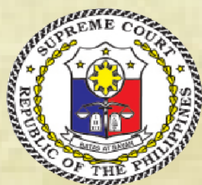

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SUPREME COURT

OF THE

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FROM

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MANILA
2013

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 159915. March 12, 2009]

BACHRACH CORPORATION, *petitioner, vs.* **PHILIPPINE PORTS AUTHORITY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISMISSAL OF APPEALS; GROUNDS; COURT OF APPEALS' AUTHORITY TO DISMISS AN APPEAL FOR FAILURE TO FILE APPELLANT'S BRIEF IS A MATTER OF JUDICIAL DISCRETION. —** Rule 50, Section 1 of the Rules of Court enumerates the grounds for the dismissal of appeals; paragraph (e) thereof provides that an appeal shall be dismissed upon — [f]ailure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules. In a long line of cases, this Court has held that the CA's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion. Thus, a dismissal based on this ground is neither mandatory nor ministerial; the fundamentals of justice and fairness must be observed, bearing in mind the background and web of circumstances surrounding the case.

2. **LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; FORMER HANDLING LAWYER AND THE LAW FIRM ARE BOTH AT FAULT FOR FAILURE TO MAKE A PROPER TURNOVER OF THE CASE TO THE PREJUDICE OF THE INTEREST OF THE CLIENT; CASE**

AT BAR. — The handling lawyer was undoubtedly at fault. The records show that even the filing of a motion for reconsideration from the Regional Trial Court's ruling was late. In this case, he even had the benefit of an extended period for the filing of the brief, but nevertheless failed to comply with the requirements. If the present counsel were to be believed, the former counsel did not even make a proper turnover of his cases — a basic matter for a lawyer and his law office to attend to before a lawyer leaves. But while fault can be attributed to the handling lawyer, we find that the law firm was no less at fault. The departure of a lawyer actively handling cases for a law firm is a major concern; the impact of a departure, in terms of the assignment of cases to new lawyers alone, is obvious. Incidents of mishandled cases due to failures in the turnover of files are well-known within professional circles. For some reason, the law firm merely attributes the failure to file the appeal brief to the handling lawyer. This is not true and is a buck-passing that we cannot accept. The law firm itself was grossly remiss in its duties to care for the interests of its client.

APPEARANCES OF COUNSEL

J.P. Villanueva & Associates for petitioner.
The Government Corporate Counsel for respondent.

D E C I S I O N

BRION, *J.*:

We have before us the Petition for Review on *Certiorari*[1] filed by the petitioner, Bachrach Corporation (*petitioner*), that seeks to reverse the Court of Appeal (*CA*) rulings dismissing the petitioner's appeal for failure to file an appeal brief.[2]

---

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

[2] Resolution of November 11, 2002 dismissing the appeal, penned by Associate Justice Andres B. Reyes, with Associate Justices Delilah Vidallon-Magtolis and Regalado E. Maambong, concurring; *rollo*, p. 36; Resolution of September 8, 2003 denying the petitioner's motion for reconsideration; *rollo*, p. 38.

ANTECEDENTS

The respondent Philippine Ports Authority (*respondent*), as lessor, entered into a 99-year contract of lease with the petitioner over its properties denominated as Blocks 180 and 185. The lease will expire in the years 2017 and 2018, respectively. Since the rentals for these properties were based on the rates prevailing in the previous decades, the respondent imposed rate increases. Separately from these properties, the respondent owned another property — Lot 8, Block 101 — covered by its own lease contract that expired in 1992. This lease has not been renewed, but the petitioner refused to vacate the premises. The respondent thus filed, and prevailed in, an ejectment case involving this property against the petitioner.

The parties tried to extrajudicially settle their differences. A Compromise Agreement was drafted in 1994, but was not fully executed by the parties.[3] Only the petitioner, its counsel, and the respondent's counsel signed; the respondent's Board of Directors was not satisfied with the terms and refused to sign the agreement.

To compel the respondent to implement the terms of the Compromise Agreement, the petitioner filed a complaint for specific performance with the Regional Trial Court (*RTC*) of Manila, Branch 42. The case was docketed as Civil Case No. 95-73399 and covered only the subjects of the Compromise Agreement — Blocks 180 and 185.[4] Seeking to include Lot 8, Block 101 in the complaint, the petitioner filed a Motion for Leave to File and for Admission of Attached Supplemental and/or Amended Complaint. In an Order dated June 26, 2000,[5] the trial court denied this motion, stating that:

> The amendment/supplement sought in the instant motion seeks the inclusion of Lot 8, Block 101 as one of the real properties subject matter of this case.

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[3] *Rollo,* pp. 96-100.

[4] *See* pp. 1 and 2 of the Compromise Agreement, *rollo,* pp. 96-97.

[5] *Rollo,* p. 43.

Granting for the sake of argument, but not in any way insinuating that plaintiff has a right to demand performance of the "Compromise Agreement," this Court can only mandate performance of its provisions. And considering that the "Compromise Agreement" speaks only of Block Nos. 185 and 180, this Court can only direct actual performance by defendant Philippine Ports Authority of its terms and conditions, and that is with respect to the lease of these blocks (185 and 180) and no other. It would therefore be a mistake for this court to grant the motion and allow inclusion of Lot 8, Block 101, as one of the subject matters of the "compromise agreement." If ever the plaintiff has any legal right over Lot 8, Block 101 as one of the subject matters of the "compromise agreement," it has to be a subject matter of another case but certainly not in this case.[6]

On December 5, 2000, the petitioner filed a complaint for Specific Performance against the same respondent, Philippine Ports Authority, this time involving Lot 8, Block 101. This case was docketed as Civil Case No. 00-99431.[7] The petitioner also sought the consolidation of this case with the earlier Civil Case No. 95-73399.[8]

On September 26, 2001, the RTC of Manila, Branch 42 dismissed the Civil Case No. 00-99431 complaint on the grounds of *res judicata,* forum shopping, and failure of the complaint to state a cause of action.[9]

The petitioner elevated the dismissal to the CA. On February 20, 2002, the petitioner received the February 13, 2002 notice of the court requiring it to file its Brief within a period of 45 days from receipt of the Order, which was to expire on April 6, 2002. Two days prior to the expiration of this period, the petitioner filed a motion for a 45-day extension of time to file the brief. No brief was filed within the extended period. On November 11, 2002, the CA dismissed the appeal *via* a resolution whose pertinent portion reads:

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[6] *Id.*

[7] *Rollo,* p. 14.

[8] *Ibid.*

[9] *Rollo,* pp. 40-41.

For failure of the plaintiff-appellant, Bachrach Corporation to file the required brief, the appeal is hereby considered DISMISSED pursuant to Section 1 (e), Rule 50 of the 1997 Rules of Civil Procedure, as amended.

The Motion for Extension of Time to File Appellant's Brief is NOTED.

SO ORDERED.[10]

On December 11, 2002, the petitioner filed a Motion for Reconsideration (with Motion to Admit Attached Brief).[11] The CA denied the motion in its September 8, 2003 resolution, paving the way for the filing of the present petition.

THE PETITION

The petition asks the Court to liberally apply the rules of procedure, grant its appeal, and thereby require the CA to entertain the appeal it dismissed. The petitioner raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT GIVING A LIBERAL APPLICATION OF SECTION 1(E) RULE 50 OF THE RULES OF COURT TO THE PRESENT CASE CONSISTENT WITH SECTION 6, RULE 1 OF THE SAME RULES[;]

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT REVERSING THE RULING OF THE TRIAL COURT THAT *RES JUDICATA* BARS THE FILING OF CIVIL CASE NO. 00-99431[;]

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT REVERSING THE RULING OF THE TRIAL COURT DISMISSING CIVIL CASE NO. 00-99431.

The threshold issue the case presents is whether the CA erred in dismissing the petitioner's appeal on the ground that no brief was timely filed.

---

[10] *Supra* note 1, p. 1.

[11] *Rollo,* pp. 44-53.

OUR RULING

The petition is devoid of merit.

Rule 50, Section 1 of the Rules of Court enumerates the grounds for the dismissal of appeals; paragraph (e) thereof provides that an appeal shall be dismissed upon —

> [f]ailure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

In a long line of cases, this Court has held that the CA's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion.[12] Thus, a dismissal based on this ground is neither mandatory nor ministerial; the fundamentals of justice and fairness must be observed, bearing in mind the background and web of circumstances surrounding the case.[13]

In the present case, the petitioner blames its former handling lawyer for failing to file the appellant's brief on time. This lawyer was allegedly transferring to another law office at the time the appellant's brief was due to be filed.[14] In his excitement to transfer to his new firm, he forgot about the appeal and the scheduled deadline; he likewise forgot his responsibility to endorse the case to another lawyer in the law office.[15]

Under the circumstances of this case, we find the failure to file the appeal brief inexcusable; thus, we uphold the CA's ruling.

The handling lawyer was undoubtedly at fault. The records show that even the filing of a motion for reconsideration from the Regional Trial Court's ruling was late. In this case, he even

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[12] *Philippine Merchant Marine School, Inc. v. Court of Appeals,* G.R. No. 137771, June 6, 2002, 383 SCRA 175; *Aguam v. Court of Appeals*, G.R. No. 137672, May 31, 2000, 332 SCRA 784; *Catindig v. Court of Appeals*, G.R. No. L-33063, February 28, 1979, 88 SCRA 675.

[13] *Ibid.*

[14] *Rollo,* p. 17.

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

had the benefit of an extended period for the filing of the brief, but nevertheless failed to comply with the requirements. If the present counsel were to be believed, the former counsel did not even make a proper turnover of his cases — a basic matter for a lawyer and his law office to attend to before a lawyer leaves.

But while fault can be attributed to the handling lawyer, we find that the law firm was no less at fault. The departure of a lawyer actively handling cases for a law firm is a major concern; the impact of a departure, in terms of the assignment of cases to new lawyers alone, is obvious. Incidents of mishandled cases due to failures in the turnover of files are well-known within professional circles. For some reason, the law firm merely attributes the failure to file the appeal brief to the handling lawyer. This is not true and is a buck-passing that we cannot accept. The law firm itself was grossly remiss in its duties to care for the interests of its client.

We note as a last point that the original 45-day period for the appellant to submit its brief expired on April 6, 2002. Petitioner seasonably filed its motion for extension on April 4, 2002. It was only on November 11, 2002, about seven (7) months later, that the CA dismissed the appeal. Absolutely nothing appeared to have been done in the interim, not even in terms of noting that no appeal brief had been filed. Thus, the petitioner simply took too long to rectify its mistake; by the time that it acted, it was simply too late.

From these perspectives, the CA cannot in any way be said to have erred in dismissing the appeal.

WHEREFORE, we *DENY* the petition for review and, consequently, *AFFIRM* the Court of Appeals' Resolutions dated November 11, 2002 and September 8, 2003.

SO ORDERED.

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

---

[*] Acting Chief Justice per Special Order No. 581 dated March 3, 2009.

SECOND DIVISION

[G.R. No. 170360. March 12, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HENRY GUERRERO *y* AGRIPA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY IF AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED RESPECT ON APPEAL. —** An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These actual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless fully scrutinized the records of this case as the penalty of *reclusion perpetua* imposed on the accused demands no less than this kind of scrutiny.

2. **CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; ELEMENTS. —** [F]or the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman,** and (2) **he accomplished the act through force, threat or intimidation,** or when she was deprived of reason or was otherwise unconscious, was under 12 years of age, or was demented.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF RAPE VICTIMS WHO ARE YOUNG AND IMMATURE DESERVE FULL CREDENCE. —** x x x We have held time and again that testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial if she had not been

motivated solely by the desire to obtain justice for the wrong committed against her.

4. **CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; ELEMENTS; FULL PENETRATION OF THE VAGINAL ORIFICE IS NOT AN ESSENTIAL INGREDIENT, NOR IS THE RUPTURE OF THE HYMEN NECESSARY; MERE TOUCHING OF THE EXTERNAL GENITALIA BY A PENIS CAPABLE OF CONSUMMATING THE SEXUAL ACT IS SUFFICIENT TO CONSTITUTE CARNAL KNOWLEDGE. —** x x x [I]n concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the *mere touching* of the external genitalia by a penis capable of consummating the sexual act (as part of the entry of the penis into the *labias* of the female organ) is sufficient to constitute carnal knowledge. Our ruling in *People v. Bali-Balita* is particularly instructive: We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. **But the act of touching should be understood here as inherently part of the entry of the penis into the *labias* of the female organ and not mere touching alone of the *mons pubis* or the pudendum.** Thus, **touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed touched the *labias* or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.** As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape.

5. **ID.; ID.; ID.; FORCE AND INTIMIDATION NEED NOT BE IRRESISTIBLE. —** x x x As an element of rape, force or

intimidation need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind. In *People v. Mateo*, we held: It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.

6. **REMEDIAL LAW; EVIDENCE; ALIBI; WHAT MUST BE PROVEN. —** x x x For the defense of alibi to prosper, proof of being at another place when the crime was committed is not enough; the accused must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity when the crime was committed. Moreover, we cannot help but note that the alibi of the accused is totally uncorroborated; only the appellant testified about his presence elsewhere. Already a weak defense, alibi becomes even weaker when the defense fails to present corroboration. The alibi totally falls if, aside from the lack of corroboration, the accused fails to show the physical impossibility of his presence at the place and time of the commission of the crime.

7. **CRIMINAL LAW; RAPE; PROPER PENALTY IN CASE AT BAR. —** Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x Although the prosecution proved during trial that the rape was committed with the use of a deadly weapon, we cannot appreciate this qualifying circumstance as it was not alleged in the Information. The lower courts therefore are correct in imposing the penalty of *reclusion perpetua* on the appellant.

8. **CIVIL LAW; DAMAGES; AWARDS OF CIVIL INDEMNITY AND MORAL DAMAGES, PROPER IN CASE AT BAR. —**

We sustain the awards of civil indemnity and moral damages in accordance with prevailing jurisprudence. Civil indemnity, actually given as actual or compensatory damages, is awarded upon the finding that rape was committed. Similarly, moral damages are awarded to rape victims without need of pleading or evidentiary basis; the law assumes that a rape victim suffered moral injuries entitling her to the award.

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 appeal the April 27, 2005 decision of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00120,[1] affirming with modification the January 28, 2003 decision of the Regional Trial Court (*RTC*), Branch 94, Quezon City.[2] The RTC decision found the accused-appellant Henry Guerrero *y* Agripa (*appellant*) guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that states:

That on or about the 30th day of May, 1998, in Quezon City, Philippines, the said accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously touch [*AAA's*][3]

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[1] Penned by Associate Justice Rodrigo V. Cosico, and concurred in by Associate Justice Danilo B. Pine and Associate Justice Arcangelita Romilla Lontok; *rollo*, pp. 3-10.

[2] Penned by Judge Romeo F. Zamora; CA *rollo*, pp. 18-21.

[3] This appellation is pursuant to our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419) wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious

private part, a minor 13 years of age, removed her panty and inserted his index finger on her vagina and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.[4]

The appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; BBB; SPO4 Susano San Diego (*SPO4 San Diego*); SPO4 Milla Billones (*SPO4 Billones*); and Dr. Ma. Cristina Freyra (*Dr. Freyra*). The appellant took the witness stand for the defense.

AAA testified that the appellant was the "*kumpadre*" of her mother, and was a frequent visitor at her parents' house. She recalled that on May 30, 1998, the appellant — who was standing beside the window of his house — called her. She approached the appellant who then grabbed her arms and dragged her inside his house. The appellant removed her dress and panty, then took off his own clothes. Thereafter, the appellant touched her private parts. She felt pain when the appellant tried to insert his penis into her vagina. She cried when she saw blood on her private part.

She went to school after two (2) days, but slept in the classroom because she had a headache and felt pain all over her body. She only informed her mother of the sexual abuse after her (AAA's) brother informed their mother that she had been sleeping during school hours. Their mother filed a complaint before the police when she learned of the rape.

On cross examination, AAA admitted that the appellant had "touched" her prior to May 30, 1998. She again narrated that she was playing with her cousin at around 5:00 p.m. of May 30, 1998, when the appellant, who was then holding a fighting

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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] Records, p. 1.

cock, called her and asked her to place a bet for him in an "*ending*" game. She approached the appellant who then dragged her inside his house. She did not shout because the appellant was armed with a knife and was threatening her. The appellant took off his shorts and briefs after he undressed her. She did not run because she was scared that the appellant might kill her. She added that she never again went near the appellant's house after the rape.[5]

BBB, the mother of AAA, declared on the witness stand that she discovered the rape incident only in June 1998. According to her, she noticed that her daughter was always "*tulala*" and would not respond when talked to. When she forced AAA to disclose what her problem was, she (AAA) replied that "*Kuya Henry raped me*." AAA's brothers and sisters were present when she made this revelation. She responded to the disclosure by accompanying AAA to the Batasan Police Station 6 where the desk officer, SPO4 Billones, took AAA's statement. They went to the PNP Crime Laboratory for AAA's medical examination upon police instructions.[6]

SPO4 San Diego narrated that on July 13, 1998, AAA and her mother went to the police station to report the rape incident. At the police desk officer's instructions, he and SPO4 Antonio Osorio (*SPO4 Osorio*) went to the appellant's residence (in Pigeon Street, Batasan Hills) and invited the appellant to the police station for investigation. He and SPO4 Osorio executed an affidavit upon their arrival at the police station.[7]

SPO4 Billones testified that AAA and her mother went to the police station sometime in July 1998 to report that the appellant had "sexually abused" AAA. She took AAA's statement and prepared a referral letter for the victim's medico-legal examination. She recalled that AAA, at that time, looked tired and uneasy.[8]

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[5] TSN, October 20, 1998, pp. 1-2; TSN, October 21, 1998, pp. 2-21; TSN, October 28, 1998, pp. 2-6.

[6] TSN, January 11, 1999, pp. 2-6.

[7] TSN, March 9, 1999, pp. 2-3.

[8] TSN, September 22, 1999, pp. 2-9.

Dr. Freyra, the medico-legal officer of the PNP Central Crime Laboratory, testified that she conducted a medical examination of AAA on July 14, 1998, and made the following findings:

F I N D I N G S:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep, healed lacerations at 4 and 9 o'clock positions. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities.

C O N C L U S I O N:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococcic and for spermatozoa. x x x.[9]

On cross examination, she stated that the hymenal lacerations on AAA's private part could have been caused by the insertion of a blunt object into her vagina.[10]

The appellant was the sole defense witness, and gave a different version of the events. He declared on the witness stand that he had known AAA and her parents for about six (6) years; they both live on the same street. He recalled that before 7:00 a.m. on May 30, 1998, he went to the house of the spouses Felipe where he worked as a carpenter. He did not leave the Felipes' house until he finished his work at 9:00 p.m.

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[9] Records, p. 9.

[10] TSN, August 9, 2000, pp. 2-4.

On cross examination, he admitted that the parents of AAA were his "*kumpare*" and "*kumadre*," respectively, and stated that his place of work was a 30-minute walk, more or less, from his residence.[11]

The RTC convicted the appellant of the crime of rape in its decision of January 28, 2003 under the following terms:

> WHEREFORE, premises considered, judgment is hereby rendered finding the herein accused Henry Guerrero Agripa **GUILTY BEYOND REASONABLE DOUBT of Rape** and hereby sentences him to suffer the penalty of ***Reclusion Perpetua*** and to indemnify the offended party the sum of ₱50,000.00 and to pay the costs.
>
> SO ORDERED.[12] [*Emphasis in the original*]

The records of this case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[13] we endorsed the case and the records to the CA for appropriate action and disposition.[14]

The CA, in its decision[15] dated April 27, 2005, affirmed the RTC decision, with the modification that the appellant be ordered to pay the victim ₱50,000.00 as moral damages.

The CA gave credence to AAA's testimony which it found to be corroborated on material points by the testimony and findings of Dr. Freyra. The appellant, on the other hand, merely presented the weak defenses of denial and alibi.

In his brief,[16] the appellant argued that the RTC erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.

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[11] TSN, July 24, 2001, pp. 2-7.

[12] CA *rollo*, p. 21.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

[14] Per our Resolution dated September 8, 2004; *rollo*, p. 2.

[15] *Rollo*, pp. 3-10.

[16] CA *rollo*, pp. 50-62.

THE COURT'S RULING

We resolve to *deny* the appeal for lack of merit.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These actual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless fully scrutinized the records of this case as the penalty of *reclusion perpetua* imposed on the accused demands no less than this kind of scrutiny.[17]

The Revised Penal Code, as amended by Republic Act No. 8353,[18] defines and penalizes Rape under Article 266-A, paragraph 1, as follows:

ART. 266-A. *Rape; When and How Committed*. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through **force, threat or intimidation**;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

[17] *People v. Ballesteros*, G.R. No. 172696, August 11, 2008 citing *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.

[18] The Anti-Rape Law of 1997.

Thus, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman,** and (2) **he accomplished the act through force, threat or intimidation**, or when she was deprived of reason or was otherwise unconscious, was under 12 years of age, or was demented.[19]

In her testimony, AAA positively identified the appellant as her rapist; she never wavered in this identification. To directly quote from the records:

ASSISTANT PROSECUTOR BEN DELA CRUZ

Q: On May 30, 1998, do you recall of any unusual incident that happened to you?

[AAA]

A: Yes, sir.

Q: What was that unusual incident?

A: He called me. He was just standing by the window, and then he dragged me inside the house.

Q: What happened after you were dragged inside the house?

A: He removed my dress.

Q: What followed after he undressed you?

A: He also undressed himself.

ASSISTANT PROSECUTOR DELA CRUZ

At this juncture the witness is crying, Your Honor, may we ask that the continuation of the testimony of witness be reset tomorrow x x x.

CONTINUATION OF DIRECT EXAMINATION BY ASSISTANT PROSECUTOR DELA CRUZ

Q: Ms. Witness, for clarity, will you please step down from the witness stand and tap the shoulder of the accused in this case, Henry Guerrero Agripa?

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[19] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

[AAA]

A: Yes, sir. This man, sir.

COURT INTERPRETER

Witness tapping the right shoulder of the man who is wearing a yellow T-shirt and who when asked identified himself as Henry Guerrero Agripa.

ASSISTANT PROSECUTOR DELA CRUZ

Q: Yesterday, during the direct examination, you were telling us about your ordeal, what you experienced on May 30, 1998 in the hands of this accused, Henry Guerrero Agripa? Do you remember that, Mr. [sic] Witness?

A: Yes, sir.

Q: Now, Ms. Witness, again, I will ask you, what happened on May 30, 1998? What happened to you?

x x x x x x x x x

A: I was then near their window and he grabbed me inside their house.

Q: When you said "nila," to whom are you referring to?

A: The house of the suspect.

Q: You mean Henry Guerrero Agripa, the accused in this case?

A: Yes, sir.

Q: What happened after you were dragged inside the house of the accused?

A: He undressed me.

Q: What was removed by the accused when you said he undressed you?

A: My shorts and panty.

Q: And then what did he do next, if he did anything, after he undressed you?

A: He also undressed himself.

Q: Thereafter, what happened next, if any.

ASSISTANT PROSECUTOR DELA CRUZ

At this juncture, your honor, may we put on record that the witness is crying.

x x x x x x x x x

A: "*Ginalaw na niya po ako*."

x x x x x x x x x

COURT:

I will ask her a question. When you said "*ginalaw,*" you mean he only held your hands?

[AAA]

A: No, your honor, he touched my whole body.

Q: Including what?

A: My private parts.

x x x x x x x x x

Q: About how many times did he do to you this touching of your body as well as your private parts?

A: Many times.

x x x x x x x x x

Q: When you said he **touched your private parts**, you mean he touched you with his hands?

A: **He used his private parts.**

Q: **You mean his penis?**

A: **Yes, sir**.

Q: What did you feel?

A: **I felt pain**.

Q: And what did he do exactly when you said you felt pain, what was he doing at this time when you felt pain?

A: **Because he was trying to force his private part into mine, into my vagina.**

Q: Aside from the pain that you felt, was there anything else that happened to you on account of that act of the accused trying to **penetrate you**?

A: No more, sir.

Q: Okay. What did you observe in you[r] private parts after the accused tried to penetrate you?

A: **There was blood.**

Q: And how did you react when you said there was blood in your private part?

A: I just cried.

Q: **You said he tried to penetrate you with his penis, how many times did he do this?**

A: **Once only.** x x x[20] [*Emphasis supplied*]

AAA's testimony strikes us to be clear, convincing and credible, corroborated as it was in a major way by the medico-legal report and the testimony of Dr. Freyra. It bears emphasis that during the initial phases of AAA's testimony, she broke down on the witness stand when the prosecution asked her questions relating to the rape she suffered. This, to our mind, is an eloquent and moving indication of the truth of her allegations. In addition, our examination of the records gives us no reason to doubt AAA's testimony or suspect her of any ulterior motive in charging and testifying against the appellant. We have held time and again that testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial if she had not been motivated solely by the desire to obtain justice for the wrong committed against her.[21]

Clearly, the prosecution positively established the elements of rape required under Article 266-A. *First*, the appellant

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[20] TSN, October 20, 1998, p. 2; TSN, October 21, 1998, pp. 2-7.

[21] See *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427.

succeeded in having **carnal knowledge** with the victim; AAA was steadfast in her assertion that the appellant tried to force his penis into her vagina. We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the *mere touching* of the external genitalia by a penis capable of consummating the sexual act (as part of the entry of the penis into the *labias* of the female organ) is sufficient to constitute carnal knowledge.[22]

Our ruling in *People v. Bali-Balita*[23] is particularly instructive:

> We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. **But the act of touching should be understood here as inherently part of the entry of the penis into the *labias* of the female organ and not mere touching alone of the *mons pubis* or the pudendum.**
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> Thus, **touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed touched the *labias* or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.** As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape.[24] [*Emphasis and italics supplied*]

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[22] See *People v. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 271.

[23] G.R. No. 134266, September 15, 2000, 340 SCRA 450.

[24] *Id.*, p. 465.

Undoubtedly, there was touching of the labia as AAA testified that the appellant "**was trying to force**" his private part into her vagina, as a result of which, **she felt pain**. She also testified that **her vagina bled** after the incident. More importantly, Dr. Freyra testified that there were **deep hymenal lacerations** on AAA's private part, thus:

ATTY. RONALD ANCHETA

Q: Doctor, in your findings, you said that you found out that **the hymen was lacerated at 4 and 9 o'clock positions.**

DR. FREYRA

A: **Yes, sir.**

Q: Doctor, what could have been the cause of the laceration?

A: **The cause of such laceration is the insertion of any blunt object inside the vagina.**

Q: Now doctor, would you be able to distinguish if only the tip of the penis or full or the whole penis was inserted. Would you determine that considering that the **laceration is [at] 4 and 9 o'clock positions?**

A: **The laceration is inflicted in the hymen if there was insertion of any hard blunt object and the size of the laceration would depend on the object that penetrated and it does not matter whether the tip of the penis is short or inverted.**

Q: Are you saying that even the tip of the penis could have caused the **laceration at 4 and 9 o'clock?**

A: As I have said, it would depend on the diameter of the thing that enters the hymen and it would break that would need to accommodate the diameter of the thing that enters [sic].

Q: So how about in this case, Doctor, if the male factor is an adult at the time of the sexual abuse and there was full penetration. Is it not a fact that there could have been more laceration than what has been stated there in your report?

A: No, sir because the hymen is elastic and it would break and produce lacerations that are made in order to accommodate the diameter of the thing that enters and since the **thing**

that penetrated only required two lacerations located at 4 and 9 o'clock, those were the only lacerations inflicted in order to accommodate the thing that entered.

Q: How about if the finger was inserted in the hymen of the victim, would it produce that type of lacerations

A: If it was a finger that penetrated the hymen, perhaps I would see a smaller laceration in the hymen. Then also it would depend on the size of the smaller finger that entered the hymen and did not do any other movements like sideward movement it would be a shallow laceration. **But in this case, it is a deep healed laceration of the hymen.**

x x x x x x x x x[25]

[*Emphasis ours*]

Second, the appellant **employed force and intimidation** in satisfying his lustful desires. AAA categorically stated that she was dragged by the appellant — who was wielding a knife — inside his (appellant's) house. AAA likewise testified that the appellant continued to threaten her while they were inside his house; and that she (AAA) did not attempt to run for fear for her life. As an element of rape, force or intimidation need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind.[26] In *People v. Mateo*,[27] we held:

It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind.

Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast

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[25] TSN, August 9, 2000, pp. 2-4.

[26] *People v. Oliver*, G.R. No. 123099, February 11, 1999, 303 SCRA 72.

[27] *People v. Mateo*, G.R. No. 170569, September 30, 2008.

rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.[28]

By itself, the act of holding a knife is strongly suggestive of force or at least of intimidation, more so if the knife was directed at a minor, as in this case. Clearly, AAA could not be expected to act with equanimity and with nerves of steel, or to act like an adult or a mature and experienced woman who would know what to do under the circumstances, or to have the courage and intelligence to disregard the threat.[29] Under the circumstances obtaining in this case, the overt acts of the appellant were sufficient to bring AAA into submission.

The Appellant's Defenses

In stark contrast with the prosecution's case is the appellant's alibi of having been in the Felipes' house at the time the rape was committed. He maintained that he never left the Felipes' house from 7:00 a.m. up to 9:00 a.m. of that day. By the appellant's own admission, however, the residence of the Felipe spouses is also located at Batasan Hills, and was a mere 30-minute walk, more or less, from his (appellant's) house where the rape was committed. Considering the proximity of these places, we cannot accord any value to the appellant's alibi. For the defense of alibi to prosper, proof of being at another place when the crime was committed is not enough; the accused must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity when the crime was committed.[30]

Moreover, we cannot help but note that the alibi of the accused is totally uncorroborated; only the appellant testified about his presence elsewhere. Already a weak defense, alibi becomes even weaker when the defense fails to present corroboration. The alibi totally falls if, aside from the lack of corroboration,

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[28] *Id.*

[29] See *People v. Adora*, G.R. Nos. 116528-31, July 14, 1997, 275 SCRA 441 (citations omitted).

[30] See *People v. Aure*, G.R. No. 180451, October 17, 2008.

the accused fails to show the physical impossibility of his presence at the place and time of the commission of the crime.[31]

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B, which provide:

Article 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;

x x x x x x x x x

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

Although the prosecution proved during trial that the rape was committed with the use of a deadly weapon, we cannot appreciate this qualifying circumstance as it was not alleged in the Information. The lower courts therefore are correct in imposing the penalty of *reclusion perpetua* on the appellant.

The Proper Indemnity

We sustain the awards of civil indemnity and moral damages in accordance with prevailing jurisprudence. Civil indemnity, actually given as actual or compensatory damages, is awarded upon the finding that rape was committed.[32] Similarly, moral damages are awarded to rape victims without need of pleading or evidentiary basis; the law assumes that a rape victim suffered moral injuries entitling her to the award.[33]

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[31] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, pp. 318-319.

[32] See *People v. Crespo*, G.R. No. 180500, September 11, 2008.

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

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the April 27, 2005 Decision of the CA in CA-G.R. CR-HC No. 00120 *in toto*. Costs against appellant Henry Guerrero *y* Agripa.

SO ORDERED.

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

EN BANC

[G.R. No. 174567. March 12, 2009]

SEVERINO B. VERGARA, *petitioner, vs.* **THE HON. OMBUDSMAN, SEVERINO J. LAJARA, and VIRGINIA G. BARORO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN'S POWER TO INVESTIGATE AND TO PROSECUTE IS PLENARY AND UNQUALIFIED; EXPLAINED. — Jurisprudence explains that the Office of the Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or on complaint of any person, any act or omission of any public officer or employee, office, or agency when such act or omission appears to be illegal, unjust, improper, or inefficient. The Ombudsman's power to investigate and to prosecute is plenary and unqualified. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. The Ombudsman may dismiss the complaint should the Ombudsman find the complaint insufficient in form or substance, or the Ombudsman may proceed with the investigation

if, in the Ombudsman's view, the complaint is in due form and substance. Hence, the filing or non-filing of the information is primarily lodged within the "full discretion" of the Ombudsman.

2. **ID.; ID.; ID.; ID.; ID.; INSTANCES WHERE THE COURTS MAY INTERFERE WITH THE OMBUDSMAN'S INVESTIGATORY POWERS; NOT PRESENT IN CASE AT BAR. —** This Court has consistently adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman, which is "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." However, this Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may be exceptionally invoked pursuant to Section 1, Article VIII of the Constitution. We have enumerated instances where the courts may interfere with the Ombudsman's investigatory powers: (a) To afford protection to the constitutional rights of the accused; (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (c) When there is a prejudicial question which is sub judice; (d) When the acts of the officer are without or in excess of authority; (e) Where the prosecution is under an invalid law, ordinance or regulation; (f) When double jeopardy is clearly apparent; (g) Where the court has no jurisdiction over the offense; (h) Where it is a case of persecution rather than prosecution; (i) Where the charges are manifestly false and motivated by the lust for vengeance. These exceptions are not present in this case. x x x

3. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; FINDINGS OF FACT BY THE OMBUDSMAN WHICH ARE SUPPORTED BY SUBSTANTIAL EVIDENCE WILL NOT BE OVERTURNED. —** A perusal of the records shows that the findings of fact by the Ombudsman are supported by substantial evidence. As long as substantial evidence supports it, the Ombudsman's ruling will not be overturned.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ONLY QUESTIONS OF LACK OF JURISDICTION OR GRAVE ABUSE OF DISCRETION CAN BE RAISED THEREIN; RATIONALE. —** x x x Petitioner, in arguing that the

Ombudsman committed grave abuse of discretion, raises questions of fact. This Court is not a trier of facts, more so in the extraordinary writ of *certiorari* where neither questions of fact nor even of law are entertained, but only questions of lack of jurisdiction or grave abuse of discretion can be raised. The rationale behind this rule is explained in this wise: The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

5. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROBABLE CAUSE; DEFINED. —** Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ABUSE OF DISCRETION; ELUCIDATED. —** We reiterate the rule that courts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion

of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

7. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE OF 1991); RATIFICATION BY THE *SANGGUNIANG PANLUNGSOD* IS NOT A CONDITION *SINE QUA NON* FOR THE LOCAL CHIEF EXECUTIVE TO ENTER INTO CONTRACTS AS LONG AS THERE IS A PRIOR AUTHORIZATION OR AUTHORITY FROM THE *SANGGUNIANG PANLUNGSOD*. —** Section 22(c), Title I of RA 7160, otherwise known as the Local Government Code of 1991, provides: Section 22. Corporate Powers. — x x x (c) **Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without <u>prior authorization</u> by the sanggunian concerned.** A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or *barangay* hall. Section 455, Title III of RA 7160 enumerates the powers, duties, and compensation of the Chief Executive. Specifically, it states that: Section 455. Chief Executive: Powers, Duties and Compensation. - x x x (b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall: x x x (vi) **Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents <u>upon authority</u> of the sangguniang panlungsod or pursuant to law or ordinance;** Clearly, when the local chief executive enters into contracts, the law speaks of prior authorization or authority from the Sangguniang Panlungsod and not ratification. It cannot be denied that the City Council issued Resolution No. 280 authorizing Mayor Lajara to purchase the subject lots.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.

Aguirre Aportadera Gavero Sandico and Associates Law Offices for S.J. Lajara and V. G. Baroro.

The Solicitor General for public respondent.

DECISION

CARPIO, *J.*:

The Case

This petition for *certiorari* and *mandamus*[1] assails the 17 March 2004 Resolution[2] and 22 August 2005 Order[3] of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in OMB-L-C-02-1205-L. The Ombudsman dismissed the case filed by Severino B. Vergara (petitioner) and Edgardo H. Catindig against Severino J. Lajara as Calamba City Mayor (Mayor Lajara), Virginia G. Baroro (Baroro) as City Treasurer, Razul Requesto as President of Pamana, Inc. (Pamana), and Lauro Jocson as Vice President and Trust Officer of the Prudential Bank and Trust Company (Prudential Bank) for violation of Section 3(e) of the Anti Graft and Corrupt Practices Act (RA 3019).[4]

The Facts

On 25 June 2001, the City Council of Calamba (City Council), where petitioner was a member, issued Resolution No. 115, Series of 2001. The resolution authorized Mayor Lajara to negotiate with landowners within the vicinity of Barangays Real, Halang, and Uno, for a new city hall site.[5] During the public hearing on 3 October 2001, the choice for the new city hall site

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

[2] *Rollo*, pp. 113-132. Penned by Graft Investigation & Prosecution Officer II Eriberto E. Cruz III, concurred in by Director Joaquin F. Salazar. Hon. Victor C. Fernandez, Deputy Ombudsman for Luzon, gave his recommending approval and Hon. Simeon V. Marcelo, Tanodbayan (Ombudsman), approved the recommendation.

[3] *Id.* at 146-155. Penned by Graft Investigation & Prosecution Officer II Joy N. Casihan-Dumlao, concurred in by Director Joaquin F. Salazar. Deputy Ombudsman for Luzon Victor C. Fernandez gave his recommending approval and Ombudsman Ma. Merceditas N. Gutierrez approved the recommendation.

[4] *Id.* at 21-22, 31.

[5] *Id.* at 5.

was limited to properties owned by Pamana and a lot in Barangay Saimsin, Calamba.[6]

On 29 October 2001, the City Council passed Resolution No. 280, Series of 2001, authorizing Mayor Lajara to purchase several lots owned by Pamana with a total area of 55,190 square meters for the price of ₱129,017,600.[7] Mayor Lajara was also authorized to execute, sign and deliver the required documents.[8]

On 13 November 2001, the City Government of Calamba (Calamba City), through Mayor Lajara, entered into the following agreements:

1. Memorandum of Agreement (MOA)

   The MOA with Pamana and Prudential Bank discussed the terms and conditions of the sale of 15 lots with a total area of 55,190 square meters. The total purchase price of ₱129,017,600 would be payable in installment as follows: ₱10,000,000 on or before 15 November 2001, ₱19,017,600 on or before 31 January 2002, and the balance of ₱100,000,000 in four equal installments payable on or before 31 April 2002, 31 July 2002, 31 October 2002, and 31 January 2003.[9]

2. Deed of Sale

   Under the Deed of Sale, Calamba City purchased from Pamana and Prudential Bank 15 lots with a total area of 55,190 square meters, more or less, located in Brgy. Lecheria/Real, Calamba, Laguna with Transfer Certificate of Title (TCT) Numbers 159893, 159894, 159895, 159896, 159897, 158598, 162412, 162413, 204488, 66140, 61703, 66141, 66142, 66143, and 61705.

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[6] *Id.* at 22.

[7] *Id.* at 5.

[8] *Id.* at 22.

[9] *Id.* at 36-39.

3. Deed of Real Estate Mortgage

   Calamba City mortgaged to Pamana and Prudential Bank the same properties subject of the Deed of Sale as security for the balance of the purchase price.

4. Deed of Assignment of Internal Revenue Allotment (IRA)

   Calamba City's IRAs from January 2002 to 31 January 2003 were assigned to Pamana and Prudential Bank in the amount of ₱119,017,600.

On 19 November 2001, the above documents were endorsed to the City Council. Petitioner alleged that all these documents were not ratified by the City Council, a fact duly noted in an Audit Observation Memorandum dated 9 August 2002 and issued by State Auditor Ruben C. Pagaspas of the Commission on Audit.

Petitioner stated that he called the attention of the City Council on the following observations:

a) TCT Nos. 66141, 66142, 66143, 61705 and 66140 were registered under the name of Philippine Sugar Estates Development Company (PSEDC) and neither Pamana nor Prudential Bank owned these properties. Petitioner pointed out that although PSEDC had executed a Deed of Assignment[10] in favor of Pamana to maintain the road lots within the PSEDC properties, PSEDC did not convey, sell or transfer these properties to Pamana. Moreover, petitioner claimed that the signature of Fr. Efren O. Rivera (Fr. Rivera) in Annex A of the Deed of Assignment appeared to be a forgery. Fr. Rivera had also submitted an Affidavit refuting his purported signature in Annex A.[11]

b) Petitioner claimed that there was no relocation survey prior to the execution of the Deed of Sale.[12]

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[10] The Deed of Assignment, issued in favor of Pamana, was signed on 21 November 1986 by Rev. Fr. Efren Rivera as Chairman of the PSEDC's Board. A copy of the Deed of Assignment was faxed to the City Government last 3 December 2001.

[11] *Rollo*, pp. 301-303.

[12] *Id.* at 303.

c) Petitioner alleged that with respect to the two lots covered by TCT No. 61703 with an area of 5,976 square meters and TCT No. 66140 with an area of 3,747 square meters, Fr. Boyd R. Sulpico (Fr. Sulpico) of the Dominican Province of the Philippines had earlier offered the same for only ₱300 per square meter.[13]

d) Petitioner contended that TCT Nos. 66141, 66142, 66143 and 61705 are road lots. The dorsal sides of the TCTs bear the common annotation that the road lots cannot be closed or disposed without the prior approval of the National Housing Authority and the conformity of the duly organized homeowners' association.[14]

e) Petitioner claimed that an existing *barangay* road and an access road to Bacnotan Steel Corporation and Danlex Corporation were included in the Deed of Sale[15]

Petitioner maintained that since the pieces of evidence in support of the complaint were documentary, respondents have admitted them impliedly.[16]

The Ruling of the Ombudsman

On 17 March 2004, the Ombudsman issued a Resolution (Resolution) finding no probable cause to hold any of the respondents liable for violation of Section 3(e) of RA 3019.[17]

The Ombudsman found that the subject properties have been transferred and are now registered in the name of Calamba City under new Certificates of Title.[18] Moreover, the reasonableness of the purchase price for the subject lots could be deduced from the fact that Calamba City bought them at

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[13] *Id.* at 79, 303-304.

[14] *Id.* at 304.

[15] *Id.* at 305.

[16] *Id.*

[17] *Id.* at 128. The Resolution was approved by Ombudsman Marcelo on 12 August 2004.

[18] *Id.* at 129.

₱3,800 per square meter, an amount lower than their zonal valuation at ₱6,000 per square meter. The Ombudsman added that it was common knowledge that the fair market value of the lots was higher than their zonal valuation, yet the lots were acquired at a lower price. The Ombudsman also found that the terms and conditions of payment were neither onerous nor burdensome to the city government as it was able to immediately take possession of the lots even if it had paid only less than ten percent of the contract price and was even relieved from paying interests on the installment payments. The Ombudsman ruled that there was no compelling evidence showing actual injury or damage to the city government to warrant the indictment of respondents for violation of Section 3(e) of RA 3019.[19]

On 27 September 2004, petitioner filed a Motion for Reconsideration. Petitioner questioned the lack of ratification by the City Council of the contracts, the overpricing of lots covered by TCT Nos. 61703 and 66140 in the amount of ₱19,812,546, the inclusion of road lots and creek lots with a total value of ₱35,000,000, and the lack of a relocation survey.[20]

In an Order dated 22 August 2005 (Order), the Ombudsman denied the Motion for Reconsideration for lack of merit.[21] The Ombudsman held that the various actions performed by Mayor Lajara in connection with the purchase of the lots were all authorized by the Sangguniang Panlungsod as manifested in the numerous resolutions. With such authority, it could not be said that there was evident bad faith in purchasing the lands in question. The lack of ratification alone did not characterize the purchase of the properties as one that gave unwarranted benefits to Pamana or Prudential Bank or one that caused undue injury to Calamba City.[22]

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[19] *Id.* at 129-130.

[20] *Id.* at 139-144.

[21] *Id.* at 146-155. The Order was approved by Ombudsman Gutierrez on 25 August 2006.

[22] *Id.* at 151-152.

On the alleged overpricing of the lots covered by TCT Nos. 61703 and 66140, the Ombudsman ruled that it could be discerned from Fr. Sulpico's affidavit that the said parcels of land were excluded from the offer, being creek easement lots.[23]

On the lots covered by TCT Nos. 66141, 66142, and 66143, the Ombudsman resolved that new titles were issued in the name of Pamana with PSEDC as the former registered owner.[24]

The Ombudsman finally declared that the absence of a relocation survey did not affect the validity of the subject transactions.[25]

Petitioner contended that the assailed Ombudsman's Resolution and Order discussed only the alleged reasonableness of the price of the property. The Ombudsman did not consider the issue that Calamba City paid for lots that were either easement/creeks, road lots or access roads. Petitioner alleged that it is erroneous to conclude that the price was reasonable because Calamba City should not have paid for the creeks, road lots and access roads at the same price per square meter. Petitioner claimed that the additional evidence of overpricing was a letter from Fr. Sulpico who offered the road lots covered by TCT Nos. 61703 and 66140 at ₱300[26] per square meter.[27]

In their Comment, Mayor Lajara and Baroro (respondents) argued that as frequently ruled by this Court, it is not sound practice to depart from the policy of non-interference in the Ombudman's exercise of discretion to determine whether to file an information against an accused. In the assailed Resolution and Order, the Ombudsman stated clearly and distinctly the facts and the law on which the case was based and as such, petitioner had the burden of proving that grave abuse of discretion attended the issuance of the Resolution and Order of the

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[23] *Id.* at 152.

[24] *Id.*

[25] *Id.* at 152-153.

[26] *Id.* at 79. In a letter dated 20 September 2002 and addressed to petitioner as City Councilor, Fr. Sulpico offered the lots at ₱300 per square meter.

[27] *Id.* at 307-310.

Ombudsman. Respondents maintained that in a meager three pages of argumentation, petitioner failed to point out the grave errors in the assailed Resolution and merely raised issues which have been disposed of by the Ombudsman.[28]

Respondents claimed that out of the six PSEDC-owned lots that were sold to Calamba City, the ownership of the four lots had already been transferred to Pamana as evidenced by the new TCTs. Respondents added that even if TCT Nos. 66140 and 61703 were still in PSEDC's name, ownership of these lots had been transferred to Pamana as confirmed by Fr. Sulpico, the custodian of all the assets of the Dominican Province of the Philippines.[29] Respondents also refuted the alleged overpricing of the lots covered by TCT Nos. 66140 and 61703. Respondents contended that Fr. Sulpico's letter offering the lots at ₱350[30] per square meter had been superseded by his own denial of said offer during the meeting of the Sangguniang Panlungsod on 14 November 2002.[31]

On the absence of ratification by the City Council of the MOA, Deed of Sale, Deed of Mortgage, and Deed of Assignment, respondents explained that Section 22[32] of Republic Act No. 7160 (RA 7160) spoke of prior authority and not ratification. Respondents pointed out that petitioner did not deny the fact that Mayor Lajara was given prior authority to negotiate and sign the subject contracts. In fact, it was petitioner who made the motion to enact Resolution No. 280.[33]

On the non-conduct of a relocation survey, respondents noted that while a relocation survey may be of use in determining

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[28] *Id.* at 172-176.

[29] *Id.* at 331-332.

[30] *Id.* at 197. In a letter dated 5 November 2002 addressed to Mayor Lajara as City Mayor, Fr. Sulpico offered the lots at ₱350 per square meter.

[31] *Id.* at 177-178, 189-194.

[32] Sec. 22(c). Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sangguniang concered.

[33] *Rollo*, pp. 178-179.

which lands should be purchased, the absence of a relocation survey would not, in any manner, affect the validity of the subject transactions.[34]

The Ombudsman, as represented by the Office of the Solicitor General, claimed that there was no grave abuse of discretion committed in dismissing the complaint-affidavit for violation of Section 3(e) of RA 3019.[35] The Ombudsman reasoned that to warrant conviction under Section 3(e) of RA 3019, the following essential elements must concur: (a) the accused is a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[36] The Ombudsman contended that when Mayor Lajara entered into and implemented the subject contracts, he complied with the resolutions issued by the City Council.

The Ombudsman cites the following circumstances to show that the action taken by Mayor Lajara neither caused any undue injury to Calamba City nor gave a private party any unwarranted benefits, advantage, or preference. First, the purchase price of ₱3,800 per square meter or a total of ₱129,017,600 for the site of the new City Hall was reasonable. The initial offer of the seller for the property was ₱6,000 per square meter, an amount equal to the zonal value. Second, Calamba City took immediate possession of the properties despite an initial payment of only ₱10,000,000 out of the total purchase price. Third, the total purchase price was paid under liberal terms as it was paid in installments for one year from date of purchase. Fourth, the parties agreed that the last installment of ₱25,000,000 was subject to the condition that titles to the properties were first transferred to Calamba City.[37]

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[34] *Id.* at 342-343.

[35] *Id.* at 369.

[36] *Id.* at 370-371.

[37] *Id.* at 372-373.

In its Memorandum, the Ombudsman asserted that petitioner had not substantiated his claim by clear and convincing evidence that TCT Nos. 66141, 66142, and 66143 are road lots. The sketch plan presented by petitioner could not be regarded as conclusive evidence to support his claim. The Ombudsman also refuted petitioner's claim that TCT Nos. 68601 and 68603 were included in the Deed of Sale.[38]

The Ombudsman maintained that petitioner's contention that the prices for TCT Nos. 66140 and 61703 were jacked up was belied by the affidavit of Fr. Sulpico stating that the said lots were excluded from the offer as they were creek/easement lots.[39]

The Ombudsman explained that ratification by the City Council was not a condition *sine qua non* for the local chief executive to enter into contracts on behalf of the city. The law requires prior authorization from the City Council and in this case, Resolution Nos. 115 and 280 were the City Council's stamp of approval and authority for Mayor Lajara to purchase the subject lots.[40]

The Ombudsman added that *mandamus* is not meant to control or review the exercise of judgment or discretion. To compel the Ombudsman to pursue a criminal case against respondents is outside the ambit of the courts.[41]

Aggrieved by the Ombudman's Resolution and Order, petitioner elevated the case before this Court.

Hence, this petition.

<u>The Issues</u>

The issues in this petition are:

1. Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction

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[38] *Id.* at 373-374.

[39] *Id.* at 375.

[40] *Id.* at 376.

[41] *Id.* at 378, 380.

when the Ombudsman dismissed for lack of probable cause the case against respondents for violation of Section 3(e) of RA 3019;

2. Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when the Ombudsman failed to consider the issue that Calamba City had acquired road lots which should not have been paid at the same price as the other lots; and

3. Whether all the documents pertaining to the purchase of the lots should bear the ratification by the City Council of Calamba.

The Ruling of the Court

On the determination of probable cause by the Ombudsman and the grave abuse of discretion in the acquisition of road lots

The mandate of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution which states:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13, Article XI of the Constitution vests in the Office of the Ombudsman the following powers, functions, and duties:

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) **Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.**

(2) Direct, upon complaint or at its own instance, any public official or employee of the government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and

> expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
>
> (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
>
> (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
>
> (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
>
> (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
>
> (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
>
> (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law. (Boldfacing supplied)

Republic Act No. 6770 (RA 6770), or the Ombudsman Act of 1989, granted the Office of the Ombudsman full administrative authority. Section 13 of RA 6770 restates the mandate of the Office of the Ombudsman:

> Sec. 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Section 15(1) of RA 6770 substantially reiterates the investigatory powers of the Office of the Ombudsman:

Sec. 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases;

Jurisprudence explains that the Office of the Ombudsman is vested with the sole power to investigate and prosecute, *motu proprio* or on complaint of any person, any act or omission of any public officer or employee, office, or agency when such act or omission appears to be illegal, unjust, improper, or inefficient.[42] The Ombudsman's power to investigate and to prosecute is plenary and unqualified.[43]

The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. The Ombudsman may dismiss the complaint should the Ombudsman find the complaint insufficient in form or substance, or the Ombudsman may proceed with the investigation if, in the Ombudsman's view, the complaint is in due form and substance.[44] Hence, the filing or non-filing of the information is primarily lodged within the "full discretion" of the Ombudsman.[45]

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[42] *Trinidad v. Office of the Ombudsman*, G.R. No. 166038, 4 December 2007, 539 SCRA 415, 423.

[43] *Schroeder v. Saldevar*, G.R. No. 163656, 27 April 2007, 522 SCRA 624, 630.

[44] *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, 23 November 2007, 538 SCRA 207, 215-216.

[45] *Republic v. Desierto*, G.R. No. 135123, 22 January 2007, 512 SCRA 57, 63.

This Court has consistently adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman, which is "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."[46] However, this Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may be exceptionally invoked pursuant to Section 1, Article VIII of the Constitution.[47] We have enumerated instances where the courts may interfere with the Ombudsman's investigatory powers:

(a) To afford protection to the constitutional rights of the accused;
(b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
(c) When there is a prejudicial question which is sub judice;
(d) When the acts of the officer are without or in excess of authority;
(e) Where the prosecution is under an invalid law, ordinance or regulation;
(f) When double jeopardy is clearly apparent;
(g) Where the court has no jurisdiction over the offense;
(h) Where it is a case of persecution rather than prosecution;
(i) Where the charges are manifestly false and motivated by the lust for vengeance.[48]

These exceptions are not present in this case. However, petitioner argues that the assailed Resolution of the Ombudsman dwelt only on the alleged reasonableness of the price of the property. Petitioner claims that the Resolution did not pass upon the more serious issue that Calamba City had paid for several lots that the City should not have paid for because they were road lots.

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[46] *Quiambao v. Hon. Desierto*, 481 Phil. 852, 867 (2004).

[47] *Crucillo v. Office of the Ombudsman*, G.R. No. 159876, 26 June 2007, 525 SCRA 636, 653.

[48] *Redulla v. Sandiganbayan*, G.R. No. 167973, 28 February 2007, 517 SCRA 110, 118-119.

The Ombudsman, in issuing the assailed Resolution, found no probable cause to hold any of the respondents liable for violation of Section 3(e) of RA 3019. The Ombudsman found that the subject lots were bought at ₱3,800 per square meter, an amount lower than their zonal valuation of ₱6,000 per square meter.

Based on this computation, Calamba City paid for a total area of 33,952 square meters[49] instead of the original 55,000 square meters as authorized in the City Council's Resolution No. 280, Series of 2001. Contrary to petitioner's allegation that Lot 5 with an area of 3,062 square meters and Lot 8 with an area of 3,327 square meters are easement/creeks and road lot respectively,[50] the sketch plan[51] submitted by petitioner as Annex L in his Affidavit-Complaint and the TCTs[52] of the properties indicate that these are parcels of land.

A perusal of the records shows that the findings of fact by the Ombudsman are supported by substantial evidence. As long as substantial evidence supports it, the Ombudsman's ruling will not be overturned.[53] Petitioner, in arguing that the Ombudsman committed grave abuse of discretion, raises questions of fact. This Court is not a trier of facts, more so in the extraordinary writ of *certiorari* where neither questions of fact nor even of law are entertained, but only questions of lack of

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[49] *Rollo*, pp. 43-57. The subject lots covered by the purchase were as follows:

1. TCT No. 159893	–	3,441 sq.m.
2. TCT No. 159894	–	2,084 sq.m.
3. TCT No. 159895	–	3,062 sq.m.
4. TCT No. 159896	–	2,057 sq.m.
5. TCT No. 159897	–	3,327 sq.m.
6. TCT No. 158598	–	5,797 sq.m.
7. TCT No. 162412	–	2,321 sq.m.
8. TCT No. 162413	–	1,363 sq.m.
9. TCT No. 204488	–	10,500 sq.m.
Total area	=	33,952 sq.m.

[50] *Id.* at 307.

[51] *Id.* at 81 and 158.

[52] *Id.* at 45 and 47.

[53] *Republic v. Desierto*, *supra* note 45 at 68.

jurisdiction or grave abuse of discretion can be raised.[54] The rationale behind this rule is explained in this wise:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[55]

In this case, the Ombudsman dismissed petitioner's complaint for lack of probable cause based on the Ombudsman's appreciation and review of the evidence presented. In dismissing the complaint, the Ombudsman did not commit grave abuse of discretion.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[56] Probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.[57]

In *Rubio v. Ombudsman*,[58] this Court held that what is contextually punishable under Section 3(e) of RA 3019 is the act of causing any undue injury to any party, or the giving to

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[54] *Cruz, Jr. v. People*, G.R. No. 110436, 27 June 1994, 233 SCRA 439, 459.

[55] *Republic v. Desierto*, *supra* note 45 at 68.

[56] *De Chavez v. Office of the Ombudsman*, G.R. Nos. 168830-31, 6 February 2007, 514 SCRA 638, 653.

[57] *R.R. Paredes v. Calilung*, G.R. No. 156055, 5 March 2007, 517 SCRA 369, 398.

[58] *Rubio v. Ombudsman*, G.R. No. 171609, 17 August 2007, 530 SCRA 649, 656.

any private party unwarranted benefits, advantage or preference in the discharge of the public officer's functions. In this case, after evaluating the evidence presented,[59] the Ombudsman categorically ruled that there was no evidence to show actual injury or damage to the city government to warrant the indictment of respondents for violation of Section 3(e) of RA 3019. Further, this Court held in *Pecho v. Sandiganbayan*,[60] that "causing undue injury to any party, including the government, could only mean actual injury or damage which must be established by evidence." Here, the Ombudsman found that petitioner had not substantiated his claim against respondents for the crime charged. This Court is not inclined to interfere with the evaluation of the evidence presented before the Ombudsman.

We reiterate the rule that courts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[61]

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[59] The Ombudsman found out that the subject properties have been transferred and are now registered in the name of Calamba City under new Certificates of Title. The reasonableness of the purchase price for the subject lots could be deduced from the fact that Calamba City bought them at ₱3,800 per square meter, an amount lower than its zonal valuation pegged at ₱6,000 per square meter. The Ombudsman added that it is common knowledge that the fair market value of the lots is higher than its zonal valuation, yet the lots were acquired only at a lower price. The Ombudsman also ascertained that the terms and conditions of payment were neither onerous nor burdensome to the city government as it was able to immediately take possession of the lots even if it had paid only less than ten percent of the contract price and was even relieved from paying interests on the installment payments.

[60] G.R. No. 111399, 14 November 1994, 238 SCRA 116, 133.

[61] *San Miguel Corporation v. Sandiganbayan*, 394 Phil. 608, 636-637 (2000).

On the ratification by the City Council of all documents pertaining to the purchase of the lots

Petitioner contends that all the documents, like the Memorandum of Agreement, Deed of Sale, Deed of Mortgage, and Deed of Assignment, do not bear the ratification by the City Council.

In the assailed Order, the Ombudsman held that the various actions performed by Mayor Lajara in connection with the purchase of the lots were all authorized by the Sangguniang Panlungsod as manifested in numerous resolutions. The lack of ratification alone does not characterize the purchase of the properties as one that gave unwarranted benefits.

In its Memorandum submitted before this Court, the Ombudsman, through the Office of the Solicitor General, pointed out that the ratification by the City Council is not a condition *sine qua non* for the local chief executive to enter into contracts on behalf of the city. The law requires prior authorization from the City Council and in this case, Resolution No. 280 is the City Council's stamp of approval and authority for Mayor Lajara to purchase the subject lots.

Section 22(c), Title I of RA 7160, otherwise known as the Local Government Code of 1991, provides:

Section 22. Corporate Powers. — x x x

(c) **Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without <u>prior authorization</u> by the sanggunian concerned.** A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall. (Boldfacing and underscoring supplied)

Section 455, Title III of RA 7160 enumerates the powers, duties, and compensation of the Chief Executive. Specifically, it states that :

Section 455. Chief Executive: Powers, Duties and Compensation. —

x x x x x x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

x x x x x x x x x

(vi) **Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the sangguniang panlungsod or pursuant to law or ordinance**; (Boldfacing and underscoring supplied)

Clearly, when the local chief executive enters into contracts, the law speaks of prior authorization or authority from the Sangguniang Panlungsod and not ratification. It cannot be denied that the City Council issued Resolution No. 280 authorizing Mayor Lajara to purchase the subject lots.

Resolution No. 280 states:

RESOLUTION NO. 280
Series of 2001

A RESOLUTION AUTHORIZING THE CITY MAYOR OF CALAMBA, HON. SEVERINO J. LAJARA TO PURCHASE LOTS OF PAMANA INC. WITH A TOTAL AREA OF FIFTY FIVE THOUSAND SQUARE METERS (55,000 SQ. M.) SITUATED AT BARANGAY REAL, CITY OF CALAMBA FOR A LUMP SUM PRICE OF ONE HUNDRED TWENTY-NINE MILLION SEVENTEEN THOUSAND SIX HUNDRED PESOS (₱129,017,600), SUBJECT TO THE AVAILABILITY OF FUNDS, AND FOR THIS PURPOSE, FURTHER AUTHORIZING THE HON. MAYOR SEVERINO J. LAJARA TO REPRESENT THE CITY GOVERNMENT AND TO EXECUTE, SIGN AND DELIVER SUCH DOCUMENTS AND PAPERS AS MAYBE SO REQUIRED IN THE PREMISES.

WHEREAS, the City of Calamba is in need of constructing a modern City Hall to adequately meet the requirements of governing new city and providing all adequate facilities and amenities to the general public that will transact business with the city government.

WHEREAS, as the City of Calamba has at present no available real property of its own that can serve as an appropriate site of said modern City Hall and must therefore purchase such property from

the private sector under terms and conditions that are most beneficial and advantageous to the people of the City of Calamba;

NOW THEREFORE, on motion of Kagawad S. VERGARA duly seconded by Kagawad R. HERNANDEZ, be it resolved as it is hereby resolved to authorize the City Mayor of Calamba, Hon. Severino J. Lajara to purchase lots of Pamana, Inc. with a total area of fifty five thousand square meters (55,000 sq.m.) situated at Barangay Real, City of Calamba for a lump sum price of One Hundred Twenty-Nine Million Seventeen Thousand Six Hundred Pesos (₱129,017,600) subject to the availability of funds, and for this purpose, **further authorizing the Hon. Mayor Severino J. Lajara to represent the City Government and to execute, sign and deliver such documents and papers as maybe so required in the premises**.[62] (Emphasis supplied)

As aptly pointed out by the Ombudsman, ratification by the City Council is not a condition *sine qua non* for Mayor Lajara to enter into contracts. With the resolution issued by the Sangguniang Panlungsod, it cannot be said that there was evident bad faith in purchasing the subject lots. The lack of ratification alone does not characterize the purchase of the properties as one that gave unwarranted benefits to Pamana or Prudential Bank or one that caused undue injury to Calamba City.

In sum, this Court has maintained its policy of non-interference with the Ombudsman's exercise of its investigatory and prosecutory powers in the absence of grave abuse of discretion, not only out of respect for these constitutionally mandated powers but also upon considerations of practicality owing to the myriad functions of the courts.[63] Absent a clear showing of grave abuse of discretion, we uphold the findings of the Ombudsman.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the Resolution and Order of the Ombudsman in OMB-L-C-02-1205-L dated 17 March 2004 and 22 August 2005, respectively.

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[62] *Rollo*, p. 95.

[63] *Trinidad v. Office of the Ombudsman*, *supra* note 42.

SO ORDERED.

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

Puno, C.J., on official leave.

SECOND DIVISION

[A.C. No. 5691. March 13, 2009]

AVITO YU, *complainant, vs.* **ATTY. CESAR R. TAJANLANGIT,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; ATTORNEYS; THE FACT THAT A LAWYER HAS A LIEN FOR HIS ATTORNEY'S FEES ON THE MONEY IN HIS HANDS COLLECTED FOR HIS CLIENT DOES NOT RELIEVE HIM FROM THE OBLIGATION TO MAKE PROMPT ACCOUNTING; CASE AT BAR. — x x x But, however justified respondent was in applying the cash bonds to the payment of his services and reimbursement of the expenses he had incurred, the Court agrees with the IBP that he is not excused from rendering an accounting of the same. In *Garcia v. Atty. Manuel*, the Court held that "(t)he highly fiduciary and confidential relation of attorney and client requires that the lawyer should promptly account for all the funds received from, or held by him for, the client." The fact that a lawyer has a lien for his attorney's fees on the money in his hands collected for his client does not relieve him from the obligation to make a prompt accounting.

APPEARANCES OF COUNSEL

Tantoco Villanueva De Guzman & Llamas Law Offices for complainant.

Jose Neil Lao Nuñez, Jr. for respondent.

R E S O L U T I O N

TINGA, *J.*:

This is an administrative complaint for disbarment filed by complainant Avito Yu against respondent Atty. Cesar R. Tajanlangit for violation of Rules 18.03 and 16.01 of the Code of Professional Responsibility (the Code).[1]

Complainant alleged that he had engaged the services of respondent as defense counsel in Criminal Case No. 96-150393 that resulted in a judgment of conviction against him and a sentence of thirty (30) years of imprisonment.[2] After the motion for reconsideration and/or new trial was denied by the trial court, instead of filing an appeal, respondent filed a petition for *certiorari*[3] under Rule 65 of the 1997 Rules of Civil Procedure imputing grave abuse of discretion on the trial court's part in denying the motion. This petition was subsequently denied by the Court of Appeals. Due to respondent's alleged error in the choice of remedy, the period to appeal lapsed and complainant was made to suffer imprisonment resulting from his conviction. In depriving complainant of his right to an appeal, respondent allegedly violated Rule 18.03[4] of the Code. Moreover, complainant averred that respondent had violated Rule 16.01[5] of the Code

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[1] *Rollo,* pp. 1-3.

[2] *Id.* at 1.

[3] *Id.* at 11-37.

[4] Rule 18.03: A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

[5] Rule 16.01: A lawyer shall account for all money or property collected or received for or from the client.

for failing to return the bailbond to him in the amount ₱195,000.00 after having withdrawn the same.[6] Further, complainant stated that respondent had failed to pay the telephone bill he had incurred during his stay at complainant's house.[7]

Complainant prayed that respondent be disbarred and be ordered to pay him the amount of ₱211,106.97 plus interest.[8]

For his part, respondent clarified that his legal services were engaged only after the denial of the motion for reconsideration and/or new trial and the supplement thereto. His legal services were limited to filing the petition for *certiorari*. Complainant, at the time, had already been convicted by the trial court. Respondent also explained that he had discussed with complainant the merits of filing a petition for *certiorari* and that complainant gave his conformity to the filing of the same.[9]

Moreover, respondent averred that complainant had authorized and instructed him to withdraw the cash bond in order to apply the amount as payment for legal fees and reimbursement for expenses. With regard to the unpaid telephone bill, respondent alleged that he was not presented a copy of the billing statement despite his previous requests. He also contended that he had been allowed to use the telephone to facilitate coordination between him and complainant as he was then residing in Bacolod City.[10]

The Court referred the matter to the Integrated Bar of the Philippines (IBP) by Resolution of 16 July 2003.[11]

In his Report and Recommendation dated 2 December 2004, Atty. Leland R. Villadolid, Jr., IBP Commissioner, made the following findings:

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[6] *Supra* note 2.

[7] *Id.* at 195-196; Position Paper of Complainant dated 9 February 2004.

[8] *Id.* at 196.

[9] *Id.* at 98-100 ; Comment dated 20 January 2003.

[10] *Id.* at 100-103.

[11] *Id.* at 129.

On the charge of violating Rule 18.03

x x x x x x x x x

x x x Considering that Respondent was only hired **after** the denial of the Motion for Reconsideration and/or New Trial, Complainant is silent whether an appeal was still available to him at that time. Complainant failed to state the material dates when his first lawyer, Atty. Lacsamana received the Decision dated 6 February 1998, when she filed the Motion for Reconsideration and/or New Trial, and when his second lawyer, Atty. Espiritu, received the Order dated 23 April 1999.

While all of the lawyers who protected Complainant's cause were of the view that there was a need to present additional evidence and/or hold trial anew, it is obvious that Complainant singled out Respondent and blamed him solely for his conviction.

At any rate, Respondent exhaustively explained his legal basis for elevating the Order dated 23 April 1999 to the Court of Appeals by filing a Petition for *Certiorari*. Considering that the Order dated 23 April 1999, which denied the Motion for Reconsideration and/or New Trial, Respondent's argument that the said order is not the proper subject of appeal is tenable. This is supported by Section 1(a), Rule 43 and Section 9, Rule 37 of the Rules of Court. For another, a perusal of grounds Respondent raised in the Petition is acceptable grounds that warrant a new trial. At least two of the grounds Respondent raised were: the negligence of former counsel in failing to present evidence and new discovered evidence. It is well-settled that these grounds usually warrant the re-opening of evidence. Thus, it cannot be said that Respondent acted negligently in advocating Complainant's cause.

x x x x x x x x x

On the charge of violating Rule 16.01

x x x In the absence of evidence controverting Respondent's claim that a verbal agreement exists or an amount different from what was agreed upon, it is believable that indeed, Complainant knew of the fee arrangement entered into with the Respondent, through Ms. Javier, who acted in his behalf. It is also indisputable that Complainant executed a Special Power of Attorney dated 23 March 1999 authorizing the Respondent to withdraw the cash bonds in several

criminal cases on his behalf. Thus, it was not all improper for Respondent to withdraw the same.

x x x x x x x x x

While Respondent is entitled to be paid for the legal services he rendered and expenses he incurred, it is still Respondent's obligation to render an accounting of the money received.

x x x x x x x x x

Further, Respondent did not substantiate his claim that he had paid for or tendered payment for the unpaid telephone bill. While he contends that he previously asked for the billing statement, it was allegedly not shown to him. However, there is no showing that from the time the instant disbarment complaint was filed, which in itself constitutes the demand for its payment, any payment (was) made by the Respondent.[12]

Accordingly, the IBP Commissioner recommended that respondent be directed to: (1) render an accounting of the money he had received and to itemize the nature of the legal services he had rendered, inclusive of the expenses he had incurred in compliance with Rule 16.01 of the Code; and (2) to pay the amount of the unpaid telephone bill. It was further recommended that respondent be sternly warned that a similar offense in the future would be dealt with more severely.[13]

On 12 March 2005, the IBP Board of Governors passed Resolution No. XVI-2005-83 adopting and approving the Report and Recommendation of the IBP Commissioner.[14]

The Court is in full accord with the findings and recommendation of the IBP.

Records show that respondent did not serve as complainant's lawyer at the inception of or during the trial of Criminal Case No. 96-150393 which resulted to the conviction of the latter. In fact, respondent was only engaged as counsel after the

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[12] *Id.* at 319-322.

[13] *Id.* at 323.

[14] *Id.* at 314-315.

withdrawal of appearance of complainant's lawyers and denial of the Motion for Reconsideration and/or New Trial and the supplement thereto. At that time, complainant had already been incarcerated. Significantly, complainant made no mention of the availability of the remedy of appeal at the time of respondent's employment.

More importantly, the Court finds adequate respondent's justification for filing the petition for *certiorari* instead of an appeal. Indeed, there is no showing that respondent was negligent in handling the legal matter entrusted to him by complainant.

The Court also agrees with the IBP that it was not at all improper for respondent to have withdrawn the cash bonds as there was evidence showing that complainant and respondent had entered into a special fee arrangement. But, however justified respondent was in applying the cash bonds to the payment of his services and reimbursement of the expenses he had incurred, the Court agrees with the IBP that he is not excused from rendering an accounting of the same. In *Garcia v. Atty. Manuel*,[15] the Court held that "(t)he highly fiduciary and confidential relation of attorney and client requires that the lawyer should promptly account for all the funds received from, or held by him for, the client."[16] The fact that a lawyer has a lien for his attorney's fees on the money in his hands collected for his client does not relieve him from the obligation to make a prompt accounting.[17]

Finally, the Court concurs with the IBP that while it is true that respondent was not presented a copy of the unpaid telephone bill, the instant complaint itself constitutes the demand for its payment. Considering that there is no manifestation to the effect that the same has been paid, respondent should accordingly be required to settle it.

WHEREFORE, in view of the foregoing, respondent Atty. Cesar R. Tajanlangit is ordered to render, within thirty (30) days

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[15] 443 Phil. 429 (2003).

[16] *Id.* at 487.

[17] *Schulz v. Atty. Flores*, 462 Phil. 601, 612-613 (2003).

from notice of this Resolution, an accounting of all monies he received from complainant and to itemize the nature of the legal services he had rendered, inclusive of the expenses he had incurred, in compliance with Rule 16.01 of the Code of Professional Responsibility.

Respondent is further *ADMONISHED* that commission of the same or similar act in the future will be dealt with more severely.

SO ORDERED.

Quisumbing (Acting C.J.), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[A.C. No. 6943. March 13, 2009]

ATTY. GODOFREDO C. MANIPUD, *complainant, vs.* **ATTY. FELICIANO M. BAUTISTA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINE; THE SUPREME COURT FINDS NO REASON TO DISTURB THE FINDINGS AND RESOLUTION OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP) FOR FAILURE OF THE COMPLAINANT TO RAISE THE ISSUES ON APPEAL. — Even assuming to be true complainant's allegation that he only learned on October 3, 2006, that the mortgagor, Jovita de Macasieb, has been dead since 1968, still he failed to raise this issue at the Mandatory Conference before the IBP where the issues were defined. The transcript of stenographic notes taken during the mandatory conference on September 13, 2007, long after complainant allegedly knew of the death of Jovita de Macasieb, shows that respondent's act of allegedly

resurrecting Jovita de Macasieb from the dead and for allowing an impostor to impersonate the dead was never raised as an issue, x x x. Thus, since respondent's act of allegedly resurrecting Jovita de Macasieb from the dead and for allowing an impostor to impersonate the dead was never raised as an issue before this Court or the IBP, then complainant could not raise the same in this late stage of the proceedings. Moreover, we note that complainant, in his *Comment on the Resolution of the IBP Board of Governors with Motion for Reinvestigation* filed before this Court, failed to assail the findings and resolution of the IBP with regard to the issue on forum shopping. As such, we find no reason to disturb the same.

APPEARANCES OF COUNSEL

Decano Law Offices for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

On November 21, 2005, Atty. Godofredo C. Manipud filed a complaint for disbarment against Atty. Feliciano M. Bautista for alleged commission of forum shopping in violation of his attorney's oath and in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility, and for improper conduct.

Complainant narrated that he was a mortgagee of the property allegedly owned by Jovita de Macasieb. When the mortgagor failed to pay despite demands, he filed an application for extra-judicial foreclosure of the said property with the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court in Dagupan City. Thereafter, a Notice of Extrajudicial Sale was issued and the public auction was scheduled on April 1, 2005.

However, on March 22, 2005, Atty. Bautista, as counsel for the mortgagor, filed with the Regional Trial Court a verified complaint for "*Annulment of Real Estate Mortgage and Notice of Extrajudicial Sale with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order with Damages*" which was docketed as Civil Case No. 2005-0107-D. The case

was raffled to Branch 41 which issued a TRO. On May 18, 2005, the trial court issued an order denying the prayer for issuance of preliminary injunction.

Thus, upon application of complainant-mortgagee, the sheriff caused another Notice of Extrajudicial Sale. The public auction was scheduled on July 29, 2005. However, on July 20, 2005, Atty. Bautista filed another case for annulment of real estate mortgage which was docketed as Civil Case No. 2005-0253-D.

According to complainant, the two complaints for annulment of real estate mortgage filed by respondent contained the same allegations, involved the same parties, the same subject matter, the same facts, the same issues and sought the same relief. Complainant argued that the act of respondent of filing the two complaints constitutes a clear case of forum shopping, an improper conduct which tends to degrade the administration of justice, and a violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility which commands all lawyers to uphold at all times the dignity and integrity of the legal profession.

Complainant also alleged that when his counsel filed a Motion to Dismiss the second complaint on the ground of forum shopping, respondent promptly filed a Motion to Withdraw Complaint.

In his Comment, Atty. Bautista alleged that the filing of the second complaint for annulment of the extrajudicial sale was a desperate attempt on his part to restrain the sale of his client's property; that he is not guilty of forum shopping because he did not act willfully, maliciously and with ill-intent; that he disclosed in the Certificate of Non-Forum Shopping of the second complaint the pendency of the first complaint, as well as in paragraphs 18, 20 and 22 of the said second complaint; that he filed the second complaint out of pity for his client who was about to lose her family home due to the unconscionably high monthly interest being charged by complainant; and that his prompt filing of a motion to withdraw the second complaint was indicative of his good faith.

On January 29, 2007, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and

recommendation. The IBP then directed the parties to attend a mandatory conference during which the admissions, stipulation of facts and definition of issues, shall be taken up. After the mandatory conference, the parties were heard and thereafter directed to submit their respective position papers.

In his Position Paper, complainant alleged that herein respondent, Atty. Bautista, is a nephew of Jovita de Macasieb, the registered owner of the mortgaged property. Although the loans which were obtained in 2003 appeared to have been received by Jovita de Macasieb, complainant learned, particularly on October 3, 2006, that Jovita de Macasieb has been dead since October 16, 1968.

Complainant alleged that respondent collaborated with an impostor in filing the two complaints for annulment of extra-judicial sale. Although the plaintiff in said complaints was referred to as JOVITA DE MACASIEB, the complaints however were signed by one JOVITA MACASIEB. Complainant argued that respondent intentionally resorted to this ploy in order to mislead the former. Since respondent was the one who notarized both complaints hence, he should know that JOVITA DE MACASIEB who was his aunt, and JOVITA MACASIEB who signed both complaints, are two different persons. Complainant averred that respondent's act of resurrecting a dead person not once but twice for the purpose of unjustly enriching themselves demonstrates a character not befitting a member of the legal profession.

In his Reply to complainant's Position Paper, respondent alleged that the only issue for resolution before the IBP is whether he violated the rule on forum shopping; that assuming the IBP could validly take cognizance of other issues, still it was complainant's fault that he transacted with an impostor; and that he did not know the person of Jovita Macasieb until the latter hired his services as lawyer.

In the Report and Recommendation of Investigating Commissioner Atty. Lolita A. Quisumbing, she found that respondent is not administratively liable for lack of showing that the filing of the second complaint was done deliberately and willfully to commit forum shopping. Thus:

To merit disciplinary action, forum shopping must be willful and deliberate. Section 5, Rule 7 of the Rules of Court requires that, should there be any pending action or claim before any court, tribunal or quasi-judicial agency, a complete statement of its status should be given.

In the present case, respondent explained his actions in this wise:

> In the second complaint the respondent called the attention of the Court that there was a pending (sic) between the parties, Civil Case No. 2005-178. Hence, the purpose is not to obtain favorable decision, but to have the issue resolved in Civil Case No. 2005-178. <u>To bring home his point, the respondent attached as Annex "E" the first complaint.</u>
>
> The respondent should not be blamed for the institution of the second complaint. He was misled by the very act of the complainant. Complainant had filed the application for foreclosure on December 20, 2004. This was the subject of Civil Case No. 178. All that he had to do was request the sheriff with whom he had filed the application to proceed with the foreclosure. There is absolutely no need for complainant to make a second application. In making the second application, it was impressed upon the mind of the respondent that it was another foreclosure.

In sum, respondent acted in good faith in filing the second complaint since it was established that it was his immediate reaction upon finding out that a second application for extrajudicial foreclosure was filed. If, indeed, there was intent to commit forum-shopping, he would not have alleged in the second complaint the fact of filing of the first complaint and attached a copy of the same.

The objective of the rule against forum-shopping was cited in *Municipality of Taguig, et al vs. Court of Appeals*. Said the Supreme Court —

> What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issues.

In this case, no undue vexation was caused to the Court and petitioner as the fact of filing of the first case was alleged in the second complaint and secondly, soon thereafter, inasmuch as both cases were raffled to the same branch, the first case was dismissed by the said Court. Hence, there was no danger of different courts ruling on the same issues.

IN VIEW OF THE FOREGOING, it is respectfully recommended that the Complaint against respondent ATTY. FELICIANO C. BAUTISTA be dismissed for lack of merit. (Citations omitted)

The Board of Governors of the IBP adopted and approved the findings and recommendation of the Investigating Commissioner in a Resolution dated February 6, 2008.

On June 2, 2008, complainant filed before this Court a *Comment on the Resolution of the IBP Board of Governors with Motion for Reinvestigation.* He claimed that forum shopping was not the sole issue raised for resolution but also respondent's alleged violation of the Oath of Attorney in relation to the Canons of the Code of Professional Responsibility and for improper conduct. He argued that the IBP should have also discussed and resolved respondent's act of allegedly resurrecting Jovita de Macasieb from the dead and for allowing an impostor to impersonate the dead.

The Court notes that in paragraphs 1-10 of the complaint filed by Atty. Manipud before this Court, he narrated the antecedents which led to the filing of two complaints for annulment of extrajudicial sale by herein respondent. Then, in paragraphs 11-19, complainant concluded that respondent's acts amounted to forum shopping. Clearly, respondent is thus being charged only with commission of forum shopping in violation of his attorney's oath and in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility, and for improper conduct.

Even assuming to be true complainant's allegation that he only learned on October 3, 2006, that the mortgagor, Jovita de Macasieb, has been dead since 1968, still he failed to raise this issue at the Mandatory Conference before the IBP where the issues were defined. The transcript of stenographic notes taken during the mandatory conference on September 13, 2007, long

after complainant allegedly knew of the death of Jovita de Macasieb, shows that respondent's act of allegedly resurrecting Jovita de Macasieb from the dead and for allowing an impostor to impersonate the dead was never raised as an issue, thus:

ATTY. DECANO:
The proceeding before this Honorable Commissioner is whether there was a forum shopping.

COMM. QUISUMBING:
Yes, the issue so will determine the relevance of that if you have any objection.

ATTY. DECANO:
There is therefore a relevant because it appears thru a representation . . .

COMM. QUISUMBING:
Yes, will be noted. State your objection.

ATTY. DECANO:
It is irrelevant, immaterial and is being of . . .

ATTY. MANIPUD:
Your Honor, I would like to mark as Exhibit "D" is the National Statistics Office showing that the plaintiff which was the counsel . . . respondent is already dead in October 16, 1968 to prove that the first complaint and the second complaint is tainted with fraud, Your Honor, and in violation of this attorney's oath of office.

ATTY. DECANO:
We object vigorously because that is not an issue before this Honorable Commission.

COMM. QUISUMBING:
That is why pañero we are here for admissions, stipulation of facts, and definition of issues.

ATTY. MANIPUD:
Yes, but, Your Honor, . . .

COMM. QUISUMBING:
We have to start first with the admissions and then we can proceed with the stipulations and issues. We can stipulate ultimately on what issue is before this Commission. It is

not for the Commission to rule on those matters that you are presenting pañero.

ATTY. MANIPUD:
But it will had include this, Your Honor, in order to avoid nor filing of multiplicity of suit because if its that taken in this forum then another case will be filed.

COMM. QUISUMBING:
It is not the proper forum, pañero. We are only limited on the issues that pertains to the conduct of among selves as a lawyer so we may proceed with the admissions and stipulations of facts and issues.

ATTY. MANIPUD:
I think the 2 complaints and the Motion to Dismiss are documentary evidence to support forum shopping that I have marked.[1]

x x x x x x x x x

ATTY. DECANO:
The other allegations in this proposed stipulation of facts for being immaterial and irrelevant.

COMM. QUISUMBING:
You're not stipulating that respondent and plaintiff Jovita de Macasieb…

ATTY. DECANO:
Because this is a new issue and the Supreme Court delegated the Commissioner to subscribe only on the issues.

COMM. QUISUMBING:
Okay, that is the rule pañero. You have already submitted your stipulation of facts let's now go to the issues.

ATTY. MANIPUD:
Whether or not respondent violated the rule on forum shopping.

COMM. QUISUMBING:
How about number 2?

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[1] TSN, September 13, 2007, pp. 8-11.

ATTY. MANIPUD:
Whether or not he violated Rule 1, Section 1 of Canon 1 of the Code of Professional Responsibility.

ATTY. DECANO:
We have deny that because that is a ….

ATTY. MANIPUD:
Whether or not respondent violated his attorney's oath?

ATTY. DECANO:
We deny that.

ATTY. MANIPUD:
Whether or not respondent shall be disbarred or administratively…

COMM. QUISUMBING:
Let's now proceed with the respondent.[2]

x x x x x x x x x

COMM. QUISUMBING:
You can discuss that later on in the position paper, we are here for stipulation. How about the issues pañero?

ATTY. DECANO:
The issue is, whether there is a forum shopping.

COMM. QUISUMBING:
Okay, so there is only one issue that to be resolved here, pañero, whether the respondent committed forum shopping.

ATTY. DECANO:
The other issue that we would like to maintain is whether the settlement of the case I think complainant and the respondent has put an end to this case.

ATTY. MANIPUD:
With respect to the mortgagor, Your Honor, it is settled, Your Honor, but with respect to this case, Your Honor, it's not yet settled.

COMM. QUISUMBING:
So, let us reiterate the 2 issues now. Counsel whether there is forum shopping and number 2?

[2] *Id.* at 18-19.

ATTY. DECANO:

Whether the settlement of the Civil Case No. 2005-0107 between Jovita Macasieb and Godofredo C. Manipud has put an end to any controversy about whether there is forum shopping already.

ATTY. MANIPUD:

No, the forum shopping is beside the issue, Your Honor, as far as the indebtedness is concern it is a third.

COMM. QUISUMBING:

That is on record so there is only one issue to be resolve here. Well, that concludes with the admissions, stipulation of facts and definition of issues. x x x[3]

Thus, since respondent's act of allegedly resurrecting Jovita de Macasieb from the dead and for allowing an impostor to impersonate the dead was never raised as an issue before this Court or the IBP, then complainant could not raise the same in this late stage of the proceedings. Moreover, we note that complainant, in his *Comment on the Resolution of the IBP Board of Governors with Motion for Reinvestigation* filed before this Court, failed to assail the findings and resolution of the IBP with regard to the issue on forum shopping. As such, we find no reason to disturb the same.

ACCORDINGLY, Resolution No. XVIII-2008-58 of the Integrated Bar of the Philippines *DISMISSING* the complaint for alleged commission of forum shopping in violation of his attorney's oath and in violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility, and for improper conduct filed by Atty. Godofredo C. Manipud against Atty. Feliciano M. Baustista, is *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Peralta, JJ.,* concur.

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[3] *Id.* at 37-38.

EN BANC

[A.M. No. CA-09-48-J. March 13, 2009]
(Formerly OCA-IPI No. 07-119-CAJ)

THE LAW FIRM OF CHAVEZ MIRANDA ASEOCHE, represented by its Founding Partner, ATTY. FRANCISCO I. CHAVEZ, *complainant, vs.* **JUSTICE ISAIAS P. DICDICAN, Chairman, Nineteenth (19th) Division, Court of Appeals, based at Cebu City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; IN ADMINISTRATIVE PROCEEDINGS, THE BURDEN OF PROOF THAT THE RESPONDENT COMMITTED THE ACTS COMPLAINED OF RESTS ON THE COMPLAINANT. —** It is settled that in administrative proceedings, the burden of proof that the respondent committed the acts complained of rests on the complainant. In fact, if the complainant upon whom rests the burden of proving his cause of action fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.

2. **ID.; ID.; ID.; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE PRESUMPTION PREVAILS. —** x x x Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent and should be derived from direct knowledge. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. In the present case, complainant failed to substantiate his imputations of impropriety and partiality against respondent Justice. Aside from his naked allegations, conjecture and speculations, he failed to present any other evidence to prove his charges. Hence, the presumption that respondent regularly performed his duties prevails. On the other hand, respondent Justice adequately explained that since his voluntary inhibition from the case, he no longer participated

in the case and his perceived participation in the issuance of the assailed Resolution was a result of a typographical mistake.

3. **REMEDIAL LAW; APPEALS; IF PREJUDICED BY THE ORDERS OF A JUDGE, A PARTY'S REMEDY LIES WITH THE PROPER REVIEWING COURT, NOT WITH THE OFFICE OF THE COURT ADMINISTRATOR. —** It also bears reiteration that a party's remedy, if prejudiced by the orders of a magistrate lies with the proper reviewing court, not with the Office of the Court Administrator by means of an administrative complaint. It is axiomatic that, where some other judicial means is available, an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular.

RESOLUTION

TINGA, *J.*:

This is an administrative complaint against Justice Isaias P. Dicdican, Chairman of the 19th Division of the Court of Appeals based in Cebu City, for violation of Canon 2[1] of the Code of Judicial Conduct in the resolution of the incidents in the special civil action for *certiorari* docketed as CA-G.R. CEB-SP-No. 00440, entitled *"St. Mary Mazzarello School and Sr. Maria Pacencia Bandalan, FMA v. Hon. Fernando R. Elumba, Ma. Kryssil Asparen, represented and assisted by her parents, Sps. Christopher and Sylvia Asparen."*

The special civil action for *certiorari* stemmed from a complaint filed by Ma. Krissyl Asparen with the Regional Trial Court of

[1] CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

Rule 2.01—A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

x x x x x x x x x

Rule 2.03—A judge shall not allow family, social or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Bacolod City for nullification of disciplinary sanctions, damages with prayer for temporary restraining order (TRO)/injunction, docketed as Civil Case No. 0512512, entitled "*Ma. Krissyl M. Asparen v. St. Mary Mazzarrello and Sr. Maria Pacencia Bandalan, FMA, Department of Education*." The school involved in the case had imposed disciplinary sanctions on its student, Ma. Krissyl M. Asparen, but the same was lifted upon the issuance of the writ of preliminary injunction by Hon. Elumba, the presiding judge of the trial court. The matter was then elevated to the Court of Appeals which issued a TRO, penned by respondent Justice, preventing the enforcement of the order and writ of the trial court.

Immediately thereafter, complainant and Ma. Krissyl Asparen sought the inhibition of respondent from the case on the ground that the latter had previously represented various religious organizations and institutions during his practice of law and the petitioner school in the case is run by a religious organization while petitioner Sr. Bandalan is a nun belonging to said organization.[2]

In a Resolution dated 1 April 2005, respondent Justice admitted on record that he once served as counsel of religious organizations but denied that such circumstance affected his impartiality in the case. Respondent Justice, however, found it proper to voluntarily inhibit himself to disabuse the mind of the student and complainant of any suspicion as to his impartiality.[3]

Despite his inhibition, respondent Justice allegedly participated again in the case when his name appeared as one of the signatories of a Resolution dated 21 November 2006 of the Court of Appeals admitting the memorandum of the petitioner school and which deemed the petition as submitted for decision.[4] As such, complainant filed on 5 December 2006 a Manifestation and Motion for respondent Justice to maintain his earlier inhibition. On 28 September 2007, complainant again filed a Reiterative

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[2] *Rollo*, p. 14.

[3] *Id.* at 14-15,147-148.

[4] *Id.* at 148.

Motion for Justice Dicdican to Maintain His Earlier Inhibition from the Present Case.[5]

Complainant alleged that respondent Justice's actions showed his manifest bias and prejudice against his client in the case — a blatant disregard of Canon 2 of the Code of Judicial Conduct.[6]

For his part, respondent Justice maintained that he never participated again in the case after his inhibition therefrom on 1 April 2005. In fact, he never received any of the manifestations and motions filed by complainant subsequent to his inhibition because the case file was no longer with him and the case documents were not forwarded to him. Respondent Justice likewise averred that the assailed Resolution of 21 November 2005 was promulgated based on the agendum which was actually signed by Justices Barza, as *ponente,* Baltazar-Padilla and Gonzales-Sison. This is clearly shown in the Report made by the Court of Appeals Division Clerk dated 25 April 2008.

Moreover, records show that on 9 May 2005, Division Clerk of Court May Faith Trumata forwarded to the Raffle Committee of the Court of Appeals, Cebu City Station the *rollo* of the case for reraffling to another justice in view of respondent Justice's inhibition therefrom. The case was reraffled on 11 May 2005 and was assigned to Justice Enrico Lanzanas. Then on 2 February 2006, Justice Lanzanas penned a resolution requiring the parties to submit their memoranda. On 1 June 2006, however, Justice Lanzanas was transferred to the Court of Appeals of Manila. Consequently, the case was reassigned as part of his initial case load to Justice Romeo F. Barza, a junior member of the 18th Division. As a result of a reorganization in August 2006, Justice Barza became a senior member of the 19th Division of which respondent Justice is the Chairman. Considering that respondent Justice could no longer participate in the case, Justice Marlene Sison was designated as third member of the 19th Division.

On 21 November 2006, the assailed Resolution was promulgated with Stenographer Agnes Joy S. Nobleza mistakenly

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

[6] *Id.* at 16.

including respondent Justice as one of the signatories. Proof of this inadvertence is the letter of apology dated 8 November 2007 sent to respondent Justice by Stenographer Nobleza.

Clearly, respondent Justice asserted, the charges leveled against him are devoid of factual basis. Respondent Justice strongly contended, in fact, that complainant should be the one made to answer for the false accusations and insults he had made against the court.

The Court finds the instant administrative complaint devoid of merit and should accordingly be dismissed.

It is settled that in administrative proceedings, the burden of proof that the respondent committed the acts complained of rests on the complainant. In fact, if the complainant upon whom rests the burden of proving his cause of action fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense. Even in administrative cases, if a court employee or magistrate is to be disciplined for a grave offense, the evidence against him should be competent and should be derived from direct knowledge. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail.[7]

In the present case, complainant failed to substantiate his imputations of impropriety and partiality against respondent Justice. Aside from his naked allegations, conjecture and speculations, he failed to present any other evidence to prove his charges. Hence, the presumption that respondent regularly performed his duties prevails. On the other hand, respondent Justice adequately explained that since his voluntary inhibition from the case, he no longer participated in the case and his perceived participation in the issuance of the assailed Resolution was a result of a typographical mistake.

It also bears reiteration that a party's remedy, if prejudiced by the orders of a magistrate lies with the proper reviewing court,

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[7] *Suarez-De Leon v. Estrella,* A.M. No. RTJ-05-1935, July 29, 2005, 465 SCRA 37, 44.

not with the Office of the Court Administrator by means of an administrative complaint.[8] It is axiomatic that, where some other judicial means is available, an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular.[9]

WHEREFORE, the administrative complaint against Justice Isaias P. Dicdican is *DISMISSED* for lack of merit.

SO ORDERED.

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

Puno, C.J., on official leave.

SECOND DIVISION

[A.M. No. MTJ-07-1689. March 13, 2009]
(Formerly OCA-I.P.I. No. 07-1897-MTJ)

PERLA BURIAS, *complainant, vs.* **JUDGE MIRAFE B. VALENCIA, MTC-Irosin, Sorsogon,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; AS MODELS OF LAW AND JUSTICE, JUDGES

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[8] *Atty. Hilario v. Hon. Ocampo III*, 422 Phil. 593, 606 (2001) citing *Dionisio v. Escano*, A.M. No. RTJ-98-1400, February 1, 1999, 302 SCRA 411; See *Geriatrics Foundation, Inc. v. Layosa*, 416 Phil. 668 (2001).

[9] *Atty. Hilario v. Hon. Ocampo III, supra*, citing *Santos v. Orlino*, Adm. Mat. No. RTJ-98-1418, September 25, 1998, 296 SCRA 101.

ARE MANDATED TO AVOID NOT ONLY IMPROPRIETY BUT ALSO THE APPEARANCE OF IMPROPRIETY IN ALL HIS EXTRA-JUDICIAL ACTIVITIES. — With respect to the charge of borrowing money in exchange for a favorable judgment, Rule 5.02, Canon 5 of the Code of Judicial Conduct mandates that a judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification. Under Rule 5.04 of Canon 5, a judge may obtain a loan if no law prohibits such loan. However, the law prohibits a judge from engaging in financial transactions with a party-litigant. Respondent admitted borrowing money from complainant during the pendency of the case. This act alone is patently inappropriate. The impression that respondent would rule in favor of complainant because the former is indebted to the latter is what the Court seeks to avoid. A judge's conduct should always be beyond reproach. This Court has time and again emphasized that no government position is more demanding of moral righteousness and uprightness than a seat in the judiciary. Judges as models of law and justice are mandated to avoid not only impropriety, but also the appearance of impropriety, because their conduct affects the people's faith and confidence in the entire judicial system.

2. **REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; ALL MATTERS RELATING TO A MOTION FOR INHIBITION ARE JUDICIAL MATTERS WHICH SHOULD NOT BE TREATED AS ADMINISTRATIVE IN CHARACTER. —** Complainant also cites intentional delay on the part of respondent as a ground in her motion for inhibition, which motion was denied by respondent. The OCA however correctly disposed this issue as a judicial matter which should not be treated as administrative in character, thus: x x x hence, the party who alleges to be aggrieved may apply for the appropriate legal remedy. In the absence of such a proceeding, the order either for or against inhibition stands. x x x All orders relating to a motion for inhibition should not be treated as administrative in character.

3. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; RENDITION OF JUDGMENT; ISSUANCE OF A CLARIFICATORY ORDER, IF NECESSARY TO CLARIFY CERTAIN MATERIAL FACTS, SHALL BE DONE WITHIN THE PERIOD FOR RENDITION OF JUDGMENT. — x x x Section 10 Rule 70 of the Revised Rules of Civil Procedure provides: Sec. 10. *Rendition of judgment*. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment. However should the court find it necessary to clarify certain material facts, it may, **during the said period,** issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same. The court shall not resort to the clarificatory procedure to gain time for the rendition of the judgment. The above-quoted rule explicitly mandates that should the court find it necessary to clarify certain material facts, it shall issue a clarificatory order during said period, which is construed as "within 30 days after receipt of the last affidavits or position papers, or the expiration of the periods for filing the same." The last position paper was filed by respondent in the civil case on 29 September 2006. Respondent should have issued the assailed order within 30 days counted from the receipt of the position paper.

4. ID.; RULES OF COURT; LEGAL ETHICS; DISCIPLINE OF JUDGES; BORROWING MONEY OR PROPERTY FROM LAWYERS AND LITIGANTS IN A CASE PENDING BEFORE THE COURT CONSTITUTES A SERIOUS CHARGE; SANCTIONS. — Under Section 8 in relation to Section 11, Rule 140 of the Rules of Court, borrowing money or property from lawyers and litigants in a case pending before the court constitutes a serious charge punishable by any of the following sanctions: 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.

R E S O L U T I O N

TINGA, *J.*:

In a verified complaint dated 19 August 2005, Perla Burias (complainant) charged Judge Mirafe B. Valencia (respondent), then Presiding Judge of the Municipal Trial Court (MTC) of Irosin, Sorsogon, of gross misconduct.

The undisputed facts follow.

On 4 and 25 August 2005, respondent borrowed money from complainant in the amounts of ₱5,000.00 and ₱2,500.00, respectively. The loans were evidenced by promissory notes.[1]

On 25 August 2005, complainant filed a verified complaint[2] for forcible entry and damages with prayer for the issuance of a writ of preliminary mandatory injunction before the MTC of Bulan, Sorsogon, presided by Judge Marie Louise A. Guan-Aragon (Judge Guan-Aragon). The case was docketed as Civil Case No. 590 entitled *Perla Burias vs. Celima Morata*.

On 7 November 2005, Judge Guan-Aragon inhibited herself from the civil case.[3]

On 16 June 2006, respondent took over Civil Case No. 590 and, as the new presiding judge in the case, issued a pre-trial conference order.[4]

On 15 and 29 September 2006, the parties to the civil case submitted their position papers in compliance with the order of respondent.

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[1] *Rollo*, p. 14.

[2] *Id.* at 9-13.

[3] *Id.* at 29.

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

On 6 December 2006, respondent issued an order requiring the defendant in the civil case to submit other documents to support her claim of prior physical possession.[5]

On 4 and 24 January 2007, respondent again borrowed from complainant the amounts of ₱15,000.00 and ₱3,000.00, as evidenced by two (2) handwritten notes.[6]

On 23 March 2007, complainant filed an urgent motion for respondent's inhibition on the ground of delay in the resolution of the civil case and apparent bias against complainant based on the Order of 6 December 2006.

Respondent denied the motion on 18 April 2007, citing the demise of her son as cause for the delay.[7]

Complainant moved for reconsideration but the motion was denied by respondent on 8 January 2008.[8]

In her administrative complaint, complainant alleged that on 12 October 2005, respondent endorsed a check and thereafter exchanged the same for cash in the sum of ₱5,000.00 that complainant provided. Said check however was dishonored when presented for payment by complainant. She also averred that sometime in March 2007, respondent verbally demanded from her the sum of ₱50,000.00 and that her ₱30,500.000 indebtedness be written off in exchange for a favorable decision in Civil Case No. 590. According to complainant, she refused to accede to the demands of respondent. In April 2007, respondent reportedly called her up and threatened that she would release any of the two (2) draft decisions she allegedly prepared favoring respondent in the civil case. Complainant claimed that by reason of these threats, she was constrained to file the instant administrative case.[9]

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[5] *Id.* at 132.

[6] *Id.* at 134-135.

[7] *Id.* at 169.

[8] *Id.* at 225.

[9] *Id.* at 3-4.

In a 1st Indorsement dated 21 May 2007, the Office of the Court Administrator (OCA) required respondent to comment on the administrative complaint.[10]

On 21 June 2007, respondent submitted her comment. Anent the dishonored check, respondent explained that she signed on the dorsal side of the check to accommodate a troubled friend who issued said check in favor of complainant.[11] Respondent admitted that she entered into several transactions with complainant involving copra products from her plantation to complainant's buying station. She was even allowed to take small credits with the assurance of payment whenever the next copra produce is delivered to complainant's store.[12] Respondent denied that she had demanded ₱50,000.00 from complainant and that the ₱30,500.00 indebtedness be written off for being malicious, baseless and simply intended to destroy her standing as a member of the bench.[13] She also denied flaunting the two (2) draft decisions. While she admitted that the first eight (8) pages of the purported decisions are similar to her draft, the rest of their pages differ.[14] She justified the 6 December 2006 Order as it was issued consistently with the provision of Section 11, Rule 70 of the Rules of Court which allows the issuance of an order for the purpose of clarifying certain material facts.

In a Resolution dated 8 October 2007, the Court resolved to re-docket the case as a regular administrative case and required the parties to manifest whether they are willing submit the matter for resolution on the basis of the pleadings filed.[15]

On 13 March 2008, respondent prayed that the administrative complaint be submitted for resolution[16] while on 2 April 2008,

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[10] *Id.* at 174.

[11] *Id.* at 187.

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

[13] *Id.* at 178.

[14] *Id.* at 178-180.

[15] *Id.* at 199.

[16] *Id.* at 243.

complainant manifested the submission of the case for resolution.[17]

In its Report dated 28 August 2007, the OCA recommended that respondent be found guilty of misconduct and be meted a fine of ₱21,000.00 with a warning that the commission of a similar offense in the future shall be dealt with more severely.[18]

The OCA held respondent accountable for contracting loans of money from persons with whom her office has official relations. It ruled that it was improper for respondent to take a loan from a party-litigant. However, the OCA considered the proof inadequate to support the allegation that the loan was extended on a promised favorable decision. With respect to the charge of delay in the resolution of Civil Case No. 590, the OCA sustained respondent's Order dated 6 December 2006. It found nothing in the records which show that clarificatory procedure was resorted to gain time for the rendition of the judgment. Neither did OCA find any irregularity in the issuance of the Order denying the motion for inhibition found by complainant.[19]

Complainant's allegations were categorized by OCA into two issues–the first relates to the charge of borrowing money and the second deals with the apparent delay in the resolution of Civil Case No. 590.

This Court shall proceed to resolve the issues in this order.

With respect to the charge of borrowing money in exchange for a favorable judgment, Rule 5.02, Canon 5 of the Code of Judicial Conduct mandates that a judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

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[17] *Id.* at 272.

[18] *Id.* at 190.

[19] *Id.* at 189.

Under Rule 5.04 of Canon 5, a judge may obtain a loan if no law prohibits such loan. However, the law prohibits a judge from engaging in financial transactions with a party-litigant. Respondent admitted borrowing money from complainant during the pendency of the case. This act alone is patently inappropriate.[20] The impression that respondent would rule in favor of complainant because the former is indebted to the latter is what the Court seeks to avoid. A judge's conduct should always be beyond reproach.

This Court has time and again emphasized that no government position is more demanding of moral righteousness and uprightness than a seat in the judiciary. Judges as models of law and justice are mandated to avoid not only impropriety, but also the appearance of impropriety, because their conduct affects the people's faith and confidence in the entire judicial system.[21]

Complainant also cites intentional delay on the part of respondent as a ground in her motion for inhibition, which motion was denied by respondent. The OCA however correctly disposed this issue as a judicial matter which should not be treated as administrative in character, thus:

> x x x hence, the party who alleges to be aggrieved may apply for the appropriate legal remedy. In the absence of such a proceeding, the order either for or against inhibition stands.[22]

However, we do not completely agree with OCA's finding on the propriety of the issuance of 6 December 2006 order. Section 10 Rule 70 of the Revised Rules of Civil Procedure provides:

> Sec. 10. *Rendition of judgment*. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

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[20] *Id.* at 188.

[21] *Adriano v. Judge Villanueva*, A.M. No. MTJ-99-1232, 19 February 2003, citing *Yu-Asensi v. Villanueva*, 322 SCRA 255, 19 January 2000.

[22] *Rollo*, p. 189.

However should the court find it necessary to clarify certain material facts, it may, **during the said period**, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same.

The court shall not resort to the clarificatory procedure to gain time for the rendition of the judgment.

The above-quoted rule explicitly mandates that should the court find it necessary to clarify certain material facts, it shall issue a clarificatory order during said period, which is construed as "within 30 days after receipt of the last affidavits or position papers, or the expiration of the periods for filing the same." The last position paper was filed by respondent in the civil case on 29 September 2006. Respondent should have issued the assailed order within 30 days counted from the receipt of the position paper.

Be that as it may, all orders relating to a motion for inhibition should not be treated as administrative in character.

Under Section 8 in relation to Section 11, Rule 140 of the Rules of Court, borrowing money or property from lawyers and litigants in a case pending before the court constitutes a serious charge punishable by any of the following sanctions:

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

Since respondent retired from service last 22 February 2008, the penalty of fine is imposed.

WHEREFORE, in view of the foregoing, Judge Mirafe B. Valencia of the MTC of Irosin, Sorsogon is meted with a *FINE* of ₱20,000.00.

SO ORDERED.

Quisumbing, Acting C.J., Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

EN BANC

[A.M. No. P-05-2060. March 13, 2009]
(Formerly A.M. No. 05-7-176-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EVELYN Y. RONCAL,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; EFFECT OF FAILURE OF A PUBLIC OFFICER TO REMIT FUNDS UPON DEMAND BY AN AUTHORIZED OFFICER; CASE AT BAR. —** Repeatedly, this Court has reminded court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. Failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use. To date, Roncal has not remitted the amount of ₱147,972.60 which she was directed to deposit.

2. ID.; ID.; ID.; CIVIL SERVICE UNIFORM RULES ON ADMINISTRATIVE CASES; GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT PREJUDICIAL TO THE BEST INTEREST; DISMISSAL PROPER EVEN IF COMMITTED FOR THE FIRST TIME. — Failure of the Clerk of Court to remit the court funds collected to the Municipal Treasurer constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Rule IV, Section 52-A of the Civil Service Uniform Rules on Administrative Cases in the Civil Service, these are grave offenses punishable by dismissal even if committed for the first time.

R E S O L U T I O N

***PER CURIAM*:**

This is an administrative case against Evelyn Y. Roncal (Roncal), former Officer-in-Charge (OIC) and Court Stenographer II of the Municipal Circuit Trial Court (MCTC), Dinalupihan-Hermosa, Bataan, in connection with her accountability for the period January 1, 2003 to November 11, 2004 as per a comprehensive financial audit conducted at the said court.

The facts are as follows:

In compliance with Travel Order No. 72-2004 dated October 5, 2004, an audit team from the Office of the Court Administrator (OCA) headed by team leader Dindo V. Sevilla, Management and Audit Analyst IV, proceeded to the MCTC, Dinalupihan-Hermosa, Bataan to conduct a comprehensive financial audit on the books of account of accountable officers of the MCTC, including respondent Roncal.[1]

In a report[2] dated June 23, 2005, the audit team submitted the following findings relative to the accountability of Roncal:

1. The cash inventory conducted by the audit team on 8 November 2004 showed an undeposited collection in the amount

[1] *Rollo*, p. 7.

[2] *Id.* at 7-18.

of ₱100,825.00 for which Ms. Roncal failed to present the corresponding official receipts for each of the funds constituting the amount mentioned.

2. Out of One Hundred Ten (110) booklets of Official Receipts (O.R.s) [consisting] of fifty (50) receipts for each booklet issued by the Supreme Court to [the] MCTC-Dinalupihan, Bataan as of the time [of] audit, five (5) booklets of Official Receipts or a total of Two Hundred Fifty (250) receipts were missing and unaccounted for.

3. One of the Official Receipts included in the abovementioned booklets later turned out in Criminal Case No. 11518, entitled "*People of the Philippines v. Alfonso Baul y Reyes.*" The records of said case show that an Official Receipt with number 10044970 was issued on October 12, 2004 for the cash bond posted [by] Anita Baul in the amount of Fifteen Thousand Pesos (₱15,000.00). This O.R. was issued during the incumbency of Ms. Roncal as OIC, but no such bail was reported in the cashbook. There was also no corresponding deposit of the said collection reflected in the bank account for fiduciary funds of the court.

4. After a tedious scrutiny of the records and reconciliation of figures, the audit team laid bare the following shortages in the collection of fees and/or under-remittances attributable to Ms. Roncal:

Clerk of Court General Fund (CoCGF) –	₱ 4,478.00
Special Allowance for the Judiciary (SAJ) –	11,465.00
Judiciary Development Fund (JDF)	28,029.60
Fiduciary Fund (FF)	104,000.00
TOTAL	147,972.60[3]

The audit team also uncovered the following irregularities committed by Roncal:

(a) *Failure to issue Official Receipt* — In the course of the audit, the accused in Criminal Case No. 11428 went to the MCTC demanding the release of his cash bond in the amount of ₱60,000 from Roncal, to whom he earlier made the payment.

[3] *Id.* at 368-369.

The accused adverted to an order directing his release after posting his cash bond and another order directing the release of said bond. He claimed, however, that he was not issued a receipt when he paid the bond. A verification of the records of the case disclosed that both orders existed, but no such cash bond was reported in the cashbook or deposited with the court. The audit team also noted the report of incumbent Clerk of Court Jonathan Visitacion that in Criminal Case No. 11382, no cash bond documents were found in the records of the case despite the existence of an order of release referring to a bond posted. Based on the records, the bond, if any, should have been part of the July 2004 collection during the incumbency of Roncal as OIC.

(b) *Using the same Official Receipt number in another transaction* — Upon further probe in Criminal Case No. 11428, the audit team discovered that the official receipt number referred to in the order (OR# 17475783) was also the same official receipt number appearing on record in Criminal Case No. 10863. In Criminal Case No. 10863, the cash bond was posted on March 4, 2004.

(c) *Failure to update cashbook* — The audit team observed the practice in the MCTC, Dinalupihan, Bataan of preparing the Monthly Report ahead of accomplishing the cashbook. This erroneous practice led to each transaction or collection not being promptly documented as soon as they transpired, which should have been the function of the cashbook. The latter therefore became subject to the limitations of human recollection or memory.

(d) *Failure to regularly submit Monthly Reports* – As can be gleaned from the records of the court and implicitly admitted by Roncal in her Explanation[4] dated August 22, 2005, there was a delay in the filing of reports for the months of January to October 2004.[5]

In a Resolution[6] dated August 15, 2005, this Court resolved to:

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[4] *Id.* at 178.

[5] *Id.* at 369-370.

[6] *Id.* at 52-54.

(a) ***REDOCKET*** the subject financial audit report as a regular administrative matter against former Officer-in-Charge and Court Stenographer II Ms. Evelyn Y. Roncal;

(b) ***SUSPEND*** Ms. Evelyn Y. Roncal from office and **ISSUE** a Hold Departure Order against her, both effective immediately, to prevent her from leaving the country;

(c) ***DIRECT*** Evelyn Y. Roncal within ten (10) days from notice to:

(1) ***PAY*** and ***DEPOSIT*** to their respective fund accounts the following ***SHORTAGES*** in her collections amounting to One Hundred Forty Seven Thousand Nine Hundred Seventy-Two Pesos and Sixty Centavos (₱147,972.60)

NAME OF FUND	AMOUNT
G.F.	₱ 4,478.00
S.A.J.	11,465.00
J.D.F.	28,029.60
Fiduciary Fund	104,000.00
TOTAL	147,972.60

and ***SUBMIT*** to the Fiscal Monitoring Division the machine validated deposit slip as proof of compliance with the above directives;

(2) ***PRODUCE*** the following Official Receipts:

O.R. BOOKLET SERIES NUMBER	DATE ISSUED BY THE PROPERTY DIVISION
10547251 to 10547300	January 22, 1999
11044951 to 11045000	April 28, 1999
15376801 to 15376850	September 28, 2001
15376851 to 15376900	September 28, 2001
15376901 to 15376950	September 28, 2001

(3) ***EXPLAIN*** in writing, within ten (10) days from notice, why no disciplinary action shall be taken against her for:

3.1 using one official receipt for two different transactions thus deceiving the government and litigants in order to collect money from them and keep it for her own personal use;

3.2 not issuing an Official Receipt to the bondsman and keeping it for her own purpose;

3.3 the shortages found in the Judiciary Development Fund, Special Allowance for Judiciary, General Fund and Fiduciary Fund; and

(4) ***EXPLAIN*** why no collections were reported in the General Fund for the period from January to July 2003 and from March to June 2004.[7]

In the same resolution, the Court also resolved to refer the matter to Executive Judge Ener S. Fernando, Regional Trial Court, Dinalupihan, Bataan for investigation, report and recommendation.[8]

In his Final Report and Recommendation[9] dated April 2, 2007, Judge Fernando declared Roncal guilty of gross dishonesty, grave misconduct and conduct prejudicial to the best interest of the public, and recommended her dismissal with forfeiture of retirement and other benefits.

Subsequently, in a Memorandum[10] dated November 14, 2007, the OCA recommended Roncal's dismissal, as follows:

IN VIEW OF THE FOREGOING, the undersigned respectfully recommends that for gross dishonesty, grave misconduct and conduct prejudicial to the best interest of the public, respondent Ms. Evelyn Y. Roncal, Court Stenographer II, MCTC, Hermosa-Dinalupihan, Bataan, be **DISMISSED** from the service with forfeiture of retirement and other benefits except accrued leave credits, if any, and with prejudice to re-employment in any government office or instrumentality, including government-owned and controlled-corporation. It is further recommended that respondent be **ORDERED** to restitute the amount of ₱147,972.60 representing [her] shortages in the following: General Fund – ₱4,478.00; SAJ – ₱11,465.00; JDF – ₱28,029.60; and Fiduciary Fund – ₱104,000.00.

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

[8] *Id.* at 54.

[9] *Id.* at 291-299.

[10] *Id.* at 368-375.

The Employees Leave Division, Office of the Administrative Services, OCA shall also be **DIRECTED** to compute the balance of respondent's earned leave credits and forward the same to the Finance Division, Fiscal Management Office, OCA, which shall compute its monetary value. The amount as well as the other benefits she may be entitled to shall be applied as restitution of the shortage.[11]

After review, we adopt the findings and recommendation of the OCA.

Needless to over-emphasize, as Officer-in-Charge, Roncal occupied an important and very sensitive position in our judicial system.

As the person entrusted with the various funds of the court, her duty was to deposit her collections immediately in authorized government depositories. She was not supposed to keep these funds in her possession or leave them elsewhere.

The procedure in the collection of different judiciary funds, as outlined by the OCA in its Memorandum, is as follows:

a) The Official Receipts to be used in the collections of the [Special Allowance for the Judiciary] **(SAJ)**, [Judiciary Development Fund] **(JDF)**, [Fiduciary Fund] (**FF**), [Sheriff's Trust Fund] **(STF)**, and [General Fund] **(GF)** are requisitioned at the Property Division, Office of the Court Administrator, Supreme Court; the [Victim's Compensation Fund] **(VCF)**, at the Department of Justice; the **Cadastral Fees**, at the Land Registration Authority; and the [Legal Research Fund] **(LRF)**, at the U.P. Law Center;

b) From the Official Receipts provided by the Court, separate booklets must be allocated for each fund;

c) For every amount collected, a corresponding Official Receipt must be issued separately for each fund. The fund to which each collection pertains must be indicated in the booklet for easy identification;

d) After issuing the corresponding Official Receipt, the transaction must be recorded in the appropriate cashbook.

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[11] *Id.* at 374-375.

For this purpose, separate cashbooks for each fund must be maintained. All unremitted collections recorded in the cashbook must tally with the cash on hand held at the end of the day;

e) If the collection for the day reaches Five Hundred Pesos (₱500.00), it must be deposited immediately to the nearest authorized government deposit[o]ry bank, the Land Bank of the Philippines (LBP). In localities where there are no LBP [branch offices], they can purchase Postal Money Orders payable to the Chief Accountant of the Office of the Court Administrator as proof of their remittance (*Amended Administrative Circular No. 35-2004, Guidelines In The Allocation of Legal Fees, August 20, 2004*).[12]

Repeatedly, this Court has reminded court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. Failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.[13] To date, Roncal has not remitted the amount of ₱147,972.60 which she was directed to deposit.

The report of the audit team showed that Roncal committed irregularities such as failure to issue official receipts, using the same receipt number in two transactions, failure to deposit collections in faithful compliance with the regulations, failure to update cashbook, failure to regularly submit monthly reports, and irregular and unauthorized withdrawals. On top of it all, she incurred shortages in her collections amounting to ₱147,972.60.

Roncal was given every opportunity to explain her side but she chose not to. She was directed to file her comment but she never complied. Such conduct could only be indicative of guilt.

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[12] *Id.* at 373.

[13] *Vilar v. Angeles*, A.M. No. P-06-2276, February 5, 2007, 514 SCRA 147, 155.

We therefore agree with the investigating judge and the OCA that Roncal is guilty of gross dishonesty, grave misconduct and acts prejudicial to the best interest of the service.

Failure of the Clerk of Court to remit the court funds collected to the Municipal Treasurer constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Rule IV, Section 52-A[14] of the Civil Service Uniform Rules on Administrative Cases in the Civil Service, these are grave offenses punishable by dismissal even if committed for the first time.[15]

WHEREFORE, respondent Evelyn Y. Roncal is hereby *DISMISSED* from service with forfeiture of retirement and other benefits except accrued leave credits, if any, and with prejudice to re-employment in any government office or instrumentality, including government-owned and controlled corporations. She is hereby ordered to *RESTITUTE* the amount of ₱147,972.60 representing her shortages in the following: General Fund — ₱4,478.00; SAJ — ₱11,465.00; JDF — ₱28,029.60; and Fiduciary Fund – ₱104,000.00. The Employees Leave Division, Office of Administrative Services, Office of the Court Administrator is also directed to compute the balance of respondent's earned leave credits and forward the same to the Finance Division, Fiscal Management Office, Office of the Court Administrator which shall compute its monetary value. The amount

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[14] 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
2. Gross Neglect of Duty
   1st offense - Dismissal
3. Grave Misconduct
   1st offense - Dismissal

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[15] *Report on the Status of the Financial Audit Conducted in the Regional Trial Court, Tarlac City,* A.M. No. P-06-2124, December 19, 2006, 511 SCRA 191, 198-199.

as well as the other benefits she may be entitled to shall be applied as restitution for the shortages.

SO ORDERED.

Quisumbing, Acting C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Velasco, Jr., J., no part due to prior action in OCA.

Puno, C.J., on official leave.

SECOND DIVISION

[G.R. Nos. 148213-17. March 13, 2009]

EDUARDO E. KAPUNAN, JR., *petitioner, vs.* **THE COURT OF APPEALS, THE SECRETARY OF THE DEPARTMENT OF JUSTICE, FELICIANA OLALIA, PEROLINA ALAY-AY, and THE PRESIDING JUDGE OF BRANCH 71, REGIONAL TRIAL COURT OF ANTIPOLO CITY,** *respondents.*

[G.R. No. 148243. March 13, 2009]

OSCAR E. LEGASPI, *petitioner, vs.* **SERAFIN R. CUEVAS, in his capacity as SECRETARY OF THE DEPARTMENT OF JUSTICE, FELICIANA C. OLALIA, PEROLINA ALAY-AY and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SECRETARY OF JUSTICE'S FINDINGS

AND CONCLUSIONS ON THE MATTER OF PROBABLE CAUSE ARE RESPECTED BY THE COURTS EXCEPT IN CLEAR CASES OF GRAVE ABUSE OF DISCRETION. — As a rule, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

2. **POLITICAL LAW; STATUTES; PROCLAMATION NO. 347; AMNESTY EXTENDS TO ALL PERSONS WHO COMMITTED THE PARTICULAR ACTS DESCRIBED THEREIN, NOT JUST REBELS OR INSURGENTS. —** It appears that the interpretation of the Court of Appeals that military personnel were not covered under Proclamation No. 347 was derived from the belief that rebels/insurgents were mutually exclusive with military personnel. There is no doubting that "rebels" or "insurgents" have acquired a connotative association with armed insurrectionists who originate outside the forces of the government, as contradistinguished from members of the AFP who take up arms against the State. Still, the very text of Section 1 of Proclamation No. 347 extends to "all persons" who committed the particular acts described in the provision, and not just "rebels" or "insurgents." Nothing in the text of the proclamation excludes military personnel by reason of their association, and indeed as we pointed out, Section 2(b) makes it evident that they are included.

3. **ID.; ID.; ID.; NOT A UNILATERAL GRANT OF AMNESTY; POWERS AND DUTIES OF THE NATIONAL AMNESTY COMMISSION IN RELATION TO THE GRANT OF AMNESTY. —** At the same time, a close reading of Proclamation No. 347 reveals that it is not a unilateral grant of amnesty. Section 1 states that it is granted "to all persons who shall apply therefore." Pursuant to Section 4, it is the NAC which is primarily tasked "with receiving and processing applications for amnesty, and determining whether the applicants are entitled to amnesty under this Proclamation." Pursuant to its functions, it has the power to "promulgate rules and

regulations subject to the approval of the President." Final decisions or determinations of the NAC are appealable to the Court of Appeals. The extension of amnesty under Proclamation No. 347 takes effect only after the determination by the National Amnesty Commission as to whether the applicant is qualified under the terms of the proclamation. To fulfill its mandate, the NAC is empowered to enact rules and regulations, to summon witnesses and issue subpoenas. Evidently, the NAC does not just stamp its approval to every application before it. It possesses the power to determine facts, and therefrom, to decide whether the applicant is qualified for amnesty. The fact that the decisions of the NAC are subject to judicial review further supports the conclusiveness of its findings.

4. **ID.; ID.; ID.; PETITIONERS ARE NOT EXEMPT FROM PROSECUTION FOR MURDERS ON ACCOUNT OF THE GRANTS OF AMNESTY THEY HAD RECEIVED. —** The amnesty granted to Kapunan extends to acts constituting only one crime, rebellion. Thus, any inquiry whether he is liable for prosecution in connection with the Olalia killings will necessarily rely not on the list of acts or crimes enumerated in Section 1 of Proclamation No. 347, but on the definition of rebellion and its component acts. x x x The limited scope of the amnesty granted to Legaspi is even more apparent. At most, it could only cover offenses connected with his participation in the 1987 and 1989 coup attempts. x x x Any equation between rebellion and the Olalia/Alay-ay killings requires accompanying context such as that possibly provided by the Final Report. However, there is no such context that we are able to appreciate and act upon at this juncture. Assuming that Kapunan, Jr. was intent to invoke the amnesty granted him in his defense against the charges connected with the Olalia/Alay-ay slays, it would be incumbent upon him to prove before the courts that the murders were elemental to his commission or attempted commission of the crime of rebellion, and not just by way of a general averment, but through detailed evidence. The same may be said of the affidavit of Barreto, which made two relevant claims: that the entire force of the Security Group of the Ministry of Defense was then actively preparing for the launch of a rumored military exercise akin to the 1986 People Power Revolution; and that he was told by another respondent, Captain Dicon, that the murder of Olalia was needed to create an atmosphere of

destabilization spurred by the protest actions of the KMU which the RAM could then use as justification for military intervention similar to the first EDSA revolt. Based on these claims in Barreto's affidavit, the Investigating Panel itself stated in its findings that the killings of Olalia and Alay-ay were undertaken on the premise "that their death would bring about massive protest action that will contribute to the destabilization of the Cory Aquino government and eventually a military take over of the government."

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner in G.R. No. 148243.

De Lima-Bohol & Meñez Law Offices for petitioner in G.R. Nos. 148213-17.

Public Interest Law Center for respondents in G.R. No. 148243 & 148213-17.

D E C I S I O N

TINGA, *J.*:

Petitioners face criminal charges in connection with the 1986 killing of Kilusang Mayo Uno (KMU) Chairman Rolando Olalia and his driver, Leonor Alay-ay. These consolidated petitions ask us to consider whether petitioners are immune from prosecution for the Alay-ay/Olalia slayings by reason of a general grant of amnesty issued by President Fidel V. Ramos to rebels, insurgents and other persons who had committed crimes in furtherance of political ends. The Court of Appeals, in its Joint Decision[1] dated 29 December 1999, as well as in its Resolution[2] dated 22 May 2001, had held that they had not.

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[1] *Rollo* (G.R. No. 148243), pp. 30-56. Penned by Associate Justice Ma. Alicia Austria-Martinez (now Supreme Court Associate Justice) and concurred in by Associate Justices Martin S. Villarama, Jr. and Andres B. Reyes, Jr.

[2] *Id.* at 73-74.

I.

Olalia and Alay-ay were both found dead with their bodies riddled with bullets on 13 November 1986. The double murders stirred considerable public anger, given Olalia's high profile as Chairman of the KMU at the time of his death.

On 12 January 1998, private respondents Feliciana C. Olalia and Perolina G. Alay-ay filed a letter-complaint before the Department of Justice (DOJ) charging petitioner Eduardo E. Kapunan, Jr. (Kapunan, Jr.), petitioner Oscar E. Legaspi (Legaspi), and other officers and men of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) for the complex crime of kidnapping with murder of Alay-ay and Olalia. The affidavits of TSgt. Medardo Barreto (Barreto) and Eduardo E. Bueno were annexed to the complaint, which was docketed as I.S. No. 98-025.

Then Secretary of Justice Serafin R. Cuevas created a panel of investigators[3] (Panel) who were tasked to conduct the preliminary investigation on the complaint. Bueno and especially Barreto provided the crux of the factual allegations against petitioners.

On 26 February 1998, Kapunan, Jr., filed a motion to dismiss[4] the charges against him before the Panel. On the same day, Legaspi likewise filed a motion to dismiss[5] alleging that his criminal liability had been totally extinguished by the amnesty granted to him under Proclamation No. 347, entitled "Granting Amnesty to Rebels, Insurgents, and All Other Persons Who Have or May Have Committed Crimes Against Public Order, Other Crimes Committed in Furtherance of Political Ends, and Violations of the Article of War, and Creating a National Amnesty Commission."[6] The DOJ Prosecutor refused to rule on the

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[3] Manuel Torrevillas, Ruben Carretas, Edna Valenzuela, Lagrimas Agaran and Pablo Formaran.

[4] CA *rollo* (G.R. Nos. 148213-17), pp. 129-138.

[5] *Rollo* (G.R. Nos. 148213-17), pp. 121-130.

[6] *Rollo* (G.R. No. 148243), p. 11.

motions to dismiss and instead treated them as their counter-affidavits.

In a Resolution[7] dated 18 March 1998, the Panel recommended the filing of two informations each for a separate count of murder against Kapunan, Jr., Legaspi, Ricardo Dicon, Cirilio Almario, Filomeno Crizaldo Maligaya, Edger Sumido, Jose Bacera, Jr., Dennis Jabatan, Freddie Sumagaysay, Fernando Casanova, Gene Paris, Gilberto Galicia, and Desiderio Perez. The Panel determined that Olalia and Alay-ay were seized on the night of 12 November 1986 along Julia Vargas Avenue in Pasig.[8] Thereafter, the two were brought to a "safehouse" in Cubao, then to a secluded area in Antipolo where they were shot dead. The alleged perpetrators belonged to a team of members of the AFP.

The Panel rendered the following findings on the involvement of Kapunan, Jr., and Legaspi in the Olalia/Alay-ay slayings, thus:

> Respondent Eduardo E. Kapunan, Jr. is alleged to have created the Counter-Intelligence and special project team. He later ordered the transfer of the agents of SOG-OMND to the Operation Control (OPCON) headed by respondent Ricardo Dicon. On that occasion, he ordered Barreto and Sabalza to help Sumido in his surveillance mission on Rolando Olalia. When a news item came about the [*sic*] Lancer with Plate No. BBB-678, used in the abduction of Olalia and Alay-ay, he called Barreto and Sabalza and [discussed] the matter. He ordered the two (2) to clean-up the mess. Upon the suggestion of Barreto and Sabalza to change the paint of all the vehicles involved, he instructed the Finance Officer, Evelyn Estocapio to extend the needed financial support. Subsequently, in the [*sic*] small gathering in his office, he admonished the agents involved in [the] Olalia-Alay-ay operation to keep everything secret. In his defense, he denies his presence at the safehouse. Likewise, he claims Barreto did not point to him as the one who gave the orders to respondent Dicon. Similarly, he cannot be considered among those superiors (*itaas*) of the group because Barreto, Sabalza and Sumido were no longer under him. Also, he claims as grantee of Amnesty pursuant to Proclamation No. 347, it [*sic*] extinguished his criminal liability.

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[7] *Rollo* (G.R. Nos. 148213-17), pp. 132-156.

[8] *Id.* at 135.

We find the denial insufficient to prevail over the positive and clear assertions of the witness about his participation (*People v. Pasiliao*, 215 SCRA 163). The specific acts committed by him before, during and after the Olalia-Alay-ay SOG-OMND operation as pointed out by Barreto are [*sic*] clear indication of his concurrence to the said operation in pursuance of a common unlawful objective. Hence, it is inescapable for us to conclude that he is a co-conspirator in the offense charged.

Respondent Oscar Legaspi, per allegations of Barreto, was present at the safehouse when Sumido announced the arrival of Olalia and Alay-ay upon their abduction. He went to the living room and peered over them up to the moment they were brought upstairs by Matammu [*sic*]. Months later, when the Olalia-Alay-ay murder case was hotly pursued by the authorities for investigation, he planned the sending abroad of the SOG agents suspected of being involved in the killing, and gave respondent Almario ₱80,000.00 to send Sabalza abroad. In his defense, he did not controvert these points. Instead, he claims that the offense charged is absorbed in the crime of rebellion. He being a grantee of amnesty pursuant to Proclamation No. 347, his criminal liability is extinguished. Thus, his presence at the safehouse, and the giving of the ₱80,000.00 to Almario to send Sabalza abroad, are impliedly admitted by him [*sic*]. Such act, although apparently appearing as independent acts from the commission of the offense, are however, suggestive of concurrence of will in pursuance of the common unlawful objective. Accordingly, probable cause against him exists as co-conspirator in the commission of the offense.[9]

The Panel refused to consider petitioners' defense of amnesty on the ground that documents pertaining to the amnesty failed to show that the Olalia-Alay-ay murder case was one of the crimes for which the amnesty was applied for. Moreover, the Panel pointed out that the criminal liability of therein respondents (herein petitioners) was not obliterated by the amnesty granted to them. It was held that the killings were not committed in furtherance of a political belief because at that time, there was no rebellion yet launched against the Cory Aquino government. The rebellion mounted by the Reform the Armed Forces Movement (RAM) against the government was made long after the killing.[10]

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[9] *Id.* at 147-148.

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

On 23 April[11] and 9 May 1998[12] respectively, Kapunan, Jr., and Legaspi appealed the said Resolution to the Secretary of Justice. Pending appeal of the case, the Panel filed criminal informations before the Regional Trial Court (RTC) of Antipolo, Branch 71, docketed as Criminal Cases Nos. 98-14881[13] and 98-14882.[14]

In a letter-resolution[15] dated 28 July 1998, the Secretary of Justice dismissed their appeal, citing the inapplicability of the two proclamations invoked by petitioners. The Secretary ruled thus:

> We are in accord with the findings of the Investigating Panel that in this particular case, the grant of amnesty to the respondents concerned, does not extinguish their criminal liability for the Olalia-Alay-ay killings. There is no showing that this case was one of those crimes for which amnesty was applied for and subsequently granted. Logic and reason dictate that amnesty for a particular offense could not have been granted when it was not even applied for. Besides, Proclamation No. 348 (granting amnesty to certain AFP/PNP personnel who may have committed certain acts defined herein) dated March 25, 1994, as amended by Proclamation No. 348 dated May 10, 1994, provides that for amnesty to be granted, the acts or omissions for which it is sought do not constitute serious human rights violations, such as acts of torture, **<u>extra-legal execution</u>**, arson, massacre, rape, other crimes against chastity, or robbery of any form (underscoring supplied). Evidently, the Olalia-Alay-ay murder partakes of the nature of extra-legal execution and could not have come within the ambit of the law.
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> Section 2(a) of Proc. No. 347 provides that amnesty under such Proclamation shall extinguish any criminal liability for acts committed in pursuit of a political belief. However, considering the circumstances and factual backdrop of the instant case, it cannot be assumed or even safely concluded that the Olalia-Alay-ay killing was committed

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[11] *Rollo* (G.R. No. 148243) , pp. 88-96.

[12] CA *rollo*, pp. 141-165.

[13] *Id.* at 290-293.

[14] *Id.* at 294-297.

[15] *Rollo* (G.R. Nos. 148213-17), pp. 157-167.

in pursuance of a political belief. At the time of the abduction and killing, there was no rebellion yet launched against the Corazon Aquino government. As aptly found by the Panel, the rebellion mounted by the RAM against the government was made long after the killings.[16]

Kapunan, Jr. and Legaspi moved for reconsideration[17] but their motion was denied in another resolution dated 9 February 1999.

Kapunan, Jr. filed his second petition for *certiorari* before the Court of Appeals docketed as CA-G.R. SP No. 52142[18] while Legaspi brought his first petition docketed as CA-G.R. SP No. 52188. In these petitions, they impugned the 28 July 1998[19] and 9 February 1999 letter-resolutions of the Secretary of Justice denying their appeal and approving their prosecution for the double murder of Olalia and Alay-ay.

In a Joint Decision dated 29 December 1999, the Special Sixth Division of the Court of Appeals dismissed the petition. Finding no grave abuse of discretion on the part of the Secretary of Justice, the appellate court refused to rule on the applicability of amnesty to Kapunan and Legaspi on the ground that this matter involves evaluation of evidence which is not within its jurisdiction to resolve in a petition for *certiorari*.[20] It held, thus:

The Court of Appeals has held that:

x x x a perusal of the Certificate of Amnesty granted in favor of petitioner Kapunan, Jr. x x x and the certification issued in favor of petitioner Legaspi x x x inevitably brings us several questions of facts, to wit: (1) whether or not the murder of Rolando Olalia and Leonor Alay-ay were committed in pursuit of political beliefs; (2) whether or not said crimes of murder were committed for personal ends; and (3) whether or not the murder of victims Olalia and Alay-ay were disclosed in Legaspi's application because if only "mutiny"

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[16] *Id.* at 165-166.

[17] CA *rollo*, pp. 227-234.

[18] *Rollo* (G.R. Nos. 148213-17), pp. 213-253.

[19] *Id.* at 185-195.

[20] *Rollo* (G.R. No. 148243), p. 63.

was invoked, then it follows that the subject crime of murder is not covered by the amnesty in favor of Legaspi — matters which are not within the province of this Court to determine in the present petitions.

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Both Proclamations [Proclamation Nos. 347 and 348] unequivocally gives the impression that Proclamation No. 347 covers rebels and insurgent returnees and not personnel of the Armed Forces of the Philippines (AFP); and, that Proclamation No. 348 applies to all personnel of the AFP and the PNP, such as herein petitioners Kapunan and Legaspi who both hold the rank of Colonel.

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Thus, another set of questions involving both factual and legal issues crop up – (1) whether or not petitioners are rebels/insurgents or personnel of the AFP, a factual issue which is not within the jurisdiction of this Court to ascertain in the present petitions for *certiorari*; and

(2) whether or not the amnesty granted to Kapunan and Legaspi under Proclamation No. 347 is valid; stated differently, are Kapunan and Legaspi covered by Proclamation No. 347 or No. 348? – a legal issue which is likewise not within the jurisdiction of this Court to determine under the present petitions for *certiorari*.

The determination of the above issues as to which proclamation covers petitioners is crucial considering that the crimes that are not covered by the amnesty under said Proclamations are different. Under Proclamation No. 347, all persons, more particularly, rebels and insurgents, who committed "crimes against chastity and other crimes committed for personal ends" cannot avail of amnesty; while under Proclamation No. 348, all personnel of the AFP and PNP who committed crimes which "constitute serious human rights violations, such as **acts of torture, extra-legal execution**, arson, massacre, rape, other crimes against chastity, or robbery of any form" are not entitled to amnesty.

Thus, it must be established first by competent evidence whether petitioners are rebels or insurgents covered by Proclamation No. 347 or members of the AFP covered by Proclamation No. 348. If petitioners are rebels or insurgents, then they may invoke the amnesty granted to them under Proclamation No. 347 at any stage of the criminal

proceedings before the RTC of Antipolo as earlier discussed in this decision subject to the sound discretion of said court whether or not it will take judicial notice of the amnesty or admit further evidence to satisfy itself that the subject crimes of murder are covered by the amnesty granted to petitioners by the National Amnesty Commission. If petitioners are members of the AFP, then they should have been granted amnesty under Proclamation No. 348 and not under Proclamation No. 347; in which case, it becomes necessary to determine whether or not the subject crimes constitute "acts of torture or extra-legal execution." If in the affirmative, petitioners could not validly avail of the amnesty under Proclamation No. 348; and in the negative, then we go back to the question, is the amnesty granted to Kapunan and Legaspi under Proclamation No. 347 valid or not?

Clearly from the foregoing, Proclamation No. 347 or Proclamation No. 348 could not be applied automatically in favor of petitioners and they are not entitled to instant exoneration from criminal prosecution without first proving in court that the amnesty granted to them is not within the exceptions provided for in the Proclamations.

Furthermore, respondent Secretary of Justice did not commit any grave abuse of discretion in not considering the finding of the Fact-Finding Commission or Davide Commission sufficient to sustain petitioners' claim that the murders were in pursuit of political beliefs.

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As can be readily gleaned therefrom, the findings were merely referred to as allegations of the NBI and a mere suggestion that the murders of Olalia and Alay-ay "could have been" part of simulated events to effect a tense and unstable atmosphere necessary for a *coup d' etat.*

And even if we are to consider the "findings" of the Davide Commission, still another set of questions of fact arises — are petitioners mere loyalists or members of the RAM-HF?; are the murders of Olalia and Alay-ay in pursuit of petitioners' political beliefs?; are the petitioners covered by Proclamation Nos. 347 or 348? – issues which are ascertainable only after due hearing in the RTC of Antipolo and not this Court in the present petitions for *certiorari* as herein previously discussed.

Consequently, this Court cannot substitute its judgment for that of the Secretary of Justice in the absence of a showing that the latter

has committed a grave abuse of discretion. (*Mantruste Systems, Inc. v. Court of Appeals*, 179 SCRA 136, 144-145)[21]

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In time, Kapunan and Legaspi moved for a reconsideration[22] but their motion was similarly denied by the appellate court in its Resolution[23] of 22 May 2001.

On 13 June 2001, Kapunan filed his petition for review on *certiorari*,[24] docketed as G.R. Nos. 148213-17, for the reversal of the 29 December 1999 Court of Appeals Joint Decision and its 22 May 2001 Resolution and the annulment of the 28 July 1998 and 9 February 1999 letters-resolution of the Secretary of Justice. He likewise prayed for the issuance of a temporary restraining order or writ of preliminary injunction to enjoin the Secretary of Justice from prosecuting him for the Olalia-Alay-ay double murder and/or the Presiding Judge of the RTC from proceeding with the criminal cases during the pendency of the petition.[25]

Kapunan invokes as grounds for the allowance of this petition the Court of Appeals' erroneous refusal to: (1) rule on the applicability of amnesty to him; and (2) the issue of whether the Olalia-Alay-ay double murder was committed in pursuit of a political belief.[26]

On 12 July 2001, Legaspi also filed a petition for review docketed as G.R. No. 148243,[27] praying for the same relief sought by Kapunan. He submits the lone issue of whether the Court of Appeals committed grave abuse of discretion in failing

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[21] *Rollo* (G.R. No. 148243), pp. 61-69.

[22] *Rollo* (G.R. Nos. 148213-17), pp. 254-267.

[23] *Supra* at note 2.

[24] *Id.* at 3-42.

[25] *Rollo* (G.R. Nos. 148213-17), pp. 37-38.

[26] *Id.* at 24.

[27] *Rollo* (G.R. No. 148243), pp. 9-29.

to recognize the legal effects of the grant of amnesty to him under Proclamation No. 347.[28]

On 16 January 2002, the Court resolved to consolidate the two petitions.[29]

II.

The main issues raised by Kapunan and Legaspi may be synthesized into one, that is, whether or not the grant of amnesty extinguished their criminal liability. Before we turn to those issues, let us focus briefly on the findings of probable cause determined by the Investigating Panel and the Secretary of Justice.

As a rule, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.[30]

Earlier, we restated the rationale propounded by the Investigating Panel for finding probable cause against petitioners. They do not possess any inherent flaws that would ring alarm bells. Moreover, both petitioners do not offer before this Court any argument that disputes such findings of fact or probable cause offered by the Investigating Panel or the DOJ. Instead, they squarely focus their arguments on whether the grant of amnesty to them entitles them to shelter from prosecution for the Olalia/Alay-ay killings.

III.

Kapunan claims that he is a military rebel and that he committed crimes in furtherance of a political end. He is no longer connected with the AFP and has not committed any crime in connection

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[28] *Id.* at 13.

[29] *Id.* at 162-163.

[30] *First Women's Credit Corp. v. Perez*, G.R. No. 169026, 15 June 2006, 490 SCRA 774, 777.

with counter-insurgency operations. Thus, Proclamation No. 347 and not Proclamation No. 348 should have been used by the Secretary of Justice in determining whether criminal liability is extinguished by the grant of amnesty. He further argues that the exclusion of "serious human rights violations, such as acts of torture and extra-legal executions" from the coverage of amnesty under Proclamation No. 348 should not be applied to those who have been granted amnesty under Proclamation No. 347 as it only covers "those crimes against chastity, and other crimes committed for personal ends."[31]

Legaspi, on the other hand, assails the Court of Appeals' refusal to rule on the factual issue of whether he is covered by Proclamation Nos. 347 or 348. He insists that he is a grantee of amnesty under Proclamation No. 347 by virtue of the Certificate of Amnesty issued to him on 13 November[32] 1995 by the National Amnesty Commission (NAC). According to Legaspi, the statement of the appellate court that *Proclamation No. 347 covers rebels and insurgent returnees and not personnel of the AFP* is unfounded. He ratiocinated that Proclamation No. 347 also applies to personnel of the AFP since the same covers crimes committed in pursuit of political beliefs including rebellion, insurrection, *coup d' etat* or disloyalty of public officers. The crime of *coup d' etat* can be committed only by persons belonging to the military or police or those holding any public office or employment. Therefore, the coverage of Proclamation Nos. 347 and 348 differs not so much on the group or classification of persons to which they may apply but on the nature of the offenses covered.[33]

A.

Proclamation Nos. 347 and 348 were issued on the same day, 25 March 1994, by President Fidel Ramos. Their respective texts warrant examination. Section 1 of Proclamation No. 347 reads, thus:

Section 1. Grant of Amnesty. — Amnesty is hereby granted to all persons who shall apply therefore and who have or may have committed

[31] *Rollo* (G.R. Nos. 148213-17), p. 27.

[32] *Rollo* (G.R. No. 148243), p. 92.

[33] *Id.* at 19.

crimes, on or before thirty (30) days following the publication of this Proclamation in two (2) newspapers of general circulation, in pursuit of political beliefs, whether punishable under the Revised Penal Code or special laws, including but not limited to the following: rebellion or insurrection; *coup d' etat*; conspiracy and proposal to commit rebellion, insurrection or *coup d' etat*; disloyalty of public officers or employees; inciting to rebellion or insurrection; sedition; conspiracy to commit sedition; inciting to sedition; illegal assembly; illegal association; direct assault; indirect assault; resistance and disobedience to a person in authority or the agents of such person; tumults and other disturbances of public order; unlawful use of means of publication and unlawful utterances; alarms and scandals; illegal possession of firearms, ammunition or explosives, committed in furtherance of, incident to, or in connection with the crimes of rebellion or insurrection; and violations of Articles 59 (desertion), 62 (absence without leave), 67 (mutiny or sedition), 68 (failure to suppress mutiny or sedition), 94 (various crimes), 96 (conduct unbecoming an officer and a gentleman), and 97 (general article) of the Articles of War: *Provided*, that the amnesty shall not cover crimes against chastity and other crimes committed for personal ends.

Section 1 of Proclamation No. 348, as amended by Section 1 of Proclamation No. 377, provides:

Section 1. Grant of Amnesty. — Amnesty is hereby granted to all personnel of the AFP and PNP who shall apply therefore and who have or may have committed, as of the date of this Proclamation, acts or omissions punishable under the Revised Penal Code, the Articles of War or other special laws, in furtherance of, incident to, or in connection with counter-insurgency operations; Provided, that such acts or omissions do not constitute *serious human rights violations, such* as acts of torture, *extra-legal execution*, arson, massacre, rape, other crimes against chastity or robbery of any form; and *Provided*, That the acts were not committed for personal ends. (*Emphasis supplied*)

Administrative Order No. 1-94, as amended, serves as the implementing rules to the two proclamations.[34] It provides further clarification as to their respective coverage.

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[34] Rules and Regulations Implementing Proclamation No. 347, Dated March 25, 1994, and Proclamation No. 348, Dated March 25, 1994, as amended by Proclamation No. 377 Dated May 10, 1994.

RULE III

Section 1. *Persons Who May Apply.* — The following persons may apply for amnesty, whether or not they have been investigated, detained, charged, convicted or have served sentence or escaped imprisonment, or are serving sentence:

(a) Under Proclamation No. 347. — **Any and all rebels, insurgents, or persons who have or may have committed acts or omissions as defined in Section 2(a) hereunder.**

(b) Under Proclamation No. 348, as amended. — Any member of the AFP or PNP who have or may have committed acts or omission as defined in Section 2(b) hereunder.

Section 2. *Crimes/Acts Covered.* — The following acts or omissions may be subject to amnesty, whether or not punishable under the Revised Penal Code, the Articles of War, or special laws:

(a) Under Proclamation No. 347. — Crimes committed **in pursuit of a political belief** on or before April 30, 1994, including, but not limited to, the following:

a. Rebellion or insurrection
b. Coup d' etat
c. Conspiracy and proposal to commit rebellion, insurrection, or *coup d' etat*
d. Disloyalty of public officers or employees
e. Inciting to rebellion or insurrection
f. Sedition
g. Conspiracy to commit sedition
h. Inciting to sedition
i. Illegal assembly
j. Illegal association
k. Direct assault
l. Indirect assault
m. Resistance and disobedience to a person in authority or the agents of such person
n. Tumults and other disturbances of public order
o. Unlawful use of means of publication and unlawful utterances
p. Alarms and scandals
q. Illegal possession of firearms, ammunition, or explosives committed in furtherance of, incident to, or in connection with the crimes of rebellion or insurrection.
r. Violation of the following Articles of War:

AW 59 (desertion),
AW 62 (absence without leave),
AW 67 (mutiny or sedition)
AW 68 (failure to suppress mutiny or sedition)
AW 94 (various crimes),
AW 96 (conduct unbecoming of an officer and a gentleman)
AW 97 (general article)

(b) Under Proclamation No. 348, as amended. — Crimes/acts committed **in furtherance of, incident to, or in connection with counter-insurgency operations** on or before March 25, 1994, including but not limited to the following:

a. Willfull killing
b. Willful infliction of physical injuries
c. Illegal detention
d. Arbitrary detention
e. Coercion
f. Threats
g. Illegal possession of firearms, ammunition, or explosives
h. Violation of the following Articles of War:

AW 94 (various crimes),
AW 96 (conduct unbecoming of an officer and a gentleman)
AW 97 (general article)

Section 3. *Crimes/Acts Not Covered*. — Amnesty shall not be extended for the crimes committed for personal ends, and the crimes enumerated hereunder:

(a) Under Proclamation No. 347. —

i. Rape
ii. Other Crimes Against Chastity

(b) Under Proclamation No. 348, as amended. — Serious human rights violations, including but not limited to:

i. Torture
ii. Extra-legal execution
iii. Arson
iv. Massacre
v. Rape
vi. Other crimes against chastity
vii. Robbery of any form (Emphasis supplied)

The Court of Appeals alluded to a measure of ambiguity in respect to whether Proclamation No. 347 also extend to personnel of the Armed Forces of the Philippines considering that Proclamation No. 348, issued on the same day, does specifically cover such class of persons. It ultimately concluded that AFP personnel were not included in Proclamation No. 347, the same including only "rebels and insurgent returnees" in its ambit.

We note that on the contrary the text of Proclamation No. 347 is sufficiently clear that members of the Armed Forces of the Philippines are indeed covered by the Proclamation. If AFP personnel were not under the coverage of Proclamation No. 347, then Section 2(b) thereof would be utterly inutile. The provision reads:

> SECTION. 2. *Effects*. — x x x
>
> (b) The amnesty herein proclaimed shall not *ipso facto* result in the reintegration or reinstatement into the service of former Armed Forces of the Philippines and Philippine National Police personnel. Reintegration or reinstatement into the service shall continue to be governed by existing laws and regulations; *Provided*, *however*, that the amnesty shall reinstate the right of AFP and PNP personnel to retirement and separation benefits, if so qualified under existing laws, rules and regulations at the time of the commission of the acts for which amnesty is extended x x x.

It appears that the interpretation of the Court of Appeals that military personnel were not covered under Proclamation No. 347 was derived from the belief that rebels/insurgents were mutually exclusive with military personnel. There is no doubting that "rebels" or "insurgents" have acquired a connotative association with armed insurrectionists who originate outside the forces of the government, as contradistinguished from members of the AFP who take up arms against the State. Still, the very text of Section 1 of Proclamation No. 347 extends to "all persons" who committed the particular acts described in the provision, and not just "rebels" or "insurgents." Nothing in the text of the proclamation excludes military personnel by reason of their association, and indeed as we pointed out, Section 2(b) makes it evident that they are included.

B.

At the same time, a close reading of Proclamation No. 347 reveals that it is not a unilateral grant of amnesty. Section 1 states that it is granted "to all persons who shall apply therefore."[35] Pursuant to Section 4, it is the NAC which is primarily tasked "with receiving and processing applications for amnesty, and determining whether the applicants are entitled to amnesty under this Proclamation."[36] Pursuant to its functions, it has the power to "promulgate rules and regulations subject to the approval of the President."[37] Final decisions or determinations of the NAC are appealable to the Court of Appeals.

The extension of amnesty under Proclamation No. 347 takes effect only after the determination by the National Amnesty Commission as to whether the applicant is qualified under the terms of the proclamation. To fulfill its mandate, the NAC is empowered to enact rules and regulations, to summon witnesses and issue subpoenas. Evidently, the NAC does not just stamp its approval to every application before it. It possesses the power to determine facts, and therefrom, to decide whether the applicant is qualified for amnesty. The fact that the decisions of the NAC are subject to judicial review further supports the conclusiveness of its findings.

Both petitioners had duly applied for amnesty with the National Amnesty Commission, and both had been issued amnesty certificates. However, an examination of these certificates reveals that the grant of amnesty was not as far-reaching as the petitioners imply.

Kapunan's Certificate of Amnesty states:

This is to certify that

EDUARDO E. KAPUNAN, JR.

was granted AMNESTY for acts constituting Rebellion on March 23, 1995 pursuant to the provisions of Proclamation No. 347, issued on March 25, 1994 by His Excellency, President Fidel V. Ramos.

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[35] Proclamation No. 347 (1994), Sec. 1.

[36] Proclamation No. 347 (1994), Sec. 4.

[37] Proclamation No. 347 (1994), Sec. 4(a).

The amnesty granted to Kapunan extends to acts constituting only one crime, rebellion. Thus, any inquiry whether he is liable for prosecution in connection with the Olalia killings will necessarily rely not on the list of acts or crimes enumerated in Section 1 of Proclamation No. 347, but on the definition of rebellion and its component acts.

Let us now examine the Certificate of Amnesty issued in favor of Legaspi.

CERTIFICATION

This is to certify that the amnesty application (No. A-270) under Proclamation No. 347 of MR. OSCAR E. LEGASPI, filed with the Local Amnesty Board of Metro Manila, was GRANTED by the NATIONAL AMNESTY COMMISSION *en banc* on 13 November 1995 subject to the qualification that the grant of amnesty shall cover only those offenses which Mr. Legaspi disclosed in his application. In his application, Mr. Legaspi stated that he participated in the 1987 and 1989 coup attempts, for which respective acts, he was charged with mutiny before a General Court Martial and Rebellion (which was archived) before the Quezon City Regional Trial Court. Mr. Legaspi further stated in his application that he went on AWOL in 1987 (Please refer to attached resolution addressed to Mr. Oscar Legaspi, dated 13 January 1995).[38]

The limited scope of the amnesty granted to Legaspi is even more apparent. At most, it could only cover offenses connected with his participation in the 1987 and 1989 coup attempts.

IV.

Given these premises, is there sufficient basis for us to enjoin the prosecution of petitioners for the slayings of Olalia and Alay-ay?

A.

Let us first examine the circumstances surrounding Kapunan. On their face, the murders of Olalia and Alay-ay do not indicate they are components of rebellion. It is not self-explanatory how

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[38] *Rollo* (G.R. No. 148243), p. 121.

the murders of two private citizens could have been oriented to the aims of rebellion, explained in the Revised Penal Code as "removing from the allegiance to [the] Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."[39]

For exculpatory context, Kapunan cites the Final Report of the independent fact-finding commission popularly known as the "Davide Commission"[40] created by Republic Act No. 6832 (R.A. No. 6832) to "investigate all the facts and circumstances of the failed *coup d'état* of December 1989, and recommend measures to prevent similar attempts at a violent seizure of power."[41]

The Final Report adverted to a planned *coup d'etat* codenamed "God Save the Queen" in November 1986, the same month as the murders of Olalia and Alay-ay. The Final Report recounted the killings as well as the resulting nationwide protests in reaction thereto "where labor and other cause-oriented groups denounced the military as the perpetrators of the crime."[42] The Final Report took note of the accusations as to the possible motive for the military to execute the murders, and the investigation undertaken by the National Bureau of Investigation (NBI) which allegedly found evidence to link some RAM officers to the killing. The Final Report stated: "The argument was made that the timing and brutality of the murders were meant to create an unstable situation favorable for a coup. Perhaps, it was the realization that their actions could be exploited by the ultra-right that radical labor unions and organizations desisted from prolonged massive demonstrations at that time."[43]

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[39] See REVISED PENAL CODE, Art. 134.

[40] So-called after its Chairman, then COMELEC Chairman (later Chief Justice) Hilario G. Davide, Jr.

[41] Republic Act No. 6832 (1990), Sec. 1.

[42] *Rollo* (G.R. No. 148243), p. 9.

[43] *Id.*

The Final Report also concluded that among the possible classifications for "triggering events" leading to military intervention was "simulated events that could be created or provoked in order to effect the tense and unstable atmosphere necessary for a coup."[44] Political assassinations, "which the brutal killing of Rolando Olalia could have been," were described as "a good example" of such simulated events.[45]

We do not wish to denigrate from the wisdom of the Davide Commission. However, its findings cannot be deemed as conclusive and binding on this Court, or any court for that matter. Nothing in R.A. No. 6832 mandates that the findings of fact or evaluations of the Davide Commission acquire binding effect or otherwise countermand the determinative functions of the judiciary. The proper role of the findings of fact of the Davide Commission in relation to the judicial system is highlighted by Section 1(c) of R.A. No. 6832, which requires the Commission to "[t]urn over to the appropriate prosecutorial authorities all evidence involving any person when in the course of its investigation, the Commission finds that there is reasonable ground to believe that he appears to be liable for any criminal offense in connection with said *coup d'état*."[46]

Whatever factual findings or evidence unearthed by the Davide Commission that could form the basis for prosecutorial action still need be evaluated by the appropriate prosecutorial authorities to serve as the nucleus of either a criminal complaint or exculpation therefrom. If a criminal complaint is indeed filed, the same findings or evidence are still subject to the normal review and evaluation processes undertaken by the judge, to be assessed in accordance with our procedural law.

Any equation between rebellion and the Olalia/Alay-ay killings requires accompanying context such as that possibly provided by the Final Report. However, there is no such context that we

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[44] *Id.* at 83.

[45] *Id.*

[46] Republic Act No. 6832 (1990), Sec. 1(c).

are able to appreciate and act upon at this juncture. Assuming that Kapunan, Jr. was intent to invoke the amnesty granted him in his defense against the charges connected with the Olalia/Alay-ay slays, it would be incumbent upon him to prove before the courts that the murders were elemental to his commission or attempted commission of the crime of rebellion, and not just by way of a general averment, but through detailed evidence.

The same may be said of the affidavit of Barreto, which made two relevant claims: that the entire force of the Security Group of the Ministry of Defense was then actively preparing for the launch of a rumored military exercise akin to the 1986 People Power Revolution;[47] and that he was told by another respondent, Captain Dicon, that the murder of Olalia was needed to create an atmosphere of destabilization spurred by the protest actions of the KMU which the RAM could then use as justification for military intervention similar to the first EDSA revolt.[48] Based on these claims in Barreto's affidavit, the Investigating Panel itself stated in its findings that the killings of Olalia and Alay-ay were undertaken on the premise "that their death would bring about massive protest action that will contribute to the destabilization of the Cory Aquino government and eventually a military take over of the government."[49]

Barreto's affidavit, as integrated in the findings of the Investigating Panel, would have been extremely favorable to Kapunan had the relevant question been whether the Olalia/Alay-ay murders were committed in furtherance of a political belief. However, as we pointed out earlier, such motive under Proclamation No. 347 operates only to the extent of entitling the criminal to apply for amnesty. The actual grant of amnesty still depends on the NAC's determination as to whether the applicant is indeed entitled to amnesty. In Kapunan's case, the grant of amnesty extended to him pertains only to the crime of rebellion.

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[47] *Rollo* (G.R. No. 148243), p. 103.

[48] *Id.* at 108.

[49] *Rollo* (G.R. Nos. 148213-17), p. 145.

Kapunan himself admits before this Court that the November 1986 "God Save the Queen" coup plot "was pre-empted."[50] We can take judicial notice that there was no public uprising or taking up of arms against the Aquino government that took place in November of 1986, and no serious coup attempt until 28 August 1987. The tenor of Barreto's claims make it clear that the Olalia/Alay-ay killings were intended to spark immediate instability which would be exploited for the coup attempt. The absence of any immediate rebellion taking place contemporaneous with or immediately after the Olalia/Alay-ay killings calls to question whether there was a causal connection between the murders and the consummated crime of rebellion. At the very least, that circumstance dissuades us from concluding with certainty that the killings were inherent to or absorbed in the crime of rebellion. Such a matter can be addressed instead through a full–dress trial on the merits.

B.

What we said as to Kapunan, Jr. also answers Legaspi's similar contentions. In the latter's case, the grant of amnesty was specifically limited to his participation in the 1987 and 1989 coup attempts against the Aquino administration. The murders took place in November 1986. They were supposedly intended to create an atmosphere that would facilitate an immediate *coup d'etat*. It is difficult for the Court to appreciate at this point how the Olalia/Alay-ay killings were connected with the 1987 or 1991 coup attempts, though Legaspi is free to establish such a connection through a trial on the merits.

The Court is satisfied that there is *prima facie* evidence for the prosecution of the petitioners for the murders of Rolando Olalia and Leonor Alay-ay. The arguments that petitioners are exempt from prosecution on account of the grants of amnesty they had received are ultimately without merit, on account of the specified limitations in the said grant of amnesty.

WHEREFORE, the petition is dismissed. The assailed Joint Decision of the Court of Appeals dated 29 December 1999, as

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[50] *Rollo* (G.R. No. 148243), p. 34.

well as its Resolution dated 22 May 2001 are hereby *AFFIRMED.* Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 150206. March 13, 2009]

HEIRS OF TEOFILO GABATAN, namely: LOLITA GABATAN, POMPEYO GABATAN, PEREGRINO GABATAN, REYNALDO GABATAN, NILA GABATAN and JESUS JABINIS, RIORITA GABATAN TUMALA and FREIRA GABATAN, *petitioners, vs.* **HON. COURT OF APPEALS and LOURDES EVERO PACANA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; AS A RULE, ONLY QUESTIONS OF LAW ARE PROPER; EXPLAINED. —** In general, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Questions of fact cannot be the subject of this particular mode of appeal, for this Court is not a trier of facts. It is not our function to examine and evaluate the probative value of the evidence presented before the concerned tribunal upon which its impugned decision or resolution is based.

2. **ID.; EVIDENCE; CONCLUSIVENESS OF THE FINDINGS OF FACT BY THE LOWER COURTS; EXCEPTIONS. —** [T]here are established exceptions to the rule on conclusiveness

of the findings of fact by the lower courts, such as (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (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; and (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.

3. **ID.; CIVIL PROCEDURE; APPEALS; INSTANCES WHEN THE APPELLATE COURT CAN REVIEW RULINGS EVEN IF THEY ARE NOT ASSIGNED AS ERRORS. —** Moreover, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Thus, the Court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

4. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; DECLARATION OF HEIRSHIP CANNOT BE MADE IN AN ORDINARY CIVIL ACTION BUT ONLY IN THE PROPER SPECIAL PROCEEDINGS IN COURT. —** Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as *one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong* while a special proceeding is *a remedy by which a party seeks to establish a status, a right, or a particular fact.* It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.

5. **ID.; ID.; ID.; ID.; EXCEPTION; RATIONALE. —** However, we are not unmindful of our decision in *Portugal v. Portugal-Beltran*, where the Court relaxed its rule and allowed the trial court in a proceeding for annulment of title to determine the status of the party therein as heirs, to wit: It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, **to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical;** it is burdensome to the estate with the costs and expenses of an administration proceeding. **And it is superfluous in light of the fact that the parties to the civil case — subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.** In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners (*Vide Pereira v. Court of Appeals*, 174 SCRA 154

[1989]; *Intestate Estate of Mercado v. Magtibay*, 96 Phil. 383 [1955]), the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial, x x x. Similarly, in the present case, there appears to be only one parcel of land being claimed by the contending parties as their inheritance from Juan Gabatan. It would be more practical to dispense with a separate special proceeding for the determination of the status of respondent as the sole heir of Juan Gabatan, specially in light of the fact that the parties to Civil Case No. 89-092, had voluntarily submitted the issue to the RTC and already presented their evidence regarding the issue of heirship in these proceeding. Also the RTC assumed jurisdiction over the same and consequently rendered judgment thereon.

6. **CIVIL LAW; PERSONS AND FAMILY RELATIONS; PATERNITY AND FILIATION; FILIATION OF LEGITIMATE CHILDREN; HOW MAY BE PROVED. —** Under the Civil Code, the filiation of legitimate children is established by any of the following: ART. 265. The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment. ART. 266. In the absence of the titles indicated in the preceding article, the filiation shall be proved by the continuous possession of status of a legitimate child. ART. 267. In the absence of a record of birth, authentic document, final judgment or possession of status, legitimate filiation may be proved by any other means allowed by the Rules of Court and special laws. x x x It was absolutely crucial to respondent's cause of action that she convincingly proves the filiation of her mother to Juan Gabatan. To reiterate, to prove the relationship of respondent's mother to Juan Gabatan, our laws dictate that the best evidence of such familial tie was the record of birth appearing in the Civil Register, or an authentic document or a final judgment. In the absence of these, respondent should have presented proof that her mother enjoyed the continuous possession of the status of a legitimate child. Only in the absence of these two classes of evidence is the respondent allowed to present other proof admissible under the Rules of Court of her mother's relationship to Juan Gabatan. However, respondent's mother's (Hermogena's) birth certificate, which would have been the best evidence of Hermogena's relationship

to Juan Gabatan, was never offered as evidence at the RTC. Neither did respondent present any authentic document or final judgment categorically evidencing Hermogena's relationship to Juan Gabatan.

7. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BLOOD RELATIVES OF PETITIONER WHO CANNOT BE SAID TO BE ENTIRELY DISINTERESTED IN THE OUTCOME OF THE CASE CANNOT BE CREDIBLE AND IMPARTIAL WITNESSES. —** Other circumstances prevent us from giving full faith to respondent's witnesses' testimonies. The records would show that they cannot be said to be credible and impartial witnesses. Frisco Lawan testified that he was the son of Laureana by a man other than Juan Gabatan and was admittedly not at all related to Juan Gabatan. His testimony regarding the relationships within the Gabatan family is hardly reliable. As for Felicisima Nagac Pacana and Cecilia Nagac Villareal who are children of Justa Gabatan Nagac, this Court is wary of according probative weight to their testimonies since respondent admitted during her cross-examination that her (respondent's) husband is the son of Felicisima Nagac Pacana. In other words, although these witnesses are indeed blood relatives of petitioners, they are also the mother and the aunt of respondent's husband. They cannot be said to be entirely disinterested in the outcome of the case.

8. **ID.; ID.; BEST EVIDENCE RULE; EXCEPTIONS; RESORT TO SECONDARY EVIDENCE CAN ONLY BE MADE AFTER THERE IS A SATISFACTORY EXPLANATION FOR NON-PRODUCTION OF THE ORIGINAL INSTRUMENT; CASE AT BAR. —** However, the admission of this Deed of Absolute Sale, including its contents and the signatures therein, as competent evidence was vigorously and repeatedly objected to by petitioners' counsel for being a mere photocopy and not being properly authenticated. After a close scrutiny of the said photocopy of the Deed of Absolute Sale, this Court cannot uphold the admissibility of the same. Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. Although the best evidence rule admits of exceptions and there are instances where the presentation of secondary evidence would be allowed, such as when the original is lost or the original is a public record, the

basis for the presentation of secondary evidence must still be established. Thus, in *Department of Education Culture and Sports v. Del Rosario,* we held that a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument. In the case at bar, a perusal of the transcript of the testimony of Felicisima Nagac Pacana (who identified the photocopy of the Deed of Absolute Sale) plainly shows that she gave no testimony regarding the whereabouts of the original, whether it was lost or whether it was recorded in any public office.

9. **ID.; ID.; ID.; NOTARY PUBLIC IS THE LEGAL CUSTODIAN OF THE ORIGINAL NOTARIZED DEEDS OF SALE, NOT THE OFFICE OF THE ASSESSOR. —** To begin with, no proof whatsoever was presented by respondent that an original of Exhibit H was registered or exists in the records of the local assessor's office. Furthermore, the stamped certification of Honesto P. Velez is insufficient authentication of Exhibit H since Velez's certification did not state that Exhibit H was a true copy from the original. Even worse, Velez was not presented as a witness to attest that Exhibit H was a true copy from the original. Indeed, it is highly doubtful that Velez could have made such an attestation since the assessor's office is not the official repository of original notarized deeds of sale and could not have been the legal custodian contemplated in the rules. It is the notary public who is mandated by law to keep an original of the Deed of Absolute Sale in his notarial register and to forward the same to the proper court. It is the notary public or the proper court that has custody of his notarial register that could have produced the original or a certified true copy thereof. x x x

10. **CIVIL LAW; LACHES; ESTABLISHED IN CASE AT BAR. —** As for the issue of laches, we are inclined to likewise rule against respondent. According to respondent's own testimony, Juan Gabatan died sometime in 1933 and thus, the cause of action of the heirs of Juan Gabatan to recover the decedent's property from third parties or to quiet title to their inheritance accrued in 1933. Yet, respondent and/or her mother Hermogena, if they were truly the legal heirs of Juan Gabatan, did not assert their rights as such. It is only in 1978 that respondent filed

her first complaint to recover the subject property, docketed as Civil Case No. 5840, against Rita Gabatan, the widow of Teofilo Gabatan. However, that case was dismissed without prejudice for failure to prosecute. Again, respondent waited until 1989 to refile her cause of action, *i.e.* the present case. She claimed that she waited until the death of Rita Gabatan to refile her case out of respect because Rita was then already old. We cannot accept respondent's flimsy reason. It is precisely because Rita Gabatan and her contemporaries (who might have personal knowledge of the matters litigated in this case) were advancing in age and might soon expire that respondent should have exerted every effort to preserve valuable evidence and speedily litigate her claim. As we held in *Republic of the Philippines v. Agunoy*: "*Vigilantibus, sed non dormientibus, jura subveniunt*, the law aids the vigilant, not those who sleep on their rights . . . [O]ne may not sleep on a right while expecting to preserve it in its pristine purity."

APPEARANCES OF COUNSEL

Arturo R. Legaspi for petitioners.
Lagamon Barba Lupeba and Associates for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed and sought to be set aside in the instant petition for review on *certiorari* are the Decision[1] dated April 28, 2000, and Resolution[2] dated September 12, 2001 of the Court of Appeals (CA), in CA G.R. CV No. 52273. The challenged Decision affirmed the decision[3] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 19, dated October 20, 1995 in Civil Case No. 89-092, an action for Recovery of Property and

[1] Penned by Associate Justice Mario M. Umali (ret.) with Presiding Justice Conrado M. Vasquez, Jr., and Associate Justice Edgardo P. Cruz, concurring; *rollo*, pp. 16-34.

[2] *Rollo*, p. 35.

[3] *Id.* at. 37-47.

Ownership and Possession, thereat commenced by respondent Lourdes Evero Pacana against petitioners, heirs of Teofilo Gabatan, Jesus Jabinis and Catalino Acantilado.

Subject of the present controversy is a 1.1062 hectare parcel of land, identified as Lot 3095 C-5 and situated at Calinugan, Balulang, Cagayan de Oro City. This lot was declared for taxation in the name of Juan Gabatan. In the complaint before the RTC, respondent alleged that she is the sole owner of Lot 3095 C-5, having inherited the same from her deceased mother, Hermogena Gabatan Evero (Hermogena). Respondent further claimed that her mother, Hermogena, is the only child of Juan Gabatan and his wife, Laureana Clarito. Respondent alleged that upon the death of Juan Gabatan, Lot 3095 C-5 was entrusted to his brother, Teofilo Gabatan (Teofilo), and Teofilo's wife, Rita Gabatan, for administration. It was also claimed that prior to her death Hermogena demanded for the return of the land but to no avail. After Hermogena's death, respondent also did the same but petitioners refused to heed the numerous demands to surrender the subject property. According to respondent, when Teofilo and his wife died, petitioners Jesus Jabinis and Catalino Acantilado took possession of the disputed land despite respondent's demands for them to vacate the same.

In their answer, petitioners denied that respondent's mother Hermogena was the daughter of Juan Gabatan with Laureana Clarito and that Hermogena or respondent is the rightful heir of Juan Gabatan. Petitioners maintained that Juan Gabatan died single in 1934 and without any issue and that Juan was survived by one brother and two sisters, namely: Teofilo (petitioners' predecessor-in-interest), Macaria and Justa. These siblings and/or their heirs, inherited the subject land from Juan Gabatan and have been in actual, physical, open, public, adverse, continuous and uninterrupted possession thereof in the concept of owners for more than fifty (50) years and enjoyed the fruits of the improvements thereon, to the exclusion of the whole world including respondent. Petitioners clarified that Jesus Jabinis and Catalino Acantilado have no interest in the subject land; the former is merely the husband of Teofilo's daughter while the latter is just a caretaker. Petitioners added that a similar case

was previously filed by respondent against Teofilo's wife, Rita *Vda. de* Gabatan, on February 21, 1978, docketed as Civil Case No. 5840 but the case was dismissed on May 3, 1983 for lack of interest. Finally, petitioners contended that the complaint lacks or states no cause of action or, if there was any, the same has long prescribed and/or has been barred by laches.

On June 20, 1989, the complaint was amended wherein the heirs of Teofilo were individually named, to wit: Lolita Gabatan, Pompeyo Gabatan, Peregrino Gabatan, Reynaldo Gabatan, Nila Gabatan and Jesus Jabinis, Riorita Gabatan Tumal and Freira Gabatan.

On July 30, 1990, petitioners filed an amended answer, additionally alleging that the disputed land was already covered by OCT No. P-3316 in the name of the heirs of Juan Gabatan represented by petitioner Riorita Gabatan (Teofilo's daughter).

On October 20, 1995, the RTC rendered a decision in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the plaintiff the owner of Lot No. 3095 C-5 situated at Calinugan, Balulang, Cagayan de Oro City; and ordering the defendants represented by Riorita Gabatan Tumala to **RECONVEY** Original Certificate of Title No. P-3316 in favor of plaintiff Lourdes Evero Pacana, free of any encumbrance; ordering the defendants to pay ₱10,000.00 by way of moral damages; ₱10,000.00 as Attorney's fees; and ₱2,000.00 for litigation expenses.
>
> SO ORDERED.[4]

Aggrieved, petitioners appealed to the CA whereat their recourse was docketed as CA-G.R. CV No. 52273.

On April 28, 2000, the CA rendered the herein challenged Decision affirming that of the RTC. Dispositively, the Decision reads:

> WHEREFORE, premises considered, the questioned decision of the lower court dated October 20, 1995 is hereby **AFFIRMED**. With costs against appellants.
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> SO ORDERED.

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[4] *Supra*, note 3.

Discounting petitioners' argument that respondent is not related to Juan Gabatan, the CA declared that respondent's claim of filiation with Juan Gabatan was sufficiently established during trial. Thus, the CA echoed a long line of jurisprudence that findings of fact of the trial court are entitled to great weight and are not disturbed except for cogent reasons, such as when the findings of fact are not supported by evidence.

The CA likewise gave weight to the Deed of Absolute Sale[5] executed by Macaria Gabatan de Abrogar, Teofilo, Hermogena and heirs of Justa Gabatan, wherein Hermogena was identified as an heir of Juan Gabatan:

> x x x HERMOGENA GABATAN, of legal age, married, Filipino citizen and presently residing at Kolambugan, Lanao del Norte, Philippines, as Heir of the deceased, JUAN GABATAN; x x x.

To the CA, the Deed of Absolute Sale on July 30, 1966 containing such declaration which was signed by Teofilo and the latter's nearest relatives by consanguinity, is a tangible proof that they acknowledged Hermogena's status as the daughter of Juan Gabatan. Applying Section 38, Rule 130[6] of the Rules of Court on the declaration against interest, the CA ruled that petitioners could not deny that even their very own father, Teofilo formally recognized Hermogena's right to heirship from Juan Gabatan which ultimately passed on to respondent.

As to the issue of prescription, the CA ruled that petitioners' possession of the disputed property could not ripen into acquisitive prescription because their predecessor-in-interest, Teofilo, never held the property in the concept of an owner.

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[5] *Rollo*, pp. 309-311.

[6] Rule 130.

Sec. 38. Declaration against interest. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.

Aggrieved, petitioners are now with this Court *via* the present recourse principally contending that the CA committed the following reversible errors:

FIRST ERROR: The lower court erred in not declaring that Juan Gabatan died single and without issue;

SECOND ERROR: The lower court erred in declaring the plaintiff-appellee (respondent) as the sole and surviving heir of Juan Gabatan, the only child of a certain Hermogena Clareto "GABATAN";

THIRD ERROR: The lower court erred in declaring that a certain Hermogena Clareto "GABATAN" is the child and sole heir of Juan Gabatan;

FOURTH ERROR: The lower court erred in failing to appreciate by preponderance of evidence in favor of the defendants-appellants (petitioners) claim that they and the heirs of Justa and Macaria both surnamed Gabatan are the sole and surviving heirs of Juan Gabatan and, therefore, entitled to inherit the land subject matter hereof;

FIFTH ERROR: The lower court erred in not declaring that the cause of action of plaintiff-appellee (respondent) if any, has been barred by laches and/or prescription.[7]

Before proceeding to the merits of the case, we must pass upon certain preliminary matters.

In general, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Questions of fact cannot be the subject of this particular mode of appeal, for this Court is not a trier of facts.[8] It is not our function to examine and evaluate the probative value of the evidence presented before the concerned tribunal upon which its impugned decision or resolution is based.[9]

However, there are established exceptions to the rule on conclusiveness of the findings of fact by the lower courts, such

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[7] *Rollo*, p. 8.

[8] *Air Philippines Corporation v. International Business Aviation Services Phils., Inc.,* G.R. No. 151963, September 9, 2004, 438 SCRA 51, 76 .

[9] *Junson v. Martinez*, G.R. No. 141324, July 8, 2003, 405 SCRA 390, 393.

as (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (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; and (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.[10]

Moreover, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Thus, the Court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on

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[10] *Toriano v. Trieste*, G.R. No. 146937, January 23, 2007, 512 SCRA 264, 267-268; *Madrigal v. Court of Appeals*, G.R. No. 142944, April 15, 2005, 456 SCRA 247, 256.

appeal but upon which the determination of a question properly assigned, is dependent. [11]

In the light of the foregoing established doctrines, we now proceed to resolve the merits of the case.

The respondent's main cause of action in the court *a quo* is the recovery of ownership and possession of property. It is undisputed that the subject property, Lot 3095 C-5, was owned by the deceased Juan Gabatan, during his lifetime.[12] Before us are two contending parties, both insisting to be the legal heir(s) of the decedent.

Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as *one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong* while a special proceeding is *a remedy by which a party seeks to establish a status, a right, or a particular fact.* It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch

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[11] *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, November 14, 1996, 332 Phil. 206, 217.

[12] It is only on appeal that petitioners posit the contention that Juan Gabatan and his siblings were co-owners in equal shares of Lot 3095 C-5 since they allegedly inherited the same from their parents. However, it is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal (*Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation*, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23). In this instance, petitioners conceded in their answer and other pleadings with the court *a quo* that the subject property was owned by Juan Gabatan and their claim of ownership was based on their status as heirs of Juan Gabatan.

as the petitioners here are seeking the establishment of a status or right.[13]

In the early case of *Litam, et al. v. Rivera,*[14] this Court ruled that the declaration of heirship must be made in a special proceeding, and not in an independent civil action. This doctrine was reiterated in *Solivio v. Court of Appeals*[15] where the Court held:

> x x x where despite the pendency of the special proceedings for the settlement of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action in which they claimed that they were the children by a previous marriage of the deceased to a Chinese woman, hence, entitled to inherit his one-half share of the conjugal properties acquired during his marriage to Marcosa Rivera, the trial court in the civil case declared that the plaintiffs-appellants were not children of the deceased, that the properties in question were paraphernal properties of his wife, Marcosa Rivera, and that the latter was his only heir. On appeal to this Court, we ruled that 'such declarations (that Marcosa Rivera was the only heir of the decedent) is improper, in Civil Case No. 2071, *it being within the exclusive competence of the court in Special Proceedings No. 1537*, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.

In the more recent case of *Milagros Joaquino v. Lourdes Reyes*,[16] the Court reiterated its ruling that matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights. Citing the case of *Agapay v. Palang*,[17] this Court held that the status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property.

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[13] *Heirs of Yaptinchay v. del Rosario*, G.R. No. 124320 March 2, 1999, 304 SCRA 18, 23.

[14] G.R. No. L-7644, November 27, 1956, 100 Phil. 364, 378.

[15] 182 SCRA 119, 128 (1990).

[16] G.R. No. 154645, 434 SCRA 260, 274 (2004).

[17] 342 Phil. 302, 313 (1997).

However, we are not unmindful of our decision in *Portugal v. Portugal-Beltran*,[18] where the Court relaxed its rule and allowed the trial court in a proceeding for annulment of title to determine the status of the party therein as heirs, to wit:

> It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, **to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical;** it is burdensome to the estate with the costs and expenses of an administration proceeding. **And it is superfluous in light of the fact that the parties to the civil case — subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.**
>
> In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners (*Vide Pereira v. Court of Appeals*, 174 SCRA 154 [1989]; *Intestate Estate of Mercado v. Magtibay*, 96 Phil. 383 [1955]), the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial, x x x. (emphasis supplied)

Similarly, in the present case, there appears to be only one parcel of land being claimed by the contending parties as their inheritance from Juan Gabatan. It would be more practical to dispense with a separate special proceeding for the determination of the status of respondent as the sole heir of Juan Gabatan, specially in light of the fact that the parties to Civil Case No. 89-092, had voluntarily submitted the issue to the RTC and already presented their evidence regarding the issue of heirship in these proceeding. Also the RTC assumed jurisdiction over the same and consequently rendered judgment thereon.

We GRANT the petition.

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[18] G.R. No. 155555, 467 SCRA 184, 199 (2005).

After a meticulous review of the records of this case, we find insufficient and questionable the basis of the RTC in conferring upon respondent the status of sole heir of Juan Gabatan.

Respondent, in asserting to be entitled to possession and ownership of the property, pinned her claim entirely on her alleged status as sole heir of Juan Gabatan. It was incumbent upon her to present preponderant evidence in support of her complaint.

Under the Civil Code, the filiation of legitimate children is established by any of the following:

ART. 265. The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment.

ART. 266. In the absence of the titles indicated in the preceding article, the filiation shall be proved by the continuous possession of status of a legitimate child.

ART. 267. In the absence of a record of birth, authentic document, final judgment or possession of status, legitimate filiation may be proved by any other means allowed by the Rules of Court and special laws.

Here, two conflicting birth certificates[19] of respondent were presented at the RTC. Respondent, during her direct testimony, presented and identified a purported certified true copy of her typewritten birth certificate which indicated that her mother's maiden name was "Hermogena Clarito Gabatan." Petitioners, on the other hand, presented a certified true copy of respondent's handwritten birth certificate which differed from the copy presented by respondent. Among the differences was respondent's mother's full maiden name which was indicated as "Hermogena Calarito" in the handwritten birth certificate.

In resolving this particular issue, the trial court ruled in this wise:

The parties are trying to outdo with (sic) each other by presenting two conflicting Certificate (sic) of Live Birth of plaintiff herein,

[19] Record, pp. 251 and 415.

Lourdes Evero Pacana, which are Exhibit "A" for the plaintiff and Exhibit "1" for the defendants. Which of this (sic) is genuine, and which is falsified. These (sic) issue is crucial and requires serious scrutiny. The Court is of the observation that Exhibit "A" for the plaintiff which is a certified true copy is in due form and bears the "as is and where is" rule. It has the impression of the original certificate. The forms (sic) is an old one used in the 1950's. Her mother's maiden name appearing thereof is Hermogina (sic) Clarito Gabatan. While Exhibit "1", the entries found thereof (sic) is handwritten which is very unusual and of dubious source. The form used is of latest vintage. The entry on the space for mother's maiden name is Hermogena Calarito. There seems to be an apparent attempt to thwart plaintiff's mother filiation with the omission of the surname Gabatan. Considering these circumstances alone the Court is inclined to believe that Exhibit "A" for the plaintiff is far more genuine and authentic certificate of live birth.[20]

Having carefully examined the questioned birth certificates, we simply cannot agree with the above-quoted findings of the trial court. To begin with, Exhibit A, as the trial court noted, was an original typewritten document, not a mere photocopy or facsimile. It uses a form of 1950's vintage[21] but this Court is unable to concur in the trial court's finding that Exhibit 1[22] was of a later vintage than Exhibit A which was one of the trial court's bases for doubting the authenticity of Exhibit 1. On the contrary, the printed notation on the upper left hand corner of Exhibit 1 states "Municipal Form No. 102 — (Revised, January 1945)" which makes it an older form than Exhibit A. Thus, the trial court's finding regarding which form was of more recent

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[20] *Rollo,* p. 44.

[21] The printed notation on the upper left hand corner of Exhibit A states "Municipal Form No. 102 – (Revised on Dec. 1, 195X)." The last digit of the year is not clear and appears to be either 1953 or 1958. In any event, considering that respondent's birth date is December 17, 1950, the Court believes that it is impossible that respondent's true birth certificate would use a form that appears to have only come into existence *after* her birth.

[22] Exhibit 1 is a certified true copy of respondent's birth certificate which was identified by witness Rosita Vidal of the Local Civil Registrar's Office, Cagayan de Oro. It is identical in material respects to Exhibit 8 which was identified by witness Maribeth Cacho of the National Statistics Office, Manila.

vintage was manifestly contradicted by the evidence on record. No actual signature appears on Exhibit A except that of a certain Maximo P. Noriga, Deputy Local Civil Registrar of the Office of the Local Civil Registrar, Cagayan de Oro City, who purportedly certified on July 6, 1977 that Exhibit A was a true copy of respondent's birth certificate. The names of the attendant at birth (Petra Sambaan) and the local civil registrar (J.L. Rivera) in 1950 were typewritten with the notation "(Sgd.)" also merely typewritten beside their names. The words "A certified true copy: July 6, 1977" above the signature of Maximo P. Noriga on Exhibit A appear to be inscribed by the same typewriter as the very entries in Exhibit A. It would seem that Exhibit A and the information stated therein were prepared and entered only in 1977. Significantly, Maximo P. Noriga was never presented as a witness to identify Exhibit A. Said document and the signature of Maximo P. Noriga therein were identified by respondent herself whose self-serving testimony cannot be deemed sufficient authentication of her birth certificate.

We cannot subscribe to the trial court's view that since the entries in Exhibit 1 were handwritten, Exhibit 1 was the one of dubious credibility. Verily, the certified true copies of the handwritten birth certificate of respondent (petitioners' Exhibits 1 and 8) were duly authenticated by two competent witnesses; namely, Rosita Vidal (Ms. Vidal), Assistant Registration Officer of the Office of the City Civil Registrar, Cagayan de Oro City and Maribeth E. Cacho (Ms. Cacho), Archivist of the National Statistics Office (NSO), Sta. Mesa, Manila. Both witnesses testified that: (a) as part of their official duties they have custody of birth records in their respective offices,[23] and (b) the certified true copy of respondent's handwritten birth certificate is a faithful reproduction of the original birth certificate registered in their respective offices.[24] Ms. Vidal, during her testimony, even brought the original of the handwritten birth certificate before the trial

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[23] TSN of Ms. Vidal's Testimony dated February 16, 1993 at p. 5 and TSN of Ms. Cacho's Deposition dated June 16, 1993 at p. 6.

[24] TSN of Ms. Vidal's Testimony dated February 16, 1993 at p. 6 and TSN of Ms. Cacho's Deposition dated June 16, 1993 at p. 8.

court and respondent's counsel confirmed that the certified true copy (which was eventually marked as Exhibit 1) was a faithful reproduction of the original.[25] Ms. Vidal likewise categorically testified that no other copy of respondent's birth certificate exists in their records except the handwritten birth certificate.[26] Ms. Cacho, in turn, testified that the original of respondent's handwritten birth certificate found in the records of the NSO Manila (from which Exhibit 8 was photocopied) was the one officially transmitted to their office by the Local Civil Registry Office of Cagayan de Oro.[27] Both Ms. Vidal and Ms. Cacho testified and brought their respective offices' copies of respondent's birth certificate in compliance with subpoenas issued by the trial court and there is no showing that they were motivated by ill will or bias in giving their testimonies. Thus, between respondent's Exhibit A and petitioners' Exhibits 1 and 8, the latter documents deserve to be given greater probative weight.

Even assuming purely for the sake of argument that the birth certificate presented by respondent (Exhibit A) is a reliable document, the same on its face is insufficient to prove respondent's filiation to her alleged grandfather, Juan Gabatan. All that Exhibit A, if it had been credible and authentic, would have proven was that respondent's mother was a certain "Hermogena Clarito Gabatan." It does not prove that same "Hermogena Clarito Gabatan" is the daughter of Juan Gabatan. Even the CA held that the conflicting certificates of live birth of respondent submitted by the parties only proved the filiation of respondent to Hermogena.[28]

It was absolutely crucial to respondent's cause of action that she convincingly proves the filiation of her mother to Juan Gabatan. To reiterate, to prove the relationship of respondent's mother to Juan Gabatan, our laws dictate that the best evidence of such familial tie was the record of birth appearing in the Civil

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[25] TSN of Ms. Vidal's Testimony dated February 16, 1993 at p. 5.

[26] *Id.* at. 6-7.

[27] TSN of Ms. Cacho's Deposition dated June 16, 1993 at p. 9.

[28] CA Decision, p. 14; *rollo*, p. 29.

Register, or an authentic document or a final judgment. In the absence of these, respondent should have presented proof that her mother enjoyed the continuous possession of the status of a legitimate child. Only in the absence of these two classes of evidence is the respondent allowed to present other proof admissible under the Rules of Court of her mother's relationship to Juan Gabatan.

However, respondent's mother's (Hermogena's) birth certificate, which would have been the best evidence of Hermogena's relationship to Juan Gabatan, was never offered as evidence at the RTC. Neither did respondent present any authentic document or final judgment categorically evidencing Hermogena's relationship to Juan Gabatan.

Respondent relied on the testimony of her witnesses, Frisco Lawan, Felicisima Nagac Pacana and Cecilia Nagac Villareal who testified that they personally knew Hermogena (respondent's mother) and/or Juan Gabatan, that they knew Juan Gabatan was married to Laureana Clarito and that Hermogena was the child of Juan and Laureana. However, none of these witnesses had personal knowledge of the fact of marriage of Juan to Laureana or the fact of birth of Hermogena to Juan and Laureana. They were not yet born or were very young when Juan supposedly married Laureana or when Hermogena was born and they all admitted that none of them were present at Juan and Laureana's wedding or Hermogena's birth. These witnesses based their testimony on what they had been told by, or heard from, others as young children. Their testimonies were, in a word, hearsay.

Other circumstances prevent us from giving full faith to respondent's witnesses' testimonies. The records would show that they cannot be said to be credible and impartial witnesses. Frisco Lawan testified that he was the son of Laureana by a man other than Juan Gabatan and was admittedly not at all related to Juan Gabatan.[29] His testimony regarding the relationships within the Gabatan family is hardly reliable. As for Felicisima Nagac Pacana and Cecilia Nagac Villareal who are children of

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[29] TSN of Frisco Lawan's testimony dated December 13, 1990 at p. 8.

Justa Gabatan Nagac,[30] this Court is wary of according probative weight to their testimonies since respondent admitted during her cross-examination that her (respondent's) husband is the son of Felicisima Nagac Pacana.[31] In other words, although these witnesses are indeed blood relatives of petitioners, they are also the mother and the aunt of respondent's husband. They cannot be said to be entirely disinterested in the outcome of the case.

Aside from the testimonies of respondent's witnesses, both the RTC and the CA relied heavily on a photocopy of a Deed of Absolute Sale[32] (Exhibit H) presented by respondent and which appeared to be signed by the siblings and the heirs of the siblings of Juan Gabatan. In this document involving the sale of a lot different from Lot 3095 C-5, "Hermogena Gabatan as heir of the deceased Juan Gabatan" was indicated as one of the vendors. The RTC deemed the statement therein as an affirmation or recognition by Teofilo Gabatan, petitioners' predecessor in interest, that Hermogena Gabatan was the heir of Juan Gabatan.[33] The CA considered the same statement as a declaration against interest on the part of Teofilo Gabatan.[34]

However, the admission of this Deed of Absolute Sale, including its contents and the signatures therein, as competent evidence was vigorously and repeatedly objected to by petitioners' counsel for being a mere photocopy and not being properly authenticated.[35] After a close scrutiny of the said photocopy of the Deed of Absolute Sale, this Court cannot uphold the admissibility of the same.

Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence shall be admissible

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[30] Justa Gabatan Nagac was the sister of Juan Gabatan.

[31] TSN of respondent's testimony dated March 31, 1992 at p. 43.

[32] *Supra*, at note 5.

[33] RTC Decision at pp. 8-9; *rollo*, pp. 44-45.

[34] CA Decision at pp. 14-16; *rollo,* pp. 29-31.

[35] TSN of the Deposition of Felicisima Nagac Pacana dated July 8, 1992 at pp. 7, 8, 15, 21, 27-28 and 38-39.

other than the original document itself.[36] Although the best evidence rule admits of exceptions and there are instances where the presentation of secondary evidence would be allowed, such as when the original is lost or the original is a public record, the basis for the presentation of secondary evidence must still be established. Thus, in *Department of Education Culture and Sports v. Del Rosario*,[37] we held that a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument.

In the case at bar, a perusal of the transcript of the testimony of Felicisima Nagac Pacana (who identified the photocopy of the Deed of Absolute Sale) plainly shows that she gave no testimony regarding the whereabouts of the original, whether it was lost or whether it was recorded in any public office.

There is an ostensible attempt to pass off Exhibit H as an admissible public document. For this, respondent relied on the stamped notation on the photocopy of the deed that it is a certified true xerox copy and said notation was signed by a certain Honesto P. Velez, Sr., Assessment Officer, who seems to be an officer in the local assessor's office. Regarding the authentication of public documents, the Rules of Court[38] provide that the record of public documents, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy.[39] The attestation of the certifying officer must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be.[40]

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[36] Rule 130, Section 3, Rules of Court.

[37] G.R. No. 146586, January 26, 2005, 449 SCRA 299, 313.

[38] Rule 132, Sections 24 and Section 25 of the 1989 Rules of Evidence and the present Rules of Court are similarly worded.

[39] Rule 132, Section 24.

[40] Rule 132, Section 25.

To begin with, no proof whatsoever was presented by respondent that an original of Exhibit H was registered or exists in the records of the local assessor's office. Furthermore, the stamped certification of Honesto P. Velez is insufficient authentication of Exhibit H since Velez's certification did not state that Exhibit He was a true copy from the original. Even worse, Velez was not presented as a witness to attest that Exhibit H was a true copy from the original. Indeed, it is highly doubtful that Velez could have made such an attestation since the assessor's office is not the official repository of original notarized deeds of sale and could not have been the legal custodian contemplated in the rules.

It is the notary public who is mandated by law to keep an original of the Deed of Absolute Sale in his notarial register and to forward the same to the proper court. It is the notary public or the proper court that has custody of his notarial register that could have produced the original or a certified true copy thereof. Instead, the Deed of Absolute Sale was identified by Felicisima Nagac Pacana who, despite appearing to be a signatory thereto, is not a disinterested witness and as can be gleaned from her testimony, she had no personal knowledge of the preparation of the alleged certified true copy of the Deed of Absolute Sale. She did not even know who secured a copy of Exhibit H from the assessor's office.[41] To be sure, the roundabout and defective manner of authentication of Exhibit H renders it inadmissible for the purpose it was offered, *i.e.* as proof that Teofilo Gabatan acknowledged or admitted the status of Hermogena Gabatan as heir of Juan Gabatan.

Even if we are to overlook the lack of proper authentication of Exhibit H and consider the same admissible, it still nonetheless would have only provided proof that a certain Hermogena Gabatan was the heir of Juan Gabatan. Exhibit H does not show the filiation of respondent to either Hermogena Gabatan or Juan Gabatan. As discussed above, the only document that respondent produced to demonstrate her filiation to "Hermogena Gabatan"

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[41] *Supra* note 35, at p. 28.

(respondent's Exhibit A) was successfully put in doubt by contrary evidence presented by petitioners.

As for the issue of laches, we are inclined to likewise rule against respondent. According to respondent's own testimony,[42] Juan Gabatan died sometime in 1933 and thus, the cause of action of the heirs of Juan Gabatan to recover the decedent's property from third parties or to quiet title to their inheritance accrued in 1933. Yet, respondent and/or her mother Hermogena, if they were truly the legal heirs of Juan Gabatan, did not assert their rights as such. It is only in 1978 that respondent filed her first complaint to recover the subject property, docketed as Civil Case No. 5840, against Rita Gabatan, the widow of Teofilo Gabatan.[43] However, that case was dismissed without prejudice for failure to prosecute.[44] Again, respondent waited until 1989 to refile her cause of action, *i.e.* the present case.[45] She claimed that she waited until the death of Rita Gabatan to refile her case out of respect because Rita was then already old.[46]

We cannot accept respondent's flimsy reason. It is precisely because Rita Gabatan and her contemporaries (who might have personal knowledge of the matters litigated in this case) were advancing in age and might soon expire that respondent should have exerted every effort to preserve valuable evidence and speedily litigate her claim. As we held in *Republic of the Philippines v. Agunoy*: "*Vigilantibus, sed non dormientibus, jura subveniunt*, the law aids the vigilant, not those who sleep on their rights . . . [O]ne may not sleep on a right while expecting to preserve it in its pristine purity."[47]

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[42] *Supra* note 31, at p. 7.

[43] *Id.* at 36

[44] *Id.* at 40; see also *rollo,* p. 51.

[45] The complaint was filed on March 15, 1989 and the amended complaint was filed on June 20, 1989; Records, at pp. 1 and 38.

[46] *Supra* note 31, at p. 40.

[47] G.R. No. 155394, February 17, 2005; 451 SCRA 749.

All in all, this Court finds that respondent dismally failed to substantiate, with convincing, credible and independently verifiable proof, her assertion that she is the sole heir of Juan Gabatan and thus, entitled to the property under litigation. Aggravating the weakness of her evidence were the circumstances that (a) she did not come to court with clean hands for she presented a tampered/altered, if not outright spurious, copy of her certificate of live birth and (b) she unreasonably delayed the prosecution of her own cause of action. If the Court cannot now affirm her claim, respondent has her own self to blame.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals' Decision in CA-G.R. CV No. 52273, affirming the decision of the Regional Trial Court in Civil Case No. 89-092, is hereby *REVERSED* and *SET ASIDE.* The complaint and amended complaint in Civil Case No. 89-092 are *DISMISSED* for lack of merit.

SO ORDERED.

Ynares-Santiago,[*] *Carpio,*[**] *Corona,* and *Brion,*[***] *JJ.*, concur.

Puno, C.J., on official leave.

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[*] Additional member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 584.

[**] Acting Chairperson as per Special Order No. 583.

[***] Additional member as per Special Order No. 570.

THIRD DIVISION

[G.R. No. 150388. March 13, 2009.]

NATIONAL INVESTMENT AND DEVELOPMENT CORPORATION, *petitioner, vs.* **SPOUSES FRANCISCO AND BASILISA BAUTISTA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; REQUISITES. —** *Res judicata* or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. The doctrine of *res judicata* is founded on a public policy against re-opening that which has previously been decided, so as to put the litigation to an end. The four requisites for *res judicata* to apply are: (a) the former judgment or order must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment or an order on the merits; and (d) there must be, between the first and the second actions, identity of parties, of subject matter and of cause of action.

2. **CIVIL LAW; MORTGAGE; REQUISITES; THE MORTGAGOR MUST BE THE ABSOLUTE OWNER OF THE PROPERTY SUBJECT OF THE MORTGAGE, OTHERWISE, THE MORTGAGE IS VOID. —** The requirements of a valid mortgage are plainly laid down in Article 2085 of the New Civil Code, *viz*: ART. 2085. The following requisites are essential to the contracts of pledge and mortgage: (1) That they be constituted to secure the fulfilment of a principal obligation; (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged; (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. For a person to validly constitute a mortgage on real estate, he must be the absolute

owner thereof as required by Article 2085 of the New Civil Code. In other words, the mortgagor must be the owner; otherwise, the mortgage is void. **Del Rosario was NOT the owner of the 5,546-sq.-meter portion of the 6,368-sq.-meter lot, so she could not have mortgaged the same to PCIB.** There being no valid mortgage of the said portion to PCIB, it could not be subjected to foreclosure; it could not be sold at the public auction; it could not be bought by PCIB as the highest bidder at the public auction; and it could not be assigned by PCIB to NIDC.

3. **MERCANTILE LAW; SPECIAL LAWS; REPUBLIC ACT NO. 3135; REDEMPTION PERIOD SHALL BE ONE YEAR TO BE RECKONED FROM THE TIME THE CERTIFICATE OF SALE WAS REGISTERED. —** Reference is made to the governing law on extrajudicial foreclosure of real estate mortgages, *i.e.*, Republic Act No. 3135 entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages," as amended by Republic Act No. 4118. Section 6 of the said statute provides: SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of **one year from and after the date of the sale** x x x. In a long line of cases, however, we have consistently held that this one-year redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale was registered with the Register of Deeds. In this case, therefore, the one-year redemption period should be reckoned from the time the certificate of sale was registered on 27 October 1971. The law speaks of "one year" period within which to exercise redemption. Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Applying said article, the period of one year within which to redeem the properties mortgaged to Banco Filipino by the Spouses Bautista shall be 365 days from 27 October 1971. Thus, excluding the first day and counting from 28 October 1971, and bearing in mind that 1972 was a leap year, the redemption of the properties in question from Banco Filipino could only be made until **26 October 1972**.

4. CIVIL LAW; OWNERSHIP; RIGHT OF THE PROPERTY OWNER TO SELL HIS PROPERTY IS ONE OF THE ATTRIBUTES OF OWNERSHIP; CASE AT BAR. — The tender of ₱431,570.66, supposedly the redemption price, by NIDC to Banco Filipino on **27 October 1972** was clearly one (1) day beyond the period for redemption. Consequently, with no one availing oneself of the right of redemption within the period, the mortgaged properties, including the entire 6,368-sq.-meter lot then covered by TCT No. 139925, became an acquired asset of the mortgagee — Banco Filipino. Like any other ordinary property owner, Banco Filipino had the right to enjoy all the attributes of ownership, one of which was to sell the property for whatever price it may deem reasonable and in favor of whomsoever it chose to sell the same.

APPEARANCES OF COUNSEL

Benilda V. Abrasia-Tejada, Irahlyn Sacupayo-Lariba, Flerida P. Zabala-Banzuela & Ricky Jones S. Macabaya for petitioner.

Law Firm of Ruby Ruiz-Bruno for respondents.

D E C I S I O N

CHICO-NAZARIO, *J*.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by the National Investment and Development Corporation (NIDC)[1] assailing the *15 October 2001 Decision*[2] of the Court of Appeals in CA-G.R. CV No. 60159, entitled, "*Spouses Francisco and Basilisa Bautista v. National Investment Development Corporation.*" It stemmed from Civil Case No. Q-28360, a complaint for reconveyance of real property and damages instituted by respondents, Spouses Francisco Bautista and Basilisa Roque (Spouses Bautista), against

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[1] NIDC used to be a subsidiary of the Philippine National Bank.

[2] Penned by Associate Justice Romeo J. Callejo, Sr. (now a retired Associate Justice of this Court), with Associate Justices Renato C. Dacudao and Mariano C. del Castillo, concurring; *rollo*, pp. 34-53.

Banco Filipino Savings and Mortgage Bank (Banco Filipino) and NIDC with the Court of First Instance (CFI) of Rizal, and later assigned to the Regional Trial Court (RTC) of Quezon City, Branch 94, pursuant to this Court's Administrative Order No. 26-90, as amended by Administrative Order No. 85B-89, dated 16 February 1990 and 11 March 1991, respectively.

From the record, the antecedent facts of this case are as follows:

The Spouses Bautista owned several lots located at Pasong Tamo, Quezon City. One such property was a ***6,368-square*** (sq.)-***meter*** lot covered by ***Transfer Certificate of Title (TCT) No. 35034***.

On 26 July 1963, the Spouses Bautista sold several lots to one Araceli Wijangco *Vda. de* Del Rosario (Del Rosario). Included in the lots sold was a portion of the aforedescribed 6,368-sq.-meter lot, measuring about 822 sq. meters. Del Rosario succeeded in securing certificates of title covering the purchased lots in her name, including TCT No. 35034. TCT No. 35034, however, covered not just the 822-sq.-meter portion sold to her, but the entire 6,368 sq. meters thereof. A new title, ***TCT No. 70813***, was issued in the names of Spouses Bautista and Del Rosario covering the entire area of 6,368 sq. meters.

Subsequently, Del Rosario mortgaged the lots she purchased from the Spouses Bautista with the Philippine Commercial and Industrial Bank (PCIB) to secure a loan she obtained from the said bank. Again, the whole 6,368-sq.-meter lot was subjected to the encumbrance and not just the 822-sq.-meter portion thereof pertaining to Del Rosario.

Del Rosario apparently failed to pay her obligation to PCIB; thus, the said bank instituted proceedings for the extrajudicial foreclosure of the mortgaged real estate properties. PCIB was issued on 24 November 1965 the Certificate of Sale for being the highest bidder of the foreclosed real properties at the public auction sale. On 4 May 1966, PCIB assigned its rights over the aforementioned lots to NIDC. The Certificate of Sale and

subsequent assignment were annotated at the back of TCT No. 70813 on 16 May 1966.

In the *interregnum*, however, because Del Rosario failed to complete payment on the lots she earlier purchased from the Spouses Bautista, the latter filed on 17 November 1964 before the CFI of Rizal, Quezon City, Branch IV, a complaint docketed as Civil Case No. Q-8407, entitled, "*Spouses Basilisa Roque and Francisco Bautista v. Araceli W. Vda. de Del Rosario and the Philippine Commercial and Industrial Bank,*" for the rescission of the Contract of Sale in favor of Del Rosario; reconveyance of the lots subject of the Contract; and the cancellation of the mortgages constituted over the said lots in favor of PCIB. On 25 January 1965, the CFI rendered a Decision[3] ordering the rescission of the subject Contract of Sale and the return of the lots covered by said agreement to the Spouses Bautista; without prejudice, however, to the rights of PCIB as a mortgagee of the same. The Spouses Bautista shall take the lots subject to the mortgage constituted thereon in favor of PCIB.[4]

The appeal of the afore-quoted decision to this Court, docketed as G.R. No. L-24873, was dismissed on 23 September 1966 because it was filed out of time. Hence, the 25 January 1965 *Decision* of the CFI attained finality.

In view of the foregoing developments, upon motion of the Spouses Bautista, the CFI ordered the cancellation of the certificates of title to the lots already in the name of Del Rosario, including TCT No. 70813, as well as their replacement in the names of the Spouses Bautista. Particularly, ***TCT No. 139925*** was issued in replacement of TCT No. 70813.

Assailing the foregoing order, NIDC came to this Court in G.R. No. L-30150 entitled, *"National Investment Development Corporation v. Judge De los Angeles."*

On 10 June 1969, the Spouses Bautista obtained a ₱400,000.00 loan from Banco Filipino. To secure payment of such debt,

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[3] Penned by Judge Hermogenes Caluag; records, pp. 261-263.

[4] *Id.* at 263.

they executed a real estate mortgage over the same lots they previously sold to Del Rosario but were reconveyed to them.

By September 1971, the Spouses Bautista defaulted in the payment of their loan with Banco Filipino, and the latter instituted proceedings for the extrajudicial foreclosure of the real estate mortgage securing the same.

The lots mortgaged to Banco Filipino by the Spouses Bautista were sold at a public auction on 22 October 1971 with said bank being the highest bidder. On 27 October 1971, a Certificate of Sale was issued in favor of Banco Filipino, which was duly registered and annotated at the dorsal portion of all subject certificates of title, including that of TCT No. 139925.

In a letter[5] dated 13 October 1972, NIDC informed Banco Filipino of its desire to acquire the lots, including that covered by TCT No. 139925, mortgaged to the latter by the Spouses Bautista. It averred that by virtue of this Court's decision in *National Investment Development Corporation v. Judge De los Angeles,*[6] "it is declared the rightful owner of these lots x x x."[7] However, it was choosing not to litigate with Banco Filipino, but, instead, [would] disregard technicalities and exercise its right of redemption.[8]

On 27 October 1972, NIDC paid Banco Filipino ₱431,473.25 for the aforementioned lots. A Certificate of Redemption was issued on even date.

Thereafter, NIDC was able to secure in its name new certificates of title over the same lots. TCT No. 139925 covering the 6,368-sq.-meter lot subject of the present case was replaced and cancelled by ***TCT No. 186147*** in the name of NIDC.

In several correspondences,[9] the Spouses Bautista attempted to buy back the lots acquired by NIDC from Banco Filipino

[5] Exhibit V, Folder of Exhibits.

[6] 140-B Phil. 452 (1971).

[7] Exhibit V, Folder of Exhibits.

[8] *Id.*

[9] Records, pp. 17-21.

including the 5,548-sq.-meter portion of the 6,368-sq.-meter lot covered by TCT No. 186147, to no avail. Though NIDC was amenable to selling, the parties could not come to an agreement respecting the purchase price.

On 12 September 1979, the Spouses Bautista filed an action with the CFI of Rizal, Quezon City, docketed as Civil Case No. Q-28360, entitled, *"Spouses Francisco M. Bautista and Basilisa R. Bautista v. Banco Filipino and National Investment Development Corporation,"* against Banco Filipino and NIDC for the recovery of the lots in question as well as damages.

In their complaint in Civil Case No. Q-28360, the Spouses Bautista alleged that with respect to the 5,546-sq.-meter portion of the 6,368-sq.- meter lot, they alleged that:

> 21. That plaintiffs-spouses never intended to mortgage the land in question [6,368 square meter lot covered by TCT No. 139925] to Banco Filipino, but for the grave mistake of the latter through its negligence to include said property in the list of mortgage properties, when the sole intention was only to annotate Himlayang Pilipino's right-of-way on said title, makes said defendant bank liable to reimburse plaintiffs-spouses the amount of ₱50,202.39, more or less, which they might be required to pay defendant NIDC for the recovery of said property.[10]

As against NIDC, the Spouse Bautista contended:

> 16. That defendant NIDC, having learned of the mortgage executed by plaintiffs-spouses in favor of [Banco Filipino] after the Supreme Court ruled in NIDC's favor on its *certiorari* (L-30150), redeemed the said properties by paying the redemption price to [Banco Filipino] in the amount of ₱400,000.00, more or less, including the 5,546 square meters owned by plaintiff-spouses;
>
> x x x x x x x x x
>
> 18. That, also, defendant NIDC, by virtue of the deed of assignment PCI Bank executed in its favor (sic) holds a lien to the extent of 822 square meters only on the parcel of land in question;

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[10] *Id.* at 6.

19. That defendant NIDC has no right to demand from defendant bank (Banco Filipino) and for which delivery of the 5,546 square meters to it was a mistaken by said [Banco Filipino] by its payment of the redemption price of the mortgage except to the extent of 822 square meters only assigned to it, among other parcels of land, by PCI Bank;

20. That in law and equity defendant NIDC is, therefore, under obligation to return and reconvey the said 5,546 square meters to plaintiffs-spouses, upon the payment by the latter of the proportionate amount of ₱50,202,39, more or less, that corresponds to the area claimed by taking into consideration the total area mortgaged to Banco Filipino by equitably distributing the redemption price defendant NIDC has paid to the entire area.[11]

Ultimately, the relief they sought were as follows:

WHEREFORE, it is most respectfully prayed that after hearing (sic) judgment be rendered in favor of plaintiffs-spouses by —

1. – Declaring and ordering that defendant NIDC has no right to demand the 5,546 square meters covered by TCT No. 139925 owned by plaintiffs-spouses and that its delivery to it by Banco Filipino was a mistake;

2. – Ordering defendant NIDC to reconvey the said 5,546 square meters covered by TCT No. 139925, now TCT No. 186147, to plaintiffs-spouses, upon payment by the latter of ₱50,202.39, more or less, to defendant NIDC for its recovery; and that TCT No. 186147 be cancelled and another be issued in accordance with TCT No. 70813;

3. – Ordering defendant Banco Filipino to reimburse plaintiffs-spouses the amount of ₱50,202.39 which they would be required to pay defendant NIDC for the recovery of said parcel of land;

4. – Ordering said defendants to pay ₱30,000.00 [as] attorney's fees and costs of the suit.[12]

In answer to the complaint of the Spouses Bautista, NIDC asserted that "it did not only redeem but actually purchased

[11] *Id.* at 5-6.

[12] *Id.* at 7-8.

from [Banco Filipino]"[13] the entire 6,368-sq.-meter lot formerly covered by TCT No. 139925, together with the other lots mortgaged to the same bank by the Spouses Bautista; and that by purchasing and/or redeeming said properties, NIDC merely stepped into the shoes of Banco Filipino and is likewise an innocent purchaser for value.

For its part, Banco Filipino merely denied the allegations contained in the complaint and argued that the Spouses Bautista had no cause of action against said bank.

During the pendency of Civil Case No. Q-28360, the same was transferred to the RTC of Quezon City, Branch 94 per this Court's Administrative Order No. 26-90, as amended by Administrative Order No. 85B-89, dated 16 February 1990 and 11 March 1991, respectively.

On 18 November 1991, the RTC rendered judgment in Civil Case No. Q-28360 in this wise:

WHEREFORE, premises considered, a judgment is hereby rendered:

1. Dismissing the complaint against Banco Filipino;

2. Ordering National Investment and Development Corporation to reconvey the 5,546 square meters to [Spouses Bautista] after reimbursement by the latter;

3. Ordering [Spouses Bautista] to reimburse National Investment and Development Corporation the amount of ₱431,470.66 plus legal interest of 6% from date of redemption, October 27, 1972 until fully paid; and

4. Ordering National Investment and Development Corporation to pay the costs of suit.[14]

The RTC held that NIDC had no right to the 5,546-sq.-meter portion of the 6,368-sq.-meter lot, which used to be covered by TCT No. 139925 (now covered by TCT No. 186147 in the name of NIDC). The same was neither sold by the Spouses

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[13] *Id.* at 116-117.

[14] *Id.* at 541-542.

Bautista to Del Rosario nor mortgaged to PCIB, from whom NIDC acquired its rights. The redemption by NIDC of the entire 6,368-sq.-meter lot did not make NIDC an absolute owner thereof, but only a co-owner with the Spouses Bautista of the said undivided property.[15] The RTC, however, failed to make a finding on the supposed negligence or mistake of Banco Filipino in including TCT No. 139925 in the list of titles mortgaged to it to secure the indebtedness of the Spouses Bautista. Instead, it declared that, except for the 5,546-sq.-meter portion of the 6,368-sq.-meter lot formerly covered by TCT No. 139925, all other lots mortgaged by the Spouses Bautista as security for their ₱400,000.00 loan from Banco Filipino were no longer owned by them at the time they constituted said mortgage, but by NIDC.

Only NIDC and the Spouses Bautista went to the Court of Appeals in CA-G.R. CV No. 60159 to challenge the foregoing judgment of the RTC.

In a *Decision* promulgated on 15 October 2001, the Court of Appeals affirmed with modification the ruling of the RTC. The *fallo* of said Decision reads:

IN THE LIGHT OF ALL THE FOREGOING, the Decision appealed from is AFFIRMED with the modification that:

1. The Appellant NIDC is hereby ordered to reconvey to the Appellants Spouses an undivided portion of that property covered by Transfer Certificate of Title No. 186147 with an undivided area of 5,546 square meters;

2. The Appellants Spouses Francisco Bautista are hereby ordered to remit to the Appellant NIDC an amount proportioned to the aforesaid area of 5,546 square meters in relation to the entire area of all the fifty-five (55) parcels of land, purchased by the Appellant NIDC from the Banco Filipino Savings & Mortgage Bank, including the aforesaid 5,546 square meters divided by the purchase price of ₱431,470.66, the dividend to be multiplied by said 5,546 square meters. For this purpose, the Court will conduct a hearing, with due notice to the parties, and receive, if necessary their evidence to

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[15] *Id.* at 537.

determine the amount to be paid by the Appellants Spouses, the said amount to earn interest at the rate of 6% from October 27, 1972.[16]

In modifying the decision of the RTC, the Court of Appeals nullified the real estate mortgage constituted by Del Rosario over the 5,546-sq.-meter portion of the 6,368-sq.-meter lot in favor of PCIB, for said portion pertained to the Spouses Bautista. Given that the mortgage of the 5,546-sq.- meter portion to PCIB was null and void, the appellate court therefore held that no right over the said portion was transferred by PCIB to NIDC. And "[s]ince [NIDC] had no right of interest over the property [the Spouses Bautista] had no obligation to redeem the said property from [NIDC]." It ratiocinated that:

In the present recourse, the [NIDC] anchored its claim over the subject property under the "**Deed of Assignment**" executed by PCIB in favor of [NIDC] under which PCIB assigned its rights and interests as the highest bidder of the properties, sold at public auction, resulting from the "**Petition**" of PCIB for the extrajudicial foreclosure of the "**Real Estate Mortgage**" executed by Araceli del Rosario over parcels of land mortgaged by her in favor of PCIB. However, included in the "**Real Estate Mortgage,**" without the consent of the [Spouses Bautista], was the undivided portion, **with an area of 5,546 square meters**, owned by the [Spouses Bautista] covered by Transfer Certificate of Title No. 70813.[17] Since Araceli del Rosario did not own that said property, she had no right to mortgage the same and, hence, the "**Real Estate Mortgage**" over said property in favor of the PCIB is null and void.

x x x x x x x x x

Hence, PCIB did not acquire any right of interest over the said property at the sale at public auction. Hence, [NIDC] did not acquire any right of interest over the property under the "**Deed of Assignment** x x x."[18] (Emphases supplied.)

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[16] *Id.* at 194-195.

[17] TCT No. 70813 in the names of the spouses Bautista and Del Rosario was cancelled and replaced by TCT No. 139925 in the names of the spouses Bautista, which was later also cancelled and replaced by TCT No. 186147 in the name of NIDC.

[18] Records, p. 187.

No motion for reconsideration was interposed by the parties to the foregoing decision.

The aforementioned *15 October 2001 Decision* of the Court of Appeals in CA-G.R. CV No. 60159 is now the subject of the Petition for Review on *Certiorari*[19] before this Court, where petitioner NIDC assigns the following errors[20]:

I.

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING AND IGNORING THE FACT THAT [Spouses Bautista's] PRESENT ACTION IS BARRED BY PRIOR JUDGMENT AND/OR STARE DECISIS; and

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN SUSTAINING [Spouses Bautista's] CONTENTION THAT [NIDC] IS MERELY A CO-OWNER OF THE SUBJECT PROPERTY, WHICH IS A COMPLETE CONTRADICTION FROM THE SUPREME COURT'S RULING IN G.R. NO. L-30150.

NIDC maintains that the Court of Appeals grievously erred in passing upon the validity of the mortgage between Del Rosario and PCIB and deed of assignment between PCIB and NIDC. It contends that our decision in *National Investment Development Corporation v. Judge De los Angeles* already settled the issue of the validity of the said contracts of mortgage and assignment over all the lots subject herein.

On the other hand, the Spouses Bautista deny that our decision in *National Investment Development Corporation v. Judge De los Angeles* amounted to *stare decisis* respecting the real estate mortgages between Del Rosario and PCIB and deed of assignment of rights between PCIB and NIDC. They assert that neither our pronouncement in *National Investment Development Corporation v. Judge De los Angeles*,[21] *viz* —

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[19] *Rollo*, pp. 9-32.

[20] *Id.* at 18.

[21] *Supra* note 6 at 461.

> It would appear, however, from the facts submitted by the parties, that a valid assignment, binding upon the [Spouses Bautista], has been made by the PCIB to the NIDC of its mortgage rights as well as its rights as purchaser of the lots in question. There does not appear to be anything in our statutes or jurisprudence which prohibits a creditor without the consent of the debtor from making an assignment of his credit and the rights accessory thereto; and, certainly, an assignment of credit and its accessory rights does not at all obliterate the obligation of the debtor to pay, but merely puts the assignee in the place of his assignor[;]

nor our *fallo* in the same case, which reads —

> ACCORDINGLY, the order of the court *a quo* dated March 31, 1967, and its subsequent orders dated May 28, 1968, November 9, 1968 and January 27, 1969, and all related orders are hereby declared null and void and without legal effect, for having been issued without jurisdiction. The preliminary injunction issued by this Court on March 11, 1970 is hereby made permanent. No pronouncement as to costs[;][22]

declared that the subject mortgage and assignment are valid. In effect, the Spouses Bautista aver that the validity of the real estate mortgages between Del Rosario and PCIB and assignment of rights between PCIB and NIDC are still very much open for interpretation by the courts.

We agree with NIDC.

The judicial findings and conclusions made in Civil Case No. Q-8407 and G.R. No. L-30150 entitled, *National Investment Development Corporation v. Judge De los Angeles*, are binding upon us in the case at bar because the same issue is raised herein — the validity of the assignment of the rights of PCIB to NIDC. The Spouses Bautista are already barred from raising the same issue under the principle of *res judicata*.

Res judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation

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[22] *Id.* at 462.

between the same parties and for the same cause.[23] The doctrine of *res judicata* is founded on a public policy against re-opening that which has previously been decided,[24] so as to put the litigation to an end. The four requisites for *res judicata* to apply are: (a) the former judgment or order must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment or an order on the merits; and (d) there must be, between the first and the second actions, identity of parties, of subject matter and of cause of action.[25]

All requisites are present herein.

It should be recalled that Civil Case No. Q-8407 was instituted before the CFI by the Spouses Bautista **against Del Rosario** for the rescission of the Contract of Sale and the reconveyance of the properties subject of the said contract, **as well as against PCIB** for the cancellation of the real estate mortgages constituted by Del Rosario in favor of PCIB over the same properties. That the CFI made a clear ruling in said case through its *Decision* dated 25 January 1965, that the properties mortgaged to PCIB were done in good faith, is beyond dispute. In the exact words of the CFI:

> The rescission of the contracts of sale in question, however, is **without prejudice** to the rights of [PCIB] who appears to be the mortgagee of the parcels of land covered by the contracts of sale in favor of defendant Del Rosario. The plaintiffs take the parcels of land **subject to the mortgage** constituted thereon by [PCIB].[26] (Emphases ours.)

The *fallo* of the 25 January 1965 Decision of the CFI in Civil Case No. Q-8407 decreed:

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[23] *Equitable Philippine Commercial International Bank v. Court of Appeals*, 469 Phil. 579, 590 (2004).

[24] 46 Am Jur 2d, Judgments, § 520, citing *Rail N Ranch Corp. v. State*, 7 Ariz App 558, 441 P2d 786.

[25] *De la Cruz v. Joaquin*, G.R. No. 162788, 28 July 2005, 464 SCRA 576, 589.

[26] Records, p. 263.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby orders the rescission of the contracts of sale x x x and the return of the parcels of land covered by the said contracts, respectively, to [Spouses Bautista], **subject to the prior lien of the defendant [PCIB]** by reason of the mortgage it has constituted thereon. The respective claims for damages of all the parties herein shall be heard separately.[27] (Emphasis ours.)

The foregoing CFI judgment became final and executory when Del Rosario's appeal[28] thereof to this Court was dismissed for being filed out of time.[29]

Fully appreciating the CFI Decision dated 25 January 1965, we made permanent, in *National Investment Development Corporation v. Judge De los Angeles,* the writ of preliminary injunction we previously issued on 11 March 1970 in the same case, basically enjoining the Spouses Bautista and other parties from removing from the certificates of title the annotations of the assignment by PCIB to NIDC of its rights as a mortgagee, as well as the highest bidder at the public auction sale of the foreclosed properties; or from entering into transactions regarding the same properties. The *fallo* of our *31 August 1971 Decision* reads:

ACCORDINGLY, the order of the court *a quo* dated March 31, 1967, and its subsequent orders dated May 28, 1968, November 9, 1968 and January 27, 1969, and all related orders are hereby declared null and void and without legal effect, for having been issued without jurisdiction. The preliminary injunction issued by this Court on March 11, 1970 is hereby made permanent. No pronouncement as to costs.

We reasoned therein that:

It would appear, however, from the facts admitted by the parties, that a valid assignment, binding upon the private respondents, has been made by the PCIB to the NIDC of its mortgage rights as well as its rights as purchaser of the lots in question. There does not

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[27] *Id.*

[28] G.R. No. L-24873.

[29] *National Investment and Development Corporation v. Judge De los Angeles, supra* note 6.

appear to be anything in our statutes or jurisprudence which prohibits a creditor without the consent of the debtor from making an assignment of his credit and the rights accessory thereto; and, certainly, an assignment of credit and its accessory rights does not at all obliterate the obligation of the debtor to pay, but merely puts the assignee in the place of his assignor.

It is very clear from the afore-quoted *ponencia* that it abided by the declaration made by the CFI in Civil Case No. Q-8407, that PCIB was a mortgagee in good faith, and its subsequent assignment to NIDC of its rights as such, and as the highest bidder of the foreclosed properties, was valid. This Decision too had become final and executory.

Nonetheless, we clarify that the Spouses Bautista are only barred from challenging the validity of the real estate mortgages executed by Del Rosario in favor of PCIB and the assignment by PCIB to NIDC of its rights insofar as they pertain to the real properties **actually sold** by the Spouses Bautista to Del Rosario. The issue of whether Del Rosario could have mortgaged to PCIB the 5,546-sq.-meter portion of the 6,368-sq.-meter lot, which was **never sold** by the Spouses Bautista to her, has not been squarely raised either in Civil Case No. Q-8407 or *National Investment Development Corporation v. Judge De los Angeles.* We now resolve the said issue in the negative.

Since only a portion of the 6,368-sq.-meter lot, measuring 882 sq. meters, was the subject of the Contract of Sale between the Spouses Bautista and Del Rosario, the remaining portion of the said lot with an area of 5,546 sq. meters was still owned by the Spouses Bautista. *This co-ownership by the Spouses Bautista and Del Rosario of the 6,368-sq.-meter lot, in the proportions so stated, was clearly reflected in TCT No. 70813.* Not being the owner of 5,546 sq. meters of the 6,368 sq. meter lot, Del Rosario could not have constituted a mortgage on the same in favor of PCIB as security for her loan.

The requirements of a valid mortgage are plainly laid down in Article 2085 of the New Civil Code, *viz*:

ART. 2085. The following requisites are essential to the contracts of pledge and mortgage:

(1) That they be constituted to secure the fulfilment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

For a person to validly constitute a mortgage on real estate, he must be the absolute owner thereof as required by Article 2085 of the New Civil Code. In other words, the mortgagor must be the owner; otherwise, the mortgage is void.[30] **Del Rosario was NOT the owner of the 5,546-sq.- meter portion of the 6,368-sq.-meter lot, so she could not have mortgaged the same to PCIB.** There being no valid mortgage of the said portion to PCIB, it could not be subjected to foreclosure; it could not be sold at the public auction; it could not be bought by PCIB as the highest bidder at the public auction; and it could not be assigned by PCIB to NIDC.

The 5,546-sq.-meter portion of the 6,368-sq.-meter lot remained the property of the Spouses Bautista. The 882-sq.-meter portion of the same lot was reconveyed to the Spouses Bautista after the rescission of its sale to Del Rosario, but subject to the rights of PCIB as mortgagee and highest bidder for the same (which rights PCIB would later assign to NIDC).

The more pressing issue for us to resolve now is whether the Spouses Bautista mortgaged the 6,368-sq.-meter lot, then covered by TCT No. 139925, to Banco Filipino. A negative answer would mean that there was no valid mortgage of the 6,368-sq.-meter lot, and Banco Filipino could not have foreclosed the same; and the 5,546-sq.-meter portion thereof would still remain the property of the Spouses Bautista (no longer at issue is the 882-sq.- meter portion, which already pertains to NIDC).

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[30] *National Bank v. Gil*, 55 Phil. 639, 643 (1931); *Contreras v. China Banking Corporation*, 76 Phil. 709 (1946).

Since the inception of the case at bar, the Spouses Bautista have maintained that they did not deliver TCT No. 139925 to Banco Filipino as part of the security for their loan from the said bank, but solely for the purpose of annotating at the dorsal part of said certificate of title the Right-of-Way of Himlayang Pilipino, a sister company of Banco Filipino, on a portion of the 6,368-sq.-meter lot, *i.e.*, the 822-sq.-meter portion thereof.

The records of the present petition, however, reveal enough evidence to belie their denial of the mortgage constituted on the 6,368-sq.-meter lot; and to attest to the real intent of the parties, that is, *to make the 6,368 sq. meter lot covered by TCT No. 139925 part of the security for the ₱400,000.00 loan obtained by the Spouses Bautista from Banco Filipino. First*, since 10 June 1969, when the real estate mortgage contract was executed by the Spouses Bautista in favor of Banco Filipino, until after the foreclosure, auction sale, and "redemption" of the mortgaged properties, no objection, written or otherwise, was ever communicated by the Spouses Bautista to Banco Filipino on the supposed erroneous inclusion of TCT No. 139925 in the list of mortgaged properties. *Second*, if it were true that the Spouses Bautista delivered TCT No. 139925 merely for the annotation thereon of the right-of-way of Himlayang Pilipino over 822-sq.-meter portion of the 6,368-sq.-meter lot, they should have surrendered the said certificate to the Register of Deeds of Quezon City and not to Don Tomas Aguirre of Banco Filipino. *Third*, the Spouses Bautista wrote several letters[31] to NIDC,

[31] A. 5 February 1973 letter of Nestor C. Fernandez, counsel of the Spouses Bautista, providing in part that:

'This is a reiteration of our proposal to settle all of the parcels of land involved in Civil Case No. Q-8407 x x x and Q-10636 x x x.

Briefly stated, our proposal to settle the said civil cases are as follows:

x x x x x x x x x

3. That the payment to be made by my client will include the amount NIDC paid to Banco Filipino to redeem some parcels of land which my clients mortgaged to the said bank;

4. That, in turn, NIDC will reconvey to my clients the parcels of land in question including the remaining portion of Don Nicolas Village;' (Records, p. 402).

from 5 February 1973 until 21 May 1974, imploring the latter to sell to them the properties NIDC "redeemed" from Banco Filipino upon payment by the Spouses Bautista of a certain amount. And, *fourth*, it was only on 3 March 1975[32] that the Spouses Bautista intimated that the 5,546-sq.-meter portion of the 6,368-sq.-meter lot covered by TCT No. 139925 was never intended to be mortgaged to Banco Filipino, and that NIDC "redeemed" it by mistake; thus, they demanded from NIDC the return of the 5,546-sq.-meter portion of the 6,368-sq.-meter lot covered by TCT No. 139925.

B. 23 August 1973 letter of one J. R. Nuguid, counsel of the Spouses Bautista, stating in part that:

'Basilisa Roque, *et al*. now offer to retrieve the parcels of land involved in Civil Cases Nos. Q-8407 and Q-10636, which were acquired by the NIDC, for a consideration to be agreed upon and under such terms and conditions as the NIDC may require. These parcels are listed in the hereto attached annex. As for the amount of the consideration, in view of the various factors attendant in the matter, we request a conference with your goodselves or your designated representative/representatives so as to arrive at what is mutually fair, just and reasonable;' (*id.* at 397-399).

C. 28 May 1978 letter of one J.R. Nuguid, counsel of the Spouses Bautista, contending in part that:

'My clients through this representation are offering ₱1,898,900. This amount is below your quoted price but, if you will reappraise the property, considering its location, terrain and accessibility, its area disposable through subdivision sales, its attractiveness to lot buyers as affected by the neighboring properties, the needed additional investments to condition it for sale as residential lots, the increased taxes and other similar factors, you will find the offer reasonable.' (*id.* at 404).

[32] A. 3 March 1975 letter the Spouses Bautista addressed to NIDC, which states in part that:

'In view of the foregoing, we wish to reiterate our request to redeem said properties and with respect to the parcel of land consisting of about 5,546 square meters, more or less, we request that the same be reconveyed to us.' (Records, pp. 17-18.)

B. 4 June 1975 letter of Nestor C. Fernandez, counsel of the Spouses Bautista, stating in part that:

'In view of the foregoing, we request that the 5,546 square meters belonging to our client and covered by TCT No. 70813 be reconveyed to her.' (*id.* at 20-21.)

NIDC "redeemed" the properties mortgaged by the Spouses Bautista from Banco Filipino, which were foreclosed and bought by the latter as the highest bidder at the public auction. Except for the 5,546-sq.-meter portion of the 6,368-sq.-meter lot, NIDC basically acquired the very same properties assigned to it by PCIB; such assignment had been held legal and valid by the CFI in Civil Case No. Q-8407 in its *25 January 1965 Decision*, which became final and executory. Instead of litigating over the properties mortgaged to, and foreclosed and bought by, Banco Filipino, NIDC chose to strengthen and reaffirm its rights over said properties by "redeeming" the same from Banco Filipino. But was the course of action of NIDC regarding the subject real properties effectively a "redemption" thereof?

That the properties mortgaged by the Spouses Bautista to Banco Filipino were validly foreclosed and sold at the public auction held on 22 October 1971 is not an issue; nor is the fact that the Certificate of Sale in the name of Banco Filipino was registered on 27 October 1971.

Reference is made to the governing law on extrajudicial foreclosure of real estate mortgages, *i.e.*, Republic Act No. 3135 entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages," as amended by Republic Act No. 4118.[33] Section 6 of the said statute provides:

SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of **one year from and after the date of the sale** x x x. (Emphasis ours.)

In a long line of cases, however, we have consistently held that this one-year redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale was registered with the Register of Deeds.[34] In this

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[33] *Luna v. Encarnacion*, 91 Phil. 531 (1952).

[34] *Quimson v. Philippine National Bank*, 146 Phil. 629 (1970).

case, therefore, the one-year redemption period should be reckoned from the time the certificate of sale was registered on 27 October 1971.[35]

The law speaks of "one year" period within which to exercise redemption. Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Applying said article, the period of one year within which to redeem the properties mortgaged to Banco Filipino by the Spouses Bautista shall be 365 days from 27 October 1971. Thus, excluding the first day and counting from 28 October 1971,[36] <u>and bearing in mind that 1972 was a leap year</u>, the redemption of the properties in question from Banco Filipino could only be made until **<u>26 October 1972</u>**.

The tender of ₱431,570.66, supposedly the redemption price, by NIDC to Banco Filipino on **<u>27 October 1972</u>** was clearly one (1) day beyond the period for redemption. Consequently, with no one availing oneself of the right of redemption within the period, the mortgaged properties, including the entire 6,368-sq.-meter lot then covered by TCT No. 139925, became an acquired asset of the mortgagee — Banco Filipino. Like any other ordinary property owner, Banco Filipino had the right to enjoy all the attributes of ownership, one of which was to sell the property for whatever price it may deem reasonable and in favor of whomsoever it chose to sell the same.

To summarize, this Court's affirmation of NIDC's entitlement to the 5,546-sq.-meter portion of the 6,368-sq.-meter lot is brought about by the following findings: (1) that the judicial conclusions made in Civil Case No. Q8407 and G.R. No. L-30150,

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[35] *Bernardez v. Reyes*, G.R. No. 71832, 24 September 1991, 201 SCRA 648.

[36] Article 13. When the law speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

entitled, "*National Investment Development Corporation v. Judge De los Angeles*," which declared and affirmed, respectively, the validity of the mortgage made by Del Rosario in favor of PCIB and the subsequent assignment by the latter to NIDC of the properties Del Rosario earlier purchased from the Spouses Bautista, are binding upon the parties in the present petition; thus, these issues shall not be raised anew in consonance with the principle of *res judicata*; (2) that with respect to the 5,546-sq.-meter portion of the 6,368-sq.-meter lot, however, we recognize that the same judgments cannot bar the Spouses Bautista from assailing the mortgage to PCIB and/or assignment to NIDC of the said portion, as the same was never actually sold by the spouses to Del Rosario, but the latter, nevertheless, mortgaged it in full to PCIB despite acquiring only an 822-sq.-meter portion of the total 6,368-sq.-meter area, because this issue was never even raised in either of the two (2) preceding cases; (3) that the 5,546-sq.-meter portion of the 6,368-sq.-meter lot remained the property of the Spouses Bautista at the time they obtained a ₱400,000.00 loan from Banco Filipino; (4) that, notwithstanding their protestations, the evidence on record speaks of the fact that the Spouses Bautista presented the entire 6,368-sq.-meter lot as part of the security for said indebtedness, and not just to have a right-of-way established with respect to the 822-sq.-meter portion of the 6,368-sq.-meter lot and to have said easement annotated at the back of the certificate of title covering said lot; (5) that since it was established that the 5,546-sq.-meter portion of the 6,368-sq.-meter lot was, indeed, mortgaged to Banco Filipino, the same was validly foreclosed and sold at public auction when the Spouses Bautista failed to pay their loan to Banco Filipino; and (6) that regardless of the terminology used, after negotiation, the redemption by NIDC from Banco Filipino of the properties mortgaged to the latter by the Spouses Bautista, including the 5,546-sq.-meter portion of the 6,368-sq.-meter lot, was actually an ordinary sale, considering that the one-year redemption period provided by law had expired without anyone having redeemed the foreclosed properties.

Essentially, therefore, *except for the 5,546-sq.-meter portion of the 6,368-sq.-meter lot*, NIDC twice became the owner of said

properties, having already acquired them by virtue of the assignment executed in its favor by PCIB and, again, having purchased the same from Banco Filipino.

WHEREFORE, premises considered, the petition for review on *certiorari* filed by petitioner National Investment Development Corporation is *GRANTED.* The assailed Decision of the Court of Appeals in CA-G.R. CV No. 60159 dated 15 October 2001 is *REVERSED* and *SET ASIDE.* Consequently, the complaint in Civil Case No. Q-28360 filed by respondent Spouses Francisco Bautista and Basilisa Roque is hereby *DISMISSED*. With costs against respondent Spouses Bautista.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 150694. March 13, 2009]

ZOMER DEVELOPMENT COMPANY, INC., *petitioner, vs.* **INTERNATIONAL EXCHANGE BANK and SHERIFF IV ARTHUR R. CABIGON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PRAYER FOR A WRIT THEREOF IS NOT PROPER IN CASE AT BAR FOR BEING MOOT AND ACADEMIC. —** The records show that, indeed, petitioner's mortgaged properties were already foreclosed, as shown by the Certificate of Sale issued by Cabigon on November 19, 2001. And they also show that ownership of the lands-subject of the real estate mortgage had been consolidated and transfer

certificates of title had been issued in IEB's name. It is on this score that the Court finds petitioner's prayer for a writ of preliminary injunction moot and academic x x x.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; RESOLUTION OF THE BOARD OF DIRECTORS AUTHORIZING THE MORTGAGE TO SECURE THE OBLIGATION OF A THIRD PARTY, WHICH ACT HAD BEEN RATIFIED BY THE CORPORATION, IS NOT *ULTRA VIRES*. — x x x This leaves it unnecessary for the Court to still dwell on petitioner's argument that it was not, under its By-Laws, empowered to mortgage its properties to secure the obligation of a third party. IN ANY EVENT, the Court finds well-taken the appellate court's following disposition of such argument: We do agree that the Petitioner, under its **"By-Laws,"** is not empowered to mortgage its properties as a security for the payment of the obligations of third parties. This is on the general premise that the properties of a corporation are regarded as held in trust for the payment of corporate creditors and not for the creditors of third parties. However, the Petitioner is not proscribed from mortgaging its properties as security for the payment of obligations of third parties. In an opinion of the Securities and Exchange Commission, dated April 15, 1987, it declared that a private corporation, by way of exceptions, may give a third party mortgage: "1. When the mortgage of corporate assets/properties shall be done in the furtherance of the interest of the corporation and in the usual and regular course of its business; and 2. To secure the debt of a subsidiary." While admittedly, the **"Opinion"** of the Securities & Exchange Commission may not be conclusive on the Respondent Court, however, admittedly the same is of persuasive effect. In the present recourse, the Respondent Court found that not only is Prime Aggregates a subsidiary of the Petitioner **but that the Petitioner appeared to be a "family" corporation**: x x x The intention of the Members of the Board of Directors of the Petitioner, in approving the "**Resolution,**" may be ascertained xxx also from the contemporaneous and subsequent acts of the Petitioner, the Private Respondent and Prime Aggregates. Given the factual milieu in the present recourse, as found and declared by the Respondent Court, there can be no equivocation that, indeed the Petitioner conformed to and ratified, and hence, is bound by the execution, by its Treasurer and General Manager, of

the "**Real Estate Mortgage**" in favor of the Private respondent, with its properties used as securities for the payment of the credit and loan availments of Prime Aggregates from the Private Respondent on the basis of the "**Resolution**" approved by its Board of Directors. As our Supreme Court declared, ratification and/or approval by the corporation of the acts of its agents/ officers may be ascertained through x x x the acquiescence in his acts of a particular nature, with actual or constructive thereof, whether within or beyond the scope of his ordinary powers. As it was, the Petitioner finally awoke from its slumber when the Private Respondent filed its "**Petition**" for the extra-judicial foreclosure of the "**Real Estate Mortgage,**" with the Sheriff, and assailed the authority of its Board of Directors to approve the said "**Resolution**" and of its Treasurer and General Manager to execute the deed and brand the said "**Resolution**" and the said deed as "***ultra vires***" and hence, not binding on the Petitioner, and hurried off to the Respondent Court and prayed for injunctive relief. Before then, the Petitioner maintained a stoic silence and adopted a "hands off" stance. We find the Petitioner's stance grossly inequitable. We must take heed and pay obeisance to the equity rule that if one maintains silence when, in conscience he ought to speak, equity will debar him from speaking when, in conscience, he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he ought to be silent. More, the transactions between the Petitioner and the Private Respondent over its properties are neither ***malum in se*** or ***malum prohibitum.*** Hence, the Petitioner cannot hide behind the cloak of "***ultra vires***" for a defense.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
Vicerra & Protasio Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On August 25, 1997, the Board of Directors of Zomer Development Company, Inc. (petitioner) approved a resolution authorizing it to apply for and obtain a credit line with respondent

International Exchange Bank (IEB) in the amount of ₱60,000,000 as well as temporary excesses or permanent increases thereon as may be approved by IEB from time to time.[1] The Board of Directors also authorized petitioner to assign, pledge, or mortgage its properties as security for this credit line; and to secure and guarantee the term loan and other credit facility of IDHI Prime Aggregates Corporation (Prime Aggregates) with IEB.[2]

Prime Aggregates obtained on August 26, 1997 a term loan from IEB in the amount of ₱60,000,000.[3] On September 2, 1997, petitioner, through its Treasurer Amparo Zosa (Amparo) and its General Manager Manuel Zosa, Jr. (Zosa), executed a real estate mortgage covering three parcels of land (the real estate mortgage) in favor of IEB to secure

1. The payment of all loans, overdrafts, credit lines and other credit facilities or accommodations *obtained or hereinafter* obtained by the MORTGAGOR and/or by **IDHI Prime Aggregates Corporation** (hereinafter referred to as DEBTOR)
2. The payment of all interests, charges, penalties, reimbursements and other obligations owing by the MORTGAGOR and/or DEBTOR to the MORTGAGEE whether direct or indirect, principal or secondary; absolute or contingent as appearing in the accounts, books and records of the MORTGAGEE.
3. The payment of all obligations of the MORTGAGOR and/or DEBTOR of whatever kind or nature whether such obligations have been contracted before, during, or after the constitution of [the] MORTGAGE.
4. In case the MORTGAGOR and/or DEBTOR incurs subsequent obligations of whatever kind or nature whether such obligations, as extension thereof, or as new loans or is given any other kind of accommodations, the payment of said obligations, and/or accommodations without the necessity of executing new agreements.

[1] Exhibit "B", records, p. 11.

[2] *Ibid.*

[3] Exhibit "3", *id.* at 103-105.

5. The faithful and strict performance and compliance by the MORTGAGOR and/or DEBTOR of all the terms and conditions of the MORTGAGE, the credit agreements, promissory notes and other loan documents and agreements evidencing the loan, overdrafts, credit lines and other credit accommodations granted to the MORTGAGOR and/or DEBTOR; including all amendments thereon, such as but not limited to changes in the interest rates, penalties, charges, or fees; acceleration of payments; and the like.

x x x[4] (Emphasis, italics and underscoring supplied)

Prime Aggregates subsequently obtained several loans from IEB from September 1997 until September 1998.[5]

Prime Aggregates failed to settle its outstanding obligation which stood at ₱90,267,854.96 and US$211,547.12[6] as of September 15, 2000, drawing IEB to file a petition for extra-judicial foreclosure of mortgage before the Regional Trial Court (RTC) of Cebu City.

Respondent Sheriff IV Arthur R. Cabigon (Cabigon) having issued on October 18, 2000 a Notice of Extra-Judicial Foreclosure and Sale[7] scheduled on November 28, 2000, petitioner filed a complaint[8] for Injunction with application for writ of preliminary injunction/temporary restraining order before the Cebu City RTC, alleging that the real estate mortgage was null and void because Amparo and Zosa were authorized to execute it to secure only one obligation of Prime Aggregates. Petitioner thus prayed

x x x that after due notice and hearing, judgment be rendered declaring the real estate mortgage and its extrajudicial foreclosure sale as null and void and that defendant bank be sentenced to pay plaintiff the sum of ₱100,000.00 as attorney's fees and ₱100,000.00 as litigation expenses.

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[4] Exhibit "C", *id.* at 13.

[5] CA *rollo*, pp. 105-159.

[6] Exhibit "62", *rollo,* p. 255.

[7] Exhibit "A", *id.* at 10.

[8] *Id.* at 1-9.

In the meantime, it is most respectfully **prayed that a writ of preliminary injunction/TRO be issued enjoining the extrajudicial foreclosure sale** of plaintiff's properties scheduled on November 28, 2000 or December 5, 2000.

. . . that after trial, the writ of preliminary injunction be made permanent. x x x[9] (Emphasis and underscoring supplied)

The complaint, docketed as Civil Case No. CEB-25762, was amended on November 15, 2000.

Branch 9 of the Cebu City RTC denied petitioner's prayer for a writ of preliminary injunction.[10] Petitioner filed a Motion for Reconsideration[11] and a Motion for Admission of a Second Amended Complaint,[12] albeit it later filed a Motion to Withdraw Second Amended Complaint and to admit *Third* Amended Complaint.[13] The trial court denied petitioner's Motion for Reconsideration.[14]

Petitioner assailed the trial court's orders denying its prayer for the issuance of a writ of preliminary injunction before the Court of Appeals via *certiorari*,[15] docketed as CA-G.R. SP No. 64390 (*certiorari* case), alleging, in the main, that the real estate mortgage it executed was null and void for being *ultra vires*[16] as it was not empowered to mortgage its properties as security for the payment of obligations of third parties; and that Amparo and Zosa were authorized to mortgage its properties to secure only a ₱60,000,000 term loan and one credit facility of Prime Aggregates.[17]

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[9] *Id.* at 7-8.

[10] *Id.* at 348-357.

[11] *Id.* at 361-374.

[12] *Id.* at 378-385.

[13] *Id.* at 425-435.

[14] *Id.* at 418-421.

[15] CA *rollo*, pp. 2-28.

[16] *Id.* at 7-8.

[17] *Ibid.*

In the meantime, Branch 15 of the Cebu City RTC to which Civil Case No. CEB-25762 was re-raffled after the Presiding Judge of Branch 9 inhibited himself in the case, dismissed petitioner's *Third* Amended Complaint[18] by Order of September 10, 2001. Petitioner appealed this Order to the Court of Appeals which docketed it as CA-G.R. CV No. 73063.

By Decision[19] of October 30, 2001, the appellate court, acting on the *certiorari* case filed by petitioners, denied it due course as it found that the trial court committed no grave abuse of discretion in denying petitioner's prayer for preliminary injunction.[20] It brushed aside petitioner's arguments that the real estate mortgage was *ultra vires* and that Amparo and Zosa were only authorized to mortgage petitioner's properties to secure the ₱60,000,000 term loan and one credit facility of Prime Aggregates.

Hence, the present petition[21] for review faulting the Court of Appeals in

I – X X X NOT HOLDING THAT THE JUDGE WHO DENIED PETITIONER'S APPLICATION FOR INJUNCTION WAS A BIASED AND PARTIAL JUDGE AS RESPONDENTS WERE GIVEN A COPY OF THE ORDER ON MARCH 2, 2001 WHEN IT WAS SIGNED BY THE JUDGE BUT BEFORE ITS OFFICIAL RELEASE ON MARCH 5, 2001.

II – X X X USING THE DECISION OF THIS HONORABLE COURT IN THE CASE OF *UNION BANK V. COURT OF APPEALS, ET AL.*, 311 SCRA 795 IN SAYING THAT PETITIONER IS NOT ENTITLED TO A WRIT OF PRELIMINARY INJUNCTION INSTEAD OF USING THE CASE OF *REPUBLIC V. COURT OF APPEALS*, 324 SCRA 569 WHEREIN THIS HONORABLE COURT HELD THAT EVEN P.D. 385 CANNOT BE USED AS A SHIELD TO STOP BY INJUNCTION THE

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[18] Records, pp. 505-510.

[19] Penned by then-Court of Appeals Associate Justice Romeo J. Callejo, Sr. with the concurrence of Associate Justices Remedios Salazar-Fernando and Josefina Guevara-Salonga. *Rollo*, pp. 45-66.

[20] *Id.* at 53-54.

[21] *Id.* at 3-44.

FORECLOSURE OF A MORTGAGE WHERE THE VERY PROPRIETY OF SAID FORECLOSURE IS IN SERIOUS DOUBT WHICH IS THE SAME ISSUE RAISED IN THE CASE AT BAR.

III – X X X HOLDING THAT [PRIME AGGREGATES] IS A SUBSIDIARY OF PETITIONER IN THE ABSENCE OF A FINDING THAT PETITIONER OWNS ANY SHARE IN [PRIME AGGREGATES].

IV – X X X NOT HOLDING THAT THE SECRETARY'S CERTIFICATE OF PETITIONER WAS NULL AND VOID FOR NOT PUTTING ANY LIMITATION OF THE AMOUNT OF THE OBLIGATION OF [PRIME AGGREGATES] TO BE SECURED BY A THIRD PARTY MORTGAGE OF ITS PROPERTIES

V – X X X NOT HOLDING THAT THE THIRD PARTY REAL ESTATE MORTGAGE EXECUTED BY THE AGENTS OF PETITIONER IN FAVOR OF PRIVATE RESPONDENT IS NULL AND VOID BECAUSE THEY EXCEEDED THEIR AUTHORITY IN SIGNING THE SAME.

VI – X X X NOT CONSTRUING STRICTLY AGAINST PRIVATE RESPONDENT THE SECRETARY'S CERTIFICATE AND THIRD PARTY REAL ESTATE MORTGAGE WHICH WERE ALL DOCUMENTS OF ADHESION AND ALL PREPARED BY IT AND TO EFFECT THE LEAST TRANSMISSION OF RIGHTS PURSUANT TO ARTICLE 1378 OF THE NEW CIVIL CODE SINCE THE THIRD PARTY REAL ESTATE MORTGAGE IS A GRATUITOUS CONTRACT WHICH WAS EXECUTED PURELY FOR ACCOMODATION OF [PRIME AGGREGATES].

VII – X X X NOT LAYING THE BLAME ON PRIVATE RESPONDENT IN MAKING THE AGENTS OF PETITIONER SIGN AN ILLEGAL CONTRACT SINCE IT WAS VERY WELL AWARE OF THEIR AUTHORITY AS ALL THE DOCUMENTS WERE ITS FORMS, PRE-PRINTED AND PREPARED BY IT.

VIII – X X X HOLDING THAT THE PETITIONER RATIFIED BY INACTION THE ILLEGAL CONTRACT EXECUTED BY ITS AGENTS SINCE THE PRIVATE RESPONDENT WAS VERY WELL AWARE OF THE EXTENT OF THEIR AUTHORITY.

IX – MAKING CONFLICTING FINDINGS OF FACTS.[22]

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[22] *Id.* at 11-12.

Respondents, in their Comment[23] dated February 27, 2002, move for the dismissal of the petition for being moot and academic, alleging that:

> On October 8, 2001 [*sic*], [petitioner's] **principal action for annulment of real estate mortgage was dismissed** by the trial court and that said action is **now on appeal** with the Court of Appeals x x x [.]
>
> On November 19, 2001, [petitioner's] mortgaged properties were **foreclosed** by [IEB]. In fact, as the highest bidder in the said foreclosure sale and in view of the passage of the new General Banking Law (which allows banks to consolidate its [*sic*] title within a shorter period if the mortgagor of a foreclosed property is a corporation), iBank had consolidated its title on the mortgaged properties.
>
> [Petitioner's] application for issuance of writ of preliminary injunction, the subject of the instant appeal purportedly under Rule 45 of the Rules of Court, **cannot survive the dismissal of its principal action as well as the foreclosure and consolidation in [IEB] name of its mortgaged properties**.[24] (Emphasis and underscoring supplied)

In its Reply,[25] petitioner argues that when Branch 15 of the Cebu City RTC dismissed the *Third* Amended Complaint in Civil Case No. CEB-25762 on September 10, 2001, it no longer had jurisdiction over it because said Branch had on August 14, 2001 been designated as a drug court.

Petitioner goes on to argue that even if the acts sought to be restrained have already been committed, since they are continuing in nature and in derogation of its rights at the outset, preliminary mandatory injunction may still be availed of to restore the *status quo,* citing *Manila Electric Railroad and Light Company v. del Rosario and Jose*.[26]

Acting on petitioner's appeal from the dismissal by Branch 15 of its *Third* Amended Complaint, the appellate court, by Decision

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[23] *Id.* at 391-425.

[24] *Id.* at 405.

[25] *Id.* at 462-486.

[26] 22 Phil. 433 (1912).

of April 14, 2005, SET ASIDE the trial court's order of dismissal and ordered the reinstatement of said complaint to the docket of Branch 15 of the Cebu City RTC.

The records show that, indeed, petitioner's mortgaged properties were already foreclosed, as shown by the Certificate of Sale issued by Cabigon on November 19, 2001.[27] And they also show that ownership of the lands-subject of the real estate mortgage had been consolidated and transfer certificates of title had been issued in IEB's name.[28] It is on this score that the Court finds petitioner's prayer for a writ of preliminary injunction moot and academic. This leaves it unnecessary for the Court to still dwell on petitioner's argument that it was not, under its By-Laws, empowered to mortgage its properties to secure the obligation of a third party. IN ANY EVENT, the Court finds well-taken the appellate court's following disposition of such argument:

> We do agree that the Petitioner, under its **"By-Laws,"** is not empowered to mortgage its properties as a security for the payment of the obligations of third parties. This is on the general premise that the properties of a corporation are regarded as held in trust for the payment of corporate creditors and not for the creditors of third parties. However, the Petitioner is not proscribed from mortgaging its properties as security for the payment of obligations of third parties. In an opinion of the Securities and Exchange Commission, dated April 15, 1987, it declared that a private corporation, by way of exceptions, may give a third party mortgage:
>
> "1. When the mortgage of corporate assets/properties shall be done in the furtherance of the interest of the corporation and in the usual and regular course of its business; and
>
> 2. To secure the debt of a subsidiary."
>
> While admittedly, the **"Opinion"** of the Securities & Exchange Commission may not be conclusive on the Respondent Court, however, admittedly the same is of persuasive effect.

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[27] *Rollo*, p. 451.

[28] *Id.* at 452-454.

In the present recourse, the Respondent Court found that not only is Prime Aggregates a subsidiary of the Petitioenr (sic) **but that the Petitioner appeared to be a "family" corporation**:

"a. The plaintiff appears to be a family corporation. The incorporators and stockholders and the membership of the board of directors are Zosa family. x x x

b. Francis and Rolando Zosa are directors of [Prime Aggregates] and of plaintiff corporation x x x

c. The REM was executed by Amparo Zosa who was the treasurer of plaintiff and Manuel Zosa, the General Manager, both are directors/stockholders of the plaintiff. Amparo Zosa is the biggest stockholder and is the mother of practically all the other stockholders of plaintiff. Manuel Zosa, Jr. is the General Manager and a son of Amparo.

d. The Corporate Secretary of plaintiff and [Prime Aggregates] are members of the Zosa family. The Corporate Secretary of [Prime Aggregates] is also the daughter of Francis Zosa, president of plaintiff.

e. The President of plaintiff corporation, Francis Zosa and the president of [Prime Aggregates], Rolando Zosa, are brothers (aside from being common directors of both corporations.)

We agree with the Respondent Court.

The Petitioner's shrill incantations that the **"Resolution,"** approved by its Board of Directors, authorizing its Treasurer and General Manager to execute a **"Real Estate Mortgage"** as security for the payment of the account of Prime Aggregates, a sister corporation, is not for its best interest, is a "puzzlement" x x x. Since when is a private corporation, going to the aid of a sister corporation, not for the best interest of both corporation? For in doing so, the two (2) corporations are enhancing, boosting and promoting a common interest, the interest of "**family**" having ownership of both corporations. In the second place, Courts are loathe to overturn decisions of the management of a corporation in the conduct of its business via its Board of Directors x x x.

x x x x x x x x x

There is no evidence on record that the "**Real Estate Mortgage**" was executed by the Petitioner and the Private Respondent to prejudice corporate creditors of the Petitioner or will result in the infringement of the trust fund doctrine or hamper the continuous business operation of the Petitioner or that the Prime Aggregates was insolvent or incapable of paying the Private Respondent. Indeed, the latter approved Prime Aggregates' loan availments and credit facilities after its investigation of the financial capability of Prime Aggregates and its capacity to pay its account to the Private respondent.[29]

x x x x x x x x x

[U]nder the "**Resolution**" of the Board of Directors, it authorized its Treasurer and General Manager to execute a "**Real Estate Mortgage**" over its properties as security for the "**term loan and credit facility**" of Prime Aggregates. The maximum amounts of such term loan and credit facility were not fixed in the "**Resolution**." The term "credit facility" is a broad term in credit business transactions to denote loans, pledges, mortgages, trust receipt transactions and credit agreements. And then, again, such term loan and/or credit facility may be granted, by the Private Respondent, in favor of Prime Aggregates, in trenches or in staggered basis, each disbursement evidenced by separate agreements depending upon the needs of Prime Aggregates for the establishment of its sand and gravel plant and port facilities and the purchase of equipments and machinery for said project. Hence, the "**Long Term Agreements**" and "**Credit Agreements**" executed by Prime Aggregates and the Private Respondent, with the Petitioner's properties, as collateral therefore, were envisaged in the terms "term loan and credit facility" in the "**Resolution**" of the Board of Directors of the Petitioner.

The intention of the Members of the Board of Directors of the Petitioner, in approving the "**Resolution,**" may be ascertained x x x also from the contemporaneous and subsequent acts of the Petitioner, the Private Respondent and Prime Aggregates. Given the factual milieu in the present recourse, as found and declared by the Respondent Court, there can be no equivocation that, indeed the Petitioner conformed to and ratified, and hence, is bound by the execution, by its Treasurer and General Manager, of the "**Real Estate Mortgage**" in favor of the Private respondent, with its properties used as securities for the payment of the credit and loan availments

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

of Prime Aggregates from the Private Respondent on the basis of the "**Resolution**" approved by its Board of Directors. As our Supreme Court declared, ratification and/or approval by the corporation of the acts of its agents/officers may be ascertained through x x x the acquiescence in his acts of a particular nature, with actual or constructive thereof, whether within or beyond the scope of his ordinary powers.

As it was, the Petitioner finally awoke from its slumber when the Private Respondent filed its "**Petition**" for the extra-judicial foreclosure of the "**Real Estate Mortgage,**" with the Sheriff, and assailed the authority of its Board of Directors to approve the said "**Resolution**" and of its Treasurer and General Manager to execute the deed and brand the said "**Resolution**" and the said deed as "***ultra vires***" and hence, not binding on the Petitioner, and hurried off to the Respondent Court and prayed for injunctive relief. Before then, the Petitioner maintained a stoic silence and adopted a "hands off" stance. We find the Petitioner's stance grossly inequitable. We must take heed and pay obeisance to the equity rule that if one maintains silence when, in conscience he ought to speak, equity will debar him from speaking when, in conscience, he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he ought to be silent. More, the transactions between the Petitioner and the Private Respondent over its properties are neither ***malum in se*** or ***malum prohibitum.*** Hence, the Petitioner cannot hide behind the cloak of "***ultra vires***" for a defense.

x x x x x x x x x

The plea of "***ultra vires***" will not be allowed to prevail, whether interposed for or against a corporation, when it will not advance justice but, on the contrary, will accomplish a legal wrong to the prejudice of another who acted in good faith.[30] (Underscoring and emphasis in the original)

WHEREFORE, the petition is *DISMISSED*.

Costs against petitioner.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 154623. March 13, 2009]

JIMMY T. GO, *petitioner, vs.* **THE CLERK OF COURT and *EX-OFFICIO* PROVINCIAL SHERIFF OF NEGROS OCCIDENTAL, ILDEFONSO M. VILLANUEVA, JR., and SHERIFF DIOSCORO F. CAPONPON, JR. and MULTI-LUCK CORPORATION**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DOCTRINE OF NON-INTERFERENCE; RATIONALE. —** We have time and again reiterated the doctrine that no court has the power to interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction. This doctrine of non-interference is premised on the principle that a judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction. As correctly ratiocinated by the CA, cases wherein an execution order has been issued, are still *pending*, so that all the proceedings on the execution are still proceedings in the suit. Since the Bacolod RTC had already acquired jurisdiction over the collection suit (Civil Case No. 98-10404) and rendered judgment in relation thereto, it retained jurisdiction to the exclusion of all other coordinate courts over its judgment, including all incidents relative to the control and conduct of its ministerial officers, namely public respondent sheriffs. Thus, the issuance by the Pasig RTC of the writ of preliminary injunction in Civil Case No. 68125 was a clear act of interference with the judgment of Bacolod RTC in Civil Case No. 98-10404.

2. **ID.; ID.; ID.; ID.; JURISDICTIONAL "EXCEPTION" FINDS NO APPLICATION IN CASE AT BAR. —** The jurisprudential "exception" adverted to by petitioner, *i.e. Santos v. Bayhon*, 199 SCRA 525 (1991), finds no application in this case. In *Santos*, we allowed the implementation of a writ of execution issued by the Labor Arbiter to be enjoined by order of the RTC where a third party claimant had filed his action to recover

property involved in the execution sale, since the Labor Arbiter had no jurisdiction to decide matters of ownership of property and the civil courts are the proper venue therefor. In the case at bar, the Bacolod RTC had jurisdiction and competence to resolve the question of ownership of the property involved had petitioner filed his claim with the said court.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GROUNDS FOR THE ISSUANCE THEREOF, NOT ESTABLISHED IN CASE AT BAR; PURPOSE. — Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of a preliminary injunction: SEC. 3. *Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance, or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. Pursuant to the above provision, a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right. The purpose of a preliminary injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Thus, to be entitled to an injunctive writ, the petitioner has the burden to establish the following requisites: (1) a right in *esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. x x x The attached real

properties are registered solely in the name of Looyuko and NAMI. Corollarily, petitioner had no standing to question the Bacolod RTC's judgment as he is a stranger to Civil Case No. 98-10404 and he has no clear right or interest in the attached property. Likewise, the stock certificate is registered in the name of NAMI. Moreover, the checks subject of Civil Case No. 98-10404 were made in payment for obligations incurred by Looyuko in the course of the business operation of NAMI. Even assuming for the sake of argument that indeed, petitioner co-owns NAMI, whatever obligation the business incurred in the course of its operation is an obligation of petitioner as a part owner. In effect, petitioner was merely forestalling the implementation of a final judgment against the corporation which he purportedly co-owns.

4. CIVIL LAW; ESTOPPEL; ESTABLISHED IN CASE AT BAR. — On the issue of estoppel, the CA ruled that petitioner was estopped from claiming that he is a co-owner of the subject properties. Petitioner would argue that on June 6, 1998, he had caused the annotation of an "Affidavit of Adverse Claim" over the attached real property covered by TCT No. 126519. According to him, in so doing, the whole world, including respondents, was informed of his being a co-owner thereof. However, the annotation of petitioner's adverse claim is not notice to third parties dealing with the property that he is in fact a co-owner, only that he *claims* to be a co-owner and intends to file the appropriate action to confirm his right as such. Under Section 70 of P.D. 1529, petitioner's adverse claim was effective for thirty days from its registration. Yet, from the records, it does not appear that petitioner filed an appropriate action with respect to his adverse claim prior to the attachment of the properties on execution. Thus, Looyuko and/or NAMI remained the sole owners of the subject properties at the time the Bacolod RTC ordered their sale on execution.

APPEARANCES OF COUNSEL

Madayag Cañeda Ruenata and Associates for petitioner.
Joselito Bayatan for respondents.

DECISION

LEONARDO-DE CASTRO, *J*.:

Before us is a petition for review on *certiorari* assailing the Decision[1] dated April 30, 2002 and Resolution[2] dated July 31, 2002, of the Court of Appeals (CA) in CA-G.R. SP No. 64473, which reversed and set aside the November 23, 2000 and December 7, 2000 Orders of the Regional Trial Court (RTC) of Pasig City, Branch 266 which in turn, granted petitioner's motion for issuance of a writ of preliminary injunction and denied respondents' motion to dismiss, respectively.

The present controversy stemmed from the execution of the Decision of RTC, Bacolod City, Branch 45 in a complaint for collection of a sum of money[3] docketed as Civil Case No. 98-10404. As culled from the CA decision and from the pleadings filed by the parties in the present case, the factual and procedural antecedents are as follows:

On August 10, 1998, respondent Multi-Luck Corporation (Multi-Luck) filed a collection suit against Alberto T. Looyuko (Looyuko) as sole proprietor of Noah's Ark Merchandising Inc. (NAMI). The complaint pertained to three (3) dishonored United Coconut Planters Bank (UCPB) checks with an aggregate amount of ₱8,985,440.00 issued by Looyuko/NAMI to Mamertha General Merchandising. These checks were indorsed to Multi-Luck, who claimed to be a holder in due course of such checks.

On January 27, 2000, upon Multi-Luck's motion for judgment on the pleadings, the Bacolod RTC rendered a Decision[4] ordering Looyuko/NAMI to pay Multi-Luck the value of the three (3)

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[1] Penned by Associate Justice Candido V. Rivera (ret.) and concurred in by Associate Justices Delilah Vidallon-Magtolis (ret.) and Sergio L. Pestaño (ret.), *rollo*, pp. 48-61.

[2] *Id.* at 63.

[3] CA *rollo*, pp.65-69.

[4] *Id.* at 79-82.

UCPB checks. Looyuko/NAMI did not file an appeal. Hence, the Decision became final and executory.

Upon Multi-Luck's motion, the Bacolod RTC issued a writ of execution[5] over a house and lot covered by TCT No. T-126519 registered in the name of Looyuko and one share in the Negros Occidental Golf and Country Club, Inc. in the name of NAMI. The auction sales were scheduled on November 10, 2000[6] (for the house and lot) and November 6, 2000 (for the stock certificate),[7] respectively.

On October 25, 2000, petitioner filed a complaint for injunction with a prayer for temporary restraining order and/or writ of preliminary injunction against respondents before the RTC, Pasig City, Branch 266, where the case was docketed as Civil Case No. 68125.[8] The complaint alleged that petitioner is a "business partner" of Looyuko and that the former co-owned the properties of Looyuko/NAMI including the properties subject of the aforementioned auction sales. It was further alleged that the intended public auction of the subject properties would unduly deprive him of his share of the property without due process of law considering that he was not impleaded as a party in Civil Case No. 98-10404.

Multi-Luck filed a motion to dismiss[9] on the ground, among others, that the Pasig RTC had no jurisdiction over the subject matter of petitioner's claim and over the public respondent sheriffs as well as over Multi-Luck.

In the Order[10] dated October 30, 2000, the Pasig RTC granted petitioner's prayer for issuance of a Temporary Restraining Order (TRO).

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[5] *Id.* at 83-84.

[6] *Id.* at 86-87.

[7] *Id.* at 85.

[8] *Rollo*, pp. 194-200.

[9] *Id.* at 212-220.

[10] *Id.* at 202-203.

Thereafter, in the Order[11] dated November 23, 2000, the Pasig RTC issued a writ of preliminary injunction enjoining public respondent sheriffs Caponpon, Jr. and Villanueva, Jr. from holding the public auction.

In the Order[12] dated December 7, 2000, the Pasig RTC denied respondents' motion to dismiss.

Multi-Luck moved for the reconsideration of the November 23, 2000 and December 7, 2000 Orders but both motions were also denied by the Pasig RTC in separate Orders[13] both dated February 2, 2001.

Multi-Luck elevated the case to the CA *via* a petition for *certiorari* and prohibition with prayer for the issuance of restraining order and/or injunction.

As previously stated herein, in the Decision[14] dated April 30, 2002, the CA granted Multi-Luck's petition and reversed the ruling of the Pasig RTC. The CA ruled that the November 23, 2000 Order issued by the Pasig RTC interfered with the order of the Bacolod RTC, which is a co-equal and coordinate court. The CA held that the Pasig RTC gravely abused its discretion when it granted the injunctive relief prayed for by petitioner despite the glaring lack of a clear legal right on the part of the latter to support his cause of action. Petitioner filed a motion for reconsideration but the CA denied the same in its equally challenged Resolution dated July 31, 2002.

Hence, this present petition for review on *certiorari*.

Petitioner theorizes that since he was a "stranger" to Civil Case No. 98-10404, he should be considered a "third party claimant" pursuant to Rule 39, Section 16 of the Rules of Court.[15] Corollarily, whatever judgment or decision rendered in the Civil

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[11] *Id.* at 221-223.

[12] CA *rollo*, pp. 33-37.

[13] *Id.* at 38-42, 64.

[14] *Supra* note 1.

[15] **SEC. 16**. *Proceedings where property claimed by third person.* — If the property levied on is claimed by any person other than the judgment

Case No. 98-10404 did not bind him or his properties. Petitioner adds that as a co-owner of all properties and monies belonging to Looyuko/NAMI, he was unduly prejudiced by the Decision in Civil Case No. 98-10404. Petitioner insists that he should have been impleaded in Civil Case No. 98-10404 so that there could be a final determination of the action as to him. He argues that the principle on "non-intervention of co-equal courts" does not apply where, as here, a third party claimant is involved.

We are not persuaded.

We have time and again reiterated the doctrine that no court has the power to interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction.[16] This doctrine of non-interference is premised on the principle that a judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction.[17] As correctly

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obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty days (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim. xxx xxx xxx

[16] *Aquino, Sr. v. Valenciano*, A.M. No. MTJ-93-746, December 27, 1994, 239 SCRA 428, 429; *Prudential Bank v. Gapultos*, G.R. No. L-41835 and *Prudential Bank v. Leopoldo M. Serrano and Paquito Fuentes*, G.R. No. L-49293, January 19, 1990, 181 SCRA 159, 171; *Investors Finance Corporation v. Ebarle*, G.R. No. 70640, June 29, 1988, 163 SCRA 60, 70.

[17] *Philippine National Bank v. Pineda*, G.R. No. L-46658, May 13, 1991, 197 SCRA 1, 12.

ratiocinated by the CA, cases wherein an execution order has been issued, are still *pending*, so that all the proceedings on the execution are still proceedings in the suit.[18] Since the Bacolod RTC had already acquired jurisdiction over the collection suit (Civil Case No. 98-10404) and rendered judgment in relation thereto, it retained jurisdiction to the exclusion of all other coordinate courts over its judgment, including all incidents relative to the control and conduct of its ministerial officers, namely public respondent sheriffs. Thus, the issuance by the Pasig RTC of the writ of preliminary injunction in Civil Case No. 68125 was a clear act of interference with the judgment of Bacolod RTC in Civil Case No. 98-10404.

The jurisprudential "exception" adverted to by petitioner, *i.e. Santos v. Bayhon*, 199 SCRA 525 (1991), finds no application in this case. In *Santos*, we allowed the implementation of a writ of execution issued by the Labor Arbiter to be enjoined by order of the RTC where a third party claimant had filed his action to recover property involved in the execution sale, since the Labor Arbiter had no jurisdiction to decide matters of ownership of property and the civil courts are the proper venue therefor. In the case at bar, the Bacolod RTC had jurisdiction and competence to resolve the question of ownership of the property involved had petitioner filed his claim with the said court.

To reiterate, a case, in which an execution order has been issued, is still pending, so that all proceedings on the execution are still proceedings in the suit.[19] Hence, any questions that may be raised regarding the subject matter of Civil Case No. 98-10404 or the execution of the decision in said case is properly threshed out by the Bacolod RTC.

As to petitioner's argument that he was unduly prejudiced by the Decision in Civil Case No. 98-10404 as a co-owner of all properties and monies belonging to Looyuko/NAMI, the Court finds the same to be without basis.

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[18] *David v. Court of Appeals, et al.*, G.R. No. 115821, October 13, 1999, 316 SCRA 710, 719, citing *Balais v. Velasco,* G.R. 118491, January 31, 1996, 252 SCRA 707, 708.

[19] *Ibid.*

Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of a preliminary injunction:

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance, or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Pursuant to the above provision, a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right.[20] There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.[21]

The purpose of a preliminary injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Thus, to be entitled to an injunctive writ, the petitioner has the burden to establish the following requisites:

(1) a right in *esse* or a clear and unmistakable right to be protected;

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[20] *Republic of the Philippines v. Judge Villarama, Jr*., G.R. No. 117733, September 5, 1997, 278 SCRA 736, 749.

[21] *Government Service Insurance System v. Florendo*, G.R. No. L-48603, September 29, 1989, 178 SCRA 76, 83-84; *National Power Corporation v. Vera*, G.R. No. 83558, 27 February 1989, 170 SCRA 721, 727.

(2) a violation of that right;

(3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[22]

To bolster his claim of interest on the attached properties, petitioner presented the Agreement dated February 9, 1982,[23] which provides in part:

> 2. That while on record the aforementioned business ventures (companies) are registered in the name of the FIRST PARTY, the founder and who initially provided the necessary capital for the very first business venture which they have established, the management expertise and actual operation thereof are provided by the SECOND PARTY who by mutual consent and agreement by the parties themselves, is entitled to ½ or 50% of the business, goodwill, profits, real and personal properties owned by the companies now existing as well as those that will be organized in the future, bank deposits, (savings and current) money market placements, stocks, time deposits inventories and such other properties of various forms and kinds. It is, however, clearly and explicitly understood that the foregoing do not include the individual properties of the parties.
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> 3. That for official record purposes and for convenience, the aforesaid business ventures will remain registered in the name of the FIRST PARTY until the parties decide otherwise.

Petitioner further claimed that the February 9, 1982 Agreement was complimented by another Agreement dated October 10, 1986,[24] *viz*:

> WHEREAS, the above-named parties, have equally pooled their talents, expertise and financial resources in forming NOAH'S ARK MERCHANDISING, which includes, among others —
> - Noah's Ark International
> - Noah's Sugar Carriers

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[22] *Limitless Potentials, Inc. v. Hon. Court of Appeals, Crisostomo Yalung and Atty. Roy Manuel Villasor*, G.R. No. 166459, 24 April 2007, 522 SCRA 70, 83, citing *Medina v. Greenfield Development Corporation*, G.R. No. 140228, 19 November 2004, 443 SCRA 150, 159.

[23] Annex "C", RTC records, pp. 16-18.

[24] Annex "D", RTC records, pp. 19-21.

- Noah's Ark Sugar Truckers
- Noah's Ark Sugar Repackers
- Noah's Ark Sugar Insurers
- Noah's Ark Sugar Terminal
- Noah's Ark Sugar Building (including the land on which the building stands)
- Noah's Ark Sugar Refinery (including the plant/buildings/ machinery situated in the compound including the land on which the refinery is situated)

and which business enterprise are otherwise collectively known as the NOAH'S ARK GROUP OF COMPANIES.

WHEREAS, the above-enumerated business firms are all registered in the name of ALBERTO T. LOOYUKO only as Proprietor for purposes of expediency;

x x x x x x x x x

NOW, THEREFORE, and in consideration of the above premises, the parties hereby agree as follows:

1. That the profits and losses of any of the above firms shall be equally apportioned between the two parties;
2. In case of the dissolution of any of the above firms, or in the event of destruction of [sic] loss of any property of the above firm, all the assets thereof, including the insurance proceeds in the event of total/partial destruction shall likewise be divided EQUALLY between the parties; xxx xxx xxx

However, the Court notes that the authenticity and the due execution of these documents are presently under litigation in other proceedings which are not pending before the Pasig RTC. There appears to be a pending case, wherein Looyuko claims that his signatures on these Agreements were a forgery.[25]

Moreover, as correctly observed by the CA, NAMI had already been in existence as early as the middle part of the 1970's. It is undeniable that for a little more than two (2) decades pending the advent of the present controversy, NAMI has been doing business as a registered single proprietorship with Looyuko as single proprietor. On this score, we quote the following discussion of the CA:

[25] DOJ Resolution dated September 17, 2001, CA *rollo*, pp. 271-280.

At this juncture, this Court notes that even assuming the validity of the foregoing partnership agreements, for all legal intents and purposes and in terms of binding effect against third persons, the *Noah's Ark Merchandising* is a registered single proprietorship. Corollarily, third persons dealing with the said business, including Multi-Luck, had the right to rely on the fact that the registered single proprietor thereof, in the person of Alberto Looyuko, may be held personally liable for any and all liabilities of the single proprietorship and vice-versa. Moreover, this Court finds it very unlikely that for more than twenty-years of the existence of the business, and considering Private Respondent's purported personal interest in the business, he would risk allowing third persons to deal with and consequently have the business liable as a single proprietorship when Private Respondent, assuming a valid partnership indeed existed, could have easily compelled Alberto Looyuko to cause the registration of the business as a partnership to afford legitimate protection to Private Respondent's property interests therein as a partner thereof. In any event, Private Respondent is now estopped from disavowing the standing of *Noah's Ark Merchandising* as a registered single proprietorship and from claiming that the properties in question belong to a purported partnership. xxx xxx xxx

Proceeding from the foregoing disquisition, it was proper for Multi-Luck to have not impleaded Private Respondent in Civil Case No. 98-10404 considering that only Alberto Looyuko was being made liable being the single proprietor of Noah's Ark Merchandising. Corollarily, there can be no question on the propriety of Petitioners-Sheriffs authority to sell at public auction the subject properties which were owned by and registered in the name of Noah's Ark Merchandising and/or Alberto Looyuko which, therefore, negates the existence of a clear right in favor of Private Respondent which would merit the protection of the courts through the writ of preliminary injunction. Respondent Court, therefore, gravely abused its discretion in granting Private Respondent the injunctive relief sought for in the face of overwhelming evidence of lack of a clear legal right on the part of Private Respondent to support its cause of action. Jurisprudentially settled is the rule that:

> It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought — in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce

> a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary. **(*Heirs of Joaquin Asuncion versus Margarito Gervacio, Jr.*, G.R. No. 115741, March 9, 1999, 304 SCRA 322, 330.)**
>
> At best, Private Respondent may file the proper action to enforce his rights, as against Alberto Looyuko, in the purported partnership. The institution of the instant injunction suit, however, is definitely not the proper forum.

The attached real properties are registered solely in the name of Looyuko and NAMI. Corollarily, petitioner had no standing to question the Bacolod RTC's judgment as he is a stranger to Civil Case No. 98-10404 and he has no clear right or interest in the attached property. Likewise, the stock certificate is registered in the name of NAMI. Moreover, the checks subject of Civil Case No. 98-10404 were made in payment for obligations incurred by Looyuko in the course of the business operation of NAMI. Even assuming for the sake of argument that indeed, petitioner co-owns NAMI, whatever obligation the business incurred in the course of its operation is an obligation of petitioner as a part owner. In effect, petitioner was merely forestalling the implementation of a final judgment against the corporation which he purportedly co-owns.

On the issue of estoppel, the CA ruled that petitioner was estopped from claiming that he is a co-owner of the subject properties. Petitioner would argue that on June 6, 1998, he had caused the annotation of an "Affidavit of Adverse Claim"[26] over the attached real property covered by TCT No. 126519. According to him, in so doing, the whole world, including respondents, was informed of his being a co-owner thereof. However, the annotation of petitioner's adverse claim is not

[26] Annex "F", RTC records, 23-24.

notice to third parties dealing with the property that he is in fact a co-owner, only that he *claims* to be a co-owner and intends to file the appropriate action to confirm his right as such. Under Section 70 of P.D. 1529, petitioner's adverse claim was effective for thirty days from its registration. Yet, from the records, it does not appear that petitioner filed an appropriate action with respect to his adverse claim prior to the attachment of the properties on execution. Thus, Looyuko and/or NAMI remained the sole owners of the subject properties at the time the Bacolod RTC ordered their sale on execution.

To recapitulate, once a decision becomes final and executory, it is the ministerial duty of the presiding judge to issue a writ of execution except in certain cases, as when subsequent events would render execution of the judgment unjust.[27] The present case does not fall within the recognized exceptions. In *Paper Industries Corporation of the Philippines v. Intermediate Appellate Court*,[28] we declared that a court has no jurisdiction to restrain the execution proceedings in another court with concurrent jurisdiction.

WHEREFORE, the petition is hereby *DENIED*. The assailed Decision dated April 30, 2002, and Resolution dated July 31, 2002 of the Court of Appeals in CA-G.R. SP No. 64473 are *AFFIRMED*.

Cost against petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Carpio,*[**] *Corona,* and *Brion,*[***] *JJ.,* concur.

Puno, C.J., on official leave.

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[27] *Leticia T. Fideldia and Petra T. Fideldia v. Spouses Ray and Gloria Songcuan*, G.R. No. 151352, July 29, 2005, 465 SCRA 218, 227-228, citing *Philippine Veterans Bank v. Intermediate Appellate Court*, G.R. No. 73162, October 23, 1989, 178 SCRA 645.

[28] G.R. No 71365, 18 June 1987, 151 SCRA 161.

[*] Additional member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 584.

[**] Acting Chairperson as per Special Order No. 583.

[***] Additional member as per Special Order No. 570.

SECOND DIVISION

[G.R. Nos. 158694-96. March 13, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TEOFILO G. PANTALEON, JR. and JAIME F. VALLEJOS,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; MALVERSATION; DEFINED; PENALTY. —** Malversation is defined and penalized under Article 217 of the Revised Penal Code, which reads: Art. 217. *Malversation of public funds or property — Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall, otherwise, be guilty of the misappropriation or malversation of such funds or property, shall suffer: x x x 4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*. In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

2. **ID.; ID.; ELEMENTS. —** The essential elements common to all acts of malversation under Article 217 of the Revised Penal Code are the following: (a) That the offender be a public officer. (b) That he had the *custody* or *control* of funds or property *by reason of the duties of his office*. (c) That those funds or property were public funds or property *for which he was accountable*. (d) That he appropriated, took, misappropriated

or consented or, through abandonment or negligence, permitted another person to take them.

3. **ID.; ID.; ID.; PUBLIC OFFICER, DEFINED. —** A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class." Pantaleon and Vallejos were the municipal mayor and municipal treasurer, respectively, of the Municipality of Castillejos at the time of the crimes charged. In short, they were public officers within the meaning of the term as defined above.

4. **ID.; ID.; ID.; CUSTODY AND CONTROL OF FUNDS OR PROPERTY BY REASON OF THE DUTIES OF THEIR OFFICE; PRESENT IN CASE AT BAR. —** As a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos**.**

5. **ID.; ID.; ID.; ACCOUNTABLE PUBLIC FUNDS, ESTABLISHED. —** The funds for which malversation the appellants stand charged were sourced from the development fund of the municipality. They were funds belonging to the municipality, for use by the municipality, and were under the collective custody of the municipality's officials who had to act together to disburse the funds for their intended municipal use. The funds were therefore public funds for which the appellants as mayor and municipal treasurer were accountable. Vallejos, as municipal treasurer, was an accountable officer pursuant to Section 101(1) of P.D. No. 1445 which defines an accountable officer to be "every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law." Among the duties of Vallejos

as treasurer under Section 470(d)(2) of Republic Act No. 7160 is "to **take custody** and exercise proper management of the funds of the local government unit concerned." Pantaleon, as municipal mayor, was also accountable for the public funds. In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality: Section 102. *Primary and secondary responsibility.* — (1) The head of any agency of the government is **immediately and primarily responsible for all government funds and property pertaining to his agency**.

6. **ID.; ID.; ID.; ESTABLISHED BY THE TESTIMONIES OF THE WITNESS. —** These testimonies lead to no other conclusion than that the appellants had deliberately consented to or permitted the taking of public funds by Baquilat despite the fact that (1) La Paz Construction never entered into a contract with the Municipality of Castillejos; (2) Baquilat was not an agent, representative or subcontractor of La Paz Construction; (3) the projects covered by the disbursement vouchers in question never existed; and (4) the disbursement vouchers lacked the requisite signatures of the municipal accountant and the local budget officer. In short, they resorted to machinations and simulation of projects to draw funds out of the municipal coffers. Through the appellant's explicit admissions, the witnesses' testimonies, and the documentary evidence submitted, the prosecution duly established the fourth element of the crime of malversation. It is settled that a public officer is liable for malversation even if he does not use public property or funds under his custody for his personal benefit, **if he allows another to take the funds, or through abandonment or negligence, allow such taking**. The felony may be committed, not only through the misappropriation or the conversion of public funds or property to one's personal use, but also **by knowingly allowing others to make use of or misappropriate the funds**. The felony may thus be committed by *dolo or by culpa*. The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence.

7. **ID.; ID.; ID.; FALSIFICATION AS A NECESSARY MEANS TO COMMIT THE CRIME; ELEMENTS. —** Article 171,

paragraphs (2) and (5) of the Revised Penal Code, provides: ART. 171. *Falsification by public officer, employee or notary* or *ecclesiastic minister*. – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts: 2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate; x x x 5. Altering true dates; x x x Falsification under paragraph 2 is committed when (a) the offender causes it to appear in a document that a person or persons participated in an act or a proceeding; and (b) that such person or persons did not in fact so participate in the act or proceeding.

8. ID.; ID.; CONSPIRACY; PRESENT IN CASE AT BAR. — Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy does not need to be proven by direct evidence and may be inferred from the conduct — before, during, and after the commission of the crime — indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, as shown by an overt act leading to the crime committed. It may be deduced from the mode and manner of the commission of the crime. The burden of proving the allegation of conspiracy rests on the prosecution, but settled jurisprudence holds that conspiracy may be proven other than by direct evidence. In *People v. Pagalasan*, the Court expounded on why **direct proof of prior agreement is not necessary:**

9. ID.; ID.; ID.; IMPOSABLE PENALTY. — Article 217, paragraph 4 of the Revised Penal Code imposes the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* when the amount malversed is greater than ₱22,000.00. This Article also imposes the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. Falsification by a public officer or employee under Article 171, on the other hand, is punished by *prision mayor* and a fine not to exceed ₱5,000.00. Since appellant committed a complex crime, the penalty for the most serious crime shall be imposed in its

maximum period, pursuant to Article 48 of the Revised Penal Code. This provision states: ART. 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. The Sandiganbayan, therefore, correctly imposed on the appellants the penalties of *reclusion perpetua* and **perpetual special disqualification** for each count of malversation of public funds through falsification of public documents, and the **payment of fines** of ₱166,242.72, ₱154,634.27, and ₱90,464.21, respectively, representing the amounts malversed. The Indeterminate Sentence Law finds no application since *reclusion perpetua* is an indivisible penalty to which the Indeterminate Sentence Law does not apply.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Averilla Salazar Defensor and Enrile and *Law Firm of Timbancaya Solis and Solis* for T.G. Pantaleon, Jr.

Reynoso Lumbatan Castillon Law Offices and *Castro Castro & Associates* for J.F. Vallejos.

D E C I S I O N

BRION, *J*.:

We review in this appeal the February 4, 2003 decision of the Sandiganbayan in Criminal Case Nos. 25861-63[1] finding the appellants Teofilo G. Pantaleon, Jr. (*Pantaleon*) and Jaime F. Vallejos (*Vallejos*), former Municipal Mayor and Municipal Treasurer, respectively, of the Municipality of Castillejos, Zambales, guilty beyond reasonable doubt of three (3) counts of malversation of public funds through falsification of public documents, defined and penalized under Article 217, in relation

[1] Penned by Sandiganbayan Associate Justice Rodolfo G. Palattao, and concurred in by Associate Justice Gregory S. Ong and Associate Justice Ma. Cristina G. Cortez-Estrada; CA *rollo*, pp. 29-58.

with Articles 48 and 171 of the Revised Penal Code. The Sandiganbayan sentenced the appellants to suffer the penalties of *reclusion perpetua* and perpetual special disqualification for each count, and ordered them to pay a fine in the amounts of ₱166,242.72, ₱154,634.27, and ₱90,464.21, respectively, and to pay the costs.

ANTECEDENT FACTS

This case originated from the joint affidavit-complaints filed by Vice Mayor Wilma D. Billman (*Vice Mayor Billman*); Councilors Reynaldo V. Misa (*Reynaldo*), Dionisio F. Abinsay (*Dionisio*), Resty D. Viloria (*Resty*), Ramon J. Tamoria (*Ramon*), Aurelio M. Fastidio (*Aurelio*), Enrique C. Clarin (*Enrique*), and Raymundo V. Navarro (*Raymundo*), dated December 18, 1998; and Rodolfo J. Navalta (*Rodolfo*) dated December 22, 1998, before the Office of the Special Prosecutor of Zambales, for malversation of public funds through falsification of public documents, against the appellants, Ken Swan Tiu, and Engineer Rainier J. Ramos (*Engr. Ramos*).

The joint affidavit-complaints alleged that the appellants, Ken Swan Tiu, and Engr. Ramos conspired to illegally disburse and misappropriate the public funds of the Municipality of Castillejos, Zambales in the amounts of ₱166,242.72 (under Disbursement Voucher No. 101-9803-328), ₱154,634.27 (under Disbursement Voucher No. 101-9803-349), and ₱90,464.21 (under Disbursement Voucher No. 101-9804-415), by falsifying the supporting documents relating to three (3) fictitious or "ghost" construction projects, namely: (a) the upgrading of *barangay* roads in Barangays Looc, Nagbayan, Magsaysay, and San Pablo; (b) the upgrading of *barangay* roads in Barangays Looc proper-Casagatan, Nagbayan proper-Angeles, and San Pablo-Sitio San Isidro; and (c) the construction of market stalls at the public market of Castillejos.

The affidavit-complaints further alleged that the disbursement vouchers were not signed by the municipal accountant and budget officer; that the *Sangguniang Bayan* did not adopt a resolution authorizing Pantaleon to enter into a contract with La Paz

Construction and/or Ken Swan Tiu; and that no projects were actually undertaken by the Municipality of Castillejos.

The Office of the Special Prosecutor (*OSP*) recommended the filing of an Information for Malversation of Public Funds through Falsification of Public Documents against the appellants and Ken Swan Tiu, and the dismissal of the complaint against Engr. Ramos.[2]

The Office of the Deputy Ombudsman for Luzon approved the Joint Resolution of the OSP, with the modification that the complaint against Ken Swan Tiu be dismissed for lack of probable cause.[3] The Office of the Ombudsman approved the Review Action of the Office of the Deputy Ombudsman for Luzon.[4]

The Office of the Ombudsman filed on March 10, 2000 three (3) separate Informations for Malversation of Public Funds through Falsification of Public Documents against the appellants before the Sandiganbayan. The Informations were docketed as Criminal Case Nos. 25861-63. Criminal Case Nos. 25861-62 refer to the disbursement of public funds in the upgrading of various roads in the Municipality of Castillejos, while Criminal Case No. 25863 concerns the disbursement of funds for the construction of market stalls at the Castillejos Public Market. The accusatory portions of these Informations read:

Criminal Case No. 25861

That on or about 5 January 1998 and 20 February 1998, or sometime prior or subsequent thereto, in the Municipality of Castillejos, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipality of Castillejos, Zambales who by reason of their said respective office, are accountable for public funds or properties, committing the complex crime charged herein while in the performance of, in relation to

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[2] Joint Resolution of February 22, 1999; records, Vol. II, pp. 393-395.

[3] Review Action dated January 12, 2000; records, Vol. I, pp. 8-12.

[4] Memorandum of February 8, 2000; records, Vol. I, pp. 5-7.

and/or taking advantage of their official positions and functions as such, and conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate public funds of the Municipality of Castillejos, Zambales under their charge and custody in the amount of ₱166,242,72, Philippine currency, under the check dated 20 February 1998 intended for the simulated disbursement and payment thereof in favor of La Paz Construction (LPC) relative to the fictitious contract for the upgrading of the *barangay* roads in Barangay Looc, Nagbayan, Magsaysay and San Pablo, Castillejos, Zambales; by means of falsifying the corresponding disbursement voucher no. 101-9803-328, certificates of inspection and acceptance, contract between LPC and the Municipality of Castillejos, Zambales, price quotation, purchase order, and LPC official receipt number 000999 dated 5 January 1998, to falsely make it appear that LPC entered into, undertook and completed the said contract and received the aforesaid amount as payment therefor from the Municipality of Castillejos, Zambales, when in truth and in fact, LPC neither entered into, undertook and completed the aforesaid contract nor received from the Municipality of Castillejos, Zambales the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Castillejos, Zambales and the public interest in the aforestated amount.

CONTRARY TO LAW.[5]

<u>*Criminal Case No. 25862*</u>

That on or about 23 February 1998, or sometime prior or subsequent thereto, in the Municipality of Castillejos, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipality of Castillejos, Zambales who by reason of their said respective office are accountable for public funds or properties, committing the complex crime charged herein while in the performance of, in relation to and/or taking advantage of their official positions and functions as such, and conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate public funds of the Municipality of Castillejos, Zambales under their charge and custody in the amount of ₱154,634.27 Philippine currency, under the check

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[5] CA *rollo*, pp. 7-8.

dated 23 February 1998 intended for the simulated disbursement and payment thereof in favor of La Paz Construction (LPC) relative to the fictitious contract for the upgrading of the *barangay* roads in Barangay Looc proper-Casagatan, Nagbayan proper-Angeles and San Pablo-Sitio Isidro, Castillejos, Zambales; by means of falsifying the corresponding disbursement voucher no. 101-9803-349, certificates of inspection and acceptance, contract between LPC and the Municipality of Castillejos, Zambales, purchase order, and LPC official receipt, to falsely make it appear that LPC entered into, undertook and completed the said contract and received the aforesaid amount as payment therefor from the Municipality of Castillejos, Zambales, when in truth and in fact, LPC neither entered into, undertook and completed the aforesaid contract nor received from the Municipality of Castillejos, Zambales the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Castillejos, Zambales and the public interest in the aforestated amount.

CONTRARY TO LAW.[6]

Criminal Case No. 25863

That on or about 20 March 1998, or sometime prior or subsequent thereto, in the Municipality of Castillejos, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipality of Castillejos, Zambales who by reason of their said respective office are accountable for public funds or properties, committing the complex crime charged herein while in the performance of, in relation to and/or taking advantage of their official positions and functions as such, and conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate public funds of the Municipality of Castillejos, Zambales under their charge and custody in the amount of ₱90,464.21, Philippine currency, under the check dated 20 March 1998 intended for the simulated disbursement and payment thereof in favor of La Paz Construction (LPC) relative to the fictitious contract for the construction of market stalls at the public market of Castillejos, Zambales, by means of falsifying the corresponding disbursement voucher no. 101-9804-415, certificates

[6] *Id.*, pp. 9-11.

of inspection and acceptance, contract between LPC and the Municipality of Castillejos, Zambales, price quotation, purchase order, and LPC official receipt number 000995 dated 20 March 1998, to falsely make it appear that LPC entered into, undertook and completed the said contract and received the aforesaid amount as payment therefor from the Municipality of Castillejos, Zambales, when in truth and in fact, LPC neither entered into, undertook and completed the aforesaid contract nor received from the Municipality of Castillejos, Zambales the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Castillejos, Zambales and the public interest in the aforestated amount.

CONTRARY TO LAW.[7]

The appellants pleaded not guilty to the charges upon arraignment. The prosecution filed a motion to suspend the accused *pendente lite* after their arraignment.[8] The Sandiganbayan (Fourth Division) granted the motion and ordered the preventive suspension of the appellants for 90 days.[9] The appellants filed a motion for reconsideration[10] which the Sandiganbayan denied.[11] The appellants filed with this Court a petition for review on *certiorari,* docketed as **G.R. No. 145030**, assailing the Sandiganbayan Resolutions of August 16, 2000 and September 12, 2000, respectively. We denied the petition for lack of merit.[12]

In the trial on the merits of Criminal Cases Nos. 25861-63 that followed, the prosecution presented the following witnesses: Engr. Ramos, Aurelio, Nida Naman (*Nida*), Alberto Domingo (*Alberto*), Engineer Eduardo Soliven (*Engr. Soliven*), Simeon Amor Viloria (*Simeon*), Ken Swan Tiu, Resty, Vice Mayor Billman, Enrique, and Reynaldo. The appellants, Quirino Adolfo (*Quirino*), Ricardo Abaya (*Ricardo*), Crisanta Ancheta (*Crisanta*), and John Baquilat (*Baquilat*) took the witness stand for the defense.

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[7] *Id.,* pp. 12-14.

[8] Records, Vol. I, pp. 104-106.

[9] Resolution dated August 16, 2000; *id.*, pp. 139-144.

[10] *Id.*, pp. 152-156.

[11] Resolution of September 12, 2000.

[12] Resolution of December 11, 2000; *id.*, pp. 340-346.

Evidence for the Prosecution

Engr. Ramos testified that he was designated as acting municipal engineer of Castillejos, Zambales by Pantaleon in January 1998; and that he prepared three (3) programs of work upon the instructions of Vallejos. The first two (2) programs of work, dated January 5, 1998 and January 14, 1998, respectively, were for the upgrading of *barangay* roads; the third, also dated January 5, 1998, was for the construction of market stalls. He confirmed that the three (3) signatures affixed in these programs of work belonged to him, to Pantaleon, and to Vallejos, respectively; and declared that he never implemented any of these projects. He later discovered that these projects had already been implemented by the previous municipal engineer; hence, the programs of work and subsequent disbursements were not really needed.[13]

On cross-examination, he stated that he was asked to prepare the programs of work in March 1998; that he submitted the programs upon completion to Vallejos who told him that he (Vallejos) would give them to Pantaleon for approval. He assumed the programs of work were disapproved because nobody coordinated with him regarding their implementation.[14]

On re-direct examination, Engr. Ramos explained that Pantaleon and Vallejos instructed him to place dates earlier than March 1998 in the three (3) programs of work, although he prepared them only in March 1998.[15]

Aurelio, a member of the *Sangguniang Bayan* of Castillejos, testified that the public market of Castillejos was built after the eruption of Mt. Pinatubo in 1991; and that it was renovated by Engr. Clarin during the incumbency of former mayor Enrique Magsaysay. He declared that no market stall was constructed in the public market in 1998 and 1999, and no upgrading, excavation, and back filling of any *barangay* road likewise took

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[13] TSN, August 22, 2000, pp. 5-17.

[14] *Id.*, pp. 18-39.

[15] *Id.*, pp. 40-42.

place in 1998 in Castillejos. He added that no infrastructure project could have been made in January 1998 because it was an election period.[16]

On cross-examination, Aurelio declared that he, together with other *Sanggunian* members, examined the disbursement vouchers and other documents related to the projects covered by the program of works after they learned that disbursements were made to La Paz Construction; that they (*Sanggunian* members) filed a case before the Provincial Prosecutor of Olongapo City after discovering that the purported transactions were anomalous. He stated that La Paz Construction never entered into a contract with the Municipality of Castillejos as confirmed by its proprietor, Ken Swan Lee Tiu. He added that the projects covered by the disbursement vouchers were not among those included in the approved development plan for the years 1996 to 1998; and that, surprisingly, the disbursement vouchers indicated that the funds used to cover these projects were charged from the 20% development fund.[17]

Nida, the senior bookkeeper of Castillejos, testified that Pantaleon designated her as municipal accountant in 1993, and that she occupied the position until July 1998; as a municipal accountant, she reviewed documents for the preparation of vouchers. She recalled that she reviewed Voucher Nos. 101-9804-415, 101-9803-328 and 101-9803-349 only after the indicated amounts had been paid.

She explained that a voucher is certified by the local budget officer and by the municipal accountant, and that without her signature, a voucher is defective for failure to comply with government auditing and accounting rules and regulations. She also revealed that the following irregularities attended the issuance of the vouchers:

(a) Martin Pagaduan (*Pagaduan*), the present municipal accountant, signed Voucher No. 101-9803-328 (*Exh. "A"*) above her (Nida's) name without her authority. Pagaduan

[16] *Id.*, pp. 43-53.

[17] *Id.*, pp. 54-61.

was not yet the municipal accountant at the time of the issuance of the voucher; he was only designated as municipal accountant on January 1, 1999;

(b) Pagaduan also similarly signed some of the documents attached to Voucher No. 101-9803-328, such as the purchase orders (*Exh. "A-4 to A-6"*) and the request for obligation allotment (*Exh. "A-9"*);

(c) Vallejos wrote the voucher number and filled up the accounting entry of Disbursement Voucher No. 101-9803-328 (*Exh. "A"*). She should have filled up these entries in her capacity as municipal accountant. Some of the documents attached to Disbursement Voucher No. 101-9803-328 (*Exh. "A"*), such as the purchase request, purchase order, and request form, were not the documents required by the rules;

(d) Disbursement Voucher Nos. 101-9803-349 (*Exh. "B"*) and 101-9804-415 (*Exh. "C"*) did not bear her (Nida's) signature. Their voucher numbers and accounting entries were written and filled up by Vallejos. In addition, the request for obligation of allotment (*Exh. "B-9"*and *"C-5"*) attached to these disbursement vouchers were not signed by the municipal accountant and by the budget officer;

(e) The contract agreement attached to Disbursement Voucher No. 101-9803-349 (*Exh. "B"*) was not notarized. No abstract of bids and authority to enter into a negotiated contract were attached to the voucher; and

(f) The certificate of acceptance (Exh. *"C-7"*), attached to Disbursement Voucher No. 101-9804-415 (*Exh. "C"*), was undated.

She reiterated that the vouchers were all approved by Pantaleon, although they did not pass through her office for pre-audit. She likewise explained that the certification of the accountant and the budget officer were necessary even if the funds were sourced from the development fund.[18]

[18] TSN, August 29, 2000, pp. 3-43.

Alberto testified that he had not seen any upgrading of roads in his area since he was elected *barangay* captain of Looc, Castillejos, Zambales in 1997. He also admitted that he signed a document before the *Sangguniang Bayan* attesting that Pantaleon did not have any project in his *barangay*.[19]

Engr. Soliven, the Municipal Engineer of Castillejos, narrated that Pantaleon appointed him municipal engineer on September 16, 1998 as replacement for Engr. Ramos. He stated that he did not know if there were projects implemented in the various *barangays* of Castillejos because he was not yet the municipal engineer when these projects were planned. He likewise maintained that he never implemented these projects.[20]

Simeon, the Municipal Planning Coordinator of Castillejos, testified that he prepared comprehensive plans and programs for the municipality, and that his tasks also included the formulation, integration and coordination of different municipal projects. He stated that he prepared the municipal development plans for the fiscal years 1997 and 1998, and these plans were approved by the *Sangguniang Bayan*. He clarified that the municipal engineer can implement projects that are not included in the municipal development plan.[21]

Ken Swan Tiu (also known as **Sonny Tiu, Tiu Ken Swan** and **Ken Swan Lee Tiu**), owner of the La Paz Construction, admitted that he executed an affidavit dated January 14, 1999 stating that he did not enter into any negotiated contract with the Municipality of Castillejos, and that his company never received any payment from the municipality. He stated that the signatures in the vouchers were not his, and reiterated that he did not have any transaction with the Municipality of Castillejos. He added that he has no agent to collect or enter into transactions in his behalf.[22]

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[19] TSN, September 7, 2000, pp. 4- 26.

[20] *Id.*, pp. 27-33.

[21] *Id.*, pp. 34-53.

[22] TSN, September 12, 2000, pp. 9-22.

Resty, a former *Sangguniang Kabataan* President and incumbent municipal councilor, declared on the witness stand that he is a resident of Barangay San Pablo, Castillejos, and that from 1998 to 2000, he did not see any road project for the upgrading, compacting or improvements of roads in his *barangay*. He also stated that he was one of the complainants in the administrative case against the appellants before the *Sangguniang Panlalawigan*. Further, he said that the vouchers for these projects were not dated.[23]

Evidence for the Defense

Vallejos, testifying in his defense, narrated that he had been the municipal treasurer of Castillejos since 1987; and that his principal duties were to collect taxes and disburse funds. He explained that a disbursement voucher should first pass through the accounting office, then to the office of the budget officer, and from there, to the office of the municipal mayor, before going to his office. He confirmed that he is the last person to sign the voucher.

He clarified that after his office has prepared checks based on the forwarded vouchers, these vouchers are returned to the accounting office for the creation of an accounting entry and for the posting of the entry in the general and subsidiary ledgers. The accounting office then issues an advice that the checks are ready for encashment.

He refuted the statement of Nida that the disbursement vouchers did not go through the accounting office for pre-audit. He stated that the signature of the accountant did not appear in the three (3) vouchers because Nida simply refused to sign it. He also insisted that the budget officer's signature likewise did not appear in the vouchers because she was always out of her office. He explained that he paid the vouchers despite the absence of the accountant's signature because the projects were already completed and the sub-contractor was already demanding payment and was threatening to sue him if he would not pay.

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[23] *Id.*, pp. 24-35.

He further recalled that the vouchers were suspended after they were submitted to the Commission on Audit (*COA*); he was given 90 days to complete the entries in the vouchers and produce the supporting papers.[24]

On cross-examination, he reiterated that he signed the vouchers because the municipal accountant and budget officer refused, without any valid or legal reason, to sign them.[25]

Quirino, the Barangay Captain of Nagbayan, Castillejos, Zambales, testified that he supervised numerous projects in his *barangay* during the incumbency of Pantaleon; that from January to February of 1998, he supervised the back filling and leveling of the roads in his *barangay* together with a certain Eduardo Escobar and Kagawads Lorenzo and Corpuz. He admitted to signing an affidavit dated July 2, 1999 stating that there were projects done in his *barangay*; he merely signed the certification on December 10, 1998 (stating that there were no projects done by the administration of Pantaleon in his area) because Kagawads Enrique Clarin and Reynaldo Misa were his *compadres*.[26]

Ricardo declared on the witness stand that he was the *barangay* captain of Nagbayan from 1971 to 1986 and subsequently served as councilor for three (3) terms; that from 1996 to 1998, he saw that there were back filling, grading, compacting and widening of roads in his area; and that it was Pantaleon and Baquilat — as mayor and contractor, respectively — who caused the repair of these roads.

On cross-examination, he admitted that Pantaleon employed him as a casual employee in 1999 and, as such, had no authority to sign vouchers.[27]

Pantaleon, mayor of Castillejos, Zambales, testified that he had served as mayor for eight and a half years before he was

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[24] TSN, October 18, 2000, pp. 4-22.

[25] *Id.*, pp. 26-30.

[26] TSN, October 19, 2000, pp. 4-22.

[27] TSN, January 31, 2001, pp. 3-22.

preventively suspended. He explained that a voucher originates from the accounting office and then goes to the budget office; from there, it goes to him for his signature, and, finally, to the treasurer for signature; he signed the vouchers and allowed the treasurer to pay the amounts stated because the accountant and the budget officer were reluctant to sign; the signatures of the accountant and budget officer were not important. He added that he approved the release of the money because the treasurer told him that there was an appropriation in the approved annual budget. He also insisted that the owner of La Paz Construction entered into a contact with the municipality.

He maintained that he physically inspected the projects, and ordered the treasurer to pay because the project in Nagbayan road had been completed. He revealed that he received a notice from the Provincial Auditor stating that the disbursement of funds was irregular due to the lack of signatures of the accountant and budget officer, and that the vouchers were subsequently suspended. He then ordered the treasurer to rectify the deficiencies in the vouchers.[28]

On cross-examination, he admitted that the *Sanggunian* did not adopt a resolution authorizing him to enter into a negotiated contract with La Paz Construction in the municipality's behalf. He also stated that the treasurer told him that the municipal accountant and budget officer asked for a commission before signing the vouchers, but he did not confront them about the demanded commission because he did not want to embarrass them. He admitted that he signed the vouchers despite the absence of the signatures of the accountant and budget officer.

He also admitted that he entered into a contract with Baquilat without inquiring if Baquilat was authorized by the La Paz Construction to enter into a contract with the municipality. He explained that he gave more importance to the implementation of a project than to its documentation. Since the compacting and leveling of the road were finished, he believed the municipal accountant and budget officer would later sign the vouchers.

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[28] *Id.*, pp. 23-37.

He confirmed that Baquilat had dealt with the municipality many times as the representative of La Paz Construction, and he does not know why La Paz Construction would now deny its link with Baquilat. He also stated that Baquilat, Aurelio, and the complainants have been his political supporters, but they now hold personal grudges against him.[29]

Crisanta, a market vendor in Castillejos, testified that there were market stalls and drainage constructed in 1998, although she did not know who constructed them.[30]

Baquilat declared on the witness stand that he put up a construction business in 1997 after resigning from the Benguit Corporation; and that he had various contracts with the province of Zambales. He recalled that he collected ₱400,000.00, more or less, from the municipality after completing construction projects in 1997 and 1998. These projects included the upgrading of the roads in Barangays Looc, Casagatan, Nagbayan, and San Pablo, as well as the repair of market stalls in Castillejos. He stated that the authority given to him by Sonny Tiu, the owner of La Paz Construction, to receive the money in behalf of La Paz Construction was merely verbal; contractors, as a usual practice, rely on verbal authority. He added that his license as a contractor had been used many times by other contractors even without his knowledge, and revealed that he had borrowed the license of Sonny Tiu when he had a contract with the Municipality of Castillejos. He acted as a subcontractor for the La Paz Construction, but failed to fully perform his duty as subcontractor because he did not see Sonny Tiu again. He paid his taxes as a subcontractor, but not Sonny Tiu's percentage.[31]

On cross-examination, he admitted that he received payments through his secretary from the municipality in behalf of La Paz Construction in 1998 to 1999; and that he received ₱400,000.00, more or less, for the three (3) projects he did for the municipality.[32]

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[29] *Id.*, pp. 38-53.

[30] TSN, February 5, 2001, pp. 3-9.

[31] TSN, February 8, 2001, pp. 3-12.

[32] *Id.*, pp. 13-23.

The Prosecution's Rebuttal Evidence

The prosecution presented Vice Mayor Billman, Engr. Clarin, Reynaldo and Ken Swan Tiu as rebuttal witnesses.

Vice Mayor Billman, the acting Municipal Mayor of Castillejos, testified that there was no upgrading and improvement of roads in Barangay Nagbayan in 1998 when she was vice mayor.[33]

Engr. Clarin, an incumbent Municipal Councilor of Castillejos, denied that he forced Quirino to sign a certification that there were no projects undertaken by the municipality.[34]

Reynaldo, testified that he was a municipal councilor in 1998; he admitted that Quirino was his friend and *compadre*, but denied that he forced Quirino to sign any certification.[35]

Ken Swan Tiu, again testifying for the prosecution, denied that he: (a) lent his license as a contractor to Baquilat; (b) entered into a contract with the Municipality of Castillejos; (c) entered into a subcontracting agreement with Baquilat; and (d) lent official receipts issued to La Paz Construction to Baquilat.[36]

On cross-examination, he stated that he had been a contractor since 1992, but never transacted with the Municipality of Castillejos. He stated that La Paz Construction lost some receipts in 1994 during the flood; he discovered in 1999 that Baquilat had been using these receipts.[37]

After trial, the Sandiganbayan set the case for promulgation of decision on July 4, 2002, but later moved the promulgation to August 1, 2002.

Pantaleon and Vallejos filed their separate motions to reopen trial with urgent motion to defer the promulgation of the

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[33] TSN, June 5, 2001, pp. 3-14.

[34] *Id.*, pp. 16-20.

[35] *Id.*, pp. 21-27.

[36] TSN, June 7, 2001, pp. 3-7.

[37] *Id.*, pp. 8-27.

Sandiganbayan decision.[38] The Sandiganbayan denied these motions.[39] The Sandiganbayan similarly denied the omnibus motion for reconsideration that followed.[40]

The appellants filed an omnibus motion seeking the reconsideration of the December 14, 2002 Resolution, but the Sandiganbayan denied this motion in its Resolution dated January 20, 2003. The appellants later on questioned these resolutions through a petition for *certiorari* and prohibition filed with this Court, docketed as **G.R. Nos. 156778-80**. This Court, in our resolution dated February 17, 2003, dismissed the petition.

THE SANDIGANBAYAN RULING

The Sandiganbayan convicted the appellants of the crimes charged in Criminal Case Nos. 25861-63. It held that the testimonies of the prosecution witnesses, supported by the documentary evidence, established all the elements of the complex crime of malversation of public funds through falsification of public documents under Article 217, in relation with Articles 171 and 48 of the Revised Penal Code. It found unacceptable the testimonies of the appellants and characterized these as self-serving. The dispositive portion of this decision (dated February 2, 2003) reads:

WHEREFORE, the accused, TEOFILO G. PANTALEON, JR., and JAIME F. VALLEJOS, are hereby found **GUILTY** beyond reasonable doubt of the crime of MALVERSATION OF PUBLIC FUNDS THRU FALSIFICATION, in three counts, as defined and penalized under Article 217 in relation to Articles 48 and 171 of the Revised Penal Code, and each of said accused is hereby sentenced in Criminal Case Nos. 25861, 25862, and 25863, respectively, to suffer three times the penalty of ***reclusion perpetua***, to suffer the penalty of perpetual special disqualification and to pay a fine in the amounts of ₱166,242.72, ₱154,634.27, and ₱90,464.21, respectively, and to pay the costs.

SO ORDERED.[41] [*Emphasis in the original*]

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[38] Dated July 26, 2002 and August 1, 2002, respectively,

[39] Resolution dated December 14, 2002; records, Vol. II, pp. 182-193.

[40] Resolution of January 20, 2003.

[41] CA *rollo*, p. 56.

Post-Sandiganbayan Developments and the Appeal

Vallejos moved on February 17, 2003 to reconsider the decision.[42] Pantaleon, for his part, moved on February 18, 2003 for a new trial (with prayer to set aside judgment).[43] The Sandiganbayan denied these motions for lack of merit.[44]

The records of the case were forwarded to this Court after the appellants filed their respective notices of appeal. In our Resolution of September 13, 2004,[45] we transferred the case to the CA for appropriate action and disposition pursuant to *People v. Mateo*.[46]

The records disclose that Pantaleon was granted a conditional pardon on June 8, 2006.[47] Pantaleon filed on June 20, 2006 with the CA an urgent motion to withdraw appeal.[48] The CA denied the motion in its Resolution of July 7, 2006.[49] CA Associate Justice Arcangelita M. Ronilla-Lontok thereafter returned the entire records of the case to this Court reasoning out that the CA has no jurisdiction over the case pursuant to Sec.1[b] and [c], Rule X of the Revised Internal Rules of the Sandiganbayan.[50] On September 24, 2007, this Court's First Division issued a Resolution reinstating the case in its docket.[51]

Pantaleon filed with this Court on November 19, 2007 an urgent motion to withdraw his appeal.[52] We granted this motion

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[42] Records, Vol. II, pp. 319-323.

[43] *Id.*, pp. 354-366.

[44] Resolution of May 20, 2003; CA *rollo*, pp. 59-65.

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

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

[47] CA *rollo*, p. 359.

[48] *Id.*, pp. 354-358.

[49] *Id.*, pp. 338-339.

[50] Letter by CA Associate Justice Arcangelita M. Romilla-Lontok; CA *rollo*, pp. 349-350.

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

[52] *Id.*, pp. 354-358.

in our Resolution of December 5, 2007,[53] and issued the corresponding entry of judgment on February 8, 2008.[54] Thus, this Decision at this point relates solely to appellant Vallejos. In the discussions that follow, however, we shall still refer to the parties as "appellants" because of the linkages that exist between them as common perpetrators of the offenses charged.

In his brief, appellant Vallejos argued, among others, that the Sandiganbayan erred —

1. **in convicting him of the crime charged despite merely occupying a salary grade (SG) 24 position;**
2. **in convicting him of the crime charged despite the absence of notice to restitute from the Provincial Auditor of Zambales;**
3. **in convicting him of the crime charged despite merely acting ministerially on the disbursement vouchers in question; and**
4. **in finding that a conspiracy existed between him and Pantaleon.**

THE COURT'S RULING

We **DENY** the appeal for lack of merit.

Sufficiency of Prosecution Evidence

Malversation is defined and penalized under Article 217 of the Revised Penal Code, which reads:

> Art. 217. *Malversation of public funds or property — Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall, otherwise, be guilty of the misappropriation or malversation of such funds or property, shall suffer:

[53] *Id.*, p. 363.

[54] *Id.*, p. 371.

x x x x x x x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

The essential elements common to all acts of malversation under Article 217 of the Revised Penal Code are the following:

(a) That the offender be a public officer.

(b) That he had the *custody* or *control* of funds or property *by reason of the duties of his office*.

(c) That those funds or property were public funds or property *for which he was accountable*.

(d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Appellants are public officers

A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class."[55] Pantaleon and Vallejos were the municipal mayor and municipal treasurer, respectively,

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[55] REVISED PENAL CODE, Article 203.

of the Municipality of Castillejos at the time of the crimes charged. In short, they were public officers within the meaning of the term as defined above.

Appellants had the custody and control of funds or property by reason of the duties of their office

As a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos.

The appellants were accountable for public funds

The funds for which malversation the appellants stand charged were sourced from the development fund of the municipality. They were funds belonging to the municipality, for use by the municipality, and were under the collective custody of the municipality's officials who had to act together to disburse the funds for their intended municipal use. The funds were therefore public funds for which the appellants as mayor and municipal treasurer were accountable.

Vallejos, as municipal treasurer, was an accountable officer pursuant to Section 101(1) of P.D. No. 1445 which defines an accountable officer to be "every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law." Among the duties of Vallejos as treasurer under Section 470(d)(2) of Republic Act No. 7160 is "to **take custody** and exercise proper management of the funds of the local government unit concerned."

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government, which reads:

Section 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

Section 102. *Primary and secondary responsibility.* — (1) The head of any agency of the government is **immediately and primarily responsible for all government funds and property pertaining to his agency**.

The appellants appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take the public funds

We note at the outset that no less than the *Sangguniang Panlalawigan* of Zambales, in its decision of April 3, 2000, already made a finding that the projects subject of Disbursement Voucher Nos. 101-9803-328, 101-9803-349, and 101-9804-415 were never implemented in 1998.

This finding was corroborated by several witnesses during the trial. Engr. Ramos, in his testimony of August 22, 2000 and speaking as the municipal engineer in charge of municipal constructions, stated that he **never implemented** the projects subject of the disbursement vouchers. To directly quote from the records:

PROSECUTOR JACQUELYN ONGPAUCO-CORTEL

Q: Now, in your stay as acting municipal engineer in Castillejos, Zambales, what documents did you prepare?

ENGR. RAMOS

A: I prepared three (3) programs of works, namely: the two (2) were up-grading of *barangay* roads and the third one was the construction of the market stall.

Q: Now, Mr. Witness, you mentioned of three (3) programs of works, now, showing to you program of work dated January 5, 1998, is this the one you were referring to?

A: Yes, ma'am.

x x x x x x x x x

Q: Can you please state before this Honorable Court what is the purpose of this program of work?

A: I was instructed to make that program of work but **I never implemented those projects anymore.**

x x x x x x x x x

Q: Now, showing to you another program of work, Mr. Witness, dated January 14, 1998, is this also a part of this program of work which you mentioned earlier?

A: Yes, ma'am.

x x x x x x x x x

Q: Can you state before this Honorable Court if this project was implemented?

A: Likewise, ma'am, **I never did implement such project.**

x x x x x x x x x

Q: Now, showing to you another program of work, Mr. Witness, dated January 5, 1998, is this the part and parcel of what you have mentioned earlier?

A: Yes, ma'am.

x x x x x x x x x

Q: And can you state before this Honorable Court **if the project was implemented in 1998** Mr. witness?

A: **No, ma'am**.

x x x x x x x x x

Q: Going back to the sites of the projects Mr. Witness, did you actually see the sites of the intended projects?

A: Yes, ma'am.

Q: What did you see?

A: They were **already existing** at that time.

Q: What do you mean by that Mr. Witness?

A: The municipal engineer did implement those projects before.

Q: When were these projects actually implemented Mr. Witness? Before?

A: Yes, ma'am.

Q: When?

A: As I've said, **they were already existing before I made those programs of work.**

ASSOCIATE JUSTICE NARCISO S. NARIO (Chairman)

Q: What were these projects that according to you were already existing? What are these projects?

ENGR. RAMOS

A: The **upgrading of the barangay** roads, Your Honor.

Q: Upgrading of the barangay roads? What barangays are these?

A: Barangay Looc proper, Barangay Magsaysay and Barangay San Pablo.

Q: What else?

A: And the **construction of the market stalls located in the public market.**

Q: These projects were **already existing**?

A: Yes, Your Honor.

PROSECUTOR CORTEL

Q: Meaning to say, Mr. Witness, that **before they applied, before the preparation of the programs of works and disbursement of the amount as indicated thereon, the projects you have mentioned are already existing?**

ENGR. RAMOS

A: Yes, ma'am.

Q: And that there is **no need for the preparation of this program of work and disbursement of another money for that project?**

A: Yes, ma'am.

x x x x x x x x x

ASSOCIATE JUSTICE NARIO

Q: Now, it's on the basis of this program of work that the disbursements, issue voucher, the check and other relevant documents were paid because of this program of work that you prepared?

A: Yes, Your Honor.[56] [*Emphasis ours*]

Aurelio, a *Sangguniang Bayan* member, likewise testified that **no construction work** was undertaken on various *barangay* roads and in the public market of Castillejos in 1998:

PROSECUTOR CORTEL

Q: But **do you know if there is a construction of the market stall, public market done in 1998**, Mr. Witness?

AURELIO FASTIDIO

A: **None**, ma'am.

Q: In 1999?

A: None, ma'am.

Q: Going to Voucher No. 101-9803-328 Mr. Witness for the upgrading, excavation, back filling of barangay roads, Mr. Witness, **do you know if there is upgrading, excavation and back filling of certain barangay roads in your area?**

A: **None**, ma'am.

Q: How many barangay roads do you have in that area, Mr. Witness?

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[56] TSN, August 22, 2000, pp. 7-23.

A: We have many barangay roads, ma'am.

Q: **And do you know if in 1998 there is the upgrading, excavation and back filling of many barangay roads?**

A: **None**, ma'am.

Q: Not even one, Mr. Witness.

A: Yes, ma'am.[57] [*Emphasis ours*]

Alberto, the Barangay Captain of Looc, also declared on the witness stand during his September 7, 2000 testimony that no project was undertaken in his *barangay* during the tenure of Pantaleon. Resty, a municipal councilor, likewise testified on September 12, 2000 that there was no upgrading, compacting and leveling of roads in Barangay San Pablo in 1998.

Despite the non-existence of the projects covered by the three (3) disbursement vouchers, and despite the fact that these vouchers never went through the accounting office and the office of the local budget officer for pre-audit and certification, the appellants still signed them. We quote Pantaleon's admission in his January 31, 2001 testimony:

ATTY. RODOLFO REYNOSO

Q: Okay. An issue of pre-audit was brought when the accountant testified earlier that allegedly you did not require them or you just signed the voucher without requiring the budget officer or the accountant to affix their signatures, what can you say about that?

TEOFILO PANTALEON, JR.

A: I asked. When the treasurer came into my office, he asked me about the non-signatures of the accountant and the budget officer, sir. So I called up their attention and they were adamant, they were hesitant to sign. I called up again the treasurer why it is [*sic*] because they were asking for a commission as per the treasurer said to me, Your Honor.

x x x x x x x x x

[57] *Id.*, pp. 48-49.

Q: In other words, Mr. Witness, **after informing the accountant and the budget officer that they have not signed the voucher, you already signed it even without their signature**, did I get you right?

A: **Yes, sir.**

Q: And you allowed the treasurer to pay?

A: Yes, sir.

x x x x x x x x x

ASSOCIATE JUSTICE NARIO

Q: **So despite the absence of the signatures of the accountant and the budget officer, you went through signing these vouchers? (*sic*)**

TEOFILO PANTALEON, JR.

A: Yes, Your Honor.

x x x[58] [*Emphasis ours*]

Vallejos, in his testimony of October 18, 2000, likewise admitted signing the disbursement vouchers:

ASSOCIATE JUSTICE RODOLFO G. PALATTAO

Q: In other words, since you considered the refusal of the accountant to sign the vouchers as accompanied by bad faith, you decided to ignore the requirement of her signature and **you allowed payment**?

JAIME VALLEJOS

A: Yes, your Honor, because the sub-contractor threatened me for not paying the vouchers, besides, that will cause injury to him.

x x x x x x x x x

Q: Mr. Witness, do you recall where were the funds coming from in paying the projects?

A: Yes, sir, there were two sources of fund, under the Engineering Office maintenance and other operating expenses, roads and bridges maintenance, and 20% development funds.

[58] TSN, January 31, 2001, pp. 29-48.

x x x x x x x x x

ASSOCIATE JUSTICE NICODEMO T. FERRER:

Q: A while ago, you said that this alleged sub-contractor encashed the checks issued to him, can you show the encashment made by the contractor?

A: It was in the bank, ma'am.

Q: Where is it now?

A: It was in the Land Bank, ma'am.

x x x x x x x x x

Q: You said that in the signing of the vouchers, you are the last signatory?

A: Yes, ma'am.

Q: Meaning to say, all the signatories precedent to you must sign first before you sign?

A: Yes, ma'am.

Q: Now, in these particular cases, **the accountant and the budget officer did not affix their signatures?**

A: Yes, ma'am.

Q: **And despite that fact, you signed the disbursement vouchers?**

A: **Yes, ma'am.**

x x x[59] [*Emphasis ours*]

Significantly, the appellants **did not deny** that they allowed the release of the public funds, but maintained that the money went to Baquilat as representative and/or subcontractor of La Paz Construction. This was confirmed by Baquilat himself when he admitted, in his February 8, 2001 testimony, receipt of ₱400,00.00, more or less, from the Municipality of Castillejos for the three (3) construction projects he allegedly did in 1998. However, Ken Swan Tiu, the owner of La Paz Construction,

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[59] TSN, October 18, 2000, pp. 16-27.

vehemently denied that he contracted with the Municipality of Castillejos:

PROSECUTOR CORTEL

Q: Mr. Witness, in connection with these cases, do you remember having received payments from the municipality of Castillejos, Zambales?

KEN SWAN TIU

A: No, **I did not receive any single centavo from the government of Castillejos.**

x x x x x x x x x

Q: Now, Mr. Witness, I would like to show to you vouchers which would indicate that the claimant or the payee is La Paz Construction of San Marcelino, Zambales. Now, Mr. Witness in Exhibit "A", Disbursement Voucher No. 101803-328, do you remember having received the amount of One Hundred Sisty (sic) Six Thousand Two Hundred Forty-Two Pesos and Seventy-Two Centavos (₱166,242.72)?

(WITNESS GOING OVER THE VOUCHER SHOWN TO HIM BY THE PUBLIC PROSECUTOR)

A: No, ma'am. I did not receive any.

Q: In Disbursement Voucher No. 1019803-349 wherein the payee is La Paz Construction also of San Marcelino, Zambales, do you remember having received the amount of One Hundred Fifty-Four Thousand Six Hundred Thirty-Four Pesos and Twenty-Seven Centavos (₱154,634.27)?

A: No, ma'am.

x x x x x x x x x

Q: Now, Exhibit "A" Mr. Witness I would like to point to you a portion wherein the recipient appears to be La Paz Construction, San Marcelino, Zambales in the amount of Two Hundred Forty-Two Pesos [*sic*]. Do you know whose signature that is appearing on top of the typewritten name of La Paz Construction?

A: No, ma'am. I don't recognize this signature and I don't have any agent to collect this amount.

x x x x x x x x x

Q: Now, what about in Exhibit "B" wherein the recipient appears to be La Paz Construction, whose signature appears on top of the typewritten name of La Paz Construction?

A: Yes, ma'am. The same, I don't recognize the signature **and I don't have any transaction with the municipality of Castillejos.**

Q: Now, in connection with Exhibit "C", there also appears a signature who was a recipient of the amount of Ninety Thousand Four Hundred Sixty-Five and Twenty-One Centavos (₱90,465.21), whose signature is that?

A: Yes, ma'am. The same, the signature I don't recognize and **I don't have any agent or collecting agent or any transaction with the officials of the municipality of Castillejos.**

x x x x x x x x x

ATTY. REYNOSO

Q: So in other words, in all transactions from the very beginning that you have transacted with the municipality, you are the only one who transacted with the municipality?

A: **I don't have any transaction with the Municipality of Castillejos.**

Q: Even before this alleged incident took place?

A: I said **I don't have any, sir**.

x x x x x x x x x

Q: You said that **you have not made any contract with the municipality**, did I get you right?

A: **Yes, sir.**

Q: You are a witness charging the accused here of an alleged contract entered into between the accused and your company and you deny did I get you right?

A: Yes, sir.

Q: So insofar as you are concerned, **there was no contract between you and the municipality?**

A: **Precisely.**[60] [*Emphasis ours*]

Ken Swan Tiu likewise testified that Baquilat was not in any way connected with the La Paz Construction. We quote his June 7, 2001 testimony:

PROSECUTOR CORTEL

Q: Mr. Witness, in his (Baquilat's) testimony in open court, he declared that you let him borrow, you lent him your license as a Contractor, is that true, Mr. Witness?

KEN SWAN TIU

A: No, ma'am. We don't have any agreement with that, and I am not lending my own company, my license to them because they have their own company.

Q: Okay. Mr. Witness, he also declared in open court that you sub-contracted him in connection with the projects undertaken by then Mayor Pantaleon in the Municipality of Castillejos, what can you say to that?

A: **No, Ma'am, I don't have any construction with the government of the Municipality of Castillejos, and sub-contracting,** I don't have this idea on my mind because I don't enter in this construction, Ma'am. (*sic*)

x x x x x x x x x

ATTY. MARK M. AVERILLA

Q: **Is your testimony, Mr. Witness, therefore that you have not entered into a sub-construction agreement with Mr. John Baquilat pertaining to that project in Castillejos, Zambales?**

A: **Yes, sir.**

Q: **Is it therefore your testimony that Mr. Witness that Mr. John Baquilat, who testified earlier declaring in open court that you authorized him to use La Paz Construction as the entity to enter into contract with the Municipality of Castillejos, that he was lying [*sic*]?**

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[60] TSN, September 12, 2000, pp. 11-22.

A: **Of course we don't have any agreement on that, and I don't have any contract…**

(interruption)

Q: Yes, Sir, so you are saying that he was lying? Is that your testimony?

A: I don't know, Sir, because I just encountered that there is a sub-contractor who came out. Actually, in myself, I don't have any construction here with the government of Castillejos. How come there exists a sub-Contractor? [*sic*].

x x x[61] [*Emphasis ours*]

These testimonies lead to no other conclusion than that the appellants had deliberately consented to or permitted the taking of public funds by Baquilat despite the fact that (1) La Paz Construction never entered into a contract with the Municipality of Castillejos; (2) Baquilat was not an agent, representative or subcontractor of La Paz Construction; (3) the projects covered by the disbursement vouchers in question never existed; and (4) the disbursement vouchers lacked the requisite signatures of the municipal accountant and the local budget officer. In short, they resorted to machinations and simulation of projects to draw funds out of the municipal coffers.

The circumstances established during trial and outlined below likewise show the anomalous circumstances that attended the disbursement of the public funds.

Pantaleon himself admitted that he was not authorized by the *Sanggunian* to enter into a contract with La Paz Construction; however, he and Vallejos requested Engr. Ramos to prepare three (3) *antedated* programs of work that later served as basis for the issuance of the disbursement vouchers. Aurelio also declared that the projects covered by the subject disbursement vouchers were charged from the development fund of the municipality, although these projects were not among those included in the approved projects for the years 1996 to 1998. Nida's testimony on the irregularities that attended the documents

[61] TSN, June 7, 2001, pp. 6-13.

supporting the vouchers were never rebutted by the defense. These irregularities were aptly summarized by the Sandiganbayan as follows:

a. All of the three disbursement vouchers were not signed by her;

b. As to the Disbursement Voucher No. 1019802-328, the box in which she did not sign as municipal accountant, now bears the signature of Martin Pagaduan without her authority, after the voucher was disallowed and returned by the Commission on Audit; Pagaduan was not yet the Municipal Accountant as he was appointed only on January 1, 1999;

c. Required documents — authority to enter into negotiated contract, plans and specifications, abstract of bids, notarized contracts — were not attached to the voucher;

d. Voucher number and accounting entries were written by accused Treasurer Vallejos, not the then municipal accountant (Nida Naman);

e. Also signed by Martin Pagaduan without her authority as municipal treasurer are the three purported Certificate of Canvass attached to the Disbursement Voucher No. 101-9803-328;

f. Official Receipt No. 000989 that appears to have been signed by John Baquilat to acknowledge receipt of the amount covered by check no. 108952 indicated in Disbursement Voucher No. 101-9803-349 is not filled up.[62]

Through the appellant's explicit admissions, the witnesses' testimonies, and the documentary evidence submitted, the prosecution duly established the fourth element of the crime of malversation. It is settled that a public officer is liable for malversation even if he does not use public property or funds under his custody for his personal benefit, **if he allows another to take the funds, or through abandonment or negligence, allow such taking.**[63] The felony may be committed, not only

[62] CA *rollo*, pp. 45-46.

[63] *Pondevida v. Sandiganbayan*, G.R. Nos. 160929-31, August 16, 2005, 467 SCRA 219.

through the misappropriation or the conversion of public funds or property to one's personal use, but also **by knowingly allowing others to make use of or misappropriate the funds.** The felony may thus be committed by *dolo or by culpa*. The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence.[64]

Falsification was a necessary means to commit the crime of malversation

Article 171, paragraphs (2) and (5) of the Revised Penal Code, provides:

ART. 171. *Falsification by public officer, employee or notary* or *ecclesiastic minister*. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

x x x   x x x   x x x

5. Altering true dates;

x x x   x x x   x x x

Falsification under paragraph 2 is committed when (a) the offender causes it to appear in a document that a person or persons participated in an act or a proceeding; and (b) that such person or persons did not in fact so participate in the act or proceeding. In the present case, both testimonial and documentary evidence showed that Vallejos filled up the spaces for the voucher number and the accounting entry of Disbursement Voucher Nos. 101-9803-328, 101-9803-349 and 10-9804-415. These items were required to be filled up by Nida as the municipal accountant. Thus, Vallejos made it appear that the municipal accountant participated in signing the disbursement vouchers.

[64] *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533.

The appellants were likewise guilty of falsification under paragraph 5 of Article 171. Engr. Ramos testified that Pantaleon and Vallejos instructed him to place the dates January 5, 1998 on the first and third programs of work, and January 14, 1998 on the second program of work, although he prepared the programs only in March 1998. Thereafter, the appellants affixed their signatures on these programs of work. The projects covered by these programs of work served as basis for the issuance of the disbursement vouchers.

The presence of conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy does not need to be proven by direct evidence and may be inferred from the conduct — before, during, and after the commission of the crime — indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, as shown by an overt act leading to the crime committed. It may be deduced from the mode and manner of the commission of the crime.[65]

The burden of proving the allegation of conspiracy rests on the prosecution, but settled jurisprudence holds that conspiracy may be proven other than by direct evidence.[66] In *People v. Pagalasan*,[67] the Court expounded on why **direct proof of prior agreement is not necessary**:

After all, secrecy and concealment are essential features of a successful conspiracy. Conspiracies are clandestine in nature. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other,

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[65] *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008.

[66] *Fernan, Jr., v. People*, G.R. No. 145927, August 24, 2007, 531 SCRA 1.

[67] G.R. Nos. 131926 & 138991, June 18, 2003, 404 SCRA 275, 291.

were in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[68]

The prosecution's evidence glaringly shows how the appellants acted in concert to facilitate the illegal release of public funds. *First*, the appellants ordered the preparation of the programs of work, with specific instructions to antedate the submitted programs. *Second,* they affixed their signatures on the antedated programs of work. *Third,* the appellants signed the disbursement vouchers covering the simulated projects despite knowledge of the absence of the signatures of the local budget officer and the local accountant. Vallejos even filled up entries in the vouchers that were for the municipal treasurer to fill up. *Finally*, the appellants affixed their signatures in the following documents attached to the three (3) disbursement vouchers:

Supporting documents attached to Disbursement Voucher Nos. 101-9803-328

a. Purchase Request (*Exh. "A-3"*);
b. Three Certificates of Canvass (*Exh. "A-4 to A-6"*);
c. Purchase Order showing La Paz Construction as the winning bidder/contractor (*Exh. "A-7"*);
d. Certificate of Acceptance with regard to the services rendered by La Paz Construction (*Exh. "A-8"*); and
e. Request for Obligation Allotment with La Paz Construction as payee (*Exh. "A-9"*).

Supporting documents attached to Disbursement Voucher Nos. 101-9803-349

a. Purchase Request (*Exh. "B-6"*);
b. Purchase Order showing La Paz Construction as the contractor (*Exh. "B-7"*);
c. Request for Obligation Allotment with La Paz Construction as payee (*Exh. "B-9"*); and

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[68] *Id.*

d. Certificate of Acceptance with regard to the services rendered by La Paz Construction (*Exh. "B-8"*).

Supporting documents attached to Disbursement Voucher Nos. 101-9804-415

a. Request for Obligation Allotment with La Paz Construction as payee (*Exh. "C-8"*);
b. Three Certificates of Canvass (*Exh. "C-4 to C-5"*);
c. Purchase Order showing La Paz Construction as the contractor (*Exh. "C-6"*);
d. Purchase Request (*Exh. "C-2"*); and
e. Certificate of Acceptance with regard to the services rendered by La Paz Construction (*Exh. "C-7"*).

The appellants' combined acts therefore indubitably point to their joint purpose and design. Their concerted actions clearly showed that conspiracy existed in their illegal release of public funds.

The appellant's defenses

Vallejos' contention that the Sandiganbayan has no jurisdiction over him because he only occupies a Salary Grade (*SG*) 24 position cannot shield him from the Sandiganbayan's reach. The critical factor in determining the Sandiganbayan's jurisdiction is the position of his co-accused, the municipal mayor, who occupies a SG 27 position. Under Section 4 of Republic Act No. 8249,[69] if the position of one or more of the accused is classified as SG 27, the Sandiganbayan has original and exclusive jurisdiction over the offense.

Our ruling in *Esquivel v. Ombudsman*[70] on this point is particularly instructive:

In *Rodrigo, Jr. vs. Sandiganbayan*, *Binay vs. Sandiganbayan,* and *Layus vs. Sandiganbayan*, we already held that municipal mayors fall under the original and exclusive jurisdiction of the Sandiganbayan. Nor can Barangay Captain Mark Anthony Esquivel claim that since

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[69] Entitled "*An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, As Amended, Providing Funds therefor, and for Other Purposes*."

[70] G.R. No. 137237, September 17, 2002, 389 SCRA 143.

he is not a municipal mayor, he is outside the Sandiganbayan's jurisdiction. R.A. 7975, as amended by R.A. No. 8249 provides that it is only in cases where "none of the accused are occupying positions corresponding to salary grade '27' or higher" that "exclusive original jurisdiction shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended." Note that under the 1991 Local Government Code, Mayor Esquivel has a salary grade of 27. Since Barangay Captain Esquivel is the co-accused in Criminal Case No. 24777 of Mayor Esquivel, whose position falls under salary grade 27, the Sandiganbayan committed no grave abuse of discretion in assuming jurisdiction over said criminal case, as well as over Criminal Case No. 24778, involving both of them.[71] [*Underscoring and italics in the original*]

Vallejos' claim that it was his ministerial function to sign the disbursement vouchers also lacks merit. Section 344, R.A. No. 7160 reads:

Sec. 344. *Certification and Approval of Vouchers*. — **No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose.** Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

x x x x x x x x x

Thus, as a safeguard against unwarranted disbursements, certifications are required from: (a) the local budget officer as

[71] *Id.*, p. 152 (citations omitted).

to the existence and validity of the appropriation; (b) the local accountant as to the legal obligation incurred by the appropriation; (c) the local treasurer as to the availability of funds; and (d) the local department head as to the validity, propriety and legality of the claim against the appropriation.[72] Therefore, Vallejos, as municipal treasurer, could not authorize the release of the funds without the requisite signatures of the municipal budget officer and the municipal accountant.

Vallejos also harps on the fact that the Provincial Auditor of Zambales did not issue a notice to restitute the funds. We find this contention misleading. Pantaleon testified that the Provincial Auditor issued a notice stating that the disbursement of the public funds was irregular. Thereafter, the three (3) disbursement vouchers were suspended by the COA for deficiency in their supporting papers. Under Section 15.2 of the Manual on Certificate of Settlement and Balances, "a suspension which is not settled within 90 days from receipt of the Notice of Suspension, or within such extended period as may be authorized by the auditor concerned, shall become a disallowance."

According to Pantaleon, he instructed Vallejos to rectify the deficiencies in the vouchers and its supporting documents; however, he admitted not knowing whether Vallejos complied with this instruction. Vallejos, for his part, did not testify on whether or not he corrected and completed the supporting documents. No proof exists in the record showing that the deficiencies were ever rectified.

At any rate, demand under Article 217 of the Revised Penal Code merely raises a *prima facie* presumption that missing funds have been put to personal use. The demand itself, however, is not an element of the crime of malversation. Even without a demand, malversation can still be committed when, as in the present case, sufficient facts exist proving the crime.[73]

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[72] *Lucman v. Malawi*, G.R. No. 159794, December 19, 2006, 511 SCRA 268.

[73] *Nizurtado v. Sandiganbayan*, G.R. No. 107383, December 7, 1994; see also *Pondevida v. Sandiganbayan*, *supra* note 63.

The Proper Penalty

Article 217, paragraph 4 of the Revised Penal Code imposes the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* when the amount malversed is greater than ₱22,000.00. This Article also imposes the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. Falsification by a public officer or employee under Article 171, on the other hand, is punished by *prision mayor* and a fine not to exceed ₱5,000.00.

Since appellant committed a complex crime, the penalty for the most serious crime shall be imposed in its maximum period, pursuant to Article 48 of the Revised Penal Code. This provision states:

> ART. 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The Sandiganbayan, therefore, correctly imposed on the appellants the penalties of ***reclusion perpetua*** and **perpetual special disqualification** for each count of malversation of public funds through falsification of public documents, and the **payment of fines** of ₱166,242.72, ₱154,634.27, and ₱90,464.21, respectively, representing the amounts malversed. The Indeterminate Sentence Law finds no application since *reclusion perpetua* is an indivisible penalty to which the Indeterminate Sentence Law does not apply.

WHEREFORE, in light of the foregoing, we *AFFIRM* the February 4, 2003 Decision of the Sandiganbayan in Criminal Case Nos. 25861-63, insofar as it found appellant Jaime F. Vallejos guilty beyond reasonable doubt of three (3) counts of the complex crime of malversation of public funds through falsification of public documents, as defined and penalized under Article 217 in relation with Articles 48 and 171 of the Revised Penal Code.

We make no pronouncement with respect to appellant Teofilo Pantaleon, Jr. whose withdrawal of appeal has been previously granted by this Court.

Costs against appellant Vallejos.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160280. March 13, 2009]

SOFIA ANIOSA SALANDANAN, *petitioner, vs.* **SPOUSES MA. ISABEL and BAYANI MENDEZ,** *respondents.*[*]

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; RULE ON INTERVENTION, EXPLAINED. —** As a rule, intervention is allowed at any time before rendition of judgment by the trial court. After the lapse of this period, it will not be warranted anymore because intervention is not an independent action but is ancillary and supplemental to an existing litigation. The permissive tenor of the provision on intervention shows the intention of the Rules to give to the court the full measure of discretion in permitting or disallowing the same, but under Section 1, Rule 19 of the Rules of Court, the courts are nevertheless **mandated** to consider several factors in determining whether or not to allow intervention. The factors that should be reckoned are **whether intervention will unduly delay** or prejudice the adjudication of the rights of the original

[*] The Court of Appeals is deleted from the title per Section 4, Rule 45 of the Rules of Court.

parties and **whether the intervenor's rights may be fully protected in a separate proceeding**. Keeping these factors in mind, the courts have to give much consideration to the fact that actions for ejectment are designed to **summarily** restore physical possession to one who has been illegally deprived of such possession.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; PURPOSE OF THE ACTIONS, EXPLAINED. —** It is primarily a quieting process intended to provide an expeditious manner for protecting possession or right to possession without involvement of the title. In *Five Star Marketing Co., Inc. v. Booc*, the Court elucidated the purpose of actions for ejectment in this wise: Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to the possession of the property involved. **It does not admit of a delay in the determination thereof.** It is a "time procedure" designed to remedy the situation. Stated in another way, the **avowed objective of actions for forcible entry and unlawful detainer, which have purposely been made summary in nature, is to provide a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly continuing his possession for a long time, thereby ensuring the maintenance of peace and order in the community;** otherwise, the party illegally deprived of possession might feel the despair of long waiting and decide as a measure of self-protection to take the law into his hands and seize the same by force and violence. And since the law discourages continued wrangling over possession of property for it involves perturbation of social order which must be restored as promptly as possible, **technicalities or details of procedure which may cause unnecessary delays should accordingly and carefully be avoided.** Thus, as stated above, ejectment cases must be resolved with great dispatch. Moreover, petitioner's intervention in the ejectment case would not result in a complete adjudication of her rights. The issue raised by petitioner is mainly that of ownership, claiming that the property in dispute was registered and titled in the name of respondents through the use of fraud. Such issue cannot even be properly threshed out in an action for ejectment, as Section 18, Rule 70 provides that "[t]he judgment rendered in an action

for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building. x x x" In *Malison v. Court of Appeals*, the Court held thus: Verily, in ejectment cases, the word "possession" means nothing more than actual physical possession, not legal possession, in the sense contemplated in civil law. The only issue in such cases is who is entitled to the physical or material possession of the property involved, independently of any claim of ownership set forth by any of the party-litigants. **It does not even matter if the party's title to the property is questionable.**

3. **ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; CONCLUSIVE ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS. —** It should be borne in mind that unless the case falls under one of the recognized 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 in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (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; and (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. factual findings of the trial court are conclusive on the parties and not reviewable by this Court, more so when the CA affirms the factual findings of the trial court. This case does not fall under any of the exceptions, thus, the factual finding of the lower courts, that the new registered owners of the subject premises are respondents, must be respected and upheld by this Court.

4. ID.; CIVIL PROCEDURE; LAND REGISTRATION; REGISTERED OWNER'S TITLE TO THE PROPERTY IS PRESUMED LEGAL AND CANNOT BE COLLATERALLY ATTACKED; SUSTAINED. — In *Malison*, the Court emphasized that when property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer. In this particular action where petitioner's alleged ownership cannot be established, coupled with the presumption that respondents' title to the property is legal, then the lower courts are correct in ruling that respondents are the ones entitled to possession of the subject premises.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; EJECTMENT CASE; ANY JUDGMENT THEREIN IS BINDING ONLY UPON THE PARTIES PROPERLY IMPLEADED AND DULY GIVEN OPPORTUNITY TO BE HEARD; EXCEPTIONS. — In *Stilgrove v. Sabas,* the Court held that: A judgment directing a party to deliver possession of a property to another is *in personam*. x x x Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, **this rule admits of the exception, such that even a non-party may be bound by the judgment in an ejectment suit** where he is any of the following: (a) trespasser, squatter **or agent of the defendant fraudulently occupying the property to frustrate the judgment;** (b) guest or occupant of the premises with the permission of the defendant; (c) transferee *pendente lite*; (d) sublessee; (e) co-lessee; or (f) **member of the family, relative or privy of the defendant.**

APPEARANCES OF COUNSEL

Reyno Tiu Domingo & Santos for petitioner.
Tristram B. Zoleta for respondents.

DECISION

AUSTRIA-MARTINEZ, *J.*:

This refers to the Petition for Review on *Certiorari* of the June 27, 2003 Decision[1] of the Court of Appeals (CA) and its September 3, 2003 Resolution[2] in CA-G.R. SP No. 76336 denying the petition for clarification and intervention filed by Sofia Aniosa Salandanan (petitioner) and affirming *in toto* the March 6, 2003 Decision of the Regional Trial Court (RTC) of Manila, Branch 30 in Civil Case No. 02-104406 which affirmed the August 9, 2002 Decision of the Metropolitan Trial Court (MeTC) of Manila, Branch 15 in Civil Case No. 172530 ordering Delfin Fernandez[3] and Carmen Fernandez (Spouses Fernandez) and all persons claiming rights under them to vacate and surrender possession of a house and lot located at 1881 Antipolo St., corner Vision St., Sta. Cruz, Manila (subject lot) to Spouses Bayani Mendez and Ma. Isabel S. Mendez (respondents) and to pay the latter monthly rental of ₱5,000.00 from January 29, 2002 until they vacate the property and ₱15,000.00 as attorney's fees.

The case stemmed from a complaint for ejectment instituted by respondents against Spouses Fernandez before the MeTC on April 18, 2002.

In their Complaint,[4] respondents alleged that they are the owners of the subject property as evidenced by Transfer Certificate of Title No. 246767 of the Registry of Deeds of Manila; that they became the owners thereof by virtue of a deed of donation; that Spouses Fernandez and their families were occupying the subject property for free through the generosity of respondent Isabel's father; that a letter of demand to vacate the subject property was sent to Spouses Fernandez but they refused to

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[1] Penned by Justice Perlita J. Tria Tirona and concurred in by Justices Oswaldo D. Agcaoili and Edgardo F. Sundiam, *rollo*, pp. 49-57.

[2] *Id.* at 46-47.

[3] Delfin Fernandez, Jr. in other pleadings, records, pp. 21, 24, 26.

[4] Records, pp. 2-6.

vacate the same; that respondents brought the matter to the *Barangay Lupon* for possible settlement but the same failed.

In their Answer,[5] Spouses Fernandez denied the allegations of the complaint and averred that Spouses Pablo and Sofia Salandanan (Spouses Salandanan) are the registered owners of the subject property and the improvements therein; that respondent Isabel is not a daughter of Spouses Salandanan; that Delfin Fernandez (Delfin) is the nearest of kin of Pablo Salandanan being the nephew of the latter; that Delfin has continuously occupied the said property since time immemorial with the permission of Spouses Salandanan; that they did not receive any notice to vacate the subject property either from respondents or their counsel.

Further, Spouses Fernandez claimed that respondents were able to transfer the subject property to their name through fraud; that sometime in November 1999, respondents went to the house of Spouses Salandanan in Dasmariñas, Cavite and asked the latter to sign a special power of attorney; that the supposed special power of attorney was in fact a deed of donation wherein Spouses Salandanan was alleged to have donated in favor of respondents the subject property; that said deed of donation was simulated and fictitious and that by virtue of the alleged deed of donation, respondent Isabel was able to transfer the title of the subject property in her name; that in fact, the subject property is the subject of a separate case filed on July 31, 2001 before the RTC of Manila docketed as Civil Case No. 01101487[6] for annulment, revocation and reconveyance of title. By way of counterclaim, Spouses Fernandez prayed for moral damages and attorney's fees.

On August 9, 2002 the MeTC rendered its decision in favor of respondents and against Spouses Fernandez, the dispositive portion of which reads:

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[5] *Id.* at 15-19.

[6] Entitled, "*Sofia Aniosa Salandanan herein represented by Delfin L. Fernandes, Jr. v. Sps. Bayani and Isabel Mendez and Expedito A. Javier of the Registry of Deeds of Manila*," records, p. 21.

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the latter and all persons claiming rights under them to peacefully vacate the premises and surrender possession thereof to the plaintiffs and for the defendants to pay plaintiffs: 1) ₱5,000.00 a month beginning January 29, 2002 (when the demand letter was received by defendants by registered mail) until they finally vacate the premises and 2) the amount of ₱15,000.00 as and for attorney's fees.

The counterclaim of the defendants is dismissed for lack of merit.

SO ORDERED.[7]

Dissatisfied, Spouses Fernandez appealed to the RTC. Respondents then filed a Motion for Execution Pending Appeal with the RTC. On December 9, 2002, the RTC issued an Order directing the issuance of a writ of execution to place respondents in possession of the disputed property on the ground that Spouses Fernandez failed to periodically deposit the monthly rentals as they fell due. The Writ of Execution was issued on January 10, 2003. The Spouses Fernandez moved for reconsideration of the Order for issuance of the writ of execution, but the same was denied.

Thus, on February 20, 2003, the sheriff went to the subject premises to implement the writ of execution but found the place padlocked. The sheriff also found the petitioner, an old woman, all alone inside the house. Taking pity on the old woman, the sheriff was unable to implement the writ. On the same day, respondents filed an Urgent Motion to Break Open, alleging that Spouses Fernandez fetched petitioner earlier that day from her residence in Dasmariñas, Cavite and purposely placed her inside the subject premises so the old woman could plead for mercy from the executing sheriff.

On March 6, 2003, the RTC promulgated its Decision affirming the decision of the MeTC of Manila,[8] and on April 8, 2003, the RTC also issued an Order authorizing the sheriff "to employ

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[7] *Id.* at 73.

[8] Records, pp. 180-182.

the necessary force to enable him to enter the subject premises and place the plaintiffs-appellees in actual possession thereof."[9]

Meanwhile, on April 4, 2003, Spouses Fernandez filed before the CA a petition for review with prayer for a temporary restraining order seeking to stay the immediate execution pending appeal.[10] In a Resolution dated April 15, 2003, the CA granted the prayer for a Temporary Restraining Order.

On June 27, 2003, the CA rendered its Decision affirming *in toto* the decision of the RTC and ordered Spouses Fernandez and all persons claiming rights under them including petitioner to vacate the premises, ruling thus:

Verily, the only issue to be resolved in the present ejectment case is who between petitioners [Spouses Fernandez] and respondents has the better right to possess the disputed premises. The issue as to who between Sofia Aniosa Salandanan and respondents is the real owner of subject premises could be properly threshed out in a separate proceedings, which in this case is already pending resolution in another court.

Interestingly, nowhere in any pleadings of petitioners submitted below could We find any allegations to the effect that their possession of the disputed premises sprung from their claim of ownership over the same nor, at the very least, that they are in possession of any document that would support their entitlement to enjoy the disputed premises.

As between respondents' Torrens Title to the premises juxtaposed that of petitioners' barren claim of ownership and absence of any document showing that they are entitled to possess the same, the choice is not difficult. Simply put, petitioners plainly have no basis to insist that they have a better right to possess the premises over respondents who have a Torrens Title over the same. Hence, the MTC, as well as the RTC, correctly ordered petitioners to vacate the premises since respondents have a better right to possess the same by virtue of the latter's Torrens Title.[11]

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[9] *Id.* at 228-229.

[10] CA *rollo*, pp. 2-27.

[11] CA *rollo*, pp. 269-270.

The dispositive portion of the CA Decision reads as follows:

WHEREFORE, the instant appeal is DISMISSED for lack of merit. The assailed Decision, dated 06 March 2003, of Hon. Judge Lucia Peña Purugganan of the Regional Trial Court of Manila, Brach 50, affirming on appeal the Decision of the Metropolitan Trial Court of Manila (MTC for brevity), Branch 15, is hereby AFFIRMED *in toto*. Accordingly, the Temporary Restraining Order is hereby LIFTED. **As a legal consequence, petitioners and all persons claiming rights under them, including Sofia Aniosa Salandanan, are hereby ORDERED to vacate the premises immediately upon receipt hereof. Costs against petitioners.**

SO ORDERED.[12] (Emphasis supplied)

On July 29, 2003, Spouses Fernandez filed their motion for reconsideration.[13]

On even date, Sofia Salandanan (petitioner) filed a Motion for Clarification and Intervention[14] and attached a Motion for Reconsideration.[15] In her motion for clarification and intervention, she alleged that she and her deceased spouse are the real owners of the subject property; that she was not a party to the case for ejectment and did not receive any notice therefrom; and that by virtue of the said decision, she was about to be evicted from her property without having participated in the entire process of the ejectment proceeding.

Petitioner further claims that sometime in 1999, respondents went to their house and showed certain papers purportedly copies of a special power of attorney but which turned out to be a deed of donation involving the subject property; that by virtue of the said donation, respondents were able to register the subject properties in their name and were issued Transfer Certificate of Title No. 246767; that on July 31, 2001, Spouses Salandanan with the assistance of Delfin, filed a civil case before the RTC

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[12] *Id.* at 272-273.

[13] *Id.* at 288-301.

[14] *Id.* at 305-312.

[15] *Id.* at 313-336.

of Manila for Revocation/Annulment of the said title and Reconveyance; and that consequently, petitioner was forced to intervene in order to protect her interests over the subject property. Petitioner prayed for (1) clarification of the CA's decision asking whether the said decision applies to her as a relative of Spouses Fernandez claiming right under them or as possessor of the subject property in her right as owner of the subject property; (2) that she be allowed to intervene in the appeal; and (3) that the attached motion for reconsideration be admitted.

In a Resolution dated September 3, 2003, the CA denied the motion for reconsideration filed by Spouses Fernandez and petitioner's motion for clarification and intervention, for lack of merit,[16] thus:

We have carefully perused petitioner's Motion and find the arguments raised therein a mere rehash, if not a repetition, of the arguments raised in their petition, which have already been thoroughly discussed and passed upon in our Decision.

Anent the movant Sofia Salandanan's Motion for Clarification and Intervention, We hereby deny the same on the ground that it is belatedly filed by virtue of the rendition of Our Decision on June 27, 2003.

Section 2, Rule 19 of 1997 Rules of Civil Procedure expressly provides:

> Section 2. *Time to Intervene*. — The motion to intervene may be filed at any time before rendition of judgment by the trial court. x x x

Moreover, it is undisputed that on 31 July 2001, movant Sofia Salandanan represented by petitioner has already instituted a Civil Case for Revocation/ Annulment of T.C.T. 246767 and Reconveyance before the Regional Trial Court of Manila, Branch 50 and docketed as Civil Case No. 01101487. As such We find movant's motion to be wanting of merit as her rights are already fully protected in said separate proceeding.

WHEREFORE, the Motion for Reconsideration and Motion for Clarification and Intervention are hereby DENIED for lack of merit.

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[16] Annex "A" of the Petition, *rollo*, p. 47.

SO ORDERED.[17]

Hence, herein petition anchored on the following assignment of errors:

1. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INCLUDED PETITIONER IN ITS ADVERSE JUDGMENT IN VIOLATION OF THE LATTER'S CONSTITUTIONAL RIGHT TO DUE PROCESS DESPITE THE FACT THAT PETITIONER WAS NOT PRIVY TO THE INSTANT CASE AND DOES NOT DERIVE HER RIGHT TO STAY IN THE CONTESTED PROPERTY FROM THE SPOUSES DELFIN AND CARMEN FERNANDEZ.
2. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE MOTION FOR INTERVENTION BY PETITIONER DESPITE THE FACT IT WAS ONLY BY VIRTUE OF ITS DECISION DATED JUNE 27, 2003 THAT PETITIONER WAS INCLUDED IN THE EJECTMENT PROCEEDINGS, AND THE EARLIEST OPPURTUNE TIME WHEN PETITIONER COULD HAVE INTERVENED WAS AFTER THE COURT OF APPEALS RULED AGAINST HER.
3. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT TAKE INTO ACCOUNT THE ISSUE OF OWNERSHIP IN RESOLVING THE ISSUE OF WHO HAS BETTER POSSESSION.
4. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT SUSPEND THE CASE DESPITE THE EQUITABLE CIRCUMSTANCES PRESENT IN THE CASE AT BAR IN THE LIGHT OF THE AMAGAN VS. MARAMAG CASE.[18]

Petitioner contends that the CA committed grave abuse of discretion when it included petitioner in its decision despite the

[17] *Id.* at 46-47.

[18] *Id.* at 19.

fact that she is not a party in the ejectment case, thus, violating her right to due process; and considering that the court did not acquire jurisdiction over her person, she cannot be bound by the Decision of the CA.

Petitioner also asserts that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's motion for clarification and intervention. According to her, she was constrained to file a motion for clarification and intervention because the CA included her in its decision in spite of the fact that she was not impleaded as a party to the unlawful detainer case.

Petitioner ascribes grave abuse of discretion when the CA failed to resolve the issue of ownership in order to determine the party who has the better right to possess the subject property. She asserts that the CA should have suspended the unlawful detainer case since the ownership of the subject property is in issue.

Finally, petitioner maintains that she is the owner of the property by virtue of Transfer Certificate of Title No. 9937 issued on October 2, 1947 by the Register of Deeds of Manila. Hence, as the owner of the subject property, she has all the right to use, the right to allow others to use and the right to exclude others from using the same. Petitioner further claims that respondents were able to transfer the title of the subject property in their name through manipulation wherein respondents asked her and her deceased husband to sign a special power of attorney but later turned out to be a deed of donation. As a matter of fact, upon learning of the said transfer, petitioner filed before the RTC of Manila a case for annulment and/or revocation of the title.

We find the petition unmeritorious.

Let us first tackle the issue of whether petitioner should have been allowed to intervene even after the CA had promulgated its Decision.

Sections 1 and 2 of Rule 19 of the Rules of Court provide:

Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. **The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding**.

Section 2. *Time to intervene*. — The motion to intervene may be filed at any time before rendition of judgment by the trial court**.** A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

As a rule, intervention is allowed at any time before rendition of judgment by the trial court. After the lapse of this period, it will not be warranted anymore because intervention is not an independent action but is ancillary and supplemental to an existing litigation.[19] The permissive tenor of the provision on intervention shows the intention of the Rules to give to the court the full measure of discretion in permitting or disallowing the same,[20] but under Section 1, Rule 19 of the Rules of Court, the courts are nevertheless **mandated** to consider several factors in determining whether or not to allow intervention. The factors that should be reckoned are **whether intervention will unduly delay** or prejudice the adjudication of the rights of the original parties and **whether the intervenor's rights may be fully protected in a separate proceeding**.

Keeping these factors in mind, the courts have to give much consideration to the fact that actions for ejectment are designed to **summarily** restore physical possession to one who has been illegally deprived of such possession.[21] It is primarily a quieting process intended to provide an expeditious manner for protecting

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[19] *Manalo v. Court of Appeals*, 419 Phil. 215, 234 (2001).

[20] *Yau v. Manila Banking Corporation*, 433 Phil. 701, 714 (2002).

[21] *Keppel Bank Philippines, Inc. v. Adao*, G.R. No. 158227, October 19, 2005, 473 SCRA 372, 379.

possession or right to possession without involvement of the title.[22] In *Five Star Marketing Co., Inc. v. Booc*,[23] the Court elucidated the purpose of actions for ejectment in this wise:

> Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to the possession of the property involved. **It does not admit of a delay in the determination thereof**. It is a "time procedure" designed to remedy the situation. Stated in another way, the **avowed objective of actions for forcible entry and unlawful detainer, which have purposely been made summary in nature, is to provide a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly continuing his possession for a long time, thereby ensuring the maintenance of peace and order in the community**; otherwise, the party illegally deprived of possession might feel the despair of long waiting and decide as a measure of self-protection to take the law into his hands and seize the same by force and violence. And since the law discourages continued wrangling over possession of property for it involves perturbation of social order which must be restored as promptly as possible, **technicalities or details of procedure which may cause unnecessary delays should accordingly and carefully be avoided**.[24] (Emphasis supplied)

Thus, as stated above, ejectment cases must be resolved with great dispatch.

Moreover, petitioner's intervention in the ejectment case would not result in a complete adjudication of her rights. The issue raised by petitioner is mainly that of ownership, claiming that the property in dispute was registered and titled in the name of respondents through the use of fraud. Such issue cannot even be properly threshed out in an action for ejectment, as Section 18, Rule 70 provides that "[t]he judgment rendered in an action for forcible entry or detainer shall be conclusive with

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[22] *Cayabyab v. Gomez de Aquino,* G.R. No. 159974, September 5, 2007, 532 SCRA 353, 361.

[23] G.R. No. 143331, October 5, 2007, 535 SCRA 28.

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

respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building. x x x" In *Malison v. Court of Appeals*,[25] the Court held thus:

> Verily, in ejectment cases, the word "possession" means nothing more than actual physical possession, not legal possession, in the sense contemplated in civil law. The only issue in such cases is who is entitled to the physical or material possession of the property involved, independently of any claim of ownership set forth by any of the party-litigants. **It does not even matter if the party's title to the property is questionable**.[26] (Emphasis supplied)

Hence, a just and complete determination of petitioner's rights could actually be had in the action for annulment, revocation and reconveyance of title that she had previously filed, not in the instant action for ejectment.

It is likewise for this reason that petitioner is not an indispensable party in the instant case. The records bear out that the disputed property is in the possession of Spouses Fernandez. Even petitioner does not allege that she was in the possession of subject premises prior to or during the commencement of the ejectment proceedings. Since her claim of ownership cannot be properly adjudicated in said action, she is, therefore, not an indispensable party therein.

It is also misleading for petitioner to say that the earliest opportune time when petitioner could have intervened was after the CA ordered her to vacate the subject property in its Decision dated June 27, 2003. As early as when the sheriff attempted to implement the writ of execution pending appeal issued by the RTC, when she pleaded not to be evicted from the subject premises, she already became aware that the RTC had ordered to place respondents in possession of the subject property pending appeal with the RTC. That would have been the proper time for her to intervene if she truly believed that her interests would be best protected by being a party to the ejectment case.

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[25] G.R. No. 147776, July 10, 2007, 527 SCRA 109.

[26] *Id.* at 121.

Verily, allowing petitioner's intervention at this late stage of the ejectment proceedings would only cause undue delay without affording petitioner the relief sought since the issue of ownership cannot be determined with finality in the unlawful detainer case.

There is also no merit to petitioner's argument that it was grave abuse of discretion for the CA to include her in its Decision because she is not a party to the ejectment case, and neither is she claiming right to possession under the Spouses Fernandez, but as its alleged rightful owner.

Note that the MeTC, RTC, and the CA unanimously found that the disputed property is presently registered under the Torrens System in the name of respondents. The lower courts then concluded that respondents presented the best proof to establish the right to possess the same. It should be borne in mind that unless the case falls under one of the recognized 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 in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (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; and (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.[27]

factual findings of the trial court are conclusive on the parties and not reviewable by this Court, more so when the CA affirms the factual findings of the trial court.[28] This case does not fall

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[27] *C&S Fishfarm Corp. v. Court of Appeals*, 442 Phil. 279, 288 (2002).

[28] *Malison v. Court of Appeals*, *supra* note 25, at 117.

under any of the exceptions, thus, the factual finding of the lower courts, that the new registered owners of the subject premises are respondents, must be respected and upheld by this Court.

In *Malison*, the Court emphasized that when property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer.[29] In this particular action where petitioner's alleged ownership cannot be established, coupled with the presumption that respondents' title to the property is legal, then the lower courts are correct in ruling that respondents are the ones entitled to possession of the subject premises.

Petitioner's ownership not having been fully established in this case, she cannot, therefore, claim that the lower court's decision divesting the Spouses Fernandez of possession should not apply to her. In *Stilgrove v. Sabas,*[30] the Court held that:

> A judgment directing a party to deliver possession of a property to another is *in personam*. x x x Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, **this rule admits of the exception, such that even a non-party may be bound by the judgment in an ejectment suit** where he is any of the following: (a) trespasser, squatter or **agent of the defendant fraudulently occupying the property to frustrate the judgment**; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee *pendente lite*; (d) sublessee; (e) co-lessee; or (f) **member of the family, relative or privy of the defendant**.[31] (Emphasis supplied)

Of particular significance is the fact that in Spouses Fernandez's Answer, they never alleged that petitioner was in actual possession of the disputed property. In fact, in said Answer, they stated that it was Delfin Fernandez, Jr. who has continuously occupied

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[29] *Id.* at 124.

[30] A.M. No. P-06-2257, November 29, 2006, 508 SCRA 383.

[31] *Id.* at 395-396.

the premises since time immemorial and that petitioner resides in her house in Dasmariñas, Cavite. Likewise worthy of note is the fact that the Spouses Fernandez never refuted in their Opposition to Amended Motion to Break Open the allegation of respondents that petitioner was merely fetched by the Spouses Fernandez from her residence in Dasmariñas, Cavite on the day (February 20, 2003) that the sheriff was to implement the writ of execution, and placed her inside the subject premises so the old woman could plead for mercy from the executing sheriff. In the petition for review dated April 3, 2003 filed with the CA, Spouses Fernandez admitted that it was only after the RTC issued its Order dated February 10, 2003, denying the motion for reconsideration of the Order for issuance of the writ of execution, that petitioner took possession of the subject premises.[32]

Taking the foregoing into account, it is clear that petitioner, even though a non-party, is bound by the judgment because aside from being a relative of or privy to Spouses Fernandez, she is also acting as their agent when she occupied the property after the RTC ordered execution pending appeal in order to frustrate the judgment.

WHEREFORE, the petition for review on *certiorari* is *DENIED.* The assailed Decision of the Court of Appeals dated June 27, 2003 affirming the decision of the Regional Trial Court and its Resolution dated September 3, 2003 in CA-G.R. SP No. 76336, denying the petition for clarification and intervention filed by Sofia Aniosa Salandanan, are *AFFIRMED.*

Cost against petitioner.

SO ORDERED.

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

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[32] CA *rollo*, p. 13.

FIRST DIVISION

[G.R. No. 161387. March 13, 2009]

SPOUSES ADRIANO AND NORMA SIOSON and SPOUSES ARNIEL AND EDITH SIOSON, *petitioners, vs.* **HEIRS OF FEDERICO AVANCEÑA, represented by his wife, RUFINA AVANCEÑA, and their children composed of FREDO AVANCEÑA, FRANCO AVANCEÑA, FULTON AVANCEÑA, AND RICO AVANCEÑA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; JUDGMENT MUST CONFORM TO AND SHOULD BE SUPPORTED BY BOTH THE PLEADINGS AND THE EVIDENCE. —** Courts of justice have no jurisdiction or power to decide a question not in issue. It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The courts, in rendering decisions, ought to limit themselves to the issues presented by the parties in their pleadings. A judgment that goes outside of the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extra-judicial and invalid. The rule rests on the fundamental tenets of fair play.

2. **ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; ISSUE TO BE RESOLVED. —** In an ejectment case, the only issue for resolution is the question of who is entitled to the physical or material possession of the property in dispute.

3. **ID.; APPEALS; ONLY QUESTIONS OF LAW ARE APPEALABLE TO THE SUPREME COURT; EXCEPTION. —** In general, only questions of law are appealable to this Court under Rule 45. However, where the factual findings of the trial court are in conflict with those of the appellate court and when the appellate court manifestly overlooked certain relevant facts which, if properly considered, would justify a different

conclusion, this Court has the authority to review and, if necessary, reverse the factual findings of the lower courts.

APPEARANCES OF COUNSEL

Teruel Law Office for petitioners.
Defensor Teodosio Daquilanea Ventilacion Law Offices for respondents.

D E C I S I O N

CARPIO,[*] *J., Acting Chairperson*:

The Case

This is a petition for review[1] of the 26 June 2003 Decision[2] and 4 December 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 67304. The Court of Appeals affirmed the 6 July 2001 Decision[4] and 11 September 2001 Order[5] of the Regional Trial Court of Iloilo City, Branch 33 (RTC). The RTC reversed the 14 March 1997 Decision[6] of the Municipal Trial Court in Cities of Iloilo City, Branch 2 (MTCC).

The Facts

On 4 June 1996, the heirs of Federico Avanceña (respondents) filed a complaint for ejectment against spouses Adriano and Norma Sioson and spouses Arniel[7] and Edith Sioson (petitioners).

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[*] Per Special Order No. 583.

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

[2] *Rollo*, pp. 7-13. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Edgardo P. Cruz and Perlita J. Tria Tirona, concurring.

[3] *Id.* at 14.

[4] *Id.* at 145-153. Penned by Judge Virgilio M. Patag.

[5] *Id.* at 166.

[6] *Id.* at 121-143. Penned by Judge Nelida S. Medina.

[7] Sometimes appears in the records as "Arnel."

Respondents alleged that petitioners constructed their cottages on a portion of their lot, Lot No. 934-B-4, covered by Transfer Certificate of Title No. T-111572 (TCT No. T-111572).[8] Respondents maintained that there was no lease agreement between the parties and that respondents merely tolerated petitioners' occupation of their lot. Respondents added that petitioners did not heed their 3 May 1996 demand letter asking petitioners to vacate the property, prompting respondents to file the complaint. Respondents also asked for the payment of rent, attorney's fees, costs of litigation, and moral and exemplary damages.

In their answer with counterclaim, petitioners denied that their cottages stood on Lot No. 934-B-4. Spouses Adriano and Norma Sioson alleged that their cottage stood entirely on Lot No. 934-B-7, a road-widening lot, which was the boundary of Lot No. 934-B-4 on the south. Spouses Arniel and Edith Sioson claimed that their cottage did not stand on either Lot Nos. 934-B-4 or 934-B-7 but stood across Molo-Arevalo Boulevard. Petitioners added that Lot No. 934-B-7 did not belong to respondents. Petitioners also asked for attorney's fees, litigation expenses, and moral and exemplary damages.

In their answer to counterclaim, respondents insisted that petitioners' cottages stood on Lot No. 934-B-4. Respondents admitted that Lot No. 934-B-7 was an area reserved for the proposed road widening of Molo-Arevalo Boulevard. However, respondents maintained that the project had not yet been implemented and no expropriation proceedings had been initiated by the City of Iloilo for the project.

Upon orders[9] of the MTCC, an ocular inspection and a relocation survey were conducted on 16 and 24 August 1996, respectively.

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[8] RTC records, p. 40. TCT No. T-111572 describes the parcel of land accordingly: A parcel of land (Lot 934-B-4 of the subdivision plan (LRC) Psd-46063, being a portion of Lot 934, described on plan Psd-22267, LRC (GLRO) Cad. Rec. No. 9741), situated in the district of Arevalo, City of Iloilo, Island of Panay. Bounded on the . . . S. points 2 to 3 by Lot 934-B-7 (Road Widening) and beyond by Molo-Arevalo Boulevard (30.00 m. wide); . . .

[9] *Id.* at 75-76.

In the preliminary conference order,[10] petitioners and respondents agreed that the issues should be limited to determining: (1) whether petitioners had cottages standing on Lot No. 934-B-4 and (2) who among the parties were entitled to damages.

On 14 March 1997, the MTCC rendered its decision in favor of petitioners. The dispositive portion of the MTCC decision reads:

> WHEREFORE, premises considered, the complaint is hereby ordered DISMISSED with costs.
>
> Counterclaim is likewise dismissed for lack of merit.
>
> SO ORDERED.[11]

Aggrieved, respondents appealed to the RTC.

On 6 July 2001, the RTC reversed the MTCC's decision. The dispositive portion of the 6 July 2001 Decision provides:

> WHEREFORE, based on the foregoing considerations, We hereby Order to:
>
> 1. Reverse the Decision dated 14 March 1997;
>
> 2. Direct defendants/appellees Spouses Adriano and Norma Siosonand Spouses Arniel and Edith Sioson to vacate the 239 squaremeters sublot 934-B-7 considering that the same belonged to the plaintiffs/appellants — *pro-indiviso* — with their other co-heirs shown in Exhibit "G" and the 129[12] square meters of Lot 934-B-4 because this portion belonged to plaintiffs/appellants;
>
> 3. Direct defendants/appellees Spouses Adriano and Norma Sioson to pay, jointly and severally, the monthly rentals of the properties that they occupied and used in the pursuit of their business in the name and style of Adring's Lechon and Manokan from the filing of the Complaint on 4 June 1996 until they completely vacate said premises at the rate of ₱1,500.00 per month;

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[10] *Id.* at 79.

[11] *Rollo*, p. 143.

[12] Should be 139 square meters in accordance with Exhibit "E-1", RTC records, p. 161.

4. Direct the defendants/appellees Spouses Adriano and Norma Sioson to pay, jointly and severally, attorney's fees in the amount of ₱5,000.00; and

5. Direct the defendants/appellees Spouses Adriano and Norma Sioson to pay, jointly and severally, the cost of litigation in the amount of ₱3,000.00.

SO ORDERED.[13]

Petitioners appealed to the Court of Appeals.

On 26 June 2003, the Court of Appeals affirmed the RTC's decision. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant petition for review is hereby DISMISSED.

SO ORDERED.[14]

Petitioners filed a motion for reconsideration.

On 4 December 2003, the Court of Appeals denied petitioners' motion for reconsideration.

The Ruling of the MTCC

The MTCC declared that spouses Adriano and Norma Sioson's cottage occupied Lot No. 934-B-7 and only its walls stood on the boundary of Lot No. 934-B-4. The MTCC also declared that spouses Arniel and Edith Sioson's cottage stood on neither Lot No. 934-B-4 nor Lot No. 934-B-7.

The Ruling of the RTC

The RTC declared that petitioners' cottages were built on 139 square meters of Lot No. 934-B-4 and on a portion of the 239 square meters of Lot No. 934-B-7.

The RTC also concluded that the cession[15] of Lot No. 934-B-7 in favor of the City of Iloilo appeared to have been abandoned

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[13] *Id.* at 152-153.

[14] *Id.* at 13.

[15] RTC records, pp. 192-193. Transfer Certificate of Title No. T-6113 of Lot No. 934, the mother lot of Lot Nos. 934-B-4 and 934-B-7, contained an

because the City of Iloilo neither initiated any expropriation proceeding nor issued any title to Lot No. 934-B-7. Consequently, the RTC declared respondents and the other co-heirs as the owners pro-indiviso of Lot No. 934-B-7. The RTC also ruled that respondents had a better right of possession over Lot No. 934-B-7 than petitioners.

The Ruling of the Court of Appeals

The Court of Appeals agreed with the RTC's conclusions. The Court of Appeals added that even assuming that the City of Iloilo did not abandon the road widening project, this did not give petitioners the absolute right to possess and occupy Lot No. 934-B-7 in derogation of the rights of respondents.

The Issues

Petitioners raise the following issues:

1. Whether the RTC could, in the exercise of its appellate jurisdiction, reverse the MTCC's decision by deciding an issue not raised in the pleadings or beyond the theory of the case before the lower court; and

2. Whether the RTC could, on appeal, reverse the MTCC's factual findings which were clearly supported by evidence.

The Ruling of the Court

The petition is meritorious.

Petitioners argue that the RTC and the Court of Appeals should not have made any declaration as to the possession and ownership of Lot No. 934-B-7 because this was not the subject matter of the complaint for ejectment before the MTCC.

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annotation that it was subject "to a cession infavor of the City of Iloilo covering a portion of 239 square meters of the above described parcel of land as per document executed before Municipal Judge of the City of Iloilo Deogracias Lutero doc. No. 49 page 10 Book I, S-1948, dated June 7, 1948 and registered on June 17, 1948 under entry No. 2416."

We agree with petitioners. Courts of justice have no jurisdiction or power to decide a question not in issue.[16] It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried.[17] The courts, in rendering decisions, ought to limit themselves to the issues presented by the parties in their pleadings.[18] A judgment that goes outside of the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extra-judicial and invalid.[19] The rule rests on the fundamental tenets of fair play.[20]

In an ejectment case, the only issue for resolution is the question of who is entitled to the physical or material possession of the property in dispute.[21]

In this case, respondents' complaint for ejectment before the MTCC clearly stated that the subject matter of the complaint was Lot No. 934-B-4.[22] In their answer to counterclaim, respondents reaffirmed that the subject matter of the complaint was Lot No. 934-B-4.[23] The MTCC's preliminary conference order limited the issue to whether petitioners had cottages on Lot No. 934-B-4.[24] Petitioners and respondents filed their position papers on the basis of the foregoing issue. Clearly, the issue in

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[16] *Bernas v. Court of Appeals*, G.R. No. 85041, 5 August 1993, 225 SCRA 119.

[17] *Liga v. Allegro Resources Corp.*, G.R. No. 175554, 23 December 2008; *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, 428 Phil. 208 (2002).

[18] *Liga v. Allegro Resources Corp.*, G.R. No. 175554, 23 December 2008, citing *Falcon v. Manzano*, 15 Phil. 441 (1910).

[19] *Salvante v. Cruz*, 88 Phil. 236 (1951).

[20] *Mon v. Court of Appeals*, G.R. No. 118292, 14 April 2004, 427 SCRA 165.

[21] RULES OF COURT, Section 1, Rule 70.

[22] *Rollo*, p. 55.

[23] *Id.* at 76.

[24] RTC records, p. 79.

the complaint for ejectment was limited to the possession of Lot No. 934-B-4. Therefore, the RTC and the Court of Appeals, in ruling on the possession and ownership of Lot No. 934-B-7, went beyond the issue of the case.

The other issue raised by petitioners is factual in nature — whether petitioners' cottages stood only on Lot No. 934-B-7, as ruled by the MTCC, or partly on Lot Nos. 934-B-4 and 934-B-7, as ruled by the RTC and affirmed by the Court of Appeals.

In general, only questions of law are appealable to this Court under Rule 45. However, where the factual findings of the trial court are in conflict with those of the appellate court and when the appellate court manifestly overlooked certain relevant facts which, if properly considered, would justify a different conclusion, this Court has the authority to review and, if necessary, reverse the factual findings of the lower courts.[25] This is precisely the situation in this case.

The Court notes that, at the request of respondents, the MTCC conducted an ocular inspection and a relocation survey to determine whether petitioners' cottages stood on Lot No. 934-B-4. Based on the position papers of the parties and the affidavits of witnesses, the MTCC declared that spouses Adriano and Norma Sioson's cottage stood entirely on Lot No. 934-B-7 and only its walls stood on the boundary of Lot No. 934-B-4.

On the other hand, the RTC, relying on the records of the case before the MTCC and the memoranda of the parties, reversed the MTCC's findings. The RTC declared that petitioners' cottages occupied 139 square meters of Lot No. 934-B-4 and a portion of the 239 square meters of Lot No. 934-B-7. The RTC accorded more weight to the report and sketch plan of respondents' Geodetic Engineer Jose S. Mañosa, Jr. (Engineer Mañosa, Jr.), as opposed to the report and sketch plan of petitioners' Geodetic Engineer Maria Gina J. Gonzales (Engineer Gonzales).

Examining the records of the case, we find that the RTC's factual findings, as affirmed by the Court of Appeals, are not

[25] *Lagon v. Hooven Comalco Industries, Inc.*, 402 Phil. 404 (2001).

supported by the evidence on record. According to the RTC, Engineer Mañosa, Jr.'s sketch plan[26] showed that petitioners' cottages encroached on 139 square meters of Lot No. 934-B-4. The RTC added that Engineer Mañosa, Jr.'s report[27] stated that petitioners' cottages stood on both Lot Nos. 934-B-4 and 934-B-7.

However, upon close examination of Engineer Mañosa, Jr.'s report and sketch plan, we note that they are inconsistent and contradictory. Engineer Mañosa, Jr.'s sketch plan, which did not even indicate where Lot No. 934-B-7 was located, showed that petitioners' entire 139 square meter cottages stood inside Lot No. 934-B-4, clearly contradicting Engineer Mañosa, Jr.'s report that petitioners' cottages stood on both Lot Nos. 934-B-4 and 934-B-7. Engineer Mañosa, Jr.'s sketch plan was inconsistent with respondents' TCT No. T-111572 which clearly stated that Lot No. 934-B-4's boundaries on the south were "points 2 to 3 by Lot 934-B-7 (Road Widening) and beyond by Molo-Arevalo Boulevard (30.00 m. wide)." Engineer Mañosa, Jr.'s sketch plan was also inconsistent with respondents' subdivision plan[28] which showed that Lot No. 934-B-4 was bounded on the south by Lot No. 934-B-7.

On the other hand, Engineer Gonzales' report[29] and sketch plan[30] were complimentary and consistent even with respondents' other evidence. Engineer Gonzales' sketch plan showed that Lot No. 934-B-4 was bounded on the south by Lot No. 934-B-7, as described in TCT No. T-111572 and as shown in respondents' subdivision plan.

We reverse the RTC's factual finding. We affirm the MTCC's factual finding that petitioners' cottages stand on Lot No. 934-B-7 and do not encroach on Lot No. 934-B-4.

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[26] RTC records, p. 161.

[27] *Id.* at 173.

[28] *Id.* at 160.

[29] *Id.* at 81.

[30] *Id.* at 82.

WHEREFORE, we *SET ASIDE* the 26 June 2003 Decision and 4 December 2003 Resolution of the Court of Appeals and *REINSTATE* the 14 March 1997 Decision of the Municipal Trial Court in Cities of Iloilo City, Branch 2.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 167141. March 13, 2009]

SAMAHAN NG MGA MANGGAGAWA SA SAMMA-LAKAS SA INDUSTRIYA NG KAPATIRANG HALIGI NG ALYANSA (SAMMA-LIKHA), *petitioner, vs.* **SAMMA CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; CERTIFICATE OF NON-FORUM SHOPPING; DEFINED AND CONSTRUED. —** The requirement for a certificate of non-forum shopping refers to complaints, counter-claims, cross-claims, petitions or applications where contending parties litigate their respective positions regarding the claim for relief of the complainant, claimant, petitioner or applicant. A certification proceeding, even though initiated by a "petition," is not a litigation but an investigation of a non-adversarial and fact-finding character. Such proceedings are **not predicated upon an allegation of misconduct requiring relief, but,**

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[*] Designated member per Special Order No. 584.

[**] Designated member per Special Order No. 5570

rather, are merely of an inquisitorial nature. The Board's functions are not judicial in nature, but are merely of an investigative character. The object of the proceedings is not the decision of any alleged commission of wrongs nor asserted deprivation of rights but is merely the determination of proper bargaining units and the ascertainment of the will and choice of the employees in respect of the selection of a bargaining representative. The determination of the proceedings does not entail the entry of remedial orders to redress rights, but culminates solely in an official designation of bargaining units and an affirmation of the employees' expressed choice of bargaining agent.

2. **ID.; ID.; ID.; ID.; NOT REQUIRED IN A PETITION FOR CERTIFICATION ELECTION. —** In *Pena v. Aparicio*, we ruled against the necessity of attaching a certification against forum shopping to a disbarment complaint. We looked into the rationale of the requirement and concluded that the evil sought to be avoided is not present in disbarment proceedings. x x x The same situation holds true for a petition for certification election. Under the omnibus rules implementing the Labor Code as amended by D.O. No. 9, it is supposed to be filed in the Regional Office which has jurisdiction over the principal office of the employer or where the bargaining unit is principally situated. The rules further provide that where two or more petitions involving the same bargaining unit are filed in one Regional Office, the same shall be automatically consolidated. Hence, the filing of multiple suits and the possibility of conflicting decisions will rarely happen in this proceeding and, if it does, will be easy to discover. Notably, under the Labor Code and the rules pertaining to the form of the petition for certification election, there is no requirement for a certificate of non-forum shopping either in D.O. No. 9, series of 1997 or in D.O. No. 40-03, series of 2003 which replaced the former. Considering the nature of a petition for certification election and the rules governing it, we therefore hold that the requirement for a certificate of non-forum shopping is inapplicable to such a petition.

3. **ID.; ID.; MOTION FOR RECONSIDERATION PROPERLY TREATED AS AN APPEAL. —** The motion for reconsideration was properly treated as an appeal because it substantially complied with the formal requisites of the latter. The lack of

proof of service was not fatal as respondent had actually received a copy of the motion. Consequently, it had the opportunity to oppose the same. Under these circumstances, we find that the demands of substantial justice and due process were satisfied.

4. **ID.; ID.; RULES OF PROCEDURE ARE INTERPRETED LIBERALLY TO SECURE A JUST, SPEEDY AND INEXPENSIVE DISPOSITION OF EVERY ACTION; APPLICATION IN CASE AT BAR. —** We stress that rules of procedure are interpreted liberally to secure a just, speedy and inexpensive disposition of every action. They should not be applied if their application serves no useful purpose or hinders the just and speedy disposition of cases. Specifically, technical rules and objections should not hamper the holding of a certification election wherein employees are to select their bargaining representative. A contrary rule will defeat the declared policy of the State to promote the free and responsible exercise of the right to self-organization through the establishment of a **simplified mechanism** for the speedy registration of labor organizations and workers' associations, **determination of representation status**, and resolution of intra and inter-union disputes.x x x

5. **LABOR AND SOCIAL LEGISLATION; LABOR ORGANIZATIONS; UNION REGISTRATION MAY BE QUESTIONED ONLY IN AN INDEPENDENT PETITION FOR CANCELLATION OF CERTIFICATE OF REGISTRATION. —** LIKHA was granted legal personality as a federation under certificate of registration no. 92-1015-032-11638-FED-LC. Subsequently, petitioner as its local chapter was issued its charter certificate no. 2-01. With certificates of registration issued in their favor, they are clothed with legal personality as legitimate labor organizations: Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation of certificate of registration. Unless petitioner's union registration is cancelled in independent proceedings, it shall continue to have all the rights of a legitimate labor organization, including the right to petition for certification election. Furthermore, the grounds for dismissal of a petition for certification election based on the lack of legal personality of a labor organization are the following: (a) petitioner is not listed by the Regional Office

or the Bureau of Labor Relations in its registry of legitimate labor organizations or (b) its legal personality has been revoked or cancelled with finality in accordance with the rules.

6. **ID.; ID.; CERTIFICATION ELECTIONS; THE CHOICE OF A COLLECTIVE BARGAINING AGENT IS THE SOLE CONCERN OF THE EMPLOYEES; SUSTAINED. —** This should not be the case. We have already declared that, in certification elections, the employer is a bystander; it has no right or material interest to assail the certification election. [This] Court notes that it is petitioner, the employer, which has offered the most tenacious resistance to the holding of a certification election among its monthly-paid rank-and-file employees. This must not be so, for the choice of a collective bargaining agent is the sole concern of the employees. The only exception to this rule is where the employer has to file the petition for certification election pursuant to Article 258 of the Labor Code because it was requested to bargain collectively, which exception finds no application in the case before us. Its role in a certification election has aptly been described in *Trade Unions of the Philippines and Allied Services (TUPAS) v. Trajano*, as that of a mere bystander. It has no legal standing in a certification election as it cannot oppose the petition or appeal the Med-Arbiter's orders related thereto . . .

APPEARANCES OF COUNSEL

Jesus B. Villamor for petitioner.
Manuel V. Regondola for respondent.

DECISION

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the August 31, 2004 decision[2] and February 15, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 77156.

Petitioner Samahan ng mga Manggagawa sa Samma– Lakas sa Industriya ng Kapatirang Haligi ng Alyansa (SAMMA-LIKHA) filed a petition for certification election on July 24, 2001 in the Department of Labor and Employment (DOLE), Regional Office IV.[4] It claimed that: (1) it was a local chapter of the LIKHA Federation, a legitimate labor organization registered with the DOLE; (2) it sought to represent all the rank-and-file employees of respondent Samma Corporation; (3) there was no other legitimate labor organization representing these rank-and-file employees; (4) respondent was not a party to any collective bargaining agreement and (5) no certification or consent election had been conducted within the employer unit for the last 12 months prior to the filing of the petition.

Respondent moved for the dismissal of the petition arguing that (1) LIKHA Federation failed to establish its legal personality; (2) petitioner failed to prove its existence as a local chapter; (3) it failed to attach the certificate of non-forum shopping and (4) it had a prohibited mixture of supervisory and rank-and-file employees.[5]

In an order dated November 12, 2002, med-arbiter Arturo V. Cosuco ordered the dismissal of the petition on the following grounds: (1) lack of legal personality for failure to attach the

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

[2] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Eugenio S. Labitoria (retired) and Fernanda Lampas Peralta of the Special Fourth Division of the Court of Appeals. *Rollo*, pp. 25-37.

[3] *Id.*, pp. 45-47.

[4] Docketed as case no. RO400-0107-RU-006; *id.*, p. 26.

[5] *Id.*, p. 84.

certificate of registration purporting to show its legal personality; (2) prohibited mixture of rank-and-file and supervisory employees and (3) failure to submit a certificate of non-forum shopping.[6]

Petitioner moved for reconsideration on November 29, 2001. The Regional Director of DOLE Regional Office IV forwarded the case to the Secretary of Labor. Meanwhile, on December 14, 2002, respondent filed a petition for cancellation of petitioner's union registration in the DOLE Regional Office IV.[7]

On January 17, 2003, Acting Secretary Manuel G. Imson, treating the motion for reconsideration as an appeal, rendered a decision reversing the order of the med-arbiter. He ruled that the legal personality of a union cannot be collaterally attacked but may only be questioned in an independent petition for cancellation of registration. Thus, he directed the holding of a certification election among the rank-and-file employees of respondent, subject to the usual pre-election conference and inclusion-exclusion proceedings.[8]

On January 23, 2003 or six days after the issuance of said decision, respondent filed its comment on the motion for reconsideration of petitioner, asserting that the order of the med-arbiter could only be reviewed by way of appeal and not by a motion for reconsideration pursuant to Department Order (D.O.) No. 9, series of 1997.[9]

On February 6, 2003, respondent filed its motion for reconsideration of the January 17, 2003 decision. In a resolution dated April 3, 2003, Secretary Patricia A. Sto. Tomas denied the motion.[10]

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[6] *Id.*

[7] *Id.* Captioned "*In Re: Petition for Cancellation of Charter/Union Registration of Samahan ng mga Manggagawa sa Samma (Samma-Likha), Samma Corporation, Petitioner, versus Samahan ng mga Manggagawa sa Samma (Samma-Likha), Respondent,*" docketed as RO400-0212-AU-002; *id.*, p. 62.

[8] *Id.*, pp. 80-82.

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

[10] *Id.*, pp. 77-79.

Meanwhile, on April 14, 2003, Crispin D. Dannug, Jr., Officer-in-Charge/Regional Director of DOLE Regional Office IV, issued a resolution revoking the charter certificate of petitioner as local chapter of LIKHA Federation on the ground of prohibited mixture of supervisory and rank-and-file employees and non-compliance with the attestation clause under paragraph 2 of Article 235 of the Labor Code.[11] On May 6, 2003, petitioner moved for the reconsideration of this resolution.[12]

Respondent filed a petition for *certiorari*[13] in the CA assailing the January 17, 2003 decision and April 3, 2003 resolution of the Secretary of Labor. In a decision dated August 31, 2004, the CA reversed the same.[14] It denied reconsideration in a resolution dated February 15, 2005. It held that Administrative Circular No. 04-94 which required the filing of a certificate of non-forum shopping applied to petitions for certification election. It also ruled that the Secretary of Labor erred in granting the appeal despite the lack of proof of service on respondent. Lastly, it found that petitioner had no legal standing to file the petition for certification election because its members were a mixture of supervisory and rank-and-file employees.[15]

Hence, this petition.

The issues for our resolution are the following: (1) whether a certificate for non-forum shopping is required in a petition for certification election; (2) whether petitioner's motion for reconsideration which was treated as an appeal by the Secretary of Labor should not have been given due course for failure to attach proof of service on respondent and (3) whether petitioner had the legal personality to file the petition for certification election.

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[11] *Id.* pp. 62-76.

[12] *Id.*, p. 28.

[13] Under Rule 65; *id.*, p. 25.

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

[15] *Id.*, pp. 6-12.

REQUIREMENT OF CERTIFICATE OF NON-FORUM SHOPPING IS NOT REQUIRED IN A PETITION FOR CERTIFICATION ELECTION

In ruling against petitioner, the CA declared that under Administrative Circular No. 04-94,[16] a certificate of non-forum shopping was required in a petition for certification election. The circular states:

> The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint, counterclaim, cross-claim, third (fourth, *etc*.) party complaint, or complaint-in-intervention, petition, or application **wherein a party asserts his claim for relief**. (Emphasis supplied)

According to the CA, a petition for certification election asserts a claim, *i.e.*, the conduct of a certification election. As a result, it is covered by the circular.[17]

We disagree.

The requirement for a certificate of non-forum shopping refers to complaints, counter-claims, cross-claims, petitions or applications where contending parties litigate their respective positions regarding the claim for relief of the complainant, claimant, petitioner or applicant. A certification proceeding, even though initiated by a "petition," is not a litigation but an investigation of a non-adversarial and fact-finding character.[18]

> Such proceedings are **not predicated upon an allegation of misconduct requiring relief, but, rather, are merely of an inquisitorial nature**. The Board's functions are not judicial in nature, but are merely of an investigative character. The object of the

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[16] Made effective on April 1, 1994; *Pena v. Aparicio*, A.C. No. 7298, 25 June 2007, 525 SCRA 444, 451.

[17] *Rollo*, p. 32.

[18] *Association of the Court of Appeals Employees v. Ferrer-Calleja*, G.R. No. 94716, 15 November 1991, 203 SCRA 597, 605, citing *Associated Labor Unions (ALU) v. Ferrer-Calleja*, G.R. No. 85085, 6 November 1989, 179 SCRA 127, 130-131.

proceedings is not the decision of any alleged commission of wrongs nor asserted deprivation of rights but is merely the determination of proper bargaining units and the ascertainment of the will and choice of the employees in respect of the selection of a bargaining representative. The determination of the proceedings does not entail the entry of remedial orders to redress rights, but culminates solely in an official designation of bargaining units and an affirmation of the employees' expressed choice of bargaining agent.[19] (Emphasis supplied)

In *Pena v. Aparicio*,[20] we ruled against the necessity of attaching a certification against forum shopping to a disbarment complaint. We looked into the rationale of the requirement and concluded that the evil sought to be avoided is not present in disbarment proceedings.

. . . [The] rationale for the requirement of a certification against forum shopping is to apprise the Court of the pendency of another action or claim involving the same issues in another court, tribunal or quasi-judicial agency, and thereby precisely avoid the forum shopping situation. Filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. Furthermore, the rule proscribing forum shopping seeks to promote candor and transparency among lawyers and their clients in the pursuit of their cases before the courts to promote the orderly administration of justice, prevent undue inconvenience upon the other party, and save the precious time of the courts. It also aims to prevent the embarrassing situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.

It is in this light that we take a further look at the necessity of attaching a certification against forum shopping to a disbarment complaint. **It would seem that the scenario sought to be avoided, *i.e.*, the filing of multiple suits and the possibility of conflicting**

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[19] *Bulakeña Restaurant & Caterer v. CIR*, 150-A Phil. 445, 453 (1972), citing *LVN Pictures, Inc. v. Philippine Musicians Guild (FFW) and CIR*, L-12582 and *Sampaguita Pictures, Inc. v. Philippine Musicians Guild (FFW) and CIR*, L-12598, decided jointly on 28 January 1961, 1 SCRA 132, 135-136.

[20] *Supra* note 16.

decisions, rarely happens in disbarment complaints considering that said proceedings are either "taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person." Thus, if the complainant in a disbarment case fails to attach a certification against forum shopping, the pendency of another disciplinary action against the same respondent may still be ascertained with ease.[21] (Emphasis supplied)

The same situation holds true for a petition for certification election. Under the omnibus rules implementing the Labor Code as amended by D.O. No. 9,[22] it is supposed to be filed in the Regional Office which has jurisdiction over the principal office of the employer or where the bargaining unit is principally situated.[23] The rules further provide that where two or more petitions involving the same bargaining unit are filed in one Regional Office, the same shall be automatically consolidated.[24] Hence, the filing of multiple suits and the possibility of conflicting decisions will rarely happen in this proceeding and, if it does, will be easy to discover.

Notably, under the Labor Code and the rules pertaining to the form of the petition for certification election, there is no requirement for a certificate of non-forum shopping either in D.O. No. 9, series of 1997 or in D.O. No. 40-03, series of 2003 which replaced the former.[25]

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[21] *Id.*, pp. 454- 455, citations omitted.

[22] Before they were amended by D.O. No. 40-03, series of 2003.

[23] Section 2, Rule XI of the implementing rules as amended by D.O. No. 9, series of 1997.

[24] *Id.*

[25] *Id.*, Section 4; Section 4, Rule VIII in D.O. 40-03. Section 4 of Rule XI of the implementing rules as amended by D.O. No. 9, series of 1997 states:

Section 4. *Form and contents of petition*. — The petition shall be in writing and under oath and shall contain, among others, the following:

(a) The name of petitioner, its address, and affiliation if appropriate, the date of its registration and number of its certificate of registration if petitioner is a federation, national union or independent union, or the date it was reported to the Department if it is a local/chapter;

(b) The name, address and nature of the employer's business;

Considering the nature of a petition for certification election and the rules governing it, we therefore hold that the requirement for a certificate of non-forum shopping is inapplicable to such a petition.

(c) The description of the bargaining unit;

(d) The approximate number of employees in the bargaining unit;

(e) The names and addresses of other legitimate labor organizations in the bargaining unit;

(f) A statement indicating any of the following circumstances:

(i) That the bargaining unit is unorganized or that there is no registered collective bargaining agreement covering the employees in the bargaining unit;

(ii) If there exists a duly registered collective bargaining agreement, that the petition is filed within the sixty-day freedom period of such agreement; or

(iii) If another union had been previously certified in a valid certification, consent or run-off election or voluntarily recognized in accordance with Rule X of these Rules, that the petition is filed outside the one-year period from such certification or run-off election and no appeal is pending thereon, or from the time the fact of recognition was entered into the records of such union.

(g) In an organized establishment, the signatures of at least twenty-five (25%) percent of all employees in the appropriate bargaining unit which shall be attached to the petition at the time of its filing; and

(h) Other relevant facts.

On the other hand, Section 4 of Rule VIII of the implementing rules as amended by D.O. No. 40-03, series of 2003 provides:

Section. 4. *Form and contents of petition*. — The petition shall be in writing, verified under oath by the president of petitioning labor organization. Where the petition is filed by a federation or national union, it shall be verified under oath by the president or its duly authorized representative. The petition shall contain the following:

(a) the name of petitioner, its address, and affiliation if appropriate, the date and number of its certificate of registration. If the petition is filed by a federation or national union, the date and number of the certificate of registration or certificate of creation of chartered local;

(b) the name, address and nature of employer's business;

(c) the description of the bargaining unit;

(d) the approximate number of employees in the bargaining unit;

(e) the names and addresses of other legitimate labor unions in the bargaining unit;

(f) A statement indicating any of the following circumstances:

TREATMENT OF MOTION FOR RECONSIDERATION AS AN APPEAL

The CA ruled that petitioner's motion for reconsideration, which was treated as an appeal by the Secretary of Labor, should not have been given due course for lack of proof of service in accordance with the implementing rules as amended by D.O. No. 9:

> Section 12. Appeal; finality of decision. — The decision of the Med-Arbiter may be appealed to the Secretary for any violation of these Rules. Interloculory orders issued by the Med-Arbiter prior to the grant or denial of the petition, including order granting motions for intervention issued after an order calling for a certification election, shall not be appealable. However, any issue arising therefrom may be raised in the appeal on the decision granting or denying the petition.
>
> The appeal shall be under oath and shall consist of a memorandum of appeal specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence. **The appeal shall be deemed not filed unless accompanied by proof of service thereof to appellee**.[26] (Emphasis supplied)

In accepting the appeal, the Secretary of Labor stated:

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1) that the bargaining unit is unorganized or that there is no registered collective bargaining agreement covering the employees in the bargaining unit;

2) if there exists a duly registered collective bargaining agreement, that the petition is filed within the sixty-day freedom period of such agreement; or

3) if another union had been previously recognized voluntarily or certified in a valid certification, consent or run-off election, that the petition is filed outside the one-year period from entry of voluntary recognition or conduct of certification or run-off election and no appeal is pending thereon.

g) in an organized establishment, the signature of at least twenty-five percent (25%) of all employees in the appropriate bargaining unit shall be attached to the petition at the time of its filing; and

h) other relevant facts. x x x

[26] Section 12, Implementing Rules of Book V, Rule XI, as amended by D.O. No. 9.

[Petitioner's] motion for reconsideration of the Med-Arbiter's Order dated November 12, 2002 was **verified under oath** by [petitioner's] president Gil Dispabiladeras before Notary Public Wilfredo A. Ruiz on 29 November 2002, and recorded in the Notarial Register under Document No. 186, Page No. 38, Book V, series of 2002. On page 7 of the said motion also appears the notation "copy of respondent to be delivered personally with the name and signature of one Rosita Simon, 11/29/02." The motion **contained the grounds and arguments** relied upon by [petitioner] for the reversal of the assailed Order. Hence, the motion for reconsideration has **complied with the formal requisites of an appeal**.

The signature of Rosita Simon appearing on the last page of the motion can be considered as **compliance with the required proof of service upon respondent**. Rosita Simon's employment status was a matter that should have been raised earlier by [respondent]. But [respondent] did not question the same and slept on its right to oppose or comment on [petitioner's] motion for reconsideration. **It cannot claim that it was unaware of the filing of the appeal** by [petitioner], because a copy of the indorsement of the entire records of the petition to the Office of the Secretary "in view of the memorandum of appeal filed by Mr. Jesus B. Villamor" was served upon the employer and legal counsels Atty. Ismael De Guzman and Atty. Anatolio Sabillo at the Samma Corporation Office, Main Avenue, PEZA, Rosario, Cavite on December 5, 2002.[27] (Emphasis supplied)

The motion for reconsideration was properly treated as an appeal because it substantially complied with the formal requisites of the latter. The lack of proof of service was not fatal as respondent had actually received a copy of the motion. Consequently, it had the opportunity to oppose the same. Under these circumstances, we find that the demands of substantial justice and due process were satisfied.

We stress that rules of procedure are interpreted liberally to secure a just, speedy and inexpensive disposition of every action. They should not be applied if their application serves no useful purpose or hinders the just and speedy disposition of cases. Specifically, technical rules and objections should not hamper

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[27] *Rollo*, pp. 78-79.

the holding of a certification election wherein employees are to select their bargaining representative. A contrary rule will defeat the declared policy of the State

to promote the free and responsible exercise of the right to self-organization through the establishment of a **simplified mechanism** for the speedy registration of labor organizations and workers' associations, **determination of representation status**, and resolution of intra and inter-union disputes.[28] x x x (Emphasis supplied)

LEGAL PERSONALITY OF PETITIONER

Petitioner argues that the erroneous inclusion of one supervisory employee in the union of rank-and-file employees was not a ground to impugn its legitimacy as a legitimate labor organization which had the right to file a petition for certification election.

We agree.

LIKHA was granted legal personality as a federation under certificate of registration no. 92-1015-032-11638-FED-LC. Subsequently, petitioner as its local chapter was issued its charter certificate no. 2-01.[29] With certificates of registration issued in their favor, they are clothed with legal personality as legitimate labor organizations:

Section 5. *Effect of registration*. — The labor organization or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules.[30]

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[28] Section 1, Implementing Rules of Book V, Rule II, as amended by D.O. No. 9.

[29] This was reported to the Bureau of Labor Relations (BLR) on June 26, 2001 in accordance with Rule VI, as amended by D.O. No. 9. Thus, the BLR issued a certificate of creation of local/chapter no. LIKHA-11; *rollo*, pp. 26, 67.

[30] Section 5, Implementing Rules of Book V, Rule V, as amended by D.O. No. 9.

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Section 3. *Acquisition of legal personality by local chapter.* — A local/chapter constituted in accordance with Section 1 of this Rule shall acquire legal personality from the date of filing of the complete documents enumerated therein. Upon compliance with all the documentary requirements, the Regional Office or Bureau of Labor Relations shall issue in favor of the local/chapter a certificate indicating that it is included in the roster of legitimate labor organizations.[31]

Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation of certificate of registration.[32] Unless petitioner's union registration is cancelled in independent proceedings, it shall continue to have all the rights of a legitimate labor organization, including the right to petition for certification election.

Furthermore, the grounds for dismissal of a petition for certification election based on the lack of legal personality of a labor organization are the following: (a) petitioner is not listed by the Regional Office or the Bureau of Labor Relations in its registry of legitimate labor organizations or (b) its legal personality has been revoked or cancelled with finality in accordance with the rules.[33]

As mentioned, respondent filed a petition for cancellation of the registration of petitioner on December 14, 2002. In a resolution dated April 14, 2003, petitioner's charter certificate was revoked by the DOLE. But on May 6, 2003, petitioner moved for the reconsideration of this resolution. Neither of the parties alleged that this resolution revoking petitioner's charter certificate had attained finality. However, in this petition, petitioner prayed

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[31] *Id.*, Section 3, Rule VI.

[32] *Tagaytay Highlands Int'l Golf Club Inc. v. Tagaytay Highlands Employees Union-PGTWO*, 443 Phil. 841, 852 (2003); *San Miguel Corporation (Mandaue Packaging Products Plants) v. MPPP-SMPP-SMAMRFU-FFW*, G.R. No. 152356, 16 August 2005, 467 SCRA 107, 132.

[33] Section 11, paragraph II, Implementing Rules of Book V, Rule XI, as amended by D.O. No. 9.

that its charter certificate be "reinstated in the roster of active legitimate labor [organizations]."[34] This cannot be granted here. To repeat, the proceedings on a petition for cancellation of registration are independent of those of a petition for certification election. This case originated from the latter. If it is shown that petitioner's legal personality had already been revoked or cancelled **with finality** in accordance with the rules, then it is no longer a legitimate labor organization with the right to petition for a certification election.

A FINAL NOTE

Respondent, as employer, had been the one opposing the holding of a certification election among its rank-and-file employees. This should not be the case. We have already declared that, in certification elections, the employer is a bystander; it has no right or material interest to assail the certification election.[35]

> [This] Court notes that it is petitioner, the employer, which has offered the most tenacious resistance to the holding of a certification election among its monthly-paid rank-and-file employees. This must not be so, for the choice of a collective bargaining agent is the sole concern of the employees. The only exception to this rule is where the employer has to file the petition for certification election pursuant to Article 258 of the Labor Code because it was requested to bargain collectively, which exception finds no application in the case before us. Its role in a certification election has aptly been described in *Trade Unions of the Philippines and Allied Services (TUPAS) v. Trajano*, as that of a mere bystander. It has no legal standing in a certification election as it cannot oppose the petition or appeal the Med-Arbiter's orders related thereto . . .[36]

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[34] *Rollo*, p. 12 of petitioner's memorandum.

[35] *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*, G.R. No. 150761, 19 May 2004, 428 SCRA 524, 528, citing *Toyota Motor Phils. Corporation Workers' Association (TMPCWA) v. Court of Appeals*, G.R. No. 148924, 24 September 2003, 412 SCRA 69.

[36] *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*, G.R. No. 116172, 10 October 1996, 263 SCRA 68, 81-82. This was reiterated in *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment*, G.R. No. 157146, 29 April 2005, 457 SCRA 730, 742.

WHEREFORE, the petition is hereby *GRANTED*. Let the records of the case be remanded to the office of origin, the Regional Office IV of the Department of Labor and Employment, for determination of the status of petitioner's legal personality. If petitioner is still a legitimate labor organization, then said office shall conduct a certification election subject to the usual pre-election conference.

SO ORDERED.

Ynares-Santiago,[*] *Carpio (Acting Chairperson),*[**] *Leonardo-de Castro,* and *Brion,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 168453. March 13, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HERNANDO T. CHICO and LORNA CHICO, in her capacity as Attorney-In-Fact,** *respondents.*

SYLLABUS

1. POLITICAL LAW; POWER OF EMINENT DOMAIN; JUST COMPENSATION; DEFINED AND CONSTRUED. — In *Land Bank of the Philippines v. Spouses Placido Orilla and Clara Dy Orilla*, we had the occasion to explain the matter of just compensation: Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition,

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[*] Per Special Order No. 584 dated March 3, 20009.

[**] Per Special Order No. 583 dated March 3, 2009.

[***] Per Special Order No. 570 dated February 12, 2009.

or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample.

2. **ID.; ID.; ID.; PARAMETERS FOR THE DETERMINATION THEREOF UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW. —** Section 17 of R.A. No. 6657 which provides for the parameters in the determination of just compensation, reads as follows: Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm-workers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

3. **ID.; ID.; ID.; RECKONING PERIOD FOR DETERMINATION THEREOF. —** As to the legal basis of just compensation, we hold that the applicable law is R.A. No. 6657. Our recent ruling in *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative, Inc., etc., et al.* is enlightening. Therein, the Court made a comparative analysis of cases that confronted the issue of whether properties covered by P.D. No. 27 and E.O. No. 228, for which the landowners had yet to be paid, would be compensated under P.D. No. 27 and E.O. No. 228 or under the pertinent provisions of R.A. No. 6657. We observed that in *Gabatin v. Land Bank of the Philippines* — a case which LBP invokes in this controversy — the Court declared that the reckoning period for the determination of just compensation should be the time when the land was taken, *i.e.,* in 1972, applying P.D. No. 27 and E.O. No. 228. However, the Court also noted that after *Gabatin*, the Court had decided

several cases in which it found it more equitable to determine just compensation based on the value of the property at the time of payment. These cases are *Land Bank of the Philippines v. Natividad*, *Meneses v. Secretary of Agrarian Reform* and *Lubrica v. Land Bank of the Philippines,* including the earlier cases of *Office of the President v. Court of Appeals* and *Paris v. Alfeche*.

4. **ID.; ID.; ID.; FINDINGS ON THE VALUATION OF THE SUBJECT PROPERTY, SUSTAINED. —** Inasmuch as the determination of just compensation in eminent domain cases is a judicial function, the SAC did not capriciously or arbitrarily act in setting the price at ₱200,000.00 per hectare — an award merely modified by the CA. We see no reason to disturb the factual findings on the valuation of the subject property. The amount fixed by the SAC and CA does not appear to be grossly exorbitant or otherwise unjustified. In this case, the SAC properly arrived at the amount of just compensation for the subject property, taking into account its nature as irrigated land, market value, assessed value at the time of the taking, and the volume and value of its produce, as it made the following findings: (a) [t]he prevailing market value of agricultural lands in Quezon, Nueva Ecija, and adjacent areas, where it is of public knowledge is sold at ₱80,000.00 to ₱300,000.00 per hectare; (b) [t]he presence [and] availability of an irrigation system to augment and increase agricultural production; (c) [t]he available comparable sales in the area, *i.e.* ₱80,000.00, ₱300,000.00 and ₱200,000.00; and (d) [t]he average harvests per hectare which [is] 100.05 cavans. Thus, it cannot be said that the SAC had no basis for its valuation of the subject property. It took into consideration the important factors enumerated in Section 17 of Republic Act No. 6657 which, in turn, are the very same criteria that make up the DAR formula.

5. **ID.; ID.; ID.; INTEREST IS ASSESSED ONLY IN CASE OF DELAY IN THE PAYMENT THEREOF. —** In *Land Bank of the Philippines v. Wycoco*, this Court held that the interest of 12% per *annum* on the just compensation is due the landowner in case of delay in payment, which will, in effect, make the obligation on the part of the government one of forbearance. On the other hand, interest in the form of damages cannot be imposed where there is prompt and valid payment of just compensation. Interest on just compensation is assessed only

in case of delay in the payment thereof, a fact which must be adequately proved. In this case, it is noteworthy that the LBP, all the while, believed in good faith in the validity of the LTPA, assumed that the acquisition of the subject property was by way of a VLT scheme, and, thus, was not obligated to finance the transfer. Given the foregoing, we find that the imposition of interest on the award of just compensation is not justified and should therefore be deleted.

6. **REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED BEFORE THE SUPREME COURT. —** It is hornbook doctrine that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. This Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective sets of evidence of the parties. Factual findings of the RTC, herein sitting as a SAC, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record. The Court shall analyze or weigh the evidence again only in the exercise of discretion and for compelling reasons, because it is not our duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts.

7. **ID.; ID.; FAVORABLE RULING, *PRO HAC VICE*; RATIONALE. —** In the exercise of our mandate as a court of justice and equity, we rule in favor of respondent despite the absence of claim folders *pro hac vice*. If respondent is deprived of the just compensation due him mainly because of the absence of claim folders which were not prepared by the DAR even after it had already taken the subject property and issued the EPs in favor of the FBs, we would be abetting the perpetration of a grave injustice on the respondent.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Mario T. Garcia and Associates Law Office for respondents.

DECISION

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated March 17, 2005, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Cabanatuan City sitting as a Special Agrarian Court (SAC), dated May 17, 2004.

The Facts

The property subject of this controversy is the 8.3027[4]-hectare portion (subject property) of three (3) parcels of irrigated rice land particularly denominated as Lot Nos. 1, 2 and 3, located at Sitio Sta. Cruz, Sto. Tomas Feria, Quezon, Nueva Ecija, containing a total area of 12.2209 hectares and covered by Transfer Certificate of Title (TCT) No. N-18893[5] (entire property) in the name of respondent Hernando T. Chico (respondent).

In his Amended Petition[6] for Fixing Just Compensation dated June 2, 2002, filed before the SAC, respondent, as represented by his Attorney-in-Fact, herein respondent Lorna Chico (Lorna), asseverated that the subject property was taken by the Department of Agrarian Reform (DAR) and the title thereto transferred to farmer-beneficiaries (FBs) Amador Gamboa, Regino Ambrocio

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[1] *Rollo,* pp. 30-70.

[2] Particularly docketed as CA-G.R. SP No. 85806, penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *id.* at 71-84.

[3] Particularly docketed as AGR. Case No. 154 (AF); *rollo*, pp. 162-172.

[4] Although petitioner LBP claims that, as stipulated by the parties per Order dated March 18, 2003, the total area covered by the DAR is 8.7337 hectares (records, pp. 188-192); however, the SAC and CA found that the area covered is only 8.3027 hectares.

[5] *Rollo,* pp. 121-122.

[6] *Id.* at 114-119.

and Romualdo Francisco,[7] with the issuance of Emancipation Patents (EPs) in their favor on December 27, 1994, without prior notice to respondent and without payment of just compensation.

Traversing the petition, the DAR claimed that respondent was duly notified of the subject property's coverage under the Operation Land Transfer (OLT) program of the government and the compensation therefor was already agreed upon at ₱10,000.00 per hectare, pursuant to the Landowner-Tenant Production Agreement[8] (LTPA) executed between respondent and the FBs. DAR submitted that the petition for just compensation was baseless and ought to be dismissed.[9]

On the other hand, petitioner Land Bank of the Philippines (LBP) opined that it did not have any legal obligation to finance the said transfer because the folder claim of respondent was not duly endorsed for processing and payment and forwarded to the LBP by the DAR. LBP supposed that the transfer may have been made through the Voluntary Land Transfer (VLT) scheme wherein the landowner and the FBs agreed on the amount of just compensation and on the manner of payment, or the FBs may have already completed paying their amortizations in accordance with DAR's valuation. In any of these instances, DAR was no longer obligated to endorse the claim folder to LBP and, in turn, LBP was under no obligation to finance said transfer. Thus, respondent had no cause of action against LBP.[10]

Trial on the merits ensued. Witnesses testified and both parties submitted their respective sets of evidence.

The SAC's Ruling

On May 17, 2004, the SAC ruled that the price of ₱10,000.00 per hectare as just compensation for the subject property, as contained in the LTPA, could not be sustained in the absence of concrete proof that respondent and the FBs voluntarily agreed

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[7] Also referred to as "Ronaldo Francisco" in other pleadings and documents.

[8] *Rollo,* pp. 160-161.

[9] DAR's Answer with Motion to Dismiss; *id.* at 140-141.

[10] LBP's Answer; *rollo,* pp. 135-137.

thereto; otherwise, respondent would not have filed the petition for just compensation before the SAC. Moreover, the SAC noted that it would have been unrealistic and illogical for respondent to agree that the subject property, which was a prime lot, should be priced at only ₱10,000.00 per hectare. Thus, the SAC held:

WHEREFORE, judgment is hereby rendered ordering the Department of Agrarian Reform through the Land Bank of the Philippines to pay petitioner Hernando T. Chico the total amount of ONE MILLION EIGHT HUNDRED SIXTY THOUSAND FIVE HUNDRED FORTY THOUSAND (sic) PESOS (₱1,860,540.00), Philippine Currency, representing the just compensation for his property with a total area of 9.3027 hectares, situated at Sto. Tomas Feria, Quezon, Nueva Ecija, covered by *TCT No. N-18893*, with 12% legal interest annually, from date of acquisition, until fully paid.

No costs.

SO ORDERED.[11]

Upon an *Ex-Parte* Motion to Correct Clerical Errors[12] filed by respondent on May 24, 2004, the SAC amended the aforementioned Decision in its Order[13] dated May 26, 2004, thus:

WHEREFORE, judgment is hereby rendered ordering the Department of Agrarian Reform through the Land Bank of the Philippines to pay petitioner Hernando T. Chico the total amount of ONE MILLION <u>SIX</u> HUNDRED SIXTY THOUSAND FIVE HUNDRED FORTY THOUSAND (sic) PESOS (₱1,<u>6</u>60,540.00), Philippine Currency, representing the just compensation of his property with a total area of <u>8</u>.3027 hectares, situated at Sto. Tomas Feria, Quezon, Nueva Ecija, covered by *TCT No. N-18893*, with 12% legal interest annually, from date of acquisition, until fully paid.

No costs.

SO ORDERED.

LBP filed a Motion for Reconsideration, arguing that the SAC should have considered October 21, 1972 as the date of

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[11] *Rollo*, p. 172.

[12] Records, pp. 256-257.

[13] *Rollo,* p. 173.

taking, inasmuch as the subject property was acquired under Presidential Decree (P.D.) No. 27[14] and Executive Order (E.O.) No. 228;[15] thus, it erred when it applied instead Republic Act (R.A.) No. 6657[16] as the legal basis for just compensation. In the meantime, respondent filed an Urgent Motion for Partial Release,[17] a Motion for Issuance of Writ of Execution of the Judgment[18] and a Motion to Deposit in Court Money Judgment and Interests.[19] On July 29, 2004, the SAC denied LBP's Motion for Reconsideration and correlatively granted respondent's motion for execution, directing LBP to partially pay respondent the amount of ₱800,000.00 as just compensation.[20]

Aggrieved, LBP appealed to the CA with an application for the issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction.[21] On September 29, 2004, the CA issued a TRO, enjoining the SAC from enforcing the Writ of Partial Execution.[22]

The CA's Ruling

On March 17, 2005, the CA affirmed the ruling of the SAC giving no probative value to the LTPA because of the absence

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[14] Decreeing the Emancipation of Tenants from the Bondage of the Soil Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefore (October 21, 1972).

[15] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27, Determining the Value of Remaining Unvalued Rice and Corn Lands Subject of P.D. No. 27, and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner (July 17, 1987).

[16] An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for other Purposes, otherwise known as the Comprehensive Agrarian Reform Law of 1988 (June 10, 1988).

[17] Records, pp. 259-261.

[18] *Id.* at 290-292.

[19] *Id.* at 304-307.

[20] SAC's Order; *rollo,* pp. 174-180.

[21] CA *rollo,* pp. 11-49.

[22] *Id.* at 198-199.

of concrete proof that the parties voluntarily agreed thereto. The CA concurred with the SAC's logic that respondent's act of filing the petition for fixing of just compensation was clear proof to the contrary. Moreover, the CA held that the ruling of the SAC was in accord with Sec. 21[23] of R.A. No. 6657. Citing our decision in *Land Bank v. Court of Appeals*,[24] the CA declared that the provisions of R.A. No. 6657 should now govern all cases of just compensation for the acquisition of lands while the provisions of P.D. No. 27 should only be suppletory in character. However, the CA ruled that the lease rentals collected from the FBs in 1991-1993, in the total amount of ₱178,200.00, should be treated as advance payments for the subject property and must be deducted from the just compensation due respondent. The CA also opined that the twelve (12%) percent interest imposed by the SAC had no legal basis. Pursuant to Sec. 26[25] of R.A.

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[23] Sec. 21 of R.A. No. 6657 provides:

SECTION 21. Payment of Compensation by Beneficiaries under Voluntary Land Transfer. — Direct payment in cash or in kind may be made by the farmer-beneficiary to the landowner under terms to be mutually agreed upon by both parties, which shall be binding upon them, upon registration with and approval by the DAR. Said approval shall be considered given, unless notice of disapproval is received by the farmer-beneficiary within 30 days from the date of registration.

In the event they cannot agree on the price of land, the procedure for compulsory acquisition as provided in Section 16 shall apply. The LBP shall extend financing to the beneficiaries for purposes of acquiring the land.

[24] 378 Phil. 1248 (1999).

[25] Sec. 26 of R.A. No. 6657 provides:

SECTION 26. Payment by Beneficiaries. — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest per *annum*. The payments for the first three (3) years after the award may be at reduced amounts as established by the PARC: Provided, That the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross production as established by the DAR. Should the scheduled annual payments after the fifth year exceed ten percent (10%) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligation to make the repayment affordable.

The LBP shall have a lien by way of mortgage on the land awarded to the beneficiary; and this mortgage may be foreclosed by the LBP for non-payment

No. 6657 and P.D. No. 27, the CA imposed an interest of six percent (6%) per *annum* from the time of taking until full payment is made. Thus, the CA disposed of the case in this wise:

WHEREFORE, premises considered, the DECISION dated May 17, 2004 and the ORDER dated July 29, 2004 of the Regional Trial Court Branch 23 of Cabanatuan City sitting as Special Agrarian Court in AGR. Case No. 154 are hereby AFFIRMED with modification that the amount of just compensation is reduced to ONE MILLION FOUR HUNDRED EIGHTY TWO THOUSAND THREE HUNDRED FORTY PESOS (₱1,482,340.00) with interest at the legal rate of six percent (6%) per annum from the time of taking until fully paid.

SO ORDERED.[26]

On April 13, 2005, LBP filed a Motion for Reconsideration[27] which the CA denied in its Resolution[28] dated June 9, 2005.

Hence this Petition based on the following grounds:

A.

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE SAC WHICH ORDERED THE PETITIONER TO PAY THE RESPONDENTS THE AMOUNT OF ₱1,482,340.00 AS JUST COMPENSATION FOR SUBJECT PROPERTY IN THE ABSENCE OF A LAND TRANSFER CLAIM COMING FROM DAR WHICH IS NECESSARY FOR THE PETITIONER TO PROCESS AND PAY THE JUST COMPENSATION CLAIM.

B.

ASSUMING *ARGUENDO* THAT THE PETITIONER IS LIABLE TO PAY JUST COMPENSATION SANS ANY LAND TRANSFER CLAIM, THE COURT OF APPEALS, IN USING FACTORS

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of an aggregate of three (3) annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholdings to other qualified beneficiaries. A beneficiary whose land, as provided herein, has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under this Act.

[26] *Rollo*, pp. 82-83.

[27] *Id.* at 92-113.

[28] *Id.* at 87-88.

PRESCRIBED IN SEC. 17 OF R.A. NO. 6657, GRAVELY ERRED IN SUSTAINING THE JUST COMPENSATION IN THE AMOUNT OF ₱1,482,340.00 WHICH TOTALLY DISREGARDED THE VALUATION FORMULA PROVIDED FOR UNDER P.D. 27, E.O. 228 AND THE LANDOWNER-TENANT PRODUCTION AGREEMENT (LTPA) DATED APRIL 19, 1987.

C.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING SIX PERCENT (6%) INTEREST PER *ANNUM* FROM THE TIME OF TAKING UNTIL FULL PAYMENT [OF] JUST COMPENSATION FOR THE SUBJECT PROPERTY.[29]

LBP claims that before it could make any payment to the landowner, as part of the legal process, it is necessary that the records or the Land Transfer Claim (LTC) should be endorsed by DAR to LBP, because without such records, LBP has nothing to evaluate, value, process, and pay; that the evidence showed that there were no records of DAR's acquisition of the subject property as no LTC was forwarded by DAR to the LBP because respondent actually entered into a VLT which pegged the amount of ₱10,000.00 per hectare as just compensation; that this amount was reasonable, considering that the agreement was entered into in 1987; that the LTPA, being a consensual contract bearing all the requisite formalities, was valid and binding upon the parties and must, therefore, be complied with in good faith; that LBP is duty-bound to protect the Agrarian Reform Fund (ARF) from being illegally disbursed, hence, any disbursement from the ARF, being a public fund, must comply with the usual and accepted accounting and auditing rules and procedure such as the existence of the LTC; and that the CA did not resolve the issue whether or not LBP was legally obliged to compensate respondent in the absence of any LTC. Moreover, LBP argues that assuming *arguendo* that it is legally obliged to finance the transfer herein, the CA erred in making the award based on R.A. No. 6657 and not on P.D. No. 27 and/or E.O. No. 228 and the LTPA; that the CA seriously erred when it upheld the SAC's use of the zonal valuation of the subject property in the

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

amount of ₱200,000.00 per hectare since that valuation is intended only for taxation purposes and not for the determination of just compensation under P.D. No. 27 and/or E.O. No. 228; that the determination by the SAC of the amount of just compensation was highly speculative, conjectural and lacked legal basis; and that the CA improperly imposed an annual six percent (6%) compounded interest on the amount of just compensation because R.A. No. 6657 does not provide for payment of interest. LBP submits that the amount of ₱10,000.00 per hectare, as agreed upon by the parties under the LTPA, should be sustained as just compensation in this case.[30]

Respondent counters that since December 27, 1994, he has been deprived of the subject property and yet, has never been paid by the LBP; that where there is delay in tendering a valid payment of just compensation, the imposition of interest is in order, citing *Land Bank of the Philippines v. Wycoco*;[31] that the determination of just compensation is not an administrative matter but a judicial function;[32] that all the issues raised by LBP were squarely discussed and resolved by the CA in its assailed Decision; that LBP repeatedly raises questions of fact in its petition, which is improper, because the factual findings of the SAC and the CA are binding and conclusive, and only questions of law may be reviewed by this Court under Rule 45 of the Rules of Civil Procedure. Respondent submits that the assailed CA Decision should be affirmed.[33]

Our Ruling

Significant is the absence of claim folders, or LTC, which would ordinarily impel us to remand this case to the SAC. However, even if the obvious recourse is to remand the case, considering the lapse of time, the efforts and resources exerted, and the age and physical condition of respondent, this Court

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[30] LBP's Memorandum dated August 25, 2006; *id.* at 261-294.

[31] 464 Phil. 83 (2004).

[32] Comment filed on October 15, 2005; *rollo*, pp. 187-200.

[33] Respondent's Memorandum dated August 15, 2006; *rollo*, pp. 240-259.

deems it proper to resolve the case on the merits here and now, if only to write *finis* to this controversy.

In *Land Bank of the Philippines v. Spouses Placido Orilla and Clara Dy Orilla*,[34] we had the occasion to explain the matter of just compensation:

> Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample.

Just compensation, under the premises, presupposes the expropriation or taking of agricultural lands for eventual distribution to agrarian reform beneficiaries. Section 17 of R.A. No. 6657 which provides for the parameters in the determination of just compensation, reads as follows:

> Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm-workers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

There is no question that, in this case, the subject property was expropriated. In fact, EPs have already been issued to the

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[34] G.R. No. 157206, June 27, 2008. (Citations omitted.)

FBs, and respondent has been deprived of the use and the fruits of the subject property.[35] Yet, respondent remains unpaid. LBP disavows any liability to respondent, relying on the LTPA which, according to LBP, proves that respondent entered into a VLT scheme with the FBs. In the same breath, LBP insists that on the basis of the LTPA, the amount of just compensation must be pegged at ₱10,000.00 per hectare. Lastly, the LBP surmises that the LTPA is the reason why no claim folder or LTC was forwarded by the DAR to LBP. By and large, LBP invites us to look closely into the LTPA.

It is hornbook doctrine that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. This Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective sets of evidence of the parties. Factual findings of the RTC, herein sitting as a SAC, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record.[36] The Court shall analyze or weigh the evidence again only in the exercise of discretion and for compelling reasons, because it is not our duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts.[37] Here, we find that none of these exceptional circumstances obtains. Outright, respondent denied having signed the LTPA.[38] Both the SAC and CA gave no probative weight to the LTPA. No proof was adduced that respondent and the FBs ever entered into a VLT scheme; neither is there evidence that the rentals given to respondent by the FBs constituted payment for the subject property. As correctly pointed out by the SAC and the CA, it would indeed be highly contrary to ordinary logic that respondent would voluntarily enter into the LTPA and,

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[35] TSN, July 15, 2003, pp. 8-9.

[36] *Security Bank and Trust Company v. Gan*, G.R. No. 150464, June 27, 2006, 493 SCRA 239, 242-243, citing *Pleyto v. Lomboy*, 432 SCRA 329, 336 (2004).

[37] *Frondarina v. Malazarte*, G.R. No. 148423, December 6, 2006, 510 SCRA 223, 233.

[38] TSN, August 12, 2003, pp. 12-17 and TSN, September 16, 2003, p. 5.

subsequently, deny the same, deprive himself of the fruits of his own land, file a case before the court and as a result, painfully undertake the rigorous, expensive and tedious process of litigation. Based on the foregoing, we find no cogent reason to deviate from the common finding of both the SAC and the CA giving no probative value to the LTPA. Necessarily, the amount of ₱10,000.00 per hectare as just compensation for the subject property must be discarded.

As to the absence of claim folders, while we understand that the LBP must give a valuation of the subject property through claim folders or LTCs forwarded by the DAR, we cannot close our eyes to the obvious reality that respondent was dispossessed of his property and has received no payment therefor.

LBP invokes our ruling in *Crisologo-Jose v. Land Bank of the Philippines*,[39] where claim folders were not forwarded to LBP, and we dismissed the petition of the landowner. However, we note that *Crisologo-Jose* and this case do not share the same factual milieu. In *Crisologo-Jose*, the properties were not actually acquired by the government, as the landowner failed to prove the fact of actual or symbolic compulsory taking by competent evidence, through such proof as the required Notice of Valuation which usually follows the Notice of Coverage, the letter of invitation to a preliminary conference and the Notice of Acquisition that DAR sends, pursuant to DAR administrative issuances, to the landowner affected. In this case, EPs were already issued in favor of the FBs. Moreover, it cannot be denied that respondent was actually deprived of rentals due him since 1994 as the FBs said that the subject property would be acquired by LBP.

In the exercise of our mandate as a court of justice and equity,[40] we rule in favor of respondent despite the absence of claim

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[39] G.R. No. 167399, June 22, 2006, 492 SCRA 322.

[40] *Republic of the Philippines, etc. v. Hon. Normelito J. Ballocanag, etc., et al.*, G.R. No. 163794, November 28, 2008, citing *Chieng v. Santos*, 531 SCRA 730, 748 (2007), further citing *National Development Company v. Madrigal Wan Hai Lines Corporation*, 458 Phil. 1038, 1055 (2003).

folders *pro hac vice*. If respondent is deprived of the just compensation due him mainly because of the absence of claim folders which were not prepared by the DAR even after it had already taken the subject property and issued the EPs in favor of the FBs, we would be abetting the perpetration of a grave injustice on the respondent.

As to the legal basis of just compensation, we hold that the applicable law is R.A. No. 6657. Our recent ruling in *Land Bank of the Philippines v. Pacita Agricultural Multi-Purpose Cooperative, Inc., etc., et al.*[41] is enlightening. Therein, the Court made a comparative analysis of cases that confronted the issue of whether properties covered by P.D. No. 27 and E.O. No. 228, for which the landowners had yet to be paid, would be compensated under P.D. No. 27 and E.O. No. 228 or under the pertinent provisions of R.A. No. 6657. We observed that in *Gabatin v. Land Bank of the Philippines*[42] — a case which LBP invokes in this controversy — the Court declared that the reckoning period for the determination of just compensation should be the time when the land was taken, *i.e.,* in 1972, applying P.D. No. 27 and E.O. No. 228. However, the Court also noted that after *Gabatin*, the Court had decided several cases in which it found it more equitable to determine just compensation based on the value of the property at the time of payment. These cases are *Land Bank of the Philippines v. Natividad*,[43] *Meneses v. Secretary of Agrarian Reform*[44] and *Lubrica v. Land Bank of the Philippines,*[45] including the earlier cases of *Office of the President v. Court of Appeals*[46] and *Paris v. Alfeche*.[47]

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[41] G.R. No. 177607, January 19, 2009.

[42] G.R. No. 148223, November 25, 2004, 444 SCRA 176.

[43] G.R. No. 127198, May 16, 2005, 458 SCRA 441.

[44] G.R. No. 156304, October 23, 2006, 505 SCRA 90.

[45] G.R. No. 170220, November 20, 2006, 507 SCRA 415.

[46] 413 Phil. 711 (2001).

[47] 416 Phil. 473 (2001).

Thus, based on foregoing jurisprudence, we reiterate our ruling in *Natividad*, to wit:

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.
>
> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.
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> x x x x x x x x x
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> It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[48]

Inasmuch as the determination of just compensation in eminent domain cases is a judicial function, the SAC did not capriciously or arbitrarily act in setting the price at ₱200,000.00 per hectare — an award merely modified by the CA. We see no reason to disturb the factual findings on the valuation of the subject property. The amount fixed by the SAC and CA does not appear to be grossly exorbitant or otherwise unjustified. In this case, the SAC properly arrived at the amount of just compensation for

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[48] *Supra* note 43, at 451-452. (Citations omitted.)

the subject property, taking into account its nature as irrigated land, market value, assessed value at the time of the taking, and the volume and value of its produce, as it made the following findings:

(a) [t]he prevailing market value of agricultural lands in Quezon, Nueva Ecija, and adjacent areas, where it is of public knowledge is sold at ₱80,000.00 to ₱300,000.00 per hectare;

(b) [t]he presence [and] availability of an irrigation system to augment and increase agricultural production;

(c) [t]he available comparable sales in the area, *i.e.* ₱80,000.00, ₱300,000.00 and ₱200,000.00; and

(d) [t]he average harvests per hectare which [is] 100.05 cavans.[49]

Thus, it cannot be said that the SAC had no basis for its valuation of the subject property. It took into consideration the important factors enumerated in Section 17 of Republic Act No. 6657 which, in turn, are the very same criteria that make up the DAR formula. In *Apo Fruits Corporation v. Court of Appeals*,[50] we held:

What is clearly implicit, thus, is that the basic formula and its alternatives — administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) — although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula

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[49] *Rollo*, p. 73.

[50] G.R. No. 164195, December 19, 2007, 541 SCRA 117.

dictated by the DAR, an administrative agency. Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance. The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors, like the cost of acquisition of the land; the current valuation of like properties; its nature, actual use and income; the sworn valuation by the owner; the tax declarations; and the assessment made by the government assessors.[51]

However, when just compensation is determined under R.A. No. 6657, no incremental, compounded interest of six percent (6%) per *annum* shall be assessed. In this regard, LBP's point is well taken. The CA erred in imputing interest, because the same applies only to lands taken under P.D. No. 27 and E.O. No. 228, pursuant to Administrative Order No. 13, Series of 1994[52] (A.O. No. 13), and not Sec. 26 of R.A. No. 6657 as cited by the CA. Pertinent is our ruling in *Land Bank of the Philippines v. Court of Appeals*,[53] to wit:

The purpose of AO No. 13 is to compensate the landowners for unearned interests. Had they been paid in 1972 when the GSP for rice and corn was valued at ₱35.00 and ₱31.00, respectively, and such amounts were deposited in a bank, they would have earned a compounded interest of 6% per *annum*. Thus, if the PARAD used the 1972 GSP, then the product of (2.5 x AGP x ₱35 or ₱31) could be multiplied by (1.06)n to determine the value of the land plus the additional 6% compounded interest it would have earned from 1972. However, since the PARAD already increased the GSP from ₱35.00 to ₱300.00/cavan of palay and from ₱31.00 to ₱250.00/cavan of corn, there is no more need to add any interest thereon, muchless

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[51] *Id.* at 131-132.

[52] Subject: Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228 (October 27, 1994).

[53] *Supra* note 24.

compound it. To the extent that it granted 6% compounded interest to private respondent Jose Pascual, the Court of Appeals erred.[54]

Likewise, the twelve percent (12%) interest imposed by the SAC has no legal basis. In *Land Bank of the Philippines v. Wycoco*,[55] this Court held that the interest of 12% per *annum* on the just compensation is due the landowner in case of delay in payment, which will, in effect, make the obligation on the part of the government one of forbearance. On the other hand, interest in the form of damages cannot be imposed where there is prompt and valid payment of just compensation. Interest on just compensation is assessed only in case of delay in the payment thereof, a fact which must be adequately proved. In this case, it is noteworthy that the LBP, all the while, believed in good faith in the validity of the LTPA, assumed that the acquisition of the subject property was by way of a VLT scheme, and, thus, was not obligated to finance the transfer. Given the foregoing, we find that the imposition of interest on the award of just compensation is not justified and should therefore be deleted.

A final note.

The Comprehensive Agrarian Reform Program was undertaken primarily for the benefit of our landless farmers. However, the undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands. Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation,[56] but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.[57] Verily, to pay respondent only ₱10,000.00

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[54] *Id.* at 1265-1266. (Citations omitted.)

[55] *Supra* note 31, at 100, citing *Reyes v. National Housing Authority*, 443 Phil. 603 (2003), further citing *Republic of the Philippines v. Court of Appeals*, 433 Phil. 106 (2002).

[56] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, 79777, July 14, 1989, 175 SCRA 343, 386.

[57] *Land Bank of the Philippines v. CA*, 319 Phil. 246, 262 (1995), citing *Mata v. Court of Appeals*, 207 SCRA 748, 753 (1992).

per hectare for his land today, after he was deprived of it since 1994, would be unjust and inequitable.

WHEREFORE, the instant Petition is partially *GRANTED*. The assailed Court of Appeals Decision in CA-G.R. SP No. 85806 dated March 17, 2005 is *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court (RTC) of Cabanatuan City, sitting as a Special Agrarian Court, dated May 17, 2004, is *REINSTATED* with the *MODIFICATION* that the interest imposed is *DELETED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Corona,[*] and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170264. March 13, 2009]

JAMES ESTRELLER, EDUARDO CULIANAN, GREG CARROS, RAQUEL YEE, JOSELITO PENILLA, LORNA DOTE, CRESENCIANA CLEOPAS, TRINIDAD TEVES, SONIA PENILLA, ANITA GOMINTONG, CHING DIONESIO, MARIBEL MANALO, DESIRES HUERTO, and RAYMUNDO CORTES, *petitioners, vs.* **LUIS MIGUEL YSMAEL and CRISTETA L. SANTOS-ALVAREZ,** *respondents.*[*]

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[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Raffle dated March 4, 2009.

[*] The Court of Appeals is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

SYLLABUS

1. **CIVIL LAW; PROPERTY; CO-OWNERSHIP; AS A RULE ANY ONE OF THE CO-OWNERS MAY BRING ANY KIND OF ACTION FOR THE RECOVERY OF CO-OWNED PROPERTIES; EFFECT. —** Recently, in *Wee v. De Castro*, the Court, citing Article 487 of the Civil Code, reasserted the rule that any one of the co-owners may bring any kind of action for the recovery of co-owned properties since the suit is presumed to have been filed for the benefit of all co-owners. The Court also stressed that Article 487 covers all kinds of action for the recovery of possession, *i.e.*, forcible entry and unlawful detainer *(accion interdictal)*, recovery of possession *(accion publiciana)*, and recovery of ownership *(accion de reivindicacion),* thus: In the more recent case of *Carandang v. Heirs of De Guzman,* this Court declared that a co-owner is not even a necessary party to an action for ejectment, for complete relief can be afforded even in his absence, thus: In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. **Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties.** They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.

2. **LABOR AND SOCIAL LEGISLATION; P.D. NO. 1517 (URBAN LAND REFORM LAW); THE PROSPECTIVE MANTLE OF THE LAW EXTENDS ONLY TO QUALIFIED LANDLESS URBAN FAMILIES; SUSTAINED. —** Section 6 of P.D. No. 1517 grants preferential rights to landless tenants/occupants to acquire land within urban land reform areas, while Section 2 of P.D. No. 2016 prohibits the eviction of qualified tenants/occupants. In *Dimaculangan v. Casalla*, the Court was emphatic in ruling that the protective mantle of P.D. No. 1517 and P.D. No. 2016 extends only to landless urban families who meet these qualifications: a) they are tenants as defined under Section 3(f) of P.D. No. 1517; b) they built a home on the land they are leasing or occupying; c) the land they are leasing

or occupying is within an Area for Priority Development and Urban Land Reform Zone; and d) they have resided on the land continuously for the last 10 years or more. Section 3(f) of P.D. No. 1517 defines the term "tenant" covered by the said decree as the "rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation." It has already been ruled that occupants of the land whose presence therein is devoid of any legal authority, or those whose contracts of lease were already terminated or had already expired, or whose possession is under litigation, are not considered "tenants" under the Section 3(f).

3. **ID.; R.A. NO. 7279 (URBAN DEVELOPMENT AND HOUSING ACT OF 1992); PROCEDURE TO BE UNDERTAKEN BY THE CONCERNED LOCAL GOVERNMENT IN THE URBAN LAND DEVELOPMENT PROCESS, PROVIDED. —** R. A. No. 7279 provides for the procedure to be undertaken by the concerned local governments in the urban land development process, to wit: conduct an inventory of all lands and improvements within their respective localities, and in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau; identify lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas; acquire the lands; and dispose of said lands to the beneficiaries of the program. While there is a Certification that the area bounded by E. Rodriguez, Victoria Avenue, San Juan River and 10th Street of *Barangay.* Damayang Lagi, Quezon City is included in the list of Areas for Priority Development under Presidential Proclamation No. 1967, there is no showing that the property has already been acquired by the local government for this purpose; or that petitioners have duly qualified as beneficiaries.

APPEARANCES OF COUNSEL

De Castro and Cagampang Law Offices for petitioners.
Rondain & Mendiola for respondents.

DECISION

AUSTRIA-MARTINEZ, *J.*:

In the present petition, the Court finds occasion to reassert the legal precepts that *a co-owner may file an action for recovery of possession without the necessity of joining all the other co-owners as co-plaintiffs since the suit is deemed to be instituted for the benefit of all; and that Section 2 of Presidential Decree (P.D.) No. 2016, reinforced by P.D. No. 1517, which prohibits the eviction of qualified tenants/occupants, extends only to landless urban families who are rightful occupants of the land and its structures, and does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation.*

Respondents filed with the Regional Trial Court (RTC), Branch 216, Quezon City, a case for Recovery of Possession against petitioners, claiming ownership of the property subject of dispute located in E. Rodriguez Avenue and La Filonila Streets in Quezon City, by virtue of Transfer Certificate of Title (TCT) No. 41698 issued by the Register of Deeds of Quezon City on June 10, 1958. Respondents alleged that on various dates in 1973, petitioners entered the property through stealth and strategy and had since occupied the same; and despite demands made in March 1993, petitioners refused to vacate the premises, prompting respondents to file the action.[1]

Petitioners denied respondents' allegations. According to them, respondent Luis Miguel Ysmael (Ysmael) had no personality to file the suit since he only owned a small portion of the property, while respondent Cristeta Santos-Alvarez (Alvarez) did not appear to be a registered owner thereof. Petitioners also contended that their occupation of the property was lawful, having leased the same from the Magdalena Estate, and later on from Alvarez. Lastly, petitioners asserted that the property has already been proclaimed by the Quezon City Government as an Area for

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[1] Records, pp. 6-7.

Priority Development under P. D. Nos. 1517 and 2016, which prohibits the eviction of lawful tenants and demolition of their homes.[2]

After trial, the RTC rendered its Decision dated September 15, 2000 in favor of respondents. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs Luis Miguel Ysmael and Cristeta L. Santos-Alvarez and against defendants ordering the latter and all persons claiming rights under them to immediately vacate the subject property and peacefully surrender the same to the plaintiffs.
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> Defendants are likewise ordered to pay plaintiffs the following:
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> 1. The amount of ₱400.00 each per month from the date of extra-judicial demand until the subject property is surrendered to plaintiffs as reasonable compensation for the use and possession thereof;
> 2. The amount of ₱20,000.00 by way of exemplary damages;
> 3. The amount of ₱20,000.00 by way of attorney's fees and litigation expenses;
> 4. Cost of suit.
>
> Corollarily, the counter-claims of defendants are hereby DISMISSED for lack of merit.
>
> SO ORDERED.[3]

Petitioners appealed to the Court of Appeals (CA), which, in a Decision[4] dated March 14, 2005, dismissed their appeal and affirmed *in toto* the RTC Decision.

Hence, the present petition for review under Rule 45 of the Rules of Court, on the following grounds:

I

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT RESPONDENTS YSMAEL AND ALVAREZ

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[2] *Id.* at 40-45.

[3] Records, pp. 409-410.

[4] CA *rollo*, pp. 88-93.

ARE BOTH "REAL PARTIES IN INTEREST" WHO WOULD BE BENEFITED OR INJURED BY THE JUDGMENT OR THE PARTY ENTITLED TO THE AVAILS OF THE SUIT.

II

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER AND DECIDE THE RELEVANT QUESTIONS AND ISSUES PRESENTED BY THE PETITIONERS IN ROMAN NUMERALS II, III AND IV OF THEIR DISCUSSIONS AND ARGUMENTS IN THE APPELLANTS BRIEF WHICH ARE HEREUNTO COPIED OR REPRODUCED.[5]

The present petition merely reiterates the issues raised and settled by the RTC and the CA. On this score, it is well to emphasize the rule that the Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court. Factual findings of the trial court, especially when affirmed by the CA, are conclusive on the parties. Since such findings are generally not reviewable, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.[6]

The Court then finds that the petition is without merit.

Respondents are real parties-in-interest in the suit below and may, therefore, commence the complaint for *accion publiciana*. On the part of Ysmael, he is a named co-owner of the subject property under TCT No. 41698, together with Julian Felipe Ysmael, Teresa Ysmael, and Ramon Ysmael.[7] For her part, Alvarez was a buyer of a portion of the property, as confirmed in several documents, namely: (1) Decision dated August 30, 1974 rendered by the Regional Trial Court of Quezon City, Branch 9 (IX), in Civil Case No. Q-8426, which was based on

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[5] *Rollo*, pp. 21 and 23.

[6] *Quimpo v. Abad*, G.R. No. 160956, February 13, 2008, 545 SCRA 178.

[7] Records, p. 153.

a Compromise Agreement between Alvarez and the Magdalena Estate;[8] (2) an unnotarized Deed of Absolute Sale dated May 1985 executed between the Ysmael Heirs and Alvarez;[9] and (3) a notarized Memorandum of Agreement between the Ysmael Heirs and Alvarez executed on May 2, 1991.[10]

Recently, in *Wee v. De Castro*,[11] the Court, citing Article 487 of the Civil Code, reasserted the rule that any one of the co-owners may bring any kind of action for the recovery of co-owned properties since the suit is presumed to have been filed for the benefit of all co-owners. The Court also stressed that Article 487 covers all kinds of action for the recovery of possession, *i.e.*, forcible entry and unlawful detainer *(accion interdictal)*, recovery of possession *(accion publiciana)*, and recovery of ownership *(accion de reivindicacion),* thus:

> In the more recent case of *Carandang v. Heirs of De Guzman,* this Court declared that a co-owner is not even a necessary party to an action for ejectment, for complete relief can be afforded even in his absence, thus:
>
> > In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. **Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties**. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners. (Emphasis supplied)

Petitioners persistently question the validity of the transfer of ownership to Alvarez. They insist that Alvarez failed to establish

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[8] *Id.* at 170-174.

[9] *Id.* at 167-169.

[10] *Id.* at 91-96.

[11] G.R. No. 176405, August 20, 2008.

any right over the property since the Deed of Absolute Sale was not inscribed on TCT No. 41698. Interestingly, petitioners debunked their own argument when they themselves claimed in their Answer with Counter-claim that they derived their right to occupy the property from a lease agreement with, first, the Magdalena Estate, and thereafter, Alvarez herself.[12] More importantly, the fact that the sale was not annotated or inscribed on TCT No. 41698 does not make it any less valid. A contract of sale has the force of law between the contracting parties and they are expected to abide, in good faith, by their respective contractual commitments. Article 1358 of the Civil Code which requires the embodiment of certain contracts in a public instrument, is only for convenience; and registration of the instrument only adversely affects third parties, and non-compliance therewith does not adversely affect the validity of the contract or the contractual rights and obligations of the parties thereunder.[13]

Petitioners further contend that the property subject of the Deed of Absolute Sale — Lot 6, Block 4 of Subd. Plan Psd No. 33309 — is different from that being claimed in this case, which are Lots 2 and 3. They claim that there exists another title covering the subject property, *i.e.*, TCT No. 41698 in the names of Victoria M. Panganiban and Teodoro M. Panganiban.

Notably, TCT No. 41698 in the name of the Ysmael Heirs covers several parcels of land under Subd. Plan Psd No. 33309. These include: Lot 2, Block 4; Lot 3, Block 4; and Lot 6, Block 4, each of which contains 1,000 square meters. In the Decision dated August 30, 1974 rendered by the RTC of Quezon City, Branch 9, in Civil Case No. Q-8426, the ownership of 200 square meters of Lot 2, Block 4; 250 square meters of Lot 3, Block 4; and the full 1,000 square meters of Lot 6, Block 4, was conferred on Alvarez. A Deed of Absolute Sale dated May 1985 was later executed by the Ysmael Heirs in favor of Alvarez, but it covered only Lot 6, Block 4. Nevertheless,

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[12] Records, p. 43.

[13] *Agasen v. Court of Appeals*, G.R. No. 115508, February 15, 2000, 325 SCRA 504.

a Memorandum of Agreement dated May 2, 1991 was subsequently entered into by the Ysmael Heirs and Alvarez, whereby all three apportioned parcels of land allocated to Alvarez under the RTC Decision dated August 30, 1974, were finally sold, transferred and conveyed to her. Evidently, while the title was yet to be registered in the name of Alvarez, for all intents and purposes, however, the subject property was already owned by her. The Ysmael Heirs are merely naked owners of the property, while Alvarez is already the beneficial or equitable owner thereof; and the right to the gains, rewards and advantages generated by the property pertains to her.

The existence of a title in the same TCT No. 41698, this time in the names of Victoria M. Panganiban and Teodoro M. Panganiban, was adequately explained by the Certification of the Register of Deeds dated March 1, 1994, and which reads:

> At the instance of RUY ALBERTO S. RONDAIN, I, SAMUEL C. CLEOFE, Register of Deeds of Quezon City, do hereby certify that TCT No. 41698, covering Lot 19, Blk. 8 of the cons.-subd. plan Pos-817, with an area of Three Hundred Seventy Five (375) Square Meters, registered in the name of VICTORIA M. PANGANIBAN; and TEODORO M. PANGANIBAN, married to Elizabeth G. Panganiban, issued on February 8, 1991, is existing and on file in this Registry.
>
> This is to certify further that **TCT No. 41698** presented by Ruy Alberto S. Rondain covering Lot 3, Blk. 2 of the subd. Plan PSD-3309, with an area of Nine Hundred Ninety Six (996) Square Meters, issued on June 10, 1958 and registered **in the name of JUAN FELIPE YSMAEL, TERESA YSMAEL, RAMON YSMAEL, LUIS MIGUEL YSMAEL**, which is also an existing title is **different and distinct from each other inasmuch as they cover different Lots and Plans**.
>
> That it is further certified that **the similarity in the title numbers is due to the fact that after the fire of June 11, 1988, the Quezon City Registry issued new title numbers beginning with TCT No. 1**.[14] (Emphasis supplied)

[14] Exhibit "G", records, p. 196.

Finally, petitioners' claim that they are entitled to the protection against eviction and demolition afforded by P.D. Nos. 2016,[15] 1517,[16] and Republic Act (R.A.) No. 7279,[17] is not plausible.

Section 6 of P.D. No. 1517 grants preferential rights to landless tenants/occupants to acquire land within urban land reform areas, while Section 2 of P.D. No. 2016 prohibits the eviction of qualified tenants/ occupants.

In *Dimaculangan v. Casalla*,[18] the Court was emphatic in ruling that the protective mantle of P.D. No. 1517 and P.D. No. 2016 extends only to landless urban families who meet these qualifications: a) they are tenants as defined under Section 3(f) of P.D. No. 1517; b) they built a home on the land they are leasing or occupying; c) the land they are leasing or occupying is within an Area for Priority Development and Urban Land Reform Zone; and d) they have resided on the land continuously for the last 10 years or more.

Section 3(f) of P.D. No. 1517 defines the term "tenant" covered by the said decree as the "rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation." It has already been ruled that occupants of the land whose presence therein is devoid of any legal authority, or those whose contracts of lease were already terminated or had already expired, or whose possession is under litigation, are not considered "tenants" under the Section 3(f).[19]

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[15] Entitled, "Prohibiting the Eviction of Occupant from Land Identified and Proclaimed as Areas for Priority Development (APD) or as Urban Land Reform Zones and Exempting such Land from Payment of Real Property (Taxes)."

[16] The Urban Land Reform Law.

[17] The Urban Development and Housing Act of 1992.

[18] G.R. No. 156689, June 8, 2007, 524 SCRA 181.

[19] *Carreon v. Court of Appeals*, G.R. No. 112041, June 22, 1998, 291 SCRA 78; See also *Delos Santos v. Court of Appeals*, G.R. No. 127465. October 25, 2001, 368 SCRA 226.

Petitioners claim that they are lawful lessees of the property. However, they failed to prove any lease relationship or, at the very least, show with whom they entered the lease contract. Respondents, on the other hand, were able to prove their right to enjoy possession of the property. Thus, petitioners, whose occupation of the subject property by mere tolerance has been terminated by respondents, clearly do not qualify as "tenants" covered by these social legislations.

Finally, petitioners failed to demonstrate that they qualify for coverage under R. A. No. 7279 or the Urban Development and Housing Act of 1992.

R. A. No. 7279 provides for the procedure to be undertaken by the concerned local governments in the urban land development process, to wit: conduct an inventory of all lands and improvements within their respective localities, and in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau; identify lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas; acquire the lands; and dispose of said lands to the beneficiaries of the program.[20] While there is a Certification that the area bounded by E. Rodriguez, Victoria Avenue, San Juan River and 10th Street of *Barangay*. Damayang Lagi, Quezon City is included in the list of Areas for Priority Development under Presidential Proclamation No. 1967,[21] there is no showing that the property has already been acquired by the local government for this purpose; or that petitioners have duly qualified as beneficiaries.

All told, the Court finds no reason to grant the present petition.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated March 14, 2005 of the Court of Appeals is *AFFIRMED*.

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[20] *City of Mandaluyong v. Aguilar*, G.R. No. 137152, January 29, 2001, 350 SCRA 487.

[21] Records, p. 50.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171056. March 13, 2009]

DINAH C. CASTILLO, *petitioner, vs.* **ANTONIO M. ESCUTIN, AQUILINA A. MISTAS, MARIETTA L. LINATOC, and THE HONORABLE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; LAND REGISTRATION; TWO SYSTEMS OF LAND REGISTRATION, CLARIFIED. —** The LRA distinguished between two systems of land registration: one is the Torrens system for registered lands under the Property Registration Decree, and the other is the system of registration for unregistered land under Act No. 3344 (now Section 113 of the Property Registration Decree). These systems are separate and distinct from each other. For documents involving registered lands, the same should be recorded under the Property Registration Decree. The registration, therefore, of an instrument under the wrong system produces no legal effect. Since it appeared that in Consulta No. 3483, the registration of the *Kasulatan ng Sanglaan*, the Certificate of Sale and the Affidavit of Consolidation was made under Act No. 3344, it did not produce any legal effect on the disputed property, because the said property was already titled when the aforementioned documents were executed and presented for registration, and their registration should have been made under the Property Registration Decree. Furthermore, the Office of the Deputy Ombudsman for Luzon, in the same

Joint Order, took into account petitioner's withdrawal of her appeal *en consulta* before the LRA of the denial by the Register of Deeds of her request for registration of the Sheriff's Deed of Final Sale/Conveyance and Affidavit of Adverse Claim, which prompted the LRA Administrator to declare the *consulta* moot and academic. For want of a categorical declaration on the registerability of petitioner's documents from the LRA, the competent authority to rule on the said matter, there could be no basis for a finding that respondent public officers could be held administratively or criminally liable for the acts imputed to them.

2. **ID.; ID.; ID.; TITLE AND CERTIFICATE OF TITLE, DISTINGUISHED. —** Before anything else, the Court must clarify that a title is different from a certificate of title. *Title* is generally defined as the lawful cause or ground of possessing that which is ours. It is that which is the foundation of ownership of property, real or personal. Title, therefore, may be defined briefly as that which constitutes a just cause of exclusive possession, or which is the foundation of ownership of property. *Certificate of title*, on the other hand, is a mere evidence of ownership; it is not the title to the land itself. Under the Torrens system, a certificate of title may be an Original Certificate of Title, which constitutes a true copy of the decree of registration; or a Transfer Certificate of Title, issued subsequent to the original registration.

3. **ID.; ID.; ID.; CERTIFICATE OF TITLE; DEFINED AND CONSTRUED. —** A certificate of title issued is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein. It is binding and conclusive upon the whole world. All persons must take notice, and no one can plead ignorance of the registration. Therefore, upon presentation of TCT No. 129642, the Office of the City Assessor must recognize the ownership of Lot 1-B by Catigbac and issue in his name a tax declaration for the said property. And since Lot 1-B is already covered by a tax declaration in the name of Catigbac, accordingly, any other tax declaration for the same property or portion thereof in the name of another person, not supported by any certificate of title, such that of petitioner, must be cancelled; otherwise, the City Assessor would be twice collecting a realty tax from different persons on one and the same property. As between Catigbac's title,

covered by a certificate of title, and petitioner's title, evidenced only by a tax declaration, the former is evidently far superior and is, in the absence of any other certificate of title to the same property, conclusive and indefeasible as to Catigbac's ownership of Lot 1-B. Catigbac's certificate of title is binding upon the whole world, including respondent public officers and even petitioner herself. Time and again, the Court has ruled that tax declarations and corresponding tax receipts cannot be used to prove title to or ownership of a real property inasmuch as they are not conclusive evidence of the same.

4. **ID.; ID.; ID.; ID.; SECTION 48 OF THE PROPERTY REGISTRATION DECREE CATEGORICALLY PROVIDES THAT A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK; APPLICATION IN CASE AT BAR. —** Petitioner's allegations of defects or irregularities in the sale of Lot 1-B to Summit Realty by Yagin, as Catigbac's attorney-in-fact, are beyond the jurisdiction of the Office of the Deputy Ombudsman for Luzon to consider. It must be remembered that Summit Realty had already acquired a certificate of title, TCT No. T-134609, in its name over Lot 1-B, which constitutes conclusive and indefeasible evidence of its ownership of the said property and, thus, cannot be collaterally attacked in the administrative and preliminary investigations conducted by the Office of the Ombudsman for Luzon. Section 48 of the Property Registration Decree categorically provides that 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. For this same reason, the Court has no jurisdiction to grant petitioner's prayer in the instant Petition for the cancellation of TCT No. T-134609 in the name of Summit Realty.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICER AND EMPLOYEES; GRAVE MISCONDUCT; WHEN PRESENT. —** In *Domingo v. Quimson*, the Court adopted the well-written report and recommendation of its Clerk of Court on the administrative matter then pending and involving the charge of gross or serious misconduct: "Under Section 36, par. (b) [1] of PD No. 807, otherwise known as the Civil Service Decree of the Philippines, 'misconduct' is a ground for disciplinary action. And under MC No. 8, S. 1970, issued by the Civil Service Commission on July 28, 1970, which sets

the 'Guidelines in the Application of Penalties in Administrative Cases and other Matters Relative Thereto,' the administrative offense of 'grave misconduct' carries with it the maximum penalty of dismissal from the service (Sec. IV-C[3], MC No. 8, S. 1970). But the term 'misconduct' as an administrative offense has a well defined meaning. It was defined in *Amosco vs. Judge Magno*, Adm. Mat. No. 439-MJ, Res. September 30, 1976, as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.' It is a misconduct 'such as affects the performance of his duties as an officer and not such only as effects his character as a private individual.' In the recent case of *Oao vs. Pabato, etc.*, Adm. Mat. No. 782-MJ, Res. July 29, 1977, the Court defined 'serious misconduct' as follows: 'Hence, even assuming that the dismissal of the case is erroneous, this would be merely an error of judgment and not serious misconduct. The term `serious misconduct' is a transgression of some established and definite rule of action more particularly, unlawful behavior of gross negligence by the magistrate. It implies a wrongful intention and not a mere error of judgment. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by intention to violate the law, or were a persistent disregard of well-known legal rules. We have previously ruled that negligence and ignorance on the part of a judge are inexcusable if they imply a manifest injustice which cannot be explained by a reasonable interpretation. This is not so in the case at bar.'" To reiterate, for grave misconduct to exist, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were a persistent disregard of well-known legal rules. Both the Office of the Deputy Ombudsman for Luzon and the Court of Appeals found that there was no sufficient evidence to substantiate petitioner's charge of grave misconduct against respondents. For this Court to reverse the rulings of the Office of the Deputy Ombudsman for Luzon and the Court of Appeals, it must necessarily review the evidence presented by the parties and decide on a question of fact. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

6. REMEDIAL LAW; APPEAL TO THE SUPREME COURT; FINDINGS MADE BY AN ADMINISTRATIVE BODY

WHICH ACQUIRED EXPERTISE ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; RATIONALE. – Factual issues are not cognizable by this Court in a Petition for Review under Rule 45 of the Rules of Court. In order to resolve this issue, the Court would necessarily have to look into the probative value of the evidence presented in the proceedings below. It is not the function of the Court to reexamine or reevaluate the evidence all over again. This Court is not a trier of facts, its jurisdiction in these cases being limited to reviewing only errors of law that may have been committed by the lower courts or administrative bodies performing quasi-judicial functions. It should be emphasized that findings made by an administrative body, which has acquired expertise, are accorded not only respect but even finality by the Court. In administrative proceedings, the quantum of evidence required is only substantial. Absent a clear showing of grave abuse of discretion, the Court shall not disturb findings of fact. The Court cannot weigh once more the evidence submitted, not only before the Ombudsman, but also before the Court of Appeals. Under Section 27 of Republic Act No. 6770, findings of fact by the Ombudsman are conclusive, as long as they are supported by substantial evidence. Substantial evidence is the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

APPEARANCES OF COUNSEL

Yee Law Office for petitioner.
Camara Tolentino & Associates Law Office for A.M. Escutin.
Francisco Balderama and Associates for A.A. Mistas and M. L. Linatoc.

D E C I S I O N

CHICO-NAZARIO, ***J.*****:**

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Dinah

[1] *Rollo*, pp. 10-36.

C. Castillo seeking the reversal and setting aside of the Decision,[2] dated 18 October 2005, of the Court of Appeals in CA-G.R. SP No. 90533, as well as the Resolution,[3] dated 11 January 2006 of the same court denying reconsideration of its aforementioned Decision. The Court of Appeals, in its assailed Decision, affirmed the Joint Resolution[4] dated 28 April 2004 and Joint Order[5] dated 20 June 2005 of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-03-0573-F and OMB-L-C-03-0728-F, dismissing petitioner Dinah C. Castillo's complaint for grave misconduct and violation of Section 3(e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, as amended, against respondent public officers Antonio M. Escutin (Escutin), Aquilina A. Mistas (Mistas) and Marietta L. Linatoc (Linatoc), together with private individuals Lauro S. Leviste II (Leviste) and Benedicto L. Orense (Orense).

Petitioner is a judgment creditor of a certain Raquel K. Moratilla (Raquel), married to Roel Buenaventura. In the course of her search for properties to satisfy the judgment in her favor, petitioner discovered that Raquel, her mother Urbana Kalaw (Urbana), and sister Perla K. Moratilla (Perla), co-owned Lot 13713, a parcel of land consisting of 15,000 square meters, situated at Brgy. Bugtongnapulo, Lipa City, Batangas, and covered by Tax Declaration No. 00449.

Petitioner set about verifying the ownership of Lot 13713. She was able to secure an Order[6] dated 4 March 1999 issued

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[2] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring; *id.* at 37-57.

[3] *Id.* at 58.

[4] Penned by Graft Investigation and Prosecution Officer I Raquel R.M. Cunanan-Marayag, with the recommending approval of Director Joaquin F. Salazar, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez; *id.* at 102-118.

[5] Penned by Graft Investigation and Prosecution Officer II Joy N. Casihan-Dumlao, with the recommending approval of Director Joaquin F. Salazar, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez; *id.* at 119-122.

[6] Records, pp. 22-28.

by Secretary Horacio R. Morales, Jr. of the Department of Agrarian Reform (DAR) approving the application of Summit Point Golf & Country Club, Inc. for conversion of several agricultural landholdings, including Lot 13713 owned by "Perla K. Mortilla, *et al*." and covered by Tax Declaration No. 00449, to residential, commercial, and recreational uses. She was also able to get from the Office of the City Assessor, Lipa City, a Certification[7] stating that Lot 13713, covered by Tax Declaration No. 00554-A, was in the name of co-owners Raquel, Urbana, and Perla; and a certified true copy of Tax Declaration No. 00554-A itself.[8] Lastly, the Register of Deeds of Lipa City issued a Certification[9] attesting that Lot 13713 in the name of co-owners Raquel, Urbana, and Perla, was not covered by a certificate of title, whether judicial or patent, or subject to the issuance of a Certificate of Land Ownership Award or patent under the Comprehensive Agrarian Reform Program.

Only thereafter did petitioner proceed to levy on execution Lot 13713, and the public auction sale of the same was scheduled on 14 May 2002. Sometime in May 2002, before the scheduled public auction sale, petitioner learned that Lot 13713 was inside the Summit Point Golf and Country Club Subdivision owned by Summit Point Realty and Development Corporation (Summit Realty). She immediately went to the Makati City office of Summit Realty to meet with its Vice President, Orense. However, she claimed that Orense did not show her any document to prove ownership of Lot 13713 by Summit Realty, and even threatened her that the owners of Summit Realty, the Leviste family, was too powerful and influential for petitioner to tangle with.

The public auction sale pushed through on 14 May 2002, and petitioner bought Raquel's 1/3 *pro-indiviso* share in Lot 13713.

On 4 June 2002, petitioner had the following documents, on her acquisition of Raquel's 1/3 *pro-indiviso* share in Lot 13713,

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[7] *Id.* at 30.

[8] *Id.* at 29.

[9] *Id.* at 31.

recorded in the Primary Entry Book and Registration Book of the Register of Deeds of Lipa City in accordance with Act No. 3344[10]: (a) Notice of Levy;[11] (b) Certificate of Sale;[12] (c) Affidavit of Publication;[13] and (d) Writ of Execution.[14]

Subsequently, petitioner was issued by the City Assessor of Lipa City Tax Declaration No. 00942-A,[15] indicating that she owned 5,000 square meters of Lot 13713, while Urbana and Perla owned the other 10,000 square meters.

When petitioner attempted to pay real estate taxes for her 5,000-square-meter share in Lot 13713, she was shocked to find out that, without giving her notice, her Tax Declaration No. 00942-A was cancelled. Lot 13713 was said to be encompassed in and overlapping with the 105,648 square meter parcel of land known as Lot 1-B, covered by Transfer Certificate of Title (TCT) No. 129642[16] and Tax Declaration No. 00949-A,[17] both in the name of Francisco Catigbac (Catigbac). The reverse side of TCT No. 129642 bore three entries, reflecting the supposed sale of Lot 1-B to Summit Realty, to wit:

ENTRY NO. 184894: SPECIAL POWER OF ATTORNEY: In favor of LEONARDO YAGIN: For purposes more particularly stipulated in the contract ratified before Atty. Ernesto M. Vergara of Lipa City as per Doc. No. 639; Page No. 29; Book No. LXXVI; Series of 1976.
Date of instrument – 2-6-1976
Date of inscription – 6-26-2002 at 11:20 a.m.

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[10] Now Chapter XIII, Section 113 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, on recording of instruments related to unregistered Lands.

[11] Records, p. 32.

[12] *Id.* at 33-34.

[13] *Id.* at 35-36.

[14] *Id.* at 37.

[15] *Id.* at 38.

[16] *Id.* at 40.

[17] *Id.* at 39.

ENTRY NO. 185833: SALE IN FAVOR OF SUMMIT POINT REALTY & DEVELOPMENT CORP: –
ENTRY NO. 185834: BIR CLEARANCE: – Of the parcel of land described in this cert. of title is hereby sold and cancelled TCT No. 134609(SN-6672938) Vol. 671-A, having been issued by virtue of the aforesaid instrument ratified before Perfecto L. Dimayuga, Notary Public for Makati City as per Doc. No. 148; Page 31, Book No. LXVII, Series of 2002.
Date of instrument: July 22, 2002
Date of inscription: July 25, 2002 at 2:30 P.M.[18]

On 25 July 2002, at 2:30 p.m., TCT No. 129642 in the name of Catigbac was cancelled and TCT No. T-134609 in the name of Summit Realty was issued in its place.

The foregoing incidents prompted petitioner to file a Complaint Affidavit[19] before the Office of the Deputy Ombudsman for Luzon charging several public officers and private individuals as follows:

32. I respectfully charge that on or about the months of June 2002 and July 2002 and onwards in Lipa City, **Atty. Antonio M. [Escutin]**, the Register of Deeds of Lipa City[;] **Aquilina A. Mistas**, the Local Assessment Operations Officer III of the City Assessor's Office of Lipa City[;] **Marietta Linatoc**, Records Clerk, Office of the City Assessor of Lipa City, who are public officers and acting in concert and conspiring with **Lauro S. Leviste II** and **Benedicto L. Orense**, Executive Vice-President and Vice-President, respectively[,] of Summit Point Realty and Development Corporation x x x while in the discharge of their administrative functions did then and there unlawfully, through evident bad faith, gross inexcusable negligence and with manifest partiality towards Summit caused me injury in the sum of ₱20,000,000.00 by cancelling my TD #00942-A in the Office of the City Assessor of Lipa City and instead issuing in the name of Francisco Catigbac TC #00949-A when aforesaid personalities well knew that TCT No. 129642 was already cancelled and therefore not legally entitled to a new tax declaration thereby manifestly favoring Summit Point Realty and Development Corporation who now appears to be the successor-in-interest of

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[18] *Id.* at 40.

[19] *Id.* at 4-20.

Francisco Catigbac, all to my damage and prejudice.[20] (Emphasis ours.)

Petitioner's Complaint Affidavit gave rise to simultaneous administrative and preliminary (criminal) investigations, docketed as OMB-L-A-03-0573-F and OMB-L-C-03-0728-F, respectively.

Petitioner pointed out several irregularities in the circumstances surrounding the alleged sale of Lot 1-B to Summit Realty and in the documents evidencing the same.

The supposed Deed of Absolute Sale in favor of Summit Realty executed on 22 July 2002 by Leonardo Yagin (Yagin), as Catigbac's attorney-in-fact, appeared to be a "one-way street." It did not express the desire of Summit Realty, as vendee, to purchase Lot 1-B or indicate its consent and conformity to the terms of the Deed. No representative of Summit Realty signed the left margin of each and every page of said Deed. It also did not appear from the Deed that a representative of Summit Realty presented himself before the Notary Public who notarized the said document. The Tax Identification Numbers of Yagin, as vendor, and Summit Realty, as vendee, were not stated in the Deed.

Petitioner also averred that, being a corporation, Summit Realty could only act through its Board of Directors. However, when the Deed of Absolute Sale of Lot 1-B was presented for recording before the Register of Deeds, it was not accompanied by a Secretary's Certificate attesting to the existence of a Board Resolution which authorized said purchase by Summit Realty. There was no entry regarding such a Secretary's Certificate and/or Board Resolution, whether on TCT No. 129642 or TCT No. T-134609. A Secretary's Certificate eventually surfaced, but it was executed only on 30 July 2002, five days after TCT No. T-134609 in the name of Summit Realty was already issued.

The Deed of Absolute Sale was presented before and recorded by the Register of Deeds of Lipa City on 25 July 2002 at 2:30 p.m., at exactly the same date and time TCT No. T-134609

[20] *Id.* at 19.

was issued to Summit Realty. Petitioner theorizes that for this to happen, TCT No. T-134609 was already prepared and ready even before the presentation for recording of the Deed of Absolute Sale before the Register of Deeds.

Moreover, Catigbac had long been dead and buried. The agency Catigbac supposedly executed in favor of Yagin was extinguished by Catigbac's death. Thus, petitioner argued, Yagin no longer had authority to execute on 22 July 2002 the Deed of Absolute Sale of Lot 1-B in favor of Summit Realty, making the said Deed null and void *ab initio*.

Petitioner asserted that Summit Realty was well-aware of Catigbac's death, having acknowledged the same in LRC Case No. 00-0376, the Petition for Issuance of New Owner's Duplicate of TCT No. 181 In Lieu of Lost One, filed by Summit Realty before the Regional Trial Court (RTC) of Lipa City. During the *ex parte* presentation of evidence in the latter part of 2000, Orense testified on behalf of Summit Realty that Catigbac's property used to form part of a bigger parcel of land, **Lot 1** of Plan Psu-12014, measuring **132,975 square meters**, covered by TCT No. 181 in the name of Catigbac; after Catigbac's death, Lot 1 was informally subdivided into several parts among his heirs and/or successors-in-interest, some of whom again transferred their shares to other persons; Summit Realty separately bought subdivided parts of Lot 181 from their respective owners, with a consolidated area of **105,648 square meters**, and identified as **Lot 1-B** after survey; despite the subdivision and transfer of ownership of Lot 1, TCT No. 181 covering the same was never cancelled; and the owner's duplicate of TCT No. 181 was lost and the fact of such loss was annotated at the back of the original copy of TCT No. 181 with the Registry of Deeds. Subsequently, in an Order[21] dated 3 January 2001, the RTC granted the Petition in LRC Case No. 00-0376 and directed the issuance of a new owner's duplicate of TCT No. 181 in the name of Catigbac, under the same terms and condition as in its original form.

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[21] Penned by Judge Vicente F. Landicho; *id.* at 46-48.

Petitioner further cast doubt on the acts undertaken by Summit Realty in connection with Catigbac's property, purportedly without legal personality and capacity. The Special Power of Attorney dated 6 February 1976 granted Yagin the right to sue on behalf of Catigbac, yet it was Summit Realty which instituted LRC Case No. 00-0376, and Yagin had no participation at all in said case. Likewise, it was not Yagin, but Orense, who, through a letter[22] dated 27 June 2001, requested the cancellation of TCT No. 181 covering Lot 1 and the issuance of a new certificate of title for Lot 1-B. Hence, it was Orense's request which resulted in the issuance of TCT No. 129642 in the name of Catigbac, later cancelled and replaced by TCT No. T-134609 in the name of Summit Realty.

Lastly, petitioner questioned why, despite the cancellation of TCT No. 129642 in the name of Catigbac and the issuance in its place of TCT No. T-134609 in the name of Summit Realty, it was the former cancelled title which was used as basis for canceling petitioner's Tax Declaration No. 00942-A. Tax Declaration No. 00949-A was thus still issued in the name of Catigbac, instead of Summit Realty.

Piecing everything together, petitioner recounted in her Complaint Affidavit the alleged scheme perpetrated against her and the involvement therein of each of the conspirators:

> 28. Summit Point Realty and Development Corporation went into action right after I paid Orense a visit sometime May 2002. Summit resurrected from the grave. (sic) Francisco Catigbac whom they knew to be long dead to face possible litigation. This is the height of malice and bad faith on the part of Summit through its Lauro Leviste II, the Executive Vice President and Benedicto Orense, the Vice President. I had only in my favor a tax declaration to show my interest and ownership over the 5, 000 sq.m. of the subject parcel of land. Evidently, Leviste and Orense came to the desperate conclusion that they needed a TCT which is a far better title than any tax declaration.
>
> Both then methodically commenced their evil and illegal scheme by causing on June 26, 2002 at 11:20 a.m. the inscription with the

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[22] *Id.* at 50.

Register of Deeds of Lipa City of a purported Special Power of Attorney in favor of Leonardo Yagin (Annex "I"). Next, the Deed of Absolute Sale (Annex "J") was made the following month in order to make it appear that Yagin unilaterally sold to Summit the subject parcel of land purportedly belonging to Francisco Catigbac. Since the latter was already dead and realizing that the agency was already extinguished, Annex "J" was not signed or executed by Leviste or Orense. This fact however did not deter the two from securing a BIR clearance on July 25, 2002. Also, on this same day, July 25, 2002, Annex "J" was presented to Atty. [Escutin] at 2:30 p.m. simultaneously, at exactly the same time of 2:30 p.m. TCT No. T-134609 in Summit's name was issued by Atty. [Escutin] WITHOUT benefit of the submission of the necessary documentation such as the Board Resolution, DAR Clearance, Revenue Tax Receipts for documentary stamps, real property tax clearance, proof of payment of transfer tax, tax declaration, articles of incorporation, SEC certification, license to sell and/or certificate of registration by HLURB, *etc*. Without the total and lightning speed cooperation of Atty. [Escutin] to close his eyes to the total absence of said vital documents, the desperately needed TCT to erase my interest and ownership would not have come into existence. Atty. [Escutin] had indeed acted in concert and in conspiracy with Leviste and Orense in producing Annex "H" and Annex "K".

29. Thereafter, Leviste and Orense utilized the already cancelled TCT No. 129642 in the name of Francisco Catigbac to be the basis in seeking the cancellation of TD #00942A in my name (Annex "F"). The Tax Mapping Division of the Office of City Assessor of Lipa City opined that my 5,000 sq.m. was (sic) part and parcel of the 105,648 sq.m. covered by TCT No. 129642. A photocopy of the Certification from said division is hereto marked and attached as Annex "P", hereof. Aquilina Mistas, the Local Assessment Operations Officer III of the Office of the City Assessor of Lipa City then conveniently caused the disappearance of my Notice of Levy and other supporting documents which she had personally received from me on March 13, 2002. For her part of the conspiracy likewise, Marietta Linatoc, Records Clerk, forthwith cancelled by TD#00942-A and in lieu thereof she issued TD #00949-A in the name of Francisco Catigbac. I dare say so because Mistas and Linatoc were presented a cancelled TCT as basis for obliterating my 5,000 sq.m. The fact of cancellation is clearly stated on the posterior side of TCT No. 129642. Both can read. But the two nevertheless proceeded with dispatch in canceling my TD, though they had ample

time and opportunity to reject the request of Summit who is not even the registered owner appearing on TCT No. 129642. Francisco Catigbac could not have been in front of Mistas and Linatoc because he was already six feet below the ground. Mistas and Linatoc could have demanded presentation of the document authorizing Summit in requesting for the cancellation of my TD. Also, they could have demanded from Summit any document transferring my interest and ownership in favor of a third party. Or, at least, they could have annotated in Tax Declaration No. 00949-A the fact that I bought my 5,000 sq.m. from a public auction sale duly conducted by the court sheriff. Alternatively, Linatoc and Mistas should have advised Summit to the effect that since they already appear to be the owners of the subject parcel of land, the new tax declaration should bear their name instead. Mistas and Linatoc indeed conspired with Summit in the illegal and unwarranted cancellation of my TD and in covering up the behind-the-scenes activities of Summit by making it appear that it was Francisco Catigbac who caused the cancellation. Even Leonardo Yagin, the alleged attorney-in-fact did not appear before Mistas and Linatoc. Yagin could not have appeared because he is rumored to be long dead. The aforementioned acts of the two benefitted (sic) Summit through their manifest partiality, evident bad faith and/or gross inexcusable negligence. Perhaps, there is some truth to the rumor that Yagin is dead because he does not even have a TIN in the questioned Deed of Absolute Sale. If indeed Yagin is already dead or inexistent[,] the allged (sic) payment of the purchase price of ₱5,282,400.00 on July 25, 2002 is a mere product of the fertile imagination of Orense and Leviste. To dispute this assertion[,] the live body of Leonardo Yagin must be presented by Orense and Leviste.[23]

After filing her Affidavit Complaint, petitioner attempted to have the Sheriff's Deed of Final Sale/Conveyance of her 5,000 square meter *pro-indiviso* share in Lot 13713 registered with the Register of Deeds of Lipa City. She also sought the annotation of her Affidavit of Adverse Claim on the said 5,000 square meters on TCT No. T-134609 of Summit Realty.

Escutin, the Register of Deeds of Lipa City, relying on the finding of Examiner Juanita H. Sta. Ana (Sta. Ana), refused to have the Sheriff's Deed of Final Sale/Conveyance registered, since:

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[23] *Id.* at 15-18.

The Sheriff's Deed of Final Sale/Conveyance is a Mode of Transfers (sic) ownership in favor of the Plaintiff, [Dinah] C. Castillo, (sic) However[,] it happen (sic) that the presented Tax Declaration [No.] 00942-A is already transfer (sic) in the name of the said [Dinah] C. Castillo, therefore[,] the registration of Sheriff (sic) Final Sale is no longer necessary.[24]

Escutin likewise denied petitioner's request to have her Affidavit of Adverse Claim annotated on TCT No. T-134609 on the following grounds:

1. The claimants (sic) rights or interest is not adverse to the registered owner. The registered owner is Summit Point Realty and Development Corporation under Transfer Certificate of Title No. T-134609 of the Registry of Deeds for Lipa City.

2. The records of the Registry reveals that the source of the rights or interest of the adverse claimant is by virtue of a Levy on Execution by the Regional Trial Court Fourth Judicial Region, Branch 30, San Pablo City, in Civil Case No. SP-4489 (1996), [Dinah] C. Castillo vs. Raquel Buenaventura. The registered owner, Summit Point Realty and Development Corporation nor its predecessor-in-interest are not the judgment debtor or a party in the said case. Simply stated, there is no privity of contract between them (Consulta No. 1044 and 1119). If ever, her adverse claim is against Raquel Buenaventura, the judgment debtor who holds no title over the property.[25]

Escutin did mention, however, that petitioner may elevate *en consulta* to the Land Registration Authority (LRA) the denial of her request for registration of the Sheriff's Deed of Final Sale/Conveyance and annotation of her adverse claim on TCT No. T-134609. This petitioner did on 3 July 2003.

While her *Consulta* was pending before the LRA, petitioner filed a Supplemental Complaint Affidavit[26] and a Second Supplemental Complaint Affidavit[27] with the Office of the Deputy

[24] *Id.* at 84, 102.

[25] *Id.* at 103.

[26] *Id.* at 57-59.

[27] *Id.* at 60.

Ombudsman for Luzon, bringing to its attention the aforementioned developments. In her Second Supplemental Complaint Affidavit, petitioner prayed that Sta. Ana be included as a co-respondent in OMB-L-A-03-0573-F and OMB-L-C-03-0728-F, averring that the latter's actuation deprived petitioner of a factual basis for securing a new title in her favor over her 5,000 square meter *pro-indiviso* share in Lot 13713, because the public auction sale of the said property to her could never become final without the registration of the Sheriff's Deed.

The persons charged in OMB-L-A-03-0573-F and OMB-L-C-03-0728-F filed their respective Counter-Affidavits.

Respondent Escutin clarified in his Counter Affidavit that TCT No. T-134609 reflected the same date and time of entry of the Deed of Absolute Sale between Yagin (as Catigbac's attorney-in-fact) and Summit Realty, *i.e.*, 25 July 2002 at 2:30 p.m., in accordance with Section 56[28] of Presidential Decree

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[28] SEC. 56. *Primary Entry Book; fees; certified copies* — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. **He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date**: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

No. 1529, otherwise known as the Property Registration Decree. He emphasized that his duty as Register of Deeds to register the Deed of Absolute Sale presented before him was purely ministerial. If the document was legal and in due form, and there was nothing mutilated or irregular on its face, the Register of Deeds had no authority to inquire into its intrinsic validity based upon proofs *aliunde*. It was not true that he allowed the registration of the Deed of Absolute Sale notwithstanding the absence of the required documents supporting the application for registration thereof. On the contrary, all the required documents such as the DAR Clearance, Bureau of Internal Revenue (BIR) Certificate Authorizing Registration (CAR), Real Property Tax, Transfer Tax, Secretary's Certificate and Articles of Incorporation of Summit Realty were submitted. While it was true that the Secretary's Certificate did not accompany the Deed of Absolute Sale upon the presentation of the latter for registration, Section 117 of the Property Registration Decree gives the party seeking registration five days to comply with the rest of the requirements; and only if the party should still fail to submit the same would it result in the denial of the registration. The License to Sell and the Housing and Land Use Regulatory Board Registration of Summit Realty are only required when a subdivision project is presented for registration. The use of TINs in certain documents is a BIR requirement. The BIR itself did not require from Yagin as vendor his TIN in the Deed of Absolute Sale, and issued the CAR even in the absence thereof. The Register of Deeds, therefore, was only bound by the CAR. As to the Certification earlier issued by the Register of Deeds of Lipa City attesting that Lot 13713 in the name of co-owners Raquel, Urbana, and Perla, was not covered by any certificate of title, Escutin explained that the Register of Deeds was not technically equipped to determine whether a cadastral lot number was within a titled property or not. Lastly, Escutin denied conspiring or participating in the cancellation of petitioner's Tax Declaration No. 00942-A for, as Register of Deeds, he was not concerned with the issuance (or cancellation) of tax declarations.

Respondent Mistas, the Assistant City Assessor for Administration of the Office of the City Assessor, Lipa City,

disputed petitioner's allegations that she personally received from petitioner copies of the Notice of Levy and other supporting documents, and that she caused the disappearance thereof. Although she admitted that said documents were shown to her by petitioner, she referred petitioner to the Receiving Clerk, Lynie Reyes, who accordingly received the same. Mistas maintained that she was not the custodian of records of the Office and she should not be held responsible for the missing documents. She opined that petitioner's documents could have been among those misplaced or destroyed when the Office of the City Assessor was flooded with water leaking from the toilet of the Office of the City Mayor. As Assistant City Assessor for Administration, Mistas identified her main function to be the control and management of all phases of administrative matters and support. She had no hand in the cancellation of petitioner's Tax Declaration No. 00942-A, and the issuance of Catigbac's Tax Declaration No. 00949-A for such function pertained to another division over which she did not exercise authority. Thus, it was also not within her function or authority to demand the presentation of certain documents to support the cancellation of petitioner's Tax Declaration No. 00942-A or to cause the annotation of petitioner's interest on Catigbac's Tax Declaration No. 00949-A.

Respondent Linatoc averred that as Local Assessment Operation Officer II of the Office of the City Assessor, Lipa City, she was in charge of safekeeping and updating the North District Records. With respect to the transfer of a tax declaration from one name to another, her duty was limited only to the act of preparing the new tax declaration and assigning it a number, in lieu of the cancelled tax declaration. It was a purely ministerial duty. She had no authority to demand the presentation of any document or question the validity of the transfer. Neither was it within her jurisdiction to determine whether petitioner's interest should have been annotated on Catigbac's Tax Declaration No. 00949-A. Examining the documents presented in support of the transfer of the tax declaration to another's name was a function belonging to other divisions of the Office of the City Assessors. The flow of work, the same as in any other ordinary

transaction, mandated her to cancel petitioner's Tax Declaration No. 00942-A, and to prepare and release Catigbac's Tax Declaration No. 00949-A after the transfer had been reviewed and approved by other divisions of the Office. It was also not true that TCT No. 129642 in the name of Catigbac was already cancelled when it was presented before the Office of the City Assessors; the photocopy of said certificate of title with the Office bore no mark of cancellation.

Leviste and Orense, the private individuals charged with the respondent public officers, admitted that they were corporate officers of Summit Realty. They related that Summit Realty bought a parcel of land measuring 105,648 square meters, later identified as Lot 1-B, previously included in TCT No. 181, then specifically covered by TCT No. 129642, both in the name of Catigbac. As a result of such purchase, ownership of Lot 1-B was transferred from Catigbac to Summit Realty. Summit Realty had every reason to believe in good faith that said property was indeed owned by Catigbac on the basis of the latter's certificate of title over the same. Catigbac's right as registered owner of Lot 1-B under TCT No. 181/No. 129642, was superior to petitioner's, which was based on a mere tax declaration. Leviste and Orense rebutted petitioner's assertion that the Deed of Absolute Sale between Yagin, as Catigbac's attorney-in-fact, and Summit Realty was a "one-way street." The Deed was actually signed on the left margin by both Yagin and the representative of Summit Realty. The inadvertent failure of the representative of Summit Realty to sign the last page of the Deed and of both parties to indicate their TINs therein did not invalidate the sale, especially since the Deed was signed by witnesses attesting to its due execution. Questions as regards the scope of Catigbac's Special Power of Attorney in favor of Yagin and the effectivity of the same after Catigbac's death can only be raised in an action directly attacking the title of Summit Realty over Lot 1-B, and not in an administrative case and/or preliminary investigation before the Ombudsman, which constituted a collateral attack against said title. Leviste and Orense further explained that since the owner's duplicate of TCT No. 181 was lost and was judicially ordered replaced only on

3 January 2001, entries/inscriptions were necessarily made thereon after said date. As to Orense's failure to show petitioner any document proving ownership of Lot 1-B by Summit Realty when the latter paid him a visit, it was not due to the lack of such documents, but because of petitioner's failure to establish her right to peruse the same. Orense also denied ever threatening petitioner during their meeting. Finally, according to Leviste and Orense, petitioner's allegations were based on mere conjectures and unsupported by evidence. That particular acts were done or not done by certain public officials was already beyond the control of Leviste and Orense, and just because they benefited from these acts did not mean that they had a hand in the commission or omission of said public officials.

After more exchange of pleadings, OMB-L-A-03-0573-F and OMB-L-C-03-0728-F were finally submitted for resolution.

In a Joint Resolution[29] dated 28 April 2004, the Office of the Deputy Ombudsman for Luzon gave more credence to respondent Escutin's defenses, as opposed to petitioner's charges against him:

> Going to the charges against respondent Escutin, he convincingly explained that he allowed the registration of the allegedly defective Deed of Sale because he, as Register of Deeds, has no power to look into the intrinsic validity [of] the contract presented to him for registration, owing to the ministerial character of his function. Moreover, as sufficiently explained by said respondent, all the documents required for the registration of the Deed of Sale were submitted by the applicant.
>
> We likewise find said respondent's explanation satisfactory that Section 56 of P.D. 1529 mandates that the TCT bear the date of registration of the instrument on which the said TCT's issuance was based. It is for this reason that TCT 134609 bears the same date and time as the registration of the Deed of Absolute Sale, which deed served as basis for its issuance.
>
> As to his denial to register [herein petitioner's] Affidavit of Adverse Claim and Sheriff's Certificate of Final Sale, through the issuance by the Registry of Deeds Examiner Juanita H. Sta. Ana, of the 29

[29] *Rollo,* pp. 102-118.

June 2003 Order denying registration thereof, such matter had been raised by herein [petitioner] in a letter-consulta to the Administrator of the Land Registration Authority (LRA) on 03 July 2003. As the criminal and administrative charges respecting this issue is premised, in part, on a matter still pending with the LRA, we find it premature to make a finding on the same.

It is for the same reason that we deny the motion contained in the Second Supplemental Complaint Affidavit praying for the inclusion, as additional respondent, of Juanita H. Sta. Ana, who is impleaded solely on the basis of having signed, by authority of Escutin, the 29 July 2003 Order of denial of [petitioner's] application for registration.

Finally, respondent Escutin was able to successfully demonstrate, through Consulta 2103 dated 25 July 1994, wherein the denial of registration by the Examiner of the Registry of Deeds of Quezon City was upheld by the LRA Administrator, that the (sic) it was practice in the different Registries that Examiners are given authority by the Register to sign letters of denial.[30]

The Office of the Deputy Ombudsman for Luzon declared in the same Joint Resolution that there was no basis to hold respondents Mistas and Linatoc administratively or criminally liable:

In this respect, this Office notes that while [herein petitioner] alleges that Aquilina Mistas caused the disappearance of the Notice of Levy and other supporting documents received from [petitioner] on 13 March 2003 when she applied for the issuance of a Tax Declaration in her favor, she did not present her receiving copy thereof showing that it was Mistas who received said documents from her. Neither did she show that Mistas is the employee responsible for record safekeeping.

Next, we find, as convincingly answered, the allegation that respondent Marietta Linatoc cancelled Tax Declaration No. 00942-A and issued Tax Declaration 00949-Q (sic) on the basis of a cancelled Transfer Certificate of Title upon the behest of Summit [Realty], which was not the registered owner of the property.

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[30] *Id.* at 112-113.

Respondent Linatoc, meeting squarely [petitioner's] allegation, admits having physically cancelled Tax Declaration No. 00942-A and having prepared a new declaration covering the same property in Catigbac's [name], as mandated by the flow of work in the City Assessor's Office. However, she denies having the authority or discretion to evaluate the correctness and sufficiency of the documents supporting the application for the issuance of the Tax Declaration, arguing that her official function is limited to the physical preparation of a new tax declaration, the assignment of a new tax declaration number and the cancellation of the old tax declaration, after the application had passed the other divisions of the City Assessor's Office.

Verily, [petitioner] failed to establish that respondent Mistas and Linatoc, are the ones officially designated to receive applications for issuance of Tax Declaration, evaluate the sufficiency of the documents supporting such applications, and on the basis of the foregoing recommend or order the cancellation of an existing Tax Declaration and direct the annotation of any fact affecting the property and direct the issuance of a new tax declaration covering the same property.

In fact, there is even a discrepancy as to the official designation of said respondents. While [petitioner] impleads Mistas, in her capacity as Local Assessment Officer, and Linatoc, in her capacity as Records Clerk, Mistas, in her counter-affidavit, alleges a different designation, *i.e.*, Assistant City Assessor for Administration, while Linatoc claims to be the Local Assessment Operation Officer II of the City Assessor's Office.

With the scope of work of said respondents not having been neatly defined by [petitioner], this Office cannot make a definitive determination of their liability for Grave Misconduct and violation of Section 3(e) of R.A. No. 3019, which charges both relate to the performance or discharge of Mistas' and Linatoc's official duties.[31]

Neither did the Office of the Deputy Ombudsman for Luzon find any probable cause to criminally charge private individuals Leviste and Orense for the following reasons:

Anent private respondents, with the alleged conspiracy to unlawfully cause the transfer of the title of [herein petitioner's]

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

property to Summit sufficiently explained by respondent Register of Deeds, such allegation against private respondents loses a legal leg to stand on.

Inasmuch as [petitioner] was not able to sufficiently outline the official functions of respondents Mistas and Linatoc to pin down their specific accountabilities, the imputation that private respondent (sic) conspired with said public respondents respecting the cancellation of Tax Declaration No. 00942-A is likewise stripped of any factual and legal bases.[32]

As to whether petitioner was indeed unlawfully deprived of her 5,000 square meter property, which issue comprised the very premise of OMB-L-A-03-0573-F and OMB-L-C-03-0728-F, the Office of the Deputy Ombudsman for Luzon ruled that such matter was not within its jurisdiction and should be raised in a civil action before the courts of justice.

In the end, the Office of the Ombudsman decreed:

WHEREFORE, premises considered, it is respectfully recommended that: (1) the administrative case against public respondents ANTONIO M. ESCUTIN, AQUILINA A. MISTAS and MARIETA L. LINATOC be DISMISSED, for lack of substantial evidence; and (2) the criminal case against the same respondents including private respondent LAURO S. LEVISTE II and BENEDICTO L. ORENSE, be DISMISSED, for lack of probable cause.[33]

In a Joint Order[34] dated 20 June 2005, the Office of the Deputy Ombudsman for Luzon denied petitioner's Motion for Reconsideration.

The Office of the Deputy Ombudsman for Luzon, in its Joint Order, took notice of the Resolution dated 17 December 2002 of the LRA in Consulta No. 3483, which involved circumstances similar to those in petitioner's case. The LRA distinguished between two systems of land registration: one is the Torrens

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[32] *Id.* at 115.

[33] *Id.* at 116.

[34] *Id.* at 119-122.

system for registered lands under the Property Registration Decree, and the other is the system of registration for unregistered land under Act No. 3344 (now Section 113 of the Property Registration Decree). These systems are separate and distinct from each other. For documents involving registered lands, the same should be recorded under the Property Registration Decree. The registration, therefore, of an instrument under the wrong system produces no legal effect. Since it appeared that in Consulta No. 3483, the registration of the *Kasulatan ng Sanglaan*, the Certificate of Sale and the Affidavit of Consolidation was made under Act No. 3344, it did not produce any legal effect on the disputed property, because the said property was already titled when the aforementioned documents were executed and presented for registration, and their registration should have been made under the Property Registration Decree.

Furthermore, the Office of the Deputy Ombudsman for Luzon, in the same Joint Order, took into account petitioner's withdrawal of her appeal *en consulta* before the LRA of the denial by the Register of Deeds of her request for registration of the Sheriff's Deed of Final Sale/Conveyance and Affidavit of Adverse Claim, which prompted the LRA Administrator to declare the *consulta* moot and academic. For want of a categorical declaration on the registerability of petitioner's documents from the LRA, the competent authority to rule on the said matter, there could be no basis for a finding that respondent public officers could be held administratively or criminally liable for the acts imputed to them.

Petitioner sought recourse from the Court of Appeals by filing a Petition for Review under Rule 43 of the Rules of Court challenging the 28 April 2004 Joint Resolution and 20 June 2005 Joint Order of the Office of the Deputy Ombudsman for Luzon.[35] The appeal was docketed as CA-G.R. SP No. 90533.

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[35] Petitioner no longer impleaded Leviste and Orense as respondents in her Petition before the Court of Appeals. She also did not appeal the non-inclusion of Sta. Ana as a respondent in OMB-L-A-03-0573-F and OMB-L-C-03-0728-F

The Court of Appeals promulgated its Decision[36] on 18 October 2005, also finding no reason to administratively or criminally charge respondents. Essentially, the appellate court adjudged that petitioner can not impute corrupt motives to respondents' acts:

> Without evidence showing that respondents received any gift, money or other pay-off or that they were induced by offers of such, the Court cannot impute any taint of direct corruption in the questioned acts of respondents. Thus, any indication of intent to violate the laws or of flagrant disregard of established rule may be negated by respondents' honest belief that their acts were sanctioned under the provisions of existing law and regulations. Such is the situation in the case at bar. Respondent Register of Deeds acted in the honest belief that the agency recognized by the court in LRC Case No. 00-0376 between the registered owner Francisco Catigbac and Leonardo Yagin subsisted with respect to the conveyance or sale of Lot 1 to Summit as the vendee, and that the Special Power of Attorney and Deed of Absolute Sale presented as evidence during said proceedings are valid and binding. Hence, respondent Escutin was justified in believing that there is no legal infirmity or defect in registering the documents and proceeding with the transfer of title of Lot 1 in the name of the new owner Summit. On the other hand, respondent Linatoc could not be held administratively liable for effecting the cancellation in the course of ordinary flow of work in the City Assessor's Office after the documents have undergone the necessary evaluation and verification by her superiors.[37]

The Court of Appeals referred to the consistent policy of the Supreme Court not to interfere with the exercise by the Ombudsman of his investigatory power. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless clothed with grave abuse of discretion. The appellate court pronounced that there was no grave abuse of discretion on the part of the Office of the Deputy Ombudsman for Luzon in dismissing petitioner's Complaint Affidavit against respondents.

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[36] *Rollo,* pp. 37-57.

[37] *Id.* at 55-56.

Hence, the dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the present petition is hereby DISMISSED for lack of merit. The challenged Joint Resolution dated April 28, 2004 and Joint Order dated June 20, 2005 in OMB-L-A-03-0573-F and OMB-L-C-03-0728-F are hereby AFFIRMED.[38]

In its Resolution dated 11 January 2006, the Court of Appeals denied petitioner's Motion for Reconsideration for failing to present new matter which the appellate court had not already considered in its earlier Decision.

Petitioner now comes before this Court via the instant Petition for Review on *Certiorari*, with the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN AFFIRMING THE CANCELLATION OF THE TAX DECLARATION 00942 OF PETITIONER IN VIOLATION OF SECTION 109 OF PRESIDENTIAL DECREE 1529, OTHERWISE KNOWN AS THE PROPERTY REGISTRATION ACT (sic);

II.

THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN RULING THAT RESPONDENTS COULD NOT BE HELD ADMINISTRATIVELY LIABLE FOR UNDULY FAVORING SUMMIT TO THE DAMAGE AND PREJUDICE OF PETITIONER.[39]

The Petition at bar is without merit.

As to the first issue, petitioner invokes Section 109 of the Property, Registration Decree which provides:

SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where

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[38] *Id.* at 56.

[39] *Id.* at 19.

the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any new instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

Petitioner argues that the RTC, in LRC Case No. 00-0376, only ordered the issuance of a new owner's duplicate of TCT No. 181 in lieu of the lost one. However, respondents did not only issue a new owner's duplicate of TCT No. 181, but also cancelled petitioner's Tax Declaration No. 00942-A and issued in its place Tax Declaration No. 00949-A in the name of Catigbac. Respondents did not even annotate petitioner's existing right over 5,000 square meters of Lot 1-B or notify petitioner of the cancellation of her Tax Declaration No. 00942-A. Petitioner maintains that a new owner's duplicate of title is not a mode of acquiring ownership, nor is it a mode of losing one. Under Section 109 of the Property Registration Decree, the new duplicate of title was issued only to replace the old; it cannot cancel existing titles.

Petitioner's position on this issue rests on extremely tenuous arguments and befuddled reasoning.

Before anything else, the Court must clarify that a title is different from a certificate of title. *Title* is generally defined as the lawful cause or ground of possessing that which is ours. It is that which is the foundation of ownership of property, real or personal.[40] Title, therefore, may be defined briefly as that

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[40] Antonio H. Noblejas and Edilberto H. Noblejas, *REGISTRATION OF LAND TITLES AND DEEDS* (2007 revised ed.), p. 2, citing *Hunt v. Easton*, 21 N.W. 429, 431.

which constitutes a just cause of exclusive possession, or which is the foundation of ownership of property.[41] *Certificate of title*, on the other hand, is a mere evidence of ownership; it is not the title to the land itself.[42] Under the Torrens system, a certificate of title may be an Original Certificate of Title, which constitutes a true copy of the decree of registration; or a Transfer Certificate of Title, issued subsequent to the original registration.

Summit Realty acquired its title to Lot 1-B, not from the issuance of the new owner's duplicate of TCT No. 181, but from its purchase of the same from Yagin, the attorney-in-fact of Catigbac, the registered owner of the said property. Summit Realty merely sought the issuance of a new owner's duplicate of TCT No. 181 in the name of Catigbac so that it could accordingly register thereon the sale in its favor of a substantial portion of Lot 1 covered by said certificate, later identified as Lot 1-B. Catigbac's title to Lot 1-B passed on by sale to Summit Realty, giving the latter the right to seek the separation of the said portion from the rest of Lot 1 and the issuance of a certificate of title specifically covering the same. This resulted in the issuance of TCT No. 129642 in the name of Catigbac, covering Lot 1-B, which was subsequently cancelled and replaced by TCT No. T-134609 in the name of Summit Realty.

Petitioner's reliance on Section 109 of the Property Registration Decree is totally misplaced. It provides for the requirements for the issuance of a lost duplicate certificate of title. It cannot, in any way, be related to the cancellation of petitioner's tax declaration.

The cancellation of petitioner's Tax Declaration No. 00942-A was not because of the issuance of a new owner's duplicate of TCT No. 181, but of the fact that Lot 1-B, which encompassed the 5,000 square meters petitioner lays claim to, was already covered by TCT No. 181 (and subsequently by TCT No. 129642) in the name of Catigbac. A certificate of title issued is an absolute and indefeasible evidence of ownership of the property in favor

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[41] *Id.* at 3.

[42] *Id.* at 4.

of the person whose name appears therein. It is binding and conclusive upon the whole world.[43] All persons must take notice, and no one can plead ignorance of the registration.[44] Therefore, upon presentation of TCT No. 129642, the Office of the City Assessor must recognize the ownership of Lot 1-B by Catigbac and issue in his name a tax declaration for the said property. And since Lot 1-B is already covered by a tax declaration in the name of Catigbac, accordingly, any other tax declaration for the same property or portion thereof in the name of another person, not supported by any certificate of title, such that of petitioner, must be cancelled; otherwise, the City Assessor would be twice collecting a realty tax from different persons on one and the same property.

As between Catigbac's title, covered by a certificate of title, and petitioner's title, evidenced only by a tax declaration, the former is evidently far superior and is, in the absence of any other certificate of title to the same property, conclusive and indefeasible as to Catigbac's ownership of Lot 1-B. Catigbac's certificate of title is binding upon the whole world, including respondent public officers and even petitioner herself. Time and again, the Court has ruled that tax declarations and corresponding tax receipts cannot be used to prove title to or ownership of a real property inasmuch as they are not conclusive evidence of the same.[45] Petitioner acquired her title to the 5,000 square meter property from Raquel, her judgment debtor who, it is important to note, likewise only had a tax declaration to evidence her title. In addition, the Court of Appeals aptly observed that, "[c]uriously, as to how and when petitioner's alleged predecessor-in-interest, Raquel K. Moratilla and her supposed co-owners acquired portions of Lot 1 described as Lot 13713 stated in TD No. 00449, petitioner had so far remained utterly silent."[46]

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[43] *Barrera v. Court of Appeals*, 423 Phil. 559, 569-570 (2001).

[44] *Heirs of Vencilao v. Court of Appeals*, 351 Phil. 815, 823 (1998).

[45] See *Cervantes v. Court of Appeals,* 404 Phil. 651, 659 (2001); *Cureg v. Intermediate Appellate Court*, G.R. No. 73465, 7 September 1989, 177 SCRA 313, 320-321.

[46] *Rollo,* p. 53.

Petitioner's allegations of defects or irregularities in the sale of Lot 1-B to Summit Realty by Yagin, as Catigbac's attorney-in-fact, are beyond the jurisdiction of the Office of the Deputy Ombudsman for Luzon to consider. It must be remembered that Summit Realty had already acquired a certificate of title, TCT No. T-134609, in its name over Lot 1-B, which constitutes conclusive and indefeasible evidence of its ownership of the said property and, thus, cannot be collaterally attacked in the administrative and preliminary investigations conducted by the Office of the Ombudsman for Luzon. Section 48 of the Property Registration Decree categorically provides that 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. For this same reason, the Court has no jurisdiction to grant petitioner's prayer in the instant Petition for the cancellation of TCT No. T-134609 in the name of Summit Realty.

Which now brings the Court to the second issue raised by petitioner on the administrative liability of respondents.

Before the Court proceeds to tackle this issue, it establishes that petitioner's Complaint Affidavit before the Office of the Ombudsman for Luzon gave rise to two charges: (1) OMB-L-A-03-0573-F involved the administrative charge for Gross Misconduct against respondent public officers; and (2) OMB-L-C-03-0728-F concerned the criminal charge for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act[47] against respondent public officers and private individuals Leviste and Orense. The Office of the Deputy Ombudsman for Luzon, affirmed by the Court of Appeals, dismissed both charges. In the Petition at bar, petitioner only assails the dismissal of the

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[47] Section 3(e) of The Anti-Graft and Corrupt Practices Act reads:

(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.

administrative charge for grave misconduct against respondent public officers. Since petitioner did not raise as an issue herein the dismissal by the Office of the Deputy Ombudsman for Luzon, affirmed by the Court of Appeals, of the criminal charge against respondent public officers for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act, the same became final and executory.[48]

In *Domingo v. Quimson*,[49] the Court adopted the well-written report and recommendation of its Clerk of Court on the administrative matter then pending and involving the charge of gross or serious misconduct:

"Under Section 36, par. (b) [1] of PD No. 807, otherwise known as the Civil Service Decree of the Philippines, 'misconduct' is a ground for disciplinary action. And under MC No. 8, S. 1970, issued by the Civil Service Commission on July 28, 1970, which sets the 'Guidelines in the Application of Penalties in Administrative Cases and other Matters Relative Thereto,' the administrative offense of 'grave misconduct' carries with it the maximum penalty of dismissal from the service (Sec. IV-C[3], MC No. 8, S. 1970). But the term 'misconduct' as an administrative offense has a well defined meaning. It was defined in *Amosco vs. Judge Magno*, Adm. Mat. No. 439-MJ, Res. September 30, 1976, as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.' It is a misconduct 'such as affects the performance of his duties as an officer and not such only as effects his character as a private individual.' In the recent case of *Oao vs. Pabato, etc.*, Adm. Mat. No. 782-MJ, Res. July 29, 1977, the Court defined 'serious misconduct' as follows:

'Hence, even assuming that the dismissal of the case is erroneous, this would be merely an error of judgment and not serious misconduct. The term 'serious misconduct' is a transgression of some established and definite rule of action more particularly, unlawful behavior of gross negligence by the magistrate. It implies a wrongful intention and not a mere error of judgment. For serious misconduct to exist, there must

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[48] See *Philippine National Bank v. Spouses Rabat*, 398 Phil. 654, 667-668 (2000).

[49] A.M. No. P-1518, 19 August 1982.

> be reliable evidence showing that the judicial acts complained of were corrupt or inspired by intention to violate the law, or were a persistent disregard of well-known legal rules. We have previously ruled that negligence and ignorance on the part of a judge are inexcusable if they imply a manifest injustice which cannot be explained by a reasonable interpretation. This is not so in the case at bar.'" (Italics supplied.)

To reiterate, for grave misconduct to exist, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were a persistent disregard of well-known legal rules. Both the Office of the Deputy Ombudsman for Luzon and the Court of Appeals found that there was no sufficient evidence to substantiate petitioner's charge of grave misconduct against respondents. For this Court to reverse the rulings of the Office of the Deputy Ombudsman for Luzon and the Court of Appeals, it must necessarily review the evidence presented by the parties and decide on a question of fact. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[50]

Factual issues are not cognizable by this Court in a Petition for Review under Rule 45 of the Rules of Court. In order to resolve this issue, the Court would necessarily have to look into the probative value of the evidence presented in the proceedings below. It is not the function of the Court to reexamine or reevaluate the evidence all over again. This Court is not a trier of facts, its jurisdiction in these cases being limited to reviewing only errors of law that may have been committed by the lower courts or administrative bodies performing quasi-judicial functions. It should be emphasized that findings made by an administrative body, which has acquired expertise, are accorded not only respect but even finality by the Court. In administrative proceedings, the quantum of evidence required is only substantial.[51]

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[50] *Crisostomo v. Garcia, Jr.*, G.R. No. 164787, 31 January 2006, 481 SCRA 402, 409.

[51] See *Basuel v. Fact Finding and Intelligence Bureau*, G.R. No. 143664, 30 June 2006, 494 SCRA 118, 126-127.

Absent a clear showing of grave abuse of discretion, the Court shall not disturb findings of fact. The Court cannot weigh once more the evidence submitted, not only before the Ombudsman, but also before the Court of Appeals. Under Section 27 of Republic Act No. 6770, findings of fact by the Ombudsman are conclusive, as long as they are supported by substantial evidence.[52] Substantial evidence is the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[53]

The Court finds no reason to disturb the finding of the Office of the Deputy Ombudsman for Luzon and the Court of Appeals that respondents did not commit gross misconduct. Evident from the 28 April 2004 Joint Resolution of the former and the 18 October 2005 Decision of the latter is that they arrived at such findings only after a meticulous consideration of the evidence submitted by the parties.

Respondents were able to clearly describe their official functions and to convincingly explain that they had only acted in accordance therewith in their dealings with petitioner and/or her documents. Respondents also enjoy in their favor the presumption of regularity in the performance of their official duty. The burden of proving otherwise by substantial evidence falls on petitioner, who failed to discharge the same.

From the very beginning, petitioner was unable to identify correctly the positions held by respondents Mistas and Linatoc at the Office of the City Assessor. How then could she even assert that a particular action was within or without their jurisdiction to perform? While it may be true that petitioner should have at least been notified that her Tax Declaration No. 00942-A was being cancelled, she was not able to establish that such would be the responsibility of respondents Mistas or Linatoc. Moreover, petitioner did not present statutory, regulatory, or procedural basis for her insistence that respondents should have done or not done a particular act. A perfect example was her assertion

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[52] *Dr. Almanzor v. Dr. Felix*, 464 Phil. 804, 810-811 (2004).

[53] Rule 133, Section 5 of the Rules of Court.

that respondents Mistas and Linatoc should have annotated her interest on Tax Declaration No. 00949-A in the name of Catigbac. However, she failed to cite any law or rule which authorizes or recognizes the annotation of an adverse interest on a tax declaration. Finally, absent any reliable evidence, petitioner's charge that respondents conspired with one another and with corporate officers of Summit Realty is nothing more than speculation, surmise, or conjecture. Just because the acts of respondents were consistently favorable to Summit Realty does not mean that there was a concerted effort to cause petitioner prejudice. Respondents' actions were only consistent with the recognition of the title of Catigbac over Lot 1-B, transferred by sale to Summit Realty, registered under the Torrens system, and accordingly evidenced by certificates of title.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. The Decision dated 18 October 2005 and Resolution dated 11 January 2006 of the Court of Appeals in CA-G.R. SP No. 90533 are hereby *AFFIRMED in toto*. Costs against the petitioner Dinah C. Castillo.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 171618-19. March 13, 2009]

JACKBILT INDUSTRIES, INC., *petitioner, vs.* **JACKBILT EMPLOYEES WORKERS UNION-NAFLU-KMU,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; CONCLUSIVENESS OF JUDGMENT; DEFINED. —** The principle of conclusiveness of judgment, embodied in Section 47(c), Rule 39 of the Rules of Court, holds that the parties to a case are bound by the findings in a previous judgment with respect to matters actually raised and adjudged therein.

2. **LABOR AND SOCIAL LEGISLATION; LABOR ORGANIZATION; THE USE OF UNLAWFUL MEANS IN THE COURSE OF A STRIKE RENDERS THE STRIKE ILLEGAL; APPLICATION IN CASE AT BAR. —** Article 264(e) of the Labor Code prohibits any person engaged in picketing from obstructing the free ingress to and egress from the employer's premises. Since respondent was found in the July 17, 1998 decision of the NLRC to have prevented the free entry into and exit of vehicles from petitioner's compound, respondent's officers and employees clearly committed illegal acts in the course of the March 9, 1998 strike. The use of unlawful means in the course of a strike renders such strike illegal. Therefore, pursuant to the principle of conclusiveness of judgment, the March 9, 1998 strike was *ipso facto* illegal. The filing of a petition to declare the strike illegal was thus unnecessary. Consequently, we uphold the legality of the dismissal of respondent's officers and employees. Article 264 of the Labor Code further provides that an employer may terminate employees found to have committed illegal acts in the course of a strike. Petitioner clearly had the legal right to terminate respondent's officers and employees.

APPEARANCES OF COUNSEL

D.A. Tejero and Amoranto Law Offices for petitioner.
Remigio D. Saladero, Jr. for respondent.

DECISION

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to reverse and set aside the July 13, 2005 decision[2] and February 9, 2006 resolution[3] of the Court of Appeals in CA-G.R. SP No. 65208 and CA-G.R. SP No. 65425.

Due to the adverse effects of the Asian economic crisis on the construction industry beginning 1997, petitioner Jackbilt Industries, Inc. decided to temporarily stop its business of producing concrete hollow blocks, compelling most of its employees to go on leave for six months.[4]

Respondent Jackbilt Employees Workers Union-NAFLU-KMU immediately protested the temporary shutdown. Because its collective bargaining agreement with petitioner was expiring during the period of the shutdown, respondent claimed that petitioner halted production to avoid its duty to bargain collectively. The shutdown was allegedly motivated by anti-union sentiments.

Accordingly, on March 9, 1998, respondent went on strike. Its officers and members picketed petitioner's main gates and deliberately prevented persons and vehicles from going into and out of the compound.

On March 19, 1998, petitioner filed a petition for injunction[5] with a prayer for the issuance of a temporary restraining order (TRO) in the National Labor Relations Commission (NLRC).

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

[2] Penned by Associate Justice Vicente Q. Roxas (dismissed from service) and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr. of the Seventh Division of the Court of Appeals. *Rollo,* pp. 56-63.

[3] *Id.*, pp. 70-71.

[4] Inter-office memorandum of petitioner's administrative officer-in-charge Albert L. Bantug. Annex "C", *id.*, pp. 72-73.

[5] Docketed as NLRC NCR IC No. 000793-98.

It sought to enjoin respondent from obstructing free entry to and exit from its production facility.[6]

On April 14, 1998, the NLRC issued a TRO directing the respondents to refrain from preventing access to petitioner's property.

The reports of both the implementing officer and the investigating labor arbiter revealed, however, that respondent union violated the April 14, 1998 order. Union members, on various occasions, stopped and inspected private vehicles entering and exiting petitioner's production facility. Thus, in a decision dated July 17, 1998, the NLRC ordered the issuance of a writ of preliminary injunction.[7]

Meanwhile, petitioner sent individual memoranda to the officers and members of respondent who participated in the strike[8] ordering

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[6] *See* Labor Code, Art. 264(e). The article provides:

Article 264. *Prohibited activities.* — x x x x x x x x x

(e) **No person engaged in picketing** shall commit any act of violence, coercion or intimidation or **obstruct the free ingress to or egress from the employer's premises for lawful purposes**, or obstruct public thoroughfares. (emphasis supplied)

[7] Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay of the Second Division of the NLRC. *Rollo,* pp. 123-130.

[8] Daniel M. Abara, Enrique G. Abrenica, Demetrio C. Anglo, Crizaldo P. Aragones, Romeo M. Badion, Olimpio C. Bandi, Jr., Virgilio R. Benavidez, Romeo E. Bersabe, Guilberto C. Biscocho, Ruben P. Borreta, Maximo C. Cabusay, Giogenes D. Catubay, Domingo C. Cardiente, Enrico C. Comedia, Crispin B. Cruz, Jimmy L. Dacara, Sergio M. Datuin, Cordencio B. Del Pilar, Elizalde O. de los Santos, Eusebio G. Dimapilis, Nemesio E. Elampario, Armando P. Espinoza, Nelson E. Esteve, Romeo G. Fabro, Mariano P. Forten, Rodolfo A. Galanto, Samson A. Gatarin, Arnold P. Genil, Espiridion E. Gines, Rodolfo E. Gines, Daniel L. Goday, Geoffrey M. Gratela, Juanito N. Lauresta, Cezar S. Lintag, Danilo D. Liso-an, Nilo M. Macahia, Carlito C. Marinas, Alberto A. Marquez, Avelino S. Mendoza, Benjamin M. Mercado, Celso T. Mercado, Angelito B. Neroza, Artemio Z. Olegario, Edgar R. Panis, Dario L. Perdigon, Roberto L. Piodina, Manuel C. Plaquia, Claro P. Queron, Birnie C. Ramirez, Ariel J. Regala, Dolphy C. Registrado, Loreto M. Revil, Ruben C. Sanchez, Sergio S. Soriano, Geronimo T. Tacdoro, Felipe E. Vallente, Marlon N. Velarde, Jhun C. Yadao, and Abraham M. Yumul.

them to explain why they should not be dismissed for committing illegal acts in the course of a strike.[9] However, respondent repeatedly ignored petitioner's memoranda despite the extensions granted.[10] Thus, on May 30, 1998, petitioner dismissed the concerned officers and members and barred them from entering its premises effective June 1, 1998.

Aggrieved, respondent filed complaints for illegal lockout, runaway shop and damages,[11] unfair labor practice, illegal dismissal and attorney's fees,[12] and refusal to bargain[13] on behalf of its officers and members against petitioner and its corporate officers. It argued that there was no basis for the temporary partial shutdown as it was undertaken by petitioner to avoid its duty to bargain collectively.

Petitioner, on the other hand, asserted that because respondent conducted a strike without observing the procedural requirements provided in Article 263 of the Labor Code,[14] the March 9, 1998

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[9] Memorandum dated April 28, 1998. Annex "F", *id.*, p. 157. Petitioner's memorandum stated stated:

Based on records, you have been identified as one of those who actively participated and joined the concerted action at [petitioner's] main gate, starting March 9, 1998, to wit:

1. effectively prevent[ed] free egress and ingress to the company's premises;
2. prevented the delivery of company products to the customers;
3. coerced employees from not reporting for working;
4. threatened employees reporting for work;
5. damage[ed] the image and goodwill of the company by preventing customers from transacting business with the company [and]
6. other acts inimical to the interest of the company.

All the foregoing acts constitute violation of the provisions of the Labor Code of the Philippines, specifically Article 282(a) thereof....

[10] Petitioner sent its memorandum to respondent again on April 18, 1998 and May 18, 1998.

[11] Docketed as NLRC Case No. 00-05-04446-98.

[12] Docketed as NLRC Case No. 00-06-05017-98.

[13] Docketed as NLRC Case No. 00-08-06766-98.

[14] Article 263. *Strikes, picketing and lockouts*. x x x x x x x x x

strike was illegal. Furthermore, in view of the July 17, 1998 decision of the NLRC (which found that respondent obstructed the free ingress to and egress from petitioner's premises), petitioner validly dismissed respondent's officers and employees for committing illegal acts in the course of a strike.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (15) days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Secretary of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Department to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

x x x x x x x x x

See also Department Order No. 40-03, s. 2003, Rule XII, *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association,* G.R. Nos. 160058 and 160059, 22 June 2007, 525 SCRA 361, 373 and *Santa Rosa Coca Cola Plant Employees Union v. Coca Cola Bottles Phils., Inc.,* G.R. Nos. 164302-03, 24 January 2007, 512 SCRA 437.

In a decision dated October 15, 1999,[15] the labor arbiter dismissed the complaints for illegal lockout and unfair labor practice for lack of merit. However, because petitioner did not file a petition to declare the strike illegal[16] before terminating respondent's officers and employees, it was found guilty of illegal dismissal. The dispositive portion of the decision read:

> WHEREFORE, judgment is hereby rendered finding [petitioner and its corporate officers] liable for the illegal dismissal of the 61 union officer and members of [respondent] and concomitantly, [petitioner and its corporate officers] are hereby jointly and severally ordered to pay [respondents' officers and members] limited backwages from June 1, 1998 to October 4, 1998.
>
> [Petitioner and its corporate officers] are further ordered to pay [respondents' officers and members] separation pay based on ½ salary for every year of credited service, a fraction of at least 6 months to be considered as one whole year in lieu of reinstatement.
>
> The complaint for unfair labor practice, moral and exemplary damages and runaway shop are hereby disallowed for lack of merit.
>
> SO ORDERED.

On December 28, 2000, the NLRC, on appeal, modified the decision of the labor arbiter. It held that only petitioner should be liable for monetary awards granted to respondent's officers and members.[17]

Both petitioner and respondent moved for reconsideration but they were denied for lack of merit.[18]

Aggrieved, petitioner assailed the December 28, 2000 decision of the NLRC via a petition for *certiorari*[19] in the CA. It asserted

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[15] Penned by labor arbiter Pablo C. Espiritu, Jr. *Rollo,* pp. 169-187.

[16] Article 217(e) of the Labor Code gives the original and exclusive jurisdiction to declare a strike (or a lockout) illegal to the labor arbiter.

[17] Resolution penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Angelita A. Gacutan. Dated December 28, 2000. *Rollo,* pp. 213-226.

[18] Resolution dated March 26, 2001. *Id.*, p. 237.

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

that the NLRC committed grave abuse of discretion in disregarding its July 17, 1998 decision[20] wherein respondent's officers and employees were found to have committed illegal acts in the course of the March 9, 1998 strike. In view thereof and pursuant to Article 264(a)(3) of the Labor Code,[21] petitioner validly terminated respondent's officers and employees.

The CA dismissed the petition but modified the December 28, 2000 decision of the NLRC.[22] Because most of affected employees were union members, the CA held that the temporary shutdown was moved by anti-union sentiments. Petitioner was therefore guilty of unfair labor practice and, consequently, was ordered to pay respondent's officers and employees backwages from March 9, 1998 (instead of June 1, 1998) to October 4, 1998 and separation pay of one month salary for every year of credited service.

Petitioner moved for reconsideration but it was denied.[23] Thus, this recourse.

The primordial issue in this petition is whether or not the filing of a petition with the labor arbiter to declare a strike illegal is a condition *sine qua non* for the valid termination of employees who commit an illegal act in the course of such strike.

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[20] Docketed as CA-G.R. SP Nos. 65208 and 65425.

[21] Article 264. *Prohibited activities.* — (a) x x x x x x x x x

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and **any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment right**: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. (emphasis supplied)

x x x x x x x x x

[22] *Supra* note 2.

[23] *Supra* note 3.

Petitioner asserts that the filing of a petition to declare the strike illegal was unnecessary since the NLRC, in its July 17, 1998 decision, had already found that respondent committed illegal acts in the course of the strike.

We grant the petition.

The principle of conclusiveness of judgment, embodied in Section 47(c), Rule 39 of the Rules of Court,[24] holds that the parties to a case are bound by the findings in a previous judgment with respect to matters actually raised and adjudged therein.[25]

Article 264(e) of the Labor Code prohibits any person engaged in picketing from obstructing the free ingress to and egress from the employer's premises. Since respondent was found in the July 17, 1998 decision of the NLRC to have prevented the free entry into and exit of vehicles from petitioner's compound, respondent's officers and employees clearly committed illegal acts in the course of the March 9, 1998 strike.

The use of unlawful means in the course of a strike renders such strike illegal.[26] Therefore, pursuant to the principle of conclusiveness of judgment, the March 9, 1998 strike was *ipso facto* illegal. The filing of a petition to declare the strike illegal was thus unnecessary.

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[24] RULES OF COURT, Rule 39, Section 47(c) provides:

Section 47. Effect of judgment 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 x x x x x x

(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.

[25] *Philippine Commercial International Bank v. Alejandro,* G.R. No. 175587, 21 September 2007, 533 SCRA 738, 747.

[26] *Chuayuco Steel Manufacturing Corporation v. Buklod ng Manggagawa sa Chuayuco Steel Manufacturing Corporation,* G.R. No. 167347, 31 January 2007, 513 SCRA 621, 632. (citations omitted)

Consequently, we uphold the legality of the dismissal of respondent's officers and employees. Article 264 of the Labor Code[27] further provides that an employer may terminate employees found to have committed illegal acts in the course of a strike.[28] Petitioner clearly had the legal right to terminate respondent's officers and employees.[29]

WHEREFORE, the petition is hereby granted. The July 13, 2005 decision and February 9, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 65208 and CA-G.R. SP No. 65425 are hereby *REVERSED* and *SET ASIDE.*

The December 28, 2000 and March 6, 2001 resolutions of the National Labor Relations Commission in NLRC-CA No. 022614-2000 are *MODIFIED* insofar as they affirmed the October 15, 1999 decision of the labor arbiter in NLRC-NCR-Case No. 00-06-05017-98 finding petitioner Jackbilt Industries, Inc. guilty of illegal dismissal for terminating respondent's officers and employees. New judgment is hereby entered *DISMISSING* NLRC-NCR-Case No. 00-06-05017-98 for lack of merit.

SO ORDERED.

Ynares-Santiago,[*] *Carpio (Acting Chairperson),*[**] *Leonardo-de Castro,* and *Brion,*[***] *JJ.,* concur.

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[27] *Supra* note 20.

[28] *G & S Transport Corporation v. Infante,* G.R. No. 160303, 13 September 2007, 533 SCRA 288, 300.

[29] See *Pilipino Telephone Corporation v. Pilipino Telephone Corporation Employees Association, supra* note 13. According to this case, because Article 264 of the Labor Code uses "may," the employer has the option to terminate a union officer who participated in an illegal strike. This construction should likewise be applied to union members who committed illegal acts during a strike.

[*] Per Special Order No. 584 dated March 3, 2009.

[**] Per Special Order No. 583 dated March 3, 2009.

[***] Per Special Order No. 570 dated February 12, 2009.

THIRD DIVISION

[G.R. No. 175422. March 13, 2009]

ALLIED BANKING CORPORATION, *petitioner, vs.* **THE LAND BANK OF THE PHILIPPINES and THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); JUST COMPENSATION; START OF THE PROCEDURE FOR THE DETERMINATION THEREOF, EXPLAINED. —** The procedure for the determination of compensation cases under Republic Act No. 6657, as synthesized by this Court, commences with the Landbank determining the value of the lands under the land reform program. Making use of the Landbank valuation, the DAR makes an offer to the landowner by way of a notice sent to the latter, pursuant to Section 16(a) of Republic Act No. 6657. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the Provincial Agrarian Reform Adjudicator (PARAD), the Regional Agrarian Reform Adjudicator (RARAD) or the Department of Agrarian Reform Adjudication Board (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court.

2. **ID.; ID.; ID.; DAR ADMINISTRATIVE ORDER (DAO) NO. 6 PROVIDED FOR THE BASIC FORMULA FOR THE DETERMINATION OF JUST COMPENSATION; SUSTAINED. —** In the process of determining the just compensation due to landowners, it is a necessity that the RTC must take into account several factors enumerated in Section 17 of Republic Act No. 6657, as amended, thus: Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the

sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. Being the government agency primarily charged with the implementation of the agrarian reform program, DAR issued DAO No. 6 to fill out the details necessary for the implementation of Section 17 of Republic Act No. 6657. DAR converted these factors specified in Section 17 into a basic formula in DAO No. 6, as amended, in this wise: LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) LV = Land Value CNI = Capitalized Net Income CS = Comparable Sales MV = Market Value per Tax Declaration The above formula shall be used if all the three factors are present, relevant and applicable. A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be: LV = (CNI x 0.9) + (MV x 0.1) A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be: LV = (CS x 0.9) + (MV x 0.1) A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be: LV = MV x 2 While the determination of just compensation is essentially a judicial function which is vested in the RTC acting as Special Agrarian Court, nevertheless, this Court disregarded the determination of just compensation made by the RTC in *Land Bank of the Philippines v. Spouses Banal, Land Bank of the Philippines v. Celada*, and in *Land Bank of the Philippines v. Lim*, when, as in this case, the judge gravely abused his discretion by not taking into full consideration the factors enumerated in the agrarian law and further detailed by the DAR administrative order implementing the same. Jurisprudence has not been wanting in reminding special agrarian courts to resolve just determination cases judiciously and with utmost observance of Section 17 of the agrarian law and the administrative orders issued by the DAR implementing the said provision. The Court *En Banc* in *Land Bank of the Philippines v. Lim* was confronted with the question whether the RTC can resort to any other means of determining just compensation apart from Section 17 of Republic Act No. 6657 and DAO No. 6. The Court resolved the issue in the negative and

pronounced therein that Section 17 of Republic Act No. 6657 and DAO No. 6 are mandatory and are not mere guides that the RTC may disregard.

3. **ID.; ID.; ID.; ID.; THE MARKET DATA APPROACHED AS A SUBSTITUTE, NOT ACCEPTABLE TO THE COURT; RATIONALE. —** In the instant case, the RTC did not consider Section 17 of Republic Act No. 6657 as well as DAO No. 6 and instead adopted, hook line and sinker, the market data approach introduced by the commissioner nominated by Allied. This undoubtedly constitutes a glaring departure from the established tenet discussed above on the mandatory nature of Section 17 of Republic Act No. 6657 and DAO No. 6, as amended. It is worthy to note that Allied did not provide any evidence that the market data approach, which based the value of the land in question on sales and listings of similar properties situated within the area, conformed to the subject administrative order, and it is not also clear if same approach took into consideration the said administrative order. Such being the case, the market data approach espoused by Allied cannot be a valuation that complies with the requirements under the agrarian law. Besides, this Court has once refused to accept the market data approach as a method of valuation compliant with the agrarian law and enforced by the DAR: **We find that the factors required by the law and enforced by the DAR Administrative Order were not observed by the SAC when it adopted wholeheartedly the valuation arrived at in the appraisal report.** According to the appraisal company, it "personally inspected the property, investigated local market conditions, and have given consideration to the extent, character and utility of the property; sales and holding prices of similar land; and highest and best use of the property." The value of the land was arrived at **using the market data approach,** which bases the value of the land on sales and listings of comparable property registered within the vicinity. In fact, as noted by the Court of Appeals, a representative of the company admitted that it did not consider the CARP valuation to be applicable.

APPEARANCES OF COUNSEL

Francisco Gerardo C. Llamas for petitioner.
LBP Legal Department for LBP.

DECISION

CHICO-NAZARIO, *J.*:

This Petition for Review under Rule 45 of the Rules of Court seeks to reverse and set aside the 29 June 2006 Decision[1] and the 07 November 2006 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 74738 which annulled the Decision of the Regional Trial Court (RTC) of Balanga City, Bataan, Branch 1. The Court of Appeals likewise remanded the case to the RTC, ordering the latter to determine the just compensation of the subject parcels of land acquired by the Department of Agrarian Reform (DAR) from Allied Banking Corporation (Allied) pursuant to Republic Act No. 6657, as amended, otherwise known as the Comprehensive Agrarian Reform Law of 1988.

Allied owned two abutting parcels of land located at Mabiga, Hermosa, Bataan, which were covered by Transfer Certificates of Title (TCT) No. 97975 and No. 97976, with respective land areas of 20.4840 hectares (204,840 square meters) and 21.3835 hectares (214,860 square meters). The two parcels of land were compulsorily acquired by the DAR pursuant to Republic Act No. 6657.

In its Notices of Valuation dated 30 July 1997 and 23 October 1997, and by using the formula under DAR Administrative Order (DAO) No. 17, Series of 1989, as amended by DAO No. 06, Series of 1992, and further amended by DAO No. 11, Series of 1994, the Land Bank of the Philippines (Landbank) pegged the value of the 20.4840-hectare land covered by TCT No. 97975 at ₱1,170,683.70 or ₱57,151.123 per hectare, while the second land with the area of 21.3835[3] hectares covered under TCT

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid, concurring. *Rollo,* pp. 60-69.

[2] *Rollo,* p. 71.

[3] 1 hectare of the 21.3835 hectares was valued at ₱113,746.20; 3 hectares were valued at ₱56,873.10; 11.4506 hectares at ₱71,877.90; 5.9329 hectares at ₱53,872.50.

No. 97976 was valued at ₱1,427,030.73 or at ₱66,735.13 per hectare. On 30 October 1997, Landbank informed Allied that it had increased the valuation of the 20.4840[4] hectares under TCT No. 97975 to ₱1,171,714.29 or ₱57,201.44 per hectare.

After allegedly having conducted a survey on the prevailing market value of the lots within the vicinity, Allied rejected the valuation and insisted that the two parcels of land in question be valued at ₱180,000.00 per hectare, hence, the 20.4840 hectares should be valued at ₱3,687,120, and the 21.3835 hectares at ₱3,867,489.

Allied presented its arguments before the Provincial Agrarian Reform Adjudicator. The Provincial Agrarian Reform Adjudicator upheld the valuation of the Landbank.

On 19 January 1999, Allied filed a *Petition for Just Compensation* with the RTC of Dinalupihan, Bataan, Branch 5. Later the case was re-raffled to the RTC of Balanga City, Bataan, Branch 1, acting as Special Agrarian Court (SAC) pursuant to Administrative Circular No. 80 dated 18 July 1989.

On 23 March 2000, upon the agreement of the parties, commissioners were appointed, namely: 1) Gilbert S. Argonza, the chairman and commissioner of the RTC; 2) Hilario M. Pariña, nominated by Allied; 3) Engr. Moises L. Petero, nominated by Landbank; and 4) Crispin O. Dominguez, nominated by the DAR.

On 2 March 2001, the commissioners were ordered by the RTC to submit their report on their respective recommendations as to the just compensation for the subject lands.

For unknown reasons, only Hilario M. Pariña, the commissioner nominated by Allied, submitted his report. The report, which adopted the findings of the Asian Appraisal Company that was earlier commissioned by Allied, made use of the *Market Data Approach,* which is explained and illustrated in the said report:

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[4] 8.0830 hectares was valued at ₱53,872.50 per hectare, while the 12.4010 hectares were valued at ₱59,371.25.

The value of the land was arrived at by the Market Data Approach. In this approach the value of the land is based on sales and listings of comparable property registered within the vicinity. The technique of this approach requires the establishing of comparable property by reducing reasonable comparative sales and listings to a common denominator. This is done by adjusting the differences between the subject property and those actual sales and listings regarded as comparable. The property used as basis of comparison was premised on the factors of location, size and shape of the lot, and time element.

In valuing the land, records of recent sales and offerings of similar land are analyzed and comparison made for such factors as size, characteristics of the lot, location, quality, and prospective use. Although no sales of truly comparable land have occurred, the following are believed to provide reasonable bases for comparison:

Listings:

1. Currently, an 18-hectare (180,000 sq. m.) property located along Barangay Road, within Barangay Mabiga, Hermosa, Bataan is being offered for sale thru a certain Mr. Paolo Hermoso, a local resident, at an asking price of ₱80 per sq.m.

2. Currently, a 4-hectare (40,000 sq. m.) property located along Barangay Road, beside Mabiga Elementary School, within Mabiga, Hermosa, Bataan is being offered for sale thru a certain Ms. Liway, Grumal, Barangay Chairman and resident of Mabiga, at an asking price of ₱40 per sq. m.

The abovementioned listings are located along Barangay Road and within a more desirable neighborhood, and are free of tenants/ squatters. They are, therefore, considered superior to the subject property.

Due to the scarcity of market data that may be used for direct comparison purposes, we have sought the opinion of some local residents, the municipal assessor, bank appraisers and other knowledgeable individuals who, in our opinion, may be considered as generally conversant with land values in the area and gathered that fairly large tracts of land along Barangay Road command a selling price of ₱30 to as much as ₱80 per sq. m., while interior parcels of agricultural land in the vicinity of the subject property are ranging

from ₱10 to ₱20 per sq. m., depending on size, shape, terrain, proximity to roadways and other physical attributes of the land.[5]

Based on the *Market Data Approach*, the report valued the subject properties at ₱15.00 per square meter (₱150,000.00 per hectare), thus:

> After an analysis of the market data, considering such factors as location, desirability, neighborhood, utility, size and time element, the market value of the land, x x x is estimated as at ₱15 per sq.m. or a total value of ₱6,296,000 for a total land area of 419,700 sq.m.[6]

In a Decision dated 14 January 2002, the RTC adopted the valuation submitted by Commissioner Hilario M. Pariña, who fixed the value of the lands in question at ₱15.00 per square meter or at ₱150,000.00 per hectare. The decretal portion reads:

> WHEREFORE, in view of the foregoing, the two (2) lots belonging to the petitioner located at Mabiga, Hermosa, Bataan, containing a total area of 419,700 square meters be valued at Six Million Two Hundred Ninety Six Thousand Pesos (₱6,296,000.00), Philippine Currency.[7]

Landbank and DAR appealed the RTC decision.

In a Decision dated 29 June 2006, the Court of Appeals nullified the RTC Decision and remanded the case to the RTC for determination of just compensation. In setting aside the RTC Decision, the Court of Appeals stated that the RTC failed to observe the basic rules of procedure and the fundamental requirements in determining just compensation, namely: (1) that the RTC relied solely upon the report of Allied's nominated commissioner when there were four commissioners; (2) that there was no showing that Landbank and DAR were notified of the filing of the report of Allied's commissioner, thereby depriving the other parties of the opportunity to object to the said report; (3) that the report of Allied's commissioner was not substantiated

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[5] Records, pp. 208-209.

[6] *Id.* at 208.

[7] *Id.* at 229.

by competent evidence; and (4) that the RTC erred in adopting the Market Data Approach, which method was not sanctioned by the pertinent administrative orders of DAR in relation to the determination of just compensation. The dispositive portion of the Court of Appeals' Decision provides:

> WHEREFORE, in view of the foregoing, the Decision dated January 14, 2002 of the RTC of Balanga City, Branch 1, is hereby ANNULLED and SET ASIDE. Civil Case No. 6885 is REMANDED to the RTC for determination of just compensation for the subject parcels of land in strict compliance with the provisions of R.A. 6657, as amended, the DAR Administrative Orders, and the Rules of Court.[8]

Allied filed a motion for reconsideration, which was denied by the Court of Appeals in its Order dated 7 November 2006.

Hence, the instant case.

Allied maintains that Landbank and DAR are barred from questioning the determination made by its commissioner since they agreed to such appointment and conceded to be bound by the findings of such commissioners. Although only the findings of Allied's commissioner was considered, owing to the fact that the other commissioners failed to submit their reports, said findings are binding on the parties.

Allied likewise insists that Landbank and DAR need not be separately notified of the submission of the report of the former's commissioner as the latter are given ample opportunity to meet with said commissioner during the several hearings set by the RTC and to question his report. According to Allied, this opportunity to meet and to question its commissioner, which Landbank and DAR squandered, is considered sufficient notice.

Allied takes exception to the Court of Appeals' statement that the RTC findings were uncorroborated by evidence. Allied argues that the RTC's decision is supported by evidence through the report of Allied's commissioner.[9]

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[8] *Rollo*, p. 49.

[9] *Id.* at 363.

Allied also contends that the Court of Appeals erred in ruling that the basic formula in DAO No. 6, Series of 1992, as amended by DAO No. 11, Series of 1994, should have been invoked instead of the Market Data Approach. It stresses that when an agrarian case for the determination of just compensation is elevated to the RTC, the court, acting as a special agrarian court, is not bound by Sections 17[10] of the Comprehensive Agrarian Law and its implementing rules, DAO No. 6, Series of 1992. As the RTC made its own evaluation in arriving at the just compensation of the subject lands, said evaluation should be followed, even if it disregarded Section 17 of the Comprehensive Agrarian Law and the pertinent rules and regulations of DAR.

Allied's arguments fail to persuade.

The procedure for the determination of compensation cases under Republic Act No. 6657, as synthesized by this Court,[11] commences with the Landbank determining the value of the lands under the land reform program. Making use of the Landbank valuation, the DAR makes an offer to the landowner by way of a notice sent to the latter, pursuant to Section 16(a) of Republic Act No. 6657. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the Provincial Agrarian Reform Adjudicator (PARAD), the Regional Agrarian Reform Adjudicator (RARAD) or the Department of Agrarian Reform Adjudication Board (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the

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[10] Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[11] *Land Bank of the Philippines v. Spouses Banal*, G.R. No. 143276, 20 July 2004, 434 SCRA 543, 550-551.

price fixed, he may bring the matter to the RTC acting as Special Agrarian Court.

In the process of determining the just compensation due to landowners, it is a necessity that the RTC must take into account several factors enumerated in Section 17 of Republic Act No. 6657, as amended, thus:

> Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Being the government agency primarily charged with the implementation of the agrarian reform program, DAR issued DAO No. 6 to fill out the details necessary for the implementation of Section 17 of Republic Act No. 6657. DAR converted these factors specified in Section 17 into a basic formula in DAO No. 6, as amended, in this wise:

> LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
>
> LV = Land Value
>
> CNI = Capitalized Net Income
>
> CS = Comparable Sales
>
> MV = Market Value per Tax Declaration
>
> The above formula shall be used if all the three factors are present, relevant and applicable.
>
> A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:
>
> LV = (CNI x 0.9) + (MV x 0.1)
>
> A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:
>
> LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

The pivotal issue at hand is whether the RTC, acting as a special agrarian court, can disregard the factors mentioned under Section 17 of the agrarian law, detailed by DAO No. 6, and adopt the market data approach submitted by a court-appointed commissioner.

While the determination of just compensation is essentially a judicial function which is vested in the RTC acting as Special Agrarian Court,[12] nevertheless, this Court disregarded the determination of just compensation made by the RTC in *Land Bank of the Philippines v. Spouses Banal,*[13] *Land Bank of the Philippines v. Celada*,[14] and in *Land Bank of the Philippines v. Lim*,[15] when, as in this case, the judge gravely abused his discretion by not taking into full consideration the factors enumerated in the agrarian law and further detailed by the DAR administrative order implementing the same.

Jurisprudence has not been wanting in reminding special agrarian courts to resolve just determination cases judiciously and with utmost observance of Section 17 of the agrarian law and the administrative orders issued by the DAR implementing the said provision.

In *Land Bank of the Philippines v. Spouses Banal*[16] this Court pointed out that factors spelled out in Section 17 of Republic Act No. 6657 and the formula stated in DAO No. 6 must be adhered to by the RTC in fixing the valuation of lands subjected to agrarian reform, thus:

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[12] *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83, 94 (2004); *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 326 (1987).

[13] *Supra* note 11.

[14] G.R. No. 164876, 23 January 2006, 479 SCRA 495.

[15] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

[16] *Supra* note 11 at 549-554.

In determining just compensation, the **RTC is required** to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus:

> "Sec. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation."

These factors have been translated into a basic formula in [**DAR AO 6-92**], as amended by [DAR AO 11-94], issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.

The formula stated in [DAR AO 6-92], as amended, is as follows:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

x x x x x x x x x

While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations. ([DAR AO 6-92], as amended by [DAR AO 11-94]).

x x x x x x x x x

WHEREFORE, x x x. The trial judge is directed **to observe strictly the procedures specified above** in determining the proper valuation of the subject property. (Emphasis supplied.)

Again, in *Land Bank of the Philippines v. Celada,*[17] this Court stressed that the special agrarian court cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation. This Court rejected the valuation fixed by the RTC because it failed to follow the DAR formula:

While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The SAC was at no liberty to disregard the formula which was devised to implement the said provision.**

It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.

Instead, it upheld the valuation made by Landbank which was patterned after the applicable administrative order issued by the DAR, *viz*:

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[17] *Supra* note 14 at 506-507.

[Landbank] arrived at its valuation by using available factors culled from the Department of Agriculture and Philippine Coconut Authority, and by computing the same in accordance with the formula provided, thus —

COMPUTATION (Applicable Formula): LV = 0.90 CNI + 0.10 MV

Comparable Land Transactions (₱ x x x x ____) = ₱ x-x-x

Capitalized Net Income:	Cassava	16,666.67 x 0.90	= 15,000.00
	Corn/Coco	26,571.70	= 23,914.53
Market Value	Cassava	8,963.78 x 0.10	= 896.38
per Tax Declaration:	Corn/Coco	10,053.93	= 1,005.39
Computed Value per			
Hectare:	Cassava 15,896.38; Corn/Coco – 24,919.92		

x x x x x x x x x

Value per hectare used: Cassava 15,896.38 x 6.0000 has. = 95,378.28
Corn/Coco 24,919.92 x 8.1939 has.= 204,191.33

Payment due to LO : ₱299, 569.61

The above computation was explained by Antero M. Gablines, Chief of the Claims, Processing, Valuation and Payment Division of the Agrarian Operations Center of the Land Bank, to wit:

ATTY. CABANGBANG: (On direct):

x x x x x x x x x

q. **What are the items needed for the Land Bank to compute?**

a. In accordance with Administrative Order No. 5, series of 1998, the value of the land should be computed using the capitalized net income plus the market value. We need the gross production of the land and its output and the net income of the property.

q. You said "gross production." How would you fix the gross production of the property?

a. In that Administrative Order No. 5, if the owner of the land is cooperative, he is required to submit the net income.

Without submitting all his sworn statements, we will get the data from the DA (Agriculture) or from the coconut authorities.

x x x x x x x x x

q. In this recommended amount which you approved, how did you arrive at this figure?

a. We used the data from the Philippine (Coconut) Authority and the Agriculture and the data stated that Cassava production was only 10,000 kilos per hectare; corn, 2,000 kilos; and coconuts, 15.38 kilos per hectare. The data stated that in the first cropping of 1986, the price of cassava was ₱1.00 per kilo; corn was sold at ₱7.75 per kilo; and the Philippine Coconut Authority stated that during that time, the selling price of coconuts was ₱8.23 per kilo.

q. After these Production data and selling price, there is here a "cost of operation," what is this?

a. It is the expenses of the land owner or farmer. From day one of the cultivation until production. Without the land owner's submission of the sworn statement of the income, production and the cost, x x x Administrative Order No. 5 states that x x x we will use 20% as the net income, meaning 80% of the production in peso. This is the cost of valuation.

q. 80 % for what crops?

a. All crops except for coconuts where the cost of expenses is only 20%.

q. Summing all these data, what is the value per hectare of the cassava?

a. The cassava is ₱15,896.38.

q. How about the corn x x x intercropped with coconuts?

a. ₱24,919.92.

Under the circumstances, **we find the explanation and computation of [Landbank] to be sufficient and in accordance with applicable laws**. [Landbank's] valuation must thus be upheld.[18]

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[18] *Id.* at 510-512.

Apo Fruits Corporation v. Court of Appeals[19] yet again accentuated the necessity of giving paramount importance to the criteria found in Section 17 of the agrarian law and the pertinent DAR administrative order. In affirming therein the special agrarian court's valuation, it reasoned in this fashion:

[T]he **Court affirmed the due consideration given by the RTC of the factors specified in Section 17, Republic Act No. 6657**. Again, the proper valuation of the subject premises was reached with clear regard for the acquisition cost of the land, current market value of the properties, its nature, actual use and income, *inter alia* — factors that are material and relevant in determining just compensation. **These are the very same factors laid down in a formula by DAR A.O. No. 5. Due regard was thus given by the RTC to Republic Act No. 6657, DAR A.O. No. 5** and prevailing jurisprudence when it arrived at the value of just compensation due to AFC and HPI in this case.

The Court *En Banc* in *Land Bank of the Philippines v. Lim*[20] was confronted with the question whether the RTC can resort to any other means of determining just compensation apart from Section 17 of Republic Act No. 6657 and DAO No. 6. The Court resolved the issue in the negative and pronounced therein that Section 17 of Republic Act No. 6657 and DAO No. 6 are mandatory and are not mere guides that the RTC may disregard. Basing its ruling on the pronouncements of *Land Bank of the Philippines v. Spouses Banal* and *Land Bank of the Philippines v. Celada,* the Court enunciated:

In *Land Bank of the Philippines v. Spouses Banal*, **this Court underscored the mandatory nature of Section 17 of RA 6657 and DAR AO 6-92, as amended by DAR AO 11-94**, *viz*:

In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus:

"Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current

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[19] G.R. No. 164195, 30 April 2008, 553 SCRA 237.

[20] *Supra* note 15 at 134-136.

value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation."

These factors have been translated into a basic formula in [DAR AO 6-92], as amended by [DAR AO 11-94], issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.

x x x x x x x x x

While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations. ([DAR AO 6-92], as amended by [DAR AO 11-94]).

x x x x x x x x x

WHEREFORE, x x x Civil Case No. 6806 is REMANDED to the RTC x x x. The trial judge is directed to observe strictly the procedures specified above in determining the proper valuation of the subject property. x x x.

And in *LBP v. Celada*, **<u>this Court set aside the valuation fixed by the RTC of Tagbilaran, which was based solely on the valuation of neighboring properties, because it did not apply the DAR valuation formula</u>**. The Court explained:

While [the RTC] is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. The DAR [Administrative Order] precisely "filled in the details" of Section 17, R.A. No. 6657 by providing a basic formula

by which the factors mentioned therein may be taken into account. The [RTC] was at no liberty to disregard the formula which was devised to implement the said provision.

x x x x x x x x x

Consequently, as the amount of ₱2,232,868 adopted by the RTC in its December 21, 2001 Order was not based on any of the mandatory formulas prescribed in DAR AO 6-92, as amended by DAR AO 11-94, the Court of Appeals erred when it affirmed the valuation adopted by the RTC. (Emphases supplied.)

In the instant case, the RTC did not consider Section 17 of Republic Act No. 6657 as well as DAO No. 6 and instead adopted, hook line and sinker, the market data approach introduced by the commissioner nominated by Allied. This undoubtedly constitutes a glaring departure from the established tenet discussed above on the mandatory nature of Section 17 of Republic Act No. 6657 and DAO No. 6, as amended. It is worthy to note that Allied did not provide any evidence that the market data approach, which based the value of the land in question on sales and listings of similar properties situated within the area, conformed to the subject administrative order, and it is not also clear if same approach took into consideration the said administrative order. Such being the case, the market data approach espoused by Allied cannot be a valuation that complies with the requirements under the agrarian law. Besides, this Court has once refused to accept the market data approach as a method of valuation compliant with the agrarian law and enforced by the DAR:

We find that the factors required by the law and enforced by the DAR Administrative Order were not observed by the SAC when it adopted wholeheartedly the valuation arrived at in the appraisal report. According to the appraisal company, it "personally inspected the property, investigated local market conditions, and have given consideration to the extent, character and utility of the property; sales and holding prices of similar land; and highest and best use of the property." The value of the land was arrived at **using the market data approach**, which bases the value of the land on sales and listings of comparable property registered within the vicinity. In fact, as noted by the Court of Appeals, a representative of the

company admitted that it did not consider the CARP valuation to be applicable.[21] (Emphases supplied.)

In fine, this Court defers to the findings of the Court of Appeals, there being no cogent reason to veer away from such findings.

Lastly, since Landbank and the DAR failed to submit their respective reports and have them substantiated during the hearings, and since the valuation of Landbank remains unsubstantiated, the Court is left with no recourse but to reand the case to the RTC.

WHEREFORE, premises considered, the instant petition is hereby *DENIED*. The Decision of the Court of Appeals dated 29 June 2006 and its Resolution dated 7 November 2006 annulling the 14 January 2002 Decision of the Regional Trial Court of Balanga City, Bataan, Branch 1, and remanding the case to the same trial court are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[21] *Lee v. Land Bank of the Philippines*, G.R. No. 170422, 7 March 2008, 548 SCRA 52, 61.

SECOND DIVISION

[G.R. Nos. 176935-36. March 13, 2009]

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, NAMELY: JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN FERNANDEZ and HONORIO DILAG, JR. (MEMBERS), *petitioners, vs.* **CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), REPRESENTED BY DOMINADOR GALLARDO, DAVID ESPOSO, CRISTITA DORADO, EDWIN CORPUZ, E. ROGER DOROPAN, JOSEFINA RAMIREZ, FERNANDO BOGNOT, JR., CARMELITA DE GUZMAN, MAXIMO DE LOS SANTOS, AURELIO FASTIDIO, BUENAVENTURA CELIS, ROBERTO LADRILLO, CORAZON ACAYAN, CARLITO CARREON, EDUARDO GARCIA, MARCIAL VILORIA, FILETO DE LEON and MANUEL LEANDER,** *respondents.*

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN FERNANDEZ and HONORIO DILAG, JR. (MEMBERS), *petitioners, vs.* **NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA-OFFICE OF THE ADMINISTRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ and CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; EXECUTIVE DEPARTMENT; NATIONAL ELECTRIFICATION ADMINISTRATION (NEA); AUTHORITY TO SUPERVISE AND CONTROL ELECTRIC COOPERATIVES; UPHELD. —** P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned. Contrary to petitioners' assertion, NEA's regulatory power over electric cooperatives is not dependent on the existence of a creditor-debtor relationship between the former and the latter. This is clear from the express wording of Sec. 5 of P.D. No. 1645, amending Sec. 10, Chapter II of P.D. No. 269, enumerating the instances when NEA may avail of the remedies outlined in the law, including, as previously mentioned, the removal from office of any or all of the members of the Board of Directors, officers or employees of the electric cooperative. These instances are when the electric cooperative concerned or other similar entity fails after due notice to comply: (1) with NEA orders, rules and regulations and/or decisions; or (2) with any of the terms of the Loan Agreement. Had the existence of a creditor-debtor relationship between the parties been the sole *vinculum* which the law intended as a precondition for NEA's exercise of regulatory powers over electric cooperatives, there would not have been any need for the above distinction.

2. **ID.; ID.; ID.; ID.; NOT AFFECTED BY THE PASSAGE OF EPIRA (ELECTRIC POWER INDUSTRY REFORM ACT OF 2001). —** The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives. This authority is expressly recognized under the last paragraph of Sec. 58, Chapter VII of the EPIRA which

states that, "NEA shall continue to be under the supervision of the DOE and *shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act*." Remarkably, even as they continually assert that NEA's regulatory authority over electric cooperatives had been abrogated by the EPIRA, petitioners fail to cite passages of the latter law which are supposedly inconsistent with the powers granted to NEA under P.D. Nos. 269 and 1645 and which should accordingly be deemed to have been withheld from it. A review of the provisions of the EPIRA reveals that the ERC has been given the specific mandate to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry." PSALM Corp., on the other hand, was created in order to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." Obviously, the functions of these two agencies do not come into conflict and are not inconsistent with the supervisory power exercised by NEA in the instant case.

3. **ID.; ID.; ID.; THE NEED FOR A HEARING BEFORE ANY PUNITIVE MEASURE MAY BE UNDERTAKEN BY AN ADMINISTRATIVE AGENCY IN THE EXERCISE OF ITS QUASI-JUDICIAL FUNCTIONS; SUSTAINED. —** In *Globe Telecom, Inc. v. National Telecommunications Commission, supra,* the Court invalidated a fine imposed by the NTC on Globe (due to the latter's alleged lack of authority to operate SMS services) on the ground that Globe was never notified that its authority to operate SMS was put in issue. The Court emphasized the need for a hearing before any punitive measure may be undertaken by an administrative agency in the exercise of its quasi-judicial functions. The Court said: Sec. 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the

fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the administrative proceedings.

4. **ID.; ID.; ID.; ELECTRIC COOPERATIVES ARE GIVEN THE OPTION TO CONVERT INTO EITHER STOCK COOPERATIVE OR STOCK CORPORATION UNDER THE EPIRA; APPLICATION IN CASE AT BAR. —** Sec. 57, Chapter VII of the EPIRA provides that, "Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code x x x" Sec. 7, Rule VII of the EPIRA Implementing Rules, in turn, provides as follows: Sec. 7. *Structural and Operational Reforms Between and Among Distribution Utilities.* . . . (c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or grant granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner: (i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645. Whether ZAMECO II complied with the foregoing provisions, particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, is a question of fact which this Court shall not review. At any rate, the evidence on record does not afford us sufficient basis to make a ruling on the matter. The remand of the case to the Court of Appeals solely on this question is, therefore, proper.

APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado and Cruz for petitioners.
Victoria F. Mejia for respondents.
Randy B. Escolango for CASCONA.

D E C I S I O N

TINGA, *J.*:

Petitioners Zambales II Electric Cooperative, Inc. (ZAMECO II) Directors, namely: Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr., assail the Decision[1] dated October 4, 2006 of the Court of Appeals in CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845, and its Resolution[2] dated March 13, 2007. The assailed Decision upheld the authority of public respondent National Electrification Administration (NEA) to supervise electric cooperatives such as ZAMECO II and the power of NEA to take preventive and/or disciplinary measures against an electric cooperative's board of directors, officers or employees. The questioned Resolution asserted the continuing regulatory power of NEA over electric cooperatives under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

The following facts are quoted from the assailed Decision:

Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barretto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr. (hereafter petitioners) are members of the Board of Directors of the Zambales II Electric Cooperative, Inc. (hereafter ZAMECO II). ZAMECO II is an electric cooperative organized and registered under Presidential Decree No. 269, as amended.

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[1] *Rollo*, pp. 54-66; Penned by Associate Justice Juan Q. Enriquez, Jr. with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Vicente Q. Roxas.

[2] *Id.* at 68-71.

NEA is a government owned and controlled corporation organized under Presidential Decree (PD) No. 269, as amended by PD No. 1645.

Castillejos Consumers Associations, Inc. (hereafter CASCONA) is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, CASCONA, through its Board of Trustees, filed a letter-complaint with NEA seeking the removal of the petitioners for the following alleged offenses:

a. illegal payment of 13th Month Pay and Excessive Mid-Year and Christmas Bonus to petitioners;

b. excessive expenses of the Board President, petitioner Mr. Jose S. Dominguez, charged to ZAMECO Power Corporation (ZPC) and Central Luzon Power Transmission Development Corporation (CLPTDC) but advanced by ZAMECO II and treated as receivables by the ZAMECO II from aforesaid corporations;

c. anomalous contract with Philreca Management Corporation (PMC) for ZAMECO II's Systems Loss Reduction Program; and

d. overstaying as members of the Board of Directors of ZAMECO II.

The letter-complaint was essentially based on the "Management and Financial Audit Report of Zambales II Electric Cooperative, Inc. (ZAMECO II) for the period from 01 January 1989 to 30 September 1997" dated June 1998 submitted by the Manager of the Coop Systems Audit Division to the NEA.

After an exchange of pleadings between herein parties, on March 12, 2003, the NEA-Administrative Committee (NEA-ADCOM) issued an Order setting the case for a preliminary mandatory conference.

During the preliminary mandatory conference, the parties agreed that:

a. ZAMECO II Board shall be given up to November 15, 2003 to deliberate complainant's proposed term of compromise; and

b. If no compromise agreement is reached until November 15, 2003, the parties shall submit verified/sworn "Position Paper" in lieu of a formal type of hearing.

On November 19, 2003, CASCONA submitted its position paper. For failure of petitioner to file its position paper despite the extended period, the ADCOM considered the case submitted for resolution.

On November 24, 2004, the NEA issued the assailed Resolution.[3] Petitioners filed a motion for reconsideration thereto.

Without acting on petitioner's motion for reconsideration, on December 21, 2004, the NEA issued the assailed Office Order[4] dated

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[3] *Id.* at 124-125; The NEA meted out the penalty of removal from office with perpetual disqualification to run for the same position against all incumbent members of the Board of Directors of ZAMECO II and authorized the NEA Administrator to designate a Project Supervisor in order not to disrupt the operations of the cooperative.

The dispositive portion of the Resolution states:

WHEREFORE, in view of the foregoing premises and pursuant to the power vested in the NEA Board of Administrators under Section 5(3) of Presidential Decree No. 1645, the respondents, Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez, Honorio Dilag, Jr., all incumbent members of the Board of Directors of ZAMECO II are hereby meted the penalty of Removal from Office with perpetual disqualifications to run for the same position in any future district elections of the Cooperative.

Let it be stated however, that except for the irregularities as contemplated or mentioned herein, acts of the ZAMECO II Board Members performed in their hold-over capacity are presumed valid unless otherwise proven before competent authority.

The penalty of removal and disqualification shall be without prejudice to the filing or institution of appropriate legal actions against the respondents and other erring officials and employees of ZAMECO II. ZAMECO II is directed to initiate such legal action as soon as possible.

Furthermore, the respondents and concerned coop's officials and employees as identified in June 25, 1998 and July 24. 2003 Audit Reports are hereby ordered to immediately reimburse the amounts disallowed in audit.

To fill the vacuum in the Board of Directors arising from the removal of the respondents, this Board hereby orders the immediate conduct of district elections in the affected areas. For this purpose, the NEA Management is hereby instructed to immediately create an election committee.

In order not to disrupt the operations of the Cooperative, the NEA Administrator is hereby authorized to designate a Project Supervisor who shall perform his duty until such time that a new set of Board of Directors shall have been constituted.

SO ORDERED.

[4] *Id.* at 56; The Office Order designated Engr. Paulino T. Lopez as Project Supervisor of ZAMECO II.

December 21, 2004 prompting petitioners to file the present petition for *certiorari* with this Court docketed as CA-G.R. SP No. 88195.

In a Resolution dated February 7, 2005 in CA-G.R. SP No. 88195, then 7th Division of this Court, issued a Temporary Restraining Order (TRO) valid for sixty (60) days enjoining the NEA, NEA-ADCOM and CASCONA from enforcing or implementing the Resolution dated November 24, 2004, Office Order No. 2005-003, Series of 2004 dated December 21, 2004.

After the issuance of said resolution, the NEA-ADCOM resolved petitioners' motion for reconsideration in the assailed Decision[5] dated February 15, 2005.

In a Resolution dated April 5, 2005, then 7th Division of this Court granted the preliminary injunction in CA-G.R. SP No. 88195.

On March 29, 2005, petitioners filed the present petition for review docketed as CA-G.R. SP. No. 88845.

In a Resolution, dated August 22, 2005 issued by then 17th Division of this Court, CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845 were ordered consolidated pursuant to Section 3(a), Rule III of the 2002 Internal Rules of the Court of Appeals, as amended.[6]

The appellate court denied the consolidated petitions on the ground that NEA properly exercised its supervisory power over ZAMECO II. Corollary to this ruling is the Court of Appeals' declaration that petitioners have not been deprived of due process in the administrative proceedings. The appellate court denied reconsideration.

In the instant Petition for Review on *Certiorari*[7] dated March 22, 2007, petitioners argue that NEA's power to supervise and control electric cooperatives had been abrogated by the EPIRA which decreed that all outstanding financial obligations of electric cooperatives to NEA shall be assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

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[5] *Id.* at 131; The decision denied ZAMECO II's motion for reconsideration for lack of merit.

[6] *Id.* at 57-59.

[7] *Id.* at 10-49.

Petitioners theorize that the regulatory authority which NEA exercises over electric cooperatives exists only by virtue of the loans incurred by the latter from NEA. With the condonation of these loans ordained under the EPIRA, NEA's power to supervise and control electric cooperatives had allegedly become defunct.

Petitioners insist that they were denied due process as they were never notified of the charges against them based on the July 24, 2003 Audit Report (2003 Audit Report). Allegedly, petitioners had been asked to respond only to the charges under the June 25, 1998 Audit Report (1998 Audit Report).

Finally, petitioners argue that NEA's Office of the Administrative Committee (ADCOM) does not have the authority to hear election-related cases. The questions raised by respondent Castillejos Consumers Association, Inc. (CASCONA), such as whether a director of an electric cooperative is already overstaying in office or is qualified to run for re-election, are allegedly election-related cases properly addressed to the Screening Committee in accordance with the Guidelines on the Conduct of Electric Cooperative District Elections (NEA Election Code).

NEA asserts in its Comment[8] dated June 20, 2007, that the EPIRA did not abrogate its regulatory power over electric cooperatives and that its authority to supervise and control the latter does not emanate solely from the cooperatives' loan agreements with NEA. The EPIRA itself allegedly enhances the powers of the NEA and, together with Executive Order No. 460, Series of 2005 (E.O. No. 460), does not expressly or even impliedly state that the assumption by PSALM Corp. of (electric cooperatives') debts to NEA carries with it the abrogation of the latter's power to impose disciplinary action.

Furthermore, NEA refutes petitioners' allegation that they were denied due process in the administrative proceedings, insisting that they were sent notices of the audit proceedings conducted by NEA.

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[8] *Id.* at 975-986.

In its Comment[9] dated June 22, 2007, CASCONA avers that there is no connection between PSALM Corp.'s assumption of the loan obligations of electric cooperatives and NEA's power to impose disciplinary action against petitioners. It also points out that the Deputy Administrator of NEA furnished a copy of the highlights of the 2003 Audit Report to petitioners in a letter dated August 15, 2003, and required petitioners to submit their explanation thereon on or before September 16, 2003. The audit exceptions in the 2003 Audit Report allegedly pertain to issues which were already raised in CASCONA's complaint filed with NEA and which persisted as found in the 2003 Audit Report. Thus, petitioners cannot claim that the 2003 Audit Report was not made known to them.

CASCONA also argues that the issue pertaining to petitioners' overstaying in office is an administrative and not an election-related matter. The fact that there was no election scheduled at all negates the assertion of petitioners that the issue is a pre-election protest.

Petitioners filed a Consolidated Reply[10] dated November 15, 2007, tracing the provenance of NEA's supervisory power over electric cooperatives. According to petitioners, with the passing of the EPIRA and E.O. No. 460, the borrower-lender relationship between ZAMECO II and NEA, by virtue of which the latter exercises regulatory powers over ZAMECO II, had been severed as of June 26, 2006. Thus, the Energy Regulatory Commission (ERC) is now the only regulatory agency which has jurisdiction over players in the power industry.

Petitioners insist that they had been deprived of due process as they were never heard on the charges as stated in the 2003 Audit Report cited as the bases for three (3) of the five (5) offenses in the Resolution of the NEA dated November 24, 2004, which directed, among other things, their removal from office.

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[9] *Id.* at 998-1018.

[10] *Id.* at 1110-1147.

In a Supplemental Petition[11] dated November 3, 2008, petitioners inform the Court that it had registered as a cooperative under the Cooperative Development Authority (CDA) and had been issued a Certificate of Registration dated December 4, 2007. They also inform the Court that CASCONA members had taken over the grounds of ZAMECO II and that NEA, in a letter dated October 30, 2008, designated Engineer Alvin Farrales as Officer-in-Charge of ZAMECO II.

NEA filed a Comment[12] dated November 18, 2008, asserting that ZAMECO II's registration with the CDA should be revoked since it failed to comply with the requirement under the EPIRA for it to be first convert into a stock cooperative prior to its registration as an electric cooperative with the CDA. With the ineffectivity of ZAMECO II's registration with the CDA, it follows that NEA retains its supervisory and regulatory powers over ZAMECO II.

CASCONA, for its part, also insists on the continuing supervisory power of the NEA over ZAMECO II as the latter did not comply with the pre-conditions for its registration as a cooperative under the CDA.[13]

Fundamental to the resolution of this case is the determination of the power and authority which NEA can properly exercise in light of the recently passed EPIRA and executive orders bearing on the power industry, particularly E.O. No. 119 series of 2002 and E.O. No. 460 series of 2005.

P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary

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[11] *Id.* at 1157-1168.

[12] *Id.* at 1220-1226.

[13] *Id.* at 1229-1249; Comment/Opposition dated November 25, 2008.

measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned.

Contrary to petitioners' assertion, NEA's regulatory power over electric cooperatives is not dependent on the existence of a creditor-debtor relationship between the former and the latter. This is clear from the express wording of Sec. 5 of P.D. No. 1645, amending Sec. 10, Chapter II of P.D. No. 269, enumerating the instances when NEA may avail of the remedies outlined in the law, including, as previously mentioned, the removal from office of any or all of the members of the Board of Directors, officers or employees of the electric cooperative. These instances are when the electric cooperative concerned or other similar entity fails after due notice to comply: (1) with NEA orders, rules and regulations and/or decisions; or (2) with any of the terms of the Loan Agreement. Had the existence of a creditor-debtor relationship between the parties been the sole *vinculum* which the law intended as a precondition for NEA's exercise of regulatory powers over electric cooperatives, there would not have been any need for the above distinction.

The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives. This authority is expressly recognized under the last paragraph of Sec. 58, Chapter VII of the EPIRA which states that, "NEA shall continue to be under the supervision of the DOE and *shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act*."

Remarkably, even as they continually assert that NEA's regulatory authority over electric cooperatives had been abrogated by the EPIRA, petitioners fail to cite passages of the latter law which are supposedly inconsistent with the powers granted to NEA under P.D. Nos. 269 and 1645 and which should accordingly be deemed to have been withheld from it.

A review of the provisions of the EPIRA reveals that the ERC has been given the specific mandate to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."[14] PSALM Corp., on the other hand, was created in order to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." Obviously, the functions of these two agencies do not come into conflict and are not inconsistent with the supervisory power exercised by NEA in the instant case.

Furthermore, Sec. 8 of E.O. No. 119 specifically provides that, "The assumption by PSALM of the Rural Electrification Loan/s of an EC shall be revoked for failure to continually comply with Section 5 of this Executive Order …" Sec. 5, in turn, provides that the assumption of Rural Electrification Loans shall be effective upon compliance with certain terms and conditions, among which, is the continued compliance by the electric cooperatives with all NEA policies governing their relationship with NEA pursuant to P.D. Nos. 269 and 1645. These provisions explicitly recognize the continued authority of the NEA over electric cooperatives and the requirement for the latter to remain compliant with NEA policies on pain of having the assumption of their loan obligations by PSALM Corp. revoked.

However, we agree with petitioners' contention that they were deprived of due process in the administrative proceedings before the NEA insofar as they were not informed that the audit disallowances contained in the 2003 Audit Report would constitute additional charges in the administrative proceedings.

The records disclose that petitioners were furnished with a copy of the 2003 Audit Report by the Chief Operating Officer of NEA in a letter[15] dated August 15, 2003, and were asked to

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[14] Republic Act No. 9136 (2002), Chapter IV, Sec. 43.

[15] CA *rollo,* (Vol. 1), pp. 763-768.

submit their explanation and action plan on the audit findings and recommendations on or before September 16, 2003. Petitioners were warned that their failure to submit an explanation shall be deemed a waiver of their opportunity to be heard and that the Audit Report shall accordingly be considered final.[16]

Petitioners were also given three (3) 30-day extensions within which to submit their explanation/justification. Thus, in the letter[17] dated November 20, 2003, petitioners were given up to November 28, 2003 to explain the audit findings, failing which the 2003 Audit Report shall be considered final as of November 29, 2003.

In yet another letter dated July 21, 2004,[18] petitioners were informed that the explanation given on some of the audit findings was not acceptable and that the refund of the disallowed expenses covered in the Audit Report should follow. However, note should be taken of the fact that the letters dated November 20, 2003 and July 21, 2004 were sent by the Cooperatives Audit Department and not by the ADCOM which was then conducting the administrative investigation of CASCONA's letter-complaint.

The first time that the 2003 Audit Report was expressly mentioned in the ADCOM proceedings was when CASCONA submitted the report together with its Position Paper[19] dated November 14, 2003. Yet, even when the ADCOM issued its Order[20] dated April 13, 2004, giving petitioners an extension of ten (10) days within which to file their Position Paper, there was no indication at all that the contents of the 2003 Audit Report shall be considered by the ADCOM as additional charges in the administrative proceedings.

Parenthetically, both the audit investigation and the administrative investigation on account of CASCONA's letter-

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[16] *Id.* at 768.

[17] *Id.* at 770.

[18] *Id.* at 772.

[19] CA *rollo,* (Vol. 1), pp. 653-654.

[20] *Id.* at 664-665.

complaint were administrative proceedings. The difference between the two is that in ruling that petitioners had violated various guidelines pertaining to electric cooperatives and imposing the penalty of removal from office, NEA exercised a function which was decidedly quasi-judicial in nature. As such, NEA's compliance with due process requirements should be evaluated based on the standard set forth in *Ang Tibay v. CIR,*[21] pertaining to the cardinal rights which must be observed in proceedings before administrative tribunals, synthesized in a subsequent case as follows:

There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.[22]

Moreover, P.D. No. 269, from which NEA derives its jurisdiction over the controversy, contains an express provision that a "hearing proceeding" be conducted wherein the party whose rights shall be substantially affected by the exercise of NEA's jurisdiction shall be given the opportunity to be heard. Sec. 47 of the law states:

Sec. 47. *Hearings and Investigations.* — The NEA is empowered to conduct such hearings and investigations and to issue such orders as are necessary for it to implement the provisions of this Chapter,

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[21] 69 Phil. 635 (1940).

[22] *Globe Telecom, Inc. v. National Telecommunications Commission*, 479 Phil. 1, 33 (2004), citing *National Development Co., et al. v. Collector of Customs Manila*, 118 Phil. 1265, 1270-1271 (1963).

and in connection therewith, without necessity of previous hearing, to require any public service entity or the officials thereof to furnish to it such information and data, including statements of account, schedules of rates, fees and charges, contracts, service rules and regulations, articles of incorporation, by-laws, audit reports and other internal records, documents, policies and procedures, as will enable the NEA to be sufficiently informed in exercising its powers and authorities: ***Provided,* That no order shall issue finally determining and substantially affecting any right of any person subject to the NEA's jurisdiction without first affording such person and any other interested person opportunity for hearing as a party in the hearing proceeding.** [Emphasis supplied]

It may be pointed out that in the Order[23] dated November 6, 2003, the ADCOM mentioned an agreement between the parties that the submission of their respective position papers shall be in lieu of formal trial-type proceedings. This agreement, however, preceded CASCONA's mention of the 2003 Audit Report on November 13, 2003. Therefore, it binds petitioners only insofar as they have effectively waived a "hearing proceeding" on the 1998 Audit Report but not with respect to the 2003 Audit Report.

Incidentally, under the 2005 Administrative Rules of Procedure of the National Electrification Administration and its Administrative Committee, which governs the procedure in administrative cases of electric cooperatives' Board of Directors, officers and employees, the ADCOM or Hearing Officer is mandated to determine whether there is a need for a formal trial or hearing after the submission of the parties' respective position papers.[24]

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[23] CA *rollo*, (Vol. 1), pp. 650-651.

[24] THE NEW ADMINISTRATIVE RULES OF PROCEDURE OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AND ADMINISTRATIVE COMMITTEE, Rule V, Sec. 4. *Determination of Necessity of Hearing.*— Immediately after the submission by the parties of their position papers/ memoranda, the NEA-ADCOM or Hearing Officer shall, *motu proprio,* determine whether there is a need for a formal trial or hearing. At this stage, it may, at its discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

In *Globe Telecom, Inc. v. National Telecommunications Commission, supra,* the Court invalidated a fine imposed by the NTC on Globe (due to the latter's alleged lack of authority to operate SMS services) on the ground that Globe was never notified that its authority to operate SMS was put in issue. The Court emphasized the need for a hearing before any punitive measure may be undertaken by an administrative agency in the exercise of its quasi-judicial functions. The Court said:

> Sec. 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the administrative proceedings.[25]

Nonetheless, we hesitate to declare the entire proceedings undertaken by the ADCOM void if only because petitioners were given fair and ample opportunity to present their side with respect to CASCONA's charges covered by the 1998 Audit Report. Specifically, the charges of illegal payment of 13th month pay and excessive bonuses/allowances claimed by petitioners in violation of a NEA Memorandum and overstaying as members of the Board of Directors were duly established by the evidence on record. It should be mentioned, in this regard, that the issue that petitioners had overstayed in office is not so much election-related as it is connected to the allegation that they had committed serious misconduct and deliberate negligence in office.

In its Resolution dated November 24, 2004, the NEA quoted the following findings of its audit team and the CASCONA complaint and found sufficient evidence to justify the penalty of removal from office meted against petitioners:

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[25] *Globe Telecom, Inc. v. The National Telecommunications Commission,* 479 Phil. 1, 39 (2004).

The Audit Report dated 25 June 1998, showed that ZAMECO II Board of Directors claimed 13th month pay, Anniversary bonus, Mid-year/Year-end Bonuses, Medical/clothing allowances, Prompt Payment Discount Bonus, and Separation Pay from January 1989 to September 1997.

The Audit Team's findings that the grant of benefits/allowances/ bonuses to the members of the Board were in violation of NEA guidelines and without legal basis and as such, the total amount of ₱3,680,425.00 were disallowed in audit and charged back to each Director as receivable.

Under the 1998 Audit Report, the details of the findings regarding the illegal 13th month pay and excessive Mid-year and Christmas bonus are as follows:

5. *Board of Directors and GM Excessive Bonuses/Allowances*

During the period audited, January 1989 to September 1997, the Board of Directors received/claimed various benefits which were in violation of NEA guidelines:

a. 13th Month Pay

This benefit is only granted to regular employees of the coop. Amount received by the Board ranges from ₱5,000.00 to ₱15,000.00.

b. Anniversary Bonus

There was no specific NEA guideline allowing the granting of such benefit but the Board Directors and the GM claimed bonuses of ₱300.00 to ₱10,000.00 from 1990-1996.

c. Mid-Year/Year-end Bonuses

Per NEA memo # 35, the EC may grant mid-year and year-end bonuses of ₱500.00 and equivalent to one month per diem/salary to its officers and employees respectively as long as all the four (4) criteria are met. During the period under audit, only one criteria current with NPC was met. However, the Board Directors claimed mid-year bonuses from ₱2,000.00 to ₱20,000.00 and Christmas bonus from ₱5,000.00 to ₱47,555.

d. Medical/clothing Allowances

The allowed allowances for coop officers and employees per Memo #35 for medical and clothing allowance were ₱2,000.00 and ₱1,000.00 (increased to ₱1,500.00 in 1996) respectively but what was granted to the Board ranges from ₱2,500.00 to ₱10,000.00

e. Prompt Payment Discount Bonus

From 1989 to 1994, the Board Directors and the GM were receiving additional monthly Prompt Payment Discount (PPD) bonus of ₱1,500.00 each.[26]

x x x x x x x x x

The Audit Report dated 25 June 1998 covering the period January 01, 1989 to September 30, 1997 showed that "*the district elections of ZAMECO II Board of Directors are long overdue which deprived the members of the right to choose or change their district representative. The holdover stay of the incumbent directors also affects the operations of the coop because no election of officers is being made.*"

Under Section 13, Article III of the 1993 Guidelines on the Conduct of District Elections for Electric Cooperatives, it expressly provides that ***"the term of office of a regularly elected member of the Board of Directors shall be three (3) years. Such member shall be entitled to only one consecutive re-election."***

However, the above 1993 EC Election Code was amended, specifically the Term of Office of the EC Board of Directors by *"adding another term of three years for a total of nine years (three term) to the present two consecutive terms (or a total of six years)"* pursuant to NEA Board of Administrator Resolution No. 38, Series of 1999.

It is an undisputed fact that the term of office of most of the members of the Board of Directors of ZAMECO II had already expired. They remain as members of the Board on a hold over capacity since the coop's district elections are not being conducted regularly which is a clear violation of the 1993 Guidelines on the Conduct of District Election, as amended, and ZAMECO II Constitution and By-Laws.[27]

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[26] *Rollo,* pp. 113-114.

[27] *Id.* at 122.

Thus, even if the other charges based on the 2003 Audit Report, on which petitioners were not heard, were disregarded, there is indeed substantial evidence to justify the penalty of removal from office imposed by the NEA.

The foregoing, notwithstanding, the apparent registration of ZAMECO II with the CDA on December 4, 2007 would ultimately bear on the question of whether NEA can still enforce its Resolution dated November 24, 2004 and Decision dated February 15, 2005, as affirmed by the Court of Appeals and by the Court herein.

Respondents NEA and CASCONA uniformly assert the invalidity of ZAMECO II's CDA Registration on the ground that ZAMECO II allegedly did not follow the procedure outlined in the EPIRA and the Rules and Regulations to Implement Republic Act No. 9136 (EPIRA Implementing Rules) for an electric cooperative to first convert into a stock cooperative as a precondition to its registration with the CDA.

Sec. 57, Chapter VII of the EPIRA provides that, "Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code x x x" Sec. 7, Rule VII of the EPIRA Implementing Rules, in turn, provides as follows:

Sec. 7. *Structural and Operational Reforms Between and Among Distribution Utilities.*

. . . .

(c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or grant granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:

(i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in

> the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.

. . . .

Whether ZAMECO II complied with the foregoing provisions, particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, is a question of fact which this Court shall not review. At any rate, the evidence on record does not afford us sufficient basis to make a ruling on the matter. The remand of the case to the Court of Appeals solely on this question is, therefore, proper.

WHEREFORE, the instant case is hereby *REMANDED* to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177059. March 13, 2009]

FE LA ROSA, OFELIA VELEZ, CELY DOMINGO, JONA NATIVIDAD and EDGAR DE LEON, *petitioners, vs.* **AMBASSADOR HOTEL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL TO THE SUPREME COURT; AS A RULE, THE SUPREME COURT DOES NOT RE-EXAMINE THE EVIDENCE PRESENTED BY THE PARTIES TO A CASE; EXCEPTIONS. —** While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but which are contradicted by the evidence on record.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; CONSTRUCTIVE DISMISSAL; WHEN PRESENT. —** Case law holds that constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. Respondent's sudden, arbitrary and unfounded adoption of the two-day work scheme which greatly reduced petitioners' salaries renders it liable for constructive dismissal.

3. **ID.; ID.; ID.; ABANDONMENT; DEFINED; NOT PRESENT IN CASE AT BAR. — Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer**. x x x Abandonment is a matter of intention and cannot lightly be inferred or legally

presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts. The second element is the more determinative factor. Abandonment as a just ground for dismissal thus requires **clear, willful, deliberate, and unjustified refusal of the employee to resume employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment**. Upon the other hand, petitioners' immediate filing of complaints for illegal suspension and illegal dismissal after the implementation of the questioned work scheme, which scheme was adopted soon after petitioners' complaints against respondent for violation of labor standards laws were found meritorious, negates respondent's claim of abandonment. An employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.

4. **ID.; ID.; ID.; AN EMPLOYEE DISMISSED WITHOUT JUST CAUSE AND WITHOUT DUE PROCESS IS ENTITLED TO REINSTATEMENT AND BACKWAGES OR PAYMENT OF SEPARATION PAY. —** As for the appellate court's ruling that petitioners are not entitled to reinstatement because they did not pray for it in their complaints, the same does not lie. In all the pro-forma complaints filed by petitioners before the NLRC, they prayed for reinstatement or, in the alternative, for the award to them of separation pay. And they reiterated this prayer in their Position Paper, specifically in paragraph 14 thereof, *viz*: 14. Due process was not followed in the constructive dismissal of the complainants. **Hence they are entitled to reinstatement with full backwages or in the alternative to full separation pay of one month per year of service.** Besides, under Article 279 of the Labor Code and based on settled jurisprudence, an employee dismissed without just cause and without due process, like petitioners herein, are entitled to reinstatement and backwages *or* payment of separation pay.

APPEARANCES OF COUNSEL

Paterno D. Menzon for petitioners.
Ray Anthony F. Fajarito for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On April 17, 2002, employees of Ambassador Hotel including herein petitioners filed before the National Labor Relations Commission (NLRC) several complaints, docketed as NLRC Case Nos. 04-02018-02, 30-04-02019-02, 08-06442-02 and 02-03643-02, for illegal dismissal, illegal suspension, and illegal deductions against the hotel (respondent) and its manager, Yolanda L. Chan. They alleged that, following their filing of complaints with the Department of Labor and Employment-NCR which prompted an inspection of the hotel's premises by a labor inspector, respondent was found to have been violating labor standards laws and was thus ordered to pay them some money claims. This purportedly angered respondent's management which retaliated by suspending and/or constructively dismissing them by drastically reducing their work days through the adoption of a work reduction/rotation scheme. Criminal cases for estafa were likewise allegedly filed against several of the employees involved, some of which cases were eventually dismissed by the prosecutor's office for lack of merit.

The complaints against respondent subject of the present petition were consolidated. By Decision[1] of September 30, 2003, the labor arbiter found respondent and its manager Yolanda L. Chan guilty of illegal dismissal and ordered them to pay petitioners' separation pay at ½ month for every year of service with full backwages, and 10% of the monetary award as attorney's fees.

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[1] Records, pp. 96-100. Penned by Labor Arbiter Ariel Cadiente Santos.

Respondent appealed to the NLRC which, by Decision[2] dated September 8, 2005, affirmed the labor arbiter's ruling with the modification that five of the complainants, namely Diana P. Castillo, Lorena L. Hildao, Gilbert Ongjoco, Salvador So and Ma. Pilar A. Barcenilla, were directed to report back to work, and respondent was directed to accept them without having to pay them backwages. With respect to petitioners, the NLRC held that Edgar de Leon was "actually dismissed but illegally" on November 7, 2001 and that with respect to the four other petitioners, they were constructively dismissed on April 15, 2002 by virtue of respondent's memorandum of even date.

Thus, the NLRC disposed:

> WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED. Diana P. Castillo, Lorena I. Hildao, Gilbet Ongjoco, Salvador So and Ma. Pilar A. Barcenilla were not dismissed. They are ordered to report back to work and respondents to accept them back, but without backwages.
>
> [Herein petitioners] Fe La Rosa, Ofelia Velez, Cely Domingo and Jona Natividad were constructively dismissed, and Edgar de Leon actually dismissed but illegally. Accordingly, the awards made in their favor are AFFIRMED.
>
> SO ORDERED.[3] (Underscoring supplied)

On respondent's motion for reconsideration, the NLRC, by Decision[4] dated January 27, 2006, modified its decision by, among other things, absolving respondent's manager Yolanda L. Chan of any personal liability.

Respondent appealed and prayed for the issuance of an injunctive writ before the Court of Appeals, faulting the NLRC to have committed grave abuse of discretion 1) in finding that petitioners were illegally dismissed, 2) in awarding backwages

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[2] *Id.* at 269-279. Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[3] CA *rollo*, p. 118

[4] Records, pp. 300-303.

and separation pay, and 3) in requiring it to pay them the monetary equivalent of their service incentive leaves. Respondent maintained that its act of reducing the number of work days per week was valid, as it was done to save its business from bankruptcy due to economic reverses.

The appellate court granted respondent's prayer for a temporary restraining order (TRO) and subsequently for a writ of preliminary injunction.

By Decision[5] dated December 12, 2006, the appellate court **reversed** the NLRC decision and dismissed petitioners' complaints, holding that there was no constructive dismissal because petitioners "simply disappeared from work" upon learning of the work reduction/rotation scheme; and that in their position paper submitted before the NLRC, petitioners only prayed for separation pay and not for reinstatement, hence, following settled jurisprudence, the latter relief has been foreclosed.

The appellate court went on to hold that respondent's adoption of the work reduction/rotation scheme, as well as its reassignment of petitioners, was a valid exercise of management prerogative, absent any showing that the same was done out of vengeance. It further held inapplicable the rule that the institution of a complaint for illegal dismissal is inconsistent with abandonment, because petitioners failed to pray for reinstatement as they instead prayed for separation pay.

Petitioners' motion for reconsideration having been denied by the appellate court by Resolution[6] dated March 7, 2007, they instituted the present petition for review on *certiorari*.

Petitioners deny having abandoned their jobs. And they take exception to the appellate court's finding that they did not pray

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[5] CA *rollo*, pp. 254- 261. Penned by then Associate Justice, now Presiding Justice Conrado M. Vasquez, Jr., and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso.

[6] *Id.* at 351. Penned by then Associate Justice (now Presiding Justice) Conrado M. Vasquez, Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso.

for reinstatement, they inviting attention to paragraph 14, page 5 of their verified position paper reading: "x x x Hence they are entitled to reinstatement with full backwages, or in the alternative to full separation pay of one month per year of service," as well as to their prayer in the pro-forma complaints filed before the labor arbiter asking for the same relief.

Petitioners question as bereft of specific proof the appellate court's ruling that the work reduction/rotation scheme adopted by respondent was a valid exercise of management prerogative.

Finally, petitioners question the issuance by the appellate court of a TRO, and subsequently of a writ of preliminary injunction conditioned on respondent's posting of a bond which was lower than the judgment award, hence, prejudicial to them.

The petition is impressed with merit.

While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but which are contradicted by the evidence on record.[7]

The appellate court predicated its reversal of the NLRC decision that petitioners were illegally dismissed on petitioners' supposed abandonment of their jobs, and justified the work rotation/reduction scheme adopted by respondent as a valid exercise of management prerogative in light of respondent's business losses.

The records fail, however, to show any documentary proof that the work reduction scheme was adopted due to respondent's business reverses. Respondent's memorandum[8] dated April 5, 2000 (*sic*, should be 2002) informing petitioners of the adoption

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[7] *Insular Life v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[8] Records, p. 48.

of a two-day work scheme effective April 5, 2002 made no mention why such scheme was being adopted. Neither do the records show any documentary proof that respondent suffered financial losses to justify its adoption of the said scheme to stabilize its operations.

What is undisputed, as found by both the labor arbiter and the NLRC and admitted by respondent itself, is that the complaints for violation of labor standards laws were filed by petitioners against respondent at the DOLE-NCR, some of which complaints were partially settled; and that almost immediately after the partial settlement of the said complaints, the work reduction/rotation scheme was implemented.

Case law holds that constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[9] Respondent's sudden, arbitrary and unfounded adoption of the two-day work scheme which greatly reduced petitioners' salaries renders it liable for constructive dismissal.

Respecting the appellate court's ruling that petitioners "simply disappeared" from their work, hence, they are guilty of abandonment, the same does not lie.

Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.

x x x x x x x x x

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee

[9] *Uniwide Sales v. NLRC*, G.R. No. 154503, February 29, 2008.

> relationship as manifested by some overt acts. The second element is the more determinative factor. **Abandonment as a just ground for dismissal thus requires clear, willful, deliberate, and unjustified refusal of the employee to resume employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment**.[10] (Emphasis and underscoring supplied)

Respondent, which has the onus of proving that petitioners abandoned their work, failed to discharge the same, however.

Upon the other hand, petitioners' immediate filing of complaints for illegal suspension and illegal dismissal after the implementation of the questioned work scheme, which scheme was adopted soon after petitioners' complaints against respondent for violation of labor standards laws were found meritorious, negates respondent's claim of abandonment. An employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.[11]

As for the appellate court's ruling that petitioners are not entitled to reinstatement because they did not pray for it in their complaints, the same does not lie. In all the pro-forma complaints[12] filed by petitioners before the NLRC, they prayed for reinstatement or, in the alternative, for the award to them of separation pay. And they reiterated this prayer in their Position Paper,[13] specifically in paragraph 14 thereof, *viz*:

> 14. Due process was not followed in the constructive dismissal of the complainants. **Hence they are entitled to reinstatement with full backwages or in the alternative to full separation pay of one month per year of service.** (Emphasis and underscoring supplied)

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[10] *Seven Star Textile Company v. Dy*, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 499.

[11] *Samarca v. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168.

[12] Records, pp. 1-3, 11.

[13] *Id.* at 41-47.

Besides, under Article 279[14] of the Labor Code and based on settled jurisprudence, an employee dismissed without just cause and without due process, like petitioners herein, are entitled to reinstatement and backwages *or* payment of separation pay.

In fine, the Court finds that petitioner Edgar de Leon was illegally dismissed on November 7, 2001, and the rest of the petitioners were illegally dismissed on April 15, 2002 from which dates the payment of backwages (*cum* separation pay), at the above-stated rate determined by the Labor Arbiter and affirmed by the NLRC, are to be reckoned with. This leaves it unnecessary to still pass on the issue of the propriety of the appellate court's issuance of a TRO and injunctive writ.

WHEREFORE, the petition is *GRANTED.*

The Court of Appeals Decision dated December 12, 2006 and Resolution dated March 7, 2007 are *REVERSED* and *SET ASIDE.* The National Labor Relations Commission Decision dated September 8, 2005 and Resolution dated January 21, 2006 are *REINSTATED.*

SO ORDERED.

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

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[14] Art. 279. Security of Tenure. — x x x

In cases of regular employment the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[*] Acting Chief Justice.

SECOND DIVISION

[G.R. No. 177211. March 13, 2009]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **RICARDO EVANGELISTA, CONCEPCION MELICAN, GRACE LIMOS and the HON. COURT OF APPEALS (Sixteenth Division),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE OMBUDSMAN; INVESTIGATORY AND PROSECUTORY POWERS THEREOF, EXPLAINED. —** It is the consistent and general policy of the Court not to interfere with the Office of the Ombudsman's exercise of its investigatory and prosecutory powers. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. It is within the context of this well-entrenched policy that the Court proceeds to pass upon the validity of the preventive suspension order issued by the Ombudsman in this case.

2. **ID.; ID.; ID.; NEITHER PRIOR NOTICE NOR HEARING IS REQUIRED FOR THE ISSUANCE OF A PREVENTIVE SUSPENSION ORDER; SUSTAINED. —** As early as 1995, this Court ruled in *Lastimosa v. Vasquez* and *Hagad v. Gozo-Dadole*, that neither prior notice nor a hearing is required for the issuance of a preventive suspension order. The well-settled doctrine is solidly anchored on the explicit text of the governing law which is Section 24 of R.A. No. 6770. The provision defines the authority of the Ombudsman to preventively suspend government officials and employees. Clearly, the plain language of the above-quoted provision debunks the appellate court's position that the order meting out preventive suspension may not be issued without prior notice and hearing and before the issues are joined. Under Section 24, two requisites must concur to render the preventive suspension order valid. The first requisite is unique and can be satisfied in only one way. It is that in the judgment of the Ombudsman or the Deputy Ombudsman, the evidence of guilt is strong. The second

requisite, however, may be met in three (3) different ways, to wit: (1) that the offense charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charge would warrant removal from the service; or (3) the respondent's continued stay in office may prejudice the case filed against him.

3. ID.; ID.; PUBLIC OFFICER; WHEN GUILTY OF DISHONESTY; PENALTY. — Dishonesty is intentionally making a false statement in any material fact. Per the findings of the Ombudsman, there is strong evidence that private respondents made false statements as to the status of the SEF as well as the purchase of speech kits and textbooks. Likewise, a mayor like any other local elective official may be removed from office for dishonesty, oppression, gross negligence or dereliction of duty in accordance with Section 60(c) of the Local Government Code. In regard to respondents Melican and Limos, both are members of the civil service under Section 22, Rule XIV of the Omnibus Rules of Civil Service, dishonesty is a grave offense punishable with dismissal even as a first offense. The penalty of dismissal is reiterated in Civil Service Memorandum Circular No. 30, series of 1989, and also in Civil Service Memorandum Circular No. 19, series of 1999. Section 9, Rule XIV, Section 9 of the Omnibus Rules and the aforecited circulars likewise state that the penalty of dismissal from the service shall carry with it cancellation of civil service eligibility, forfeiture of leave credits and retirement benefits, and disqualification from any employment in the government service.

4. ID.; ID.; ID.; PURPOSE OF PREVENTIVE SUSPENSION, EXPLAINED; APPLICATION IN CASE AT BAR. — We reiterate the rule that the prosecution must be given the opportunity to gather and prepare the facts for trial under conditions which would ensure non-intervention and noninterference from accused's camp. Similar to Section 13 of Republic Act No. 3019, Section 24 of R.A. No. 6770 emphasizes the principle that a public office is a public trust. Part and parcel of this principle is a presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both. Relatedly, the Ombudsman has full discretion to select which evidence it will gather and present, free from any interference. This Court also holds that there was no undue haste on the Ombudsman's part

in issuing the preventive suspension order. The fact that the Ombudsman signed the order prior to her Deputy Ombudsman's recommendation does not affect its validity. A review of Section 24 of R.A. No. 6770 reveals that the recommendation of the Deputy Ombudsman is not a condition *sine qua non* for the Ombudsman to issue a preventive suspension order. A preventive suspension is not a penalty and such an order when issued by the Ombudsman is accorded the highest deference unless the order violates Section 24 of R.A. No. 6770.

5. **ID.; ID.; ID.; AS A RULE, ELECTIVE OFFICIALS MAY NOT BE HELD ADMINISTRATIVELY LIABLE FOR MISCONDUCT COMMITTED DURING A PREVIOUS TERM OF OFFICE; RATIONALE. —** This Court has consistently ruled that elective officials may not be held administratively liable for misconduct committed during a previous term of office. The rationale for this rule is that it is assumed that the electorate returned the official to power with full knowledge of past misconduct and in fact condoned it. It should be stressed that this forgiveness only applies to the administrative liability; the State may still pursue the official in a criminal case.

APPEARANCES OF COUNSEL

Office of Legal Affairs (Ombudsman) for petitioner.
Atienza Madrid & Formento for private respondents.

D E C I S I O N

TINGA, *J.*:

Respondents Ricardo Evangelista, Concepcion Melican and Grace Limos (respondents) are the mayor, municipal treasurer and accountant respectively, of Aguilar, Pangasinan.

In this petition for *certiorari* and prohibition,[1] the Office of the Ombudsman assails the Court of Appeals' decision[2] dated

[1] *Rollo*, pp. 2-26 with annexes.

[2] Justice Juan Q. Enriquez *ponente,* Justices Vicente S.E. Veloso and Marlene Gonzales-Sison members; *id.* at 28-37.

March 23, 2007 setting aside the Ombudsman's order placing respondents under preventive suspension.

The facts follow.

In an affidavit-complaint dated November 13, 2006, Priscilla Villanueva, the Co-Chair of the Local School Board of Aguilar, accused the respondents of having misappropriated the Special Education Fund (SEF).[3] The complainant alleged that the three respondents had used the SEF to purchase speech kit tapes and textbooks without the approval of the Local School Board. She also alleged that the speech kit tapes and textbooks were not received by the recipients, as evidenced by attached certifications of principals and head teachers of different public schools within Aguilar debunking such receipt.[4] Villanueva specially pleaded that the respondents be preventively suspended.[5]

In an order dated January 9, 2007,[6] the Ombudsman placed respondents under preventive suspension for a period of four (4) months. The dispositive portion of the order reads:

> WHEREFORE PREMISES CONSIDERED, it is most respectfully recommended that the request of complainant Priscilla B. Villanueva for the preventive suspension of the respondents be **GRANTED**. In accordance with Section 24, R.A. No. 6770 and Section 9, Rule III of Administrative Order No. 07, respondents RICARDO EVANGELISTA, CONCEPCION MELICAN and GRACE LIMOS are hereby **PREVENTIVELY SUSPENDED** during the pendency of the case until termination, but not to exceed the total period of four (4) months, without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.
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> In accordance with Section 27, par. (1), R.A. No. 6770, this Order is immediately executory. Notwithstanding any motion, appeal or

[3] CA *rollo,* pp. 59-63.

[4] *Id.* at 74-82.

[5] *Id.* at 62.

[6] CA *rollo,* pp. 16-24.

petition that may be filed by the respondents seeking relief from this Order, unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall be interrupted within the period prescribed. The Honorable Secretary of the Interior and Local Government and Department of Finance are hereby directed to implement this Order immediately upon receipt hereof, and to notify this Office within five (5) days from said receipt of the status of said implementation.

SO ORDERED.[7]

The Ombudsman held that the proofs submitted by Villanueva showed strong evidence of guilt, that if duly proven the acts imputed against the respondents would constitute grave misconduct and dishonesty and that their continued stay in office would prejudice the fair and independent disposition of the case against them.

The suspension order was served on respondent Evangelista on January 13, 2007. Two (2) days later, the same process was effected on respondent Limos.

On January 17, 2007, respondents filed a petition for *certiorari* with the Court of Appeals assailing the order of the Ombudsman.[8] They claimed that they had been denied due process since they were never furnished with a copy of Villanueva's complaint. They also alleged that the unsubstantiated allegations of Villanueva do not constitute sufficient evidence to suspend them. Lastly, they averred that the order had been hastily issued.

The Court of Appeals granted the petition and set aside the order of the Ombudsman. The appellate court observed that even a cursory reading of the assailed order reveals that the requirements of R.A. No. 6770 were not complied with. It pointed out that under Section 26(2) of R.A. No. 6770, the Ombudsman is required to inform the accused of the charges; yet, the respondents learned of the charges against them only upon receipt of the suspension order. Rejecting the tenability of the preventive

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[7] *Id.* at 22-23.

[8] *Id.* at 2-15.

suspension order, the appellate ruled that the documents which could possibly be tampered were beyond the reach of the respondent as they had been kept in the custody of the Commission on Audit. In addition, the Court of Appeals found that there was haste in ordering the suspension since the Ombudsman signed the order prior to the Deputy Ombudsman's recommendation of approval.

Aggrieved by the decision of the appellate court, the Ombudsman assails the same before this Court via a petition for review on *certiorari.* The Ombudsman claims that the order complied with the two requirements in Section 24 of R.A. No. 6770, namely: the evidence of guilt being strong and the charge against such officer or employee involving as it does dishonesty, oppression or grave misconduct or neglect in the performance of duty. Furthermore, as the function of a petition for *certiorari* is to correct errors of jurisdiction, it can not include a review of the Ombudsman's factual findings. The Ombudsman also asserts that the reliance by the appellate court on Section 26(2) of R.A. No. 6770 is misplaced since a preventive suspension order has to satisfy only the requirements laid down in Section 24 of the same law. Finally, there is ample jurisprudence supporting the legality of a preventive suspension order issued even prior to the hearing of the charges.

In their defense, the respondents reiterate that they were denied due process when they were not informed of the charges against them prior to their preventive suspension. The irregularities concerning the SEF imputed to them are baseless, they add. They claim that Villanueva had effected the concoction and circulation of a bogus Special Prosecutor's order finding them guilty of grave misconduct and dishonesty, as well as recommending their dismissal from service. Lastly, they assert that the re-election of Evangelista has rendered the preventive suspension order moot and academic following the doctrine laid down in *Mayor Garcia v. Hon. Mojica*.[9]

The petition is meritorious.

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[9] G.R. 139043, September 10, 1999, 314 SCRA 207 .

There is a procedural matter that must first be resolved.

Generally, to challenge appellate court decisions reversing rulings of the Ombudsman in administrative cases, the special civil action for *certiorari* under Rule 65 is not the appropriate recourse. As the Ombudsman assails the appellate court's misapplication of the law, the proper remedy is a petition for review on *certiorari* under Rule 45. Errors of judgment committed by the appellate court are not correctible by a petition for *certiorari.*[10] Respondents, however, failed to raise this lapse of the Ombudsman as an error. In any event, the issues raised by the Ombudsman merit a full-blown discussion. Thus, the Court opts to adopt a liberal construction of the Rules of Court, treating the petition for *certiorari* as a petition for review in order to avert a miscarriage of justice,[11] especially since the petition for *certiorari* was filed within the fifteen-(15) day period prescribed for a petition for review under Section 2, Rule 45 of the Rules of Court. Specifically, the petition was filed on April 13, 2007 or exactly 15 days after the Ombudsman received the decision on March 29, 2007.

Now, on the substantive aspects.

It is the consistent and general policy of the Court not to interfere with the Office of the Ombudsman's exercise of its investigatory and prosecutory powers.[12] The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well.[13] It is within the context of this

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[10] *Villarule v. NLRC*, 348 Phil. 427 (1998); *Paa v. Court of Appeals*, 347 Phil. 122 (1997); *Meralco v. La Campana Food Products Inc.*, 317 Phil. 91 (1995), *Azarcon v. Sandiganbayan*, 268 SCRA 747 (1997); *B.F. Corporation v. Court of Appeals*, 351 Phil. 507 (1998); *Casil v. Court of Appeals*, 349 Phil. 187 (1998).

[11] RULES OF COURT, Rule 1, Sec. 6.

[12] *Estrada v. Desierto*, G.R. No. 156160, 9 December 2004, 445 SCRA 655; *Kara-an v. Office of the Ombudsman*, G.R. No. 119990, 21 June 2004, 432 SCRA 457, 467.

[13] *Alba v. Hon. Nitorreda*, 325 Phil. 229 (1996); *Knecht v. Hon. Desierto*, 353 Phil. 494 (1998).

well-entrenched policy that the Court proceeds to pass upon the validity of the preventive suspension order issued by the Ombudsman in this case.

As early as 1995, this Court ruled in *Lastimosa v. Vasquez*[14] and *Hagad v. Gozo-Dadole,*[15] that neither prior notice nor a hearing is required for the issuance of a preventive suspension order. The well-settled doctrine is solidly anchored on the explicit text of the governing law which is Section 24 of R.A. No. 6770. The provision defines the authority of the Ombudsman to preventively suspend government officials and employees. It reads:

> SEC. 24. *Preventive Suspension*. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.
>
> The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Clearly, the plain language of the above-quoted provision debunks the appellate court's position that the order meting out preventive suspension may not be issued without prior notice and hearing and before the issues are joined. Under Section 24, two requisites must concur to render the preventive suspension order valid. The first requisite is unique and can be satisfied in only one way. It is that in the judgment of the Ombudsman or the Deputy Ombudsman, the evidence of guilt is strong. The

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[14] 313 Phil. 358 (1995).

[15] *Hon. Hagad v. Hon. Gozo-Dadole*, 321 Phil. 604 (1995).

second requisite, however, may be met in three (3) different ways, to wit: (1) that the offense charged involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charge would warrant removal from the service; or (3) the respondent's continued stay in office may prejudice the case filed against him.

Undoubtedly, in this case, there is no showing of grave abuse of discretion on the Ombudsman's part in finding the evidence to be strong. In issuing the preventive suspension order, the Ombudsman considered the following: the Local Budget Preparation Form No. 151 indicating the balance of the SEF;[16] records from the office of the municipal account;[17] a letter dated December 13, 2004 of Villanueva to the Municipal Treasurer requesting clarification of the SEF balance;[18] status of appropriation, allotment and obligation of the SEF as of December 31, 2003;[19] SEF statement of income and expenses for 2003;[20] the letter of the municipal accountant to Mayor Evangelista enumerating the disbursements charged to the SEF which includes disbursements for speech kits and textbooks for 2003-2005;[21] certifications dated February 11, 2005 issued by principals and head teachers stating they did not receive speech kits nor text books for 2004-2005.[22]

The SEF was suddenly reduced to ₱343,763.30 from ₱783,937.60 without sufficient justification as revealed by this Court's evaluation of the Status of Appropriation, Allotment and Obligation as well as the Statement of Income and Expense, both certified as correct by respondent Limos no less.[23] Moreover,

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[16] CA *rollo,* p. 64.

[17] *Id.* at 65.

[18] *Id.* at 66.

[19] *Id.* at 68.

[20] *Id.* at 69.

[21] *Id.* at 72-73.

[22] *Id.* at 74-80.

[23] *Id.* at 68.

the certifications of numerous head teachers and principals that their schools did not receive the speech kits and textbooks are likewise strong evidence of dishonesty and grave misconduct on the respondents' part.[24] This is bolstered by the fact that no disbursement was authorized by the local school board.

In this case, the second requisite is satisfied by two circumstances. First, the offense definitely involves dishonesty, oppression or grave misconduct or neglect in the performance of duty. Second, the charge would warrant removal from the service.

Dishonesty is intentionally making a false statement in any material fact.[25] Per the findings of the Ombudsman, there is strong evidence that private respondents made false statements as to the status of the SEF as well as the purchase of speech kits and textbooks. Likewise, a mayor like any other local elective official may be removed from office for dishonesty, oppression, gross negligence or dereliction of duty in accordance with Section 60(c) of the Local Government Code. In regard to respondents Melican and Limos, both are members of the civil service under Section 22, Rule XIV of the Omnibus Rules of Civil Service, dishonesty is a grave offense punishable with dismissal even as a first offense.

The penalty of dismissal is reiterated in Civil Service Memorandum Circular No. 30, series of 1989,[26] and also in Civil Service Memorandum Circular No. 19, series of 1999.[27] Section 9, Rule XIV, Section 9 of the Omnibus Rules and the aforecited circulars likewise state that the penalty of dismissal from the service shall carry with it cancellation of civil service eligibility, forfeiture of leave credits and retirement benefits,

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[24] *Id.*

[25] *Sevilla v. Gocon*, 467 Phil. 512, 521 (2004).

[26] ENTITLED GUIDELINES IN THE APPLICATION OF PENALTIES IN ADMINISTRATIVE CASES.

[27] ENTITLED REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

and disqualification from any employment in the government service.[28]

The appellate court strangely juxtaposed the requisites found in Section 26 of R.A. No. 6770 governing inquiries by the Ombudsman with those found in Section 24 of the same law. Section 24 does not require that notice of the charges against the accused must precede an order meting out preventive suspension. While a preventive suspension order may stem from a complaint, the Ombudsman is not required to furnish the respondent with a copy of the complaint prior to ordering preventive suspension. The requisites for the Ombudsman to issue a preventive suspension order are clearly contained in Section 24 of R.A. No. 6770. The appellate court cannot alter these requirements by insisting that the preventive suspension order also meet the requisites found in Section 26 of the same law.

The appellate court's stance that there is no longer any reason for the preventive suspension of the respondents as the pertinent documents are with the Commission on Audit likewise has no merit. Respondents argue there is no reason for suspension *pendente lite* as they could no longer tamper with the evidence. This Court found a similar argument in *Bunye v. Escarreal*[29] devoid of merit. We reiterate the rule that the prosecution must be given the opportunity to gather and prepare the facts for trial under conditions which would ensure non-intervention and noninterference from accused's camp.[30] Similar to Section 13 of Republic Act No. 3019, Section 24 of R.A. No. 6770 emphasizes the principle that a public office is a public trust.[31] Part and parcel of this principle is a presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both.[32] Relatedly, the Ombudsman

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[28] Civil Service Commission Memorandum Circular No. 19 (1999), Sec. 58, qualifies this further: " x x x unless otherwise provided in the decision."

[29] G.R. No. 110216, September 10, 1993, 226 SCRA 332.

[30] *Id.*

[31] *Dr. Beroña v. Sandiganbayan*, 479 Phil. 182 (2004).

[32] *Rios v. The 2nd Division of the Sandiganbayan*, 345 Phil. 85, 92 (1997).

has full discretion to select which evidence it will gather and present, free from any interference.

This Court also holds that there was no undue haste on the Ombudsman's part in issuing the preventive suspension order. The fact that the Ombudsman signed the order prior to her Deputy Ombudsman's recommendation does not affect its validity. A review of Section 24 of R.A. No. 6770 reveals that the recommendation of the Deputy Ombudsman is not a condition *sine qua non* for the Ombudsman to issue a preventive suspension order.

A preventive suspension is not a penalty and such an order when issued by the Ombudsman is accorded the highest deference unless the order violates Section 24 of R.A. No. 6770.[33]

A final note. The preventive suspension order insofar as Mayor Evagelista is concerned has been rendered moot and academic. The Mayor was re-elected and proclaimed during the May 2007 elections as evidenced by the certificate of canvass of votes and proclamation of winning candidates for the Municipality of Aguilar, Pangasinan.[34] This Court has consistently ruled that elective officials may not be held administratively liable for misconduct committed during a previous term of office.[35] The rationale for this rule is that it is assumed that the electorate returned the official to power with full knowledge of past misconduct and in fact condoned it. It should be stressed that this forgiveness only applies to the administrative liability; the State may still pursue the official in a criminal case.

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[33] *Quimbo v. Gervacio,* G.R. No. 155620, August 9, 2005, 466 SCRA 277, 282; *Pimentel v. Garchitorena,* G.R. Nos. 98340-42, 10 April 1982, 208 SCRA 122, 124 (1992; See Section 24, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws state that: SEC. 24. Preventive suspension is **not a punishment or penalty** for misconduct in office but is considered to be a preventive measure.

[34] *Rollo*, p. 246.

[35] *Pascual v. Provincial Board*, 106 Phil. 466 (1959); *Lizares v. Hechanova*, 17 SCRA 58 (1966); *Aguinaldo v. Santos*, G.R. No. 94115, 21 August 1992, 212 SCRA 768; *Salalima v. Guingona*, 326 Phil. 847 (1996); *Mayor Garcia v. Hon. Mojica*, 372 Phil. 892 (1999).

WHEREFORE, the petition is partially *GRANTED*. The Decision dated March 23, 2007 of the Court of Appeals is *REVERSED* and *SET ASIDE* insofar as it refers to respondents Grace Limos and Concepcion Melican. The preventive suspension order issued by the Ombudsman on said respondents is *AFFIRMED.* Said Decision of the Court of Appeals is *AFFIRMED* with respect to respondent Ricardo Evangelista.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177516. March 13, 2009]

CONRADO QUESADA, ANGELITA QUESADA EJERCITO, HECTOR A. QUESADA, AUGUST QUESADA, ENGRACIA A. QUESADA, and GAVINA ASUNCION, *petitioners, vs.* **HON. COURT OF APPEALS, HEIRS OF ILDEFONSO DEREQUITO and AGUSTIN D. DEREQUITO, represented by EUGENIO DEREQUITO and FOR HIMSELF,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NOT APPLICABLE IN CASE AT BAR. — One of the requirements for *certiorari* to lie is that there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. Respondents had the remedy of appeal when the trial court rendered judgment in favor of petitioners. Respondents did in fact file a Notice of Appeal, which was denied due course, however, because it was filed beyond the reglementary period.

Having lost the remedy of appeal, they should not have been allowed by the Court of Appeals to avail of the remedy of *certiorari*.

2. ID.; ATTORNEYS; STRONG PRESUMPTION IN FAVOR OF COUNSEL'S AUTHORITY TO APPEAR IN BEHALF OF CLIENT; EXEMPLIFIED. — Respondent Eugenio, together with the other respondents, participated in the proceedings of the case through their counsel Atty. Teofilo G. Leonidas, Jr. (Atty. Leonidas) who received the court processes in their behalf. It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. Respondents argue, however, that there is no proof that Atty. Leonidas had been given the authority to represent them. Again, the Court is not impressed. The presumption in favor of a counsel's authority to appear in behalf of a client is a strong one, and a lawyer is not required to present a written authorization from his client.

3. ID.; ACTION FOR REVIVAL OF JUDGMENT; COMPUTATION OF TEN-YEAR PRESCRIPTION PERIOD, EXPLAINED. — Respecting the issue of prescription, contrary to respondents' contention, the action to revive the judgment in the forcible entry case had not prescribed. The judgment sought to be revived was rendered on August 25, 1975 and the motion for reconsideration of the said judgment was denied on September 15, <u>1976</u>. A writ of execution was in fact issued. The writ of execution was not enforced, however, within five years or up to or on or about September 15, 1981. Hence, the filing of Civil Case No. 16681 — the action for revival of judgment — on August 26, <u>1985</u>, was well within the 10-year prescriptive period. <u>STRANGELY</u>, the appellate court, in its challenged decision of May 31, 2006, appears to have reckoned the 10-year prescriptive period from the finality of the trial court's decision <u>up to the promulgation of its (the appellate court's) decision on May 31, 2006</u>, hence, its ruling that 30 years had already passed from the finality of the trial court's decision.

4. CIVIL LAW; DAMAGES; AWARD OF DAMAGES FOR WITHHOLDING POSSESSION OF THE LOT IN QUESTION, WHEN PROPER; CASE AT BAR. — The damages awarded represented those suffered by petitioners on account of respondents' withholding possession of the lot since 1977 (when San Luis' lease contract expired and

petitioners took over his rights and interests over the questioned portion of the lot) and attorney's fees and litigation expenses. It need not be underlined that the relief to which the judgment creditor-plaintiff in a complaint for revival of a judgment depends upon the contents of the judgment in said complaint, and not on what was granted in the judgment sought to be revived. Thus, petitioners' complaint for revival of judgment and recovery of possession and damages had two causes of action. The first sought the revival of judgment in the case for forcible entry, which was in favor of former lessee San Luis. The second sought the recovery of possession and damages against respondents for violation of petitioners' right to the possession and fruits of the lot since 1977.

APPEARANCES OF COUNSEL

Franklin J. Andrada for petitioners.
Luciano G. Cameros for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Epitacio Asuncion, predecessor-in-interest of herein petitioners Conrado Quesada, *et al.*, was the owner of Lot No. 225-B (the lot) covered by Original Certificate of Title No. F-24467 of the Register of Deeds of Iloilo and containing about 3.4 hectares.[1] One-and-a-half (1½) hectares of the lot were leased to one Claro San Luis (San Luis).

The lot is separated from the land occupied by Querubin Derequito (Querubin), predecessor-in-interest of respondents, by the Balabag River. Querubin converted a portion of the Balabag River into a fish pond and occupied a portion of the lot leased to San Luis.

Querubin later filed a complaint for forcible entry against San Luis, docketed as Civil Case No. 8863. Branch I of the Iloilo then Court of First Instance rendered a decision dated

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[1] Records, p. 167.

August 25, 1975 in favor of the therein defendant San Luis,[2] disposing as follows:

> FOR ALL THE FOREGOING, judgment is rendered:
>
> a. ordering plaintiff [Querubin] to renounce possession of the little over one hectare indicated as Exhibit A-2 and Exhibit A-3 on Exhibit A for plaintiff and Exhibit 5 for defendant;
>
> b. ordering plaintiff to limit his fishpond operation on the area North and Northeast of the original bank (before encroachment) of the Balabag River in Dumangas, Iloilo;
>
> c. ordering defendant to limit his fishpond operation along the curb line indicated in red pencil from point x to y on the sketch plan, Exhibit B for the plaintiff, of the area South and southeast of the original bank of the Balabag River.
>
> No pronouncement as to cost.
>
> Let copy of this decision be furnished the Regional Director of the Department of Public Works, Transportation and Communication with offices in Iloilo City.
>
> SO ORDERED. (Underscoring supplied)[3]

The Motion for Reconsideration of the Decision was denied by Order of September 15, 1976. The decision having become final and executory, a writ of execution was issued by the trial court but it appears that it was not implemented.[4]

In 1977, San Luis' contract of lease expired.

After Querubin died, respondents succeeded in the possession and enjoyment of the fruits of the questioned portion of the lot.

On August 26, 1985, San Luis, together with petitioners, filed before the Regional Trial Court (RTC) of Iloilo City a complaint to revive the judgment in Civil Case No. 8863 (for forcible entry, which was decided in favor of the therein defendant San Luis) and to recover possession and damages.[5] The complaint,

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[2] *Id.* at 6-9.

[3] *Id.* at 8-9.

[4] *Id.* at 43.

[5] *Id.* at 1-5.

docketed as Civil Case No. 16681, was later amended to implead respondents Agustin Derequito and Eugenio Derequito (Eugenio) as defendants and to drop San Luis as a plaintiff.[6]

Branch 32 of the Iloilo City RTC, by Decision of July 8, 2002, rendered judgment in Civil Case No. 16681 in favor of petitioners, the dispositive portion of which reads:

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

1. The Decision rendered in Civil Case No. 8863 be revived in favor of the plaintiffs[-herein petitioners] Quesadas, Ejercito, and Asuncion after they have acquired the rights and interest of Claro San Luis by subrogation upon the termination of the lease contract of Claro San Luis in 1977 in the Decision Dated August 25, 1975 which reads as follows:

    a. ordering plaintiff to renounce possession of the little over one hectare indicated as Exhibit A-2 and Exhibit A-3 on Exhibit A for plaintiff and Exhibit 5 for defendant;
    b. ordering plaintiff to limit his fishpond operation on the area North and Northeast of the original bank (before encroachment) of the Balabag River in Dumangas, Iloilo;
    c. ordering defendant to limit his fishpond operation along the curb line indicated in red pencil from point x to y on the sketch plan, Exhibit B for the plaintiff, of the area South and southeast of the original bank of the Balabag River.

    No pronouncement as to cost.

    Let copy of this decision be furnished the Regional Director of the Department of Public Works, Transportation and Communication with offices in Iloilo City.

    SO ORDERED.

    Iloilo City, August 25, 1975.

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[6] *Id.* at 55-59.

2. The defendants-[herein respondents] are hereby ordered jointly and severally to pay plaintiffs the sum of no less than Forty Thousand (₱40,000.00) Pesos a year for damages **from 1977 until plaintiffs are restored to the possession of that 1-1/2 hectares more or less of Lot 225-B;**

3. Defendants are ordered jointly and severally to pay plaintiffs the sum of Twenty Thousand (₱20,000.00) Pesos as **attorney's fees** and Two Thousand (₱2,000.00) as **litigation expenses** every time case is called for trial;

4. Defendants are ordered **to pay the costs** of the suit; and

5. Defendants are ordered jointly and severally to return that portion of Lot 225-B covered by Original Certificate of Title No. F-24467 in the name of Epitacio Asuncion, the predecessor-in-interest of the plaintiffs, Quesadas, Ejercito and Asuncion.

SO ORDERED.[7] (Emphasis and underscoring supplied)

Respondents filed a Notice of Appeal[8] of the trial court's decision which was denied due course as it was filed beyond the reglementary period.[9] A Writ of Execution was thereupon issued.[10]

Respondents subsequently filed a petition for *certiorari*, prohibition, and injunction[11] before the Court of Appeals, alleging that the trial judge acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in

x x x MODIFYING the original judgment [in the forcible entry case] which has long become final and executory, rendered by Hon. Judge Sancho Y. Inserto, by requiring the defendants-petitioner[s] to pay monetary damages which was not awarded on the original judgment,

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[7] *Id.* at 205-206.

[8] *Id.* at 208.

[9] *Id.* at 239.

[10] *Id.* at 240.

[11] CA *rollo*, pp. 2-18.

x x x reviving the original judgment which has long PRESCRIBE[D];

x x x x x x x x x

x x x granting the *ex-parte* motion to serve the Writ of Execution of the revived judgment here in Digos City upon he defendant-petitioner, Eugenio Derequito[;][12] (Emphasis and underscoring in the original; CAPITALIZATION supplied);

and that the *Ex-Officio* Provincial Sheriff and Clerk of Court of the Iloilo City RTC committed grave abuse of discretion in issuing the Writ of Execution.[13]

By Decision[14] of May 31, 2006, the Court of Appeals, finding that prescription had set in as 30 years had "already passed" from the time the decision in the forcible entry case became final and executory "in 1975," and that the said decision "may no longer be reviewed in the new action for its enforcement," found merit in respondents' petition. Thus it ratiocinated:

It must be stressed that Article 1444 (3) of the New Civil Code provides that actions upon a judgment must be brought within ten (10) years from the time the right of action accrues. In other words, the action to revive a judgment prescribes in ten (10) years counted from the date said judgment became final or from the date of its entry. Additionally, after the lapse of five (5) years from the date of entry of judgment or the date said judgment became final and executory, and before the expiration of ten (10) years from such date, the judgment may be enforced by instituting an ordinary action alleging said judgment as the cause of action. Furthermore, Section 6, Rule 39 of the Rules of Court provides that a final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time and before it is barred by the statute of limitations, a judgment may be enforced by action. The records of the case at bar reveal that prescription had

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[12] *Id.* at 10-11.

[13] *Id.* at 11.

[14] Penned by Court of Appeals Associate Justice Apolinario D. Bruselas, Jr. with the concurrence of Associate Justices Arsenio J. Magpale and Vicente L. Yap, CA *rollo*, pp. 125-133.

already set in against the original judgment because it became final and executory in 1975 and **more than 30 years have already passed, thus the judgment can no longer be enforced.**

x x x x x x x x x

x x x The petitioners are therefore correct in assailing the court *a quo's* decision since it is already unalterable and may not be modified in any respect.

Moreover, the rule is well-settled that **the judgment sought to be enforced may no longer be reviewed in the new action for its enforcement, an action the purpose of which is not to re-examine and re-try the issues already decided** but to revive the judgment. x x x

x x x x x x x x x

WHEREFORE, the foregoing premises considered, the petition is GRANTED. Consequently, the Decision and Order dated July 8, 2002 and January 9, 2006 of the Regional Trial Court, Branch 32, Iloilo City, are vacated and set aside.

IT IS SO ORDERED.[15] (Emphasis and underscoring supplied)

Petitioners' Motion for Reconsideration having been denied by Resolution of April 12, 2007,[16] the present petition[17] was filed, faulting the appellate court

(a)

x x x IN NOT DISMISSING THE PETITION FOR *CERTIORARI*, PROHIBITION AND INJUNCTION IN CA-G.R. SP NO. 01489 ON THE GROUND THAT IT SUFFERED FROM BOTH SUBSTANTIVE AND PROCEDURAL INFIRMITIES.

(b)

x x x IN FINDING AND CONCLUDING THAT THE LOWER COURT ACTED WITHOUT OR IN EXCESS OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING THE

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[15] *Id.* at 130-133.

[16] *Id.* at 152-153.

[17] *Rollo*, pp. 3-22.

ORIGINAL JUDGMENT, WHICH HAS LONG BECOME FINAL AND EXECUTORY, BY REQUIRIING THE PETITIONERS TO PAY MONETARY DAMAGES NOT AWARDED IN THE ORIGINAL JUDGMENT.

(c)

x x x IN UPHOLDING THE CLAIM OF PRIVATE RESPONDENTS THAT PRESCRIPTION HAD ALREADY SET IN AGAINST THE ORIGINAL JUDGMENT BECAUSE IT BECAME FINAL AND EXECUTORY IN 1975 AND MORE THAN 30 YEARS HAVE ALREADY PASSED, THUS THE JUDGMENT CAN NO LONGER BE ENFORCED.[18]

The petition is impressed with merit on procedural and substantive grounds.

One of the requirements for *certiorari* to lie is that there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[19] Respondents had the remedy of appeal when the trial court rendered judgment in favor of petitioners. Respondents did in fact file a Notice of Appeal, which was denied due course, however, because it was <u>filed beyond the reglementary period</u>. Having lost the remedy of appeal, they should not have been allowed by the Court of Appeals to avail of the remedy of *certiorari*.

Respondents nevertheless argue that respondent Eugenio learned of Civil Case No. 16681-action for revival of judgment only when the writ of execution was served on him; and that Eugenio, who has been living in Hagonoy, Davao del Sur since 1960, has not been served with copies of the orders, notices, and other court processes issued in said case.[20]

The Court is not impressed. Respondent Eugenio, together with the other respondents, participated in the proceedings of the case through their counsel Atty. Teofilo G. Leonidas, Jr.

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[18] *Id.* at 8-9.

[19] <u>*Vide*</u> RULES OF COURT, Rule 65, Section 1.

[20] *Rollo*, pp. 46-47.

(Atty. Leonidas) who received the court processes in their behalf. It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client.[21]

Respondents argue, however, that there is no proof that Atty. Leonidas had been given the authority to represent them.[22] Again, the Court is not impressed. The presumption in favor of a counsel's authority to appear in behalf of a client is a strong one, and a lawyer is not required to present a written authorization from his client.[23]

Respecting the issue of prescription, contrary to respondents' contention, the action to revive the judgment in the forcible entry case had not prescribed. The judgment sought to be revived was rendered on August 25, 1975 and the motion for reconsideration of the said judgment was denied on September 15, 1976.[24] A writ of execution was in fact issued.

The writ of execution was not enforced, however, within five years or up to or on or about September 15, 1981. Hence, the filing of Civil Case No. 16681 — the action for revival of judgment — on August 26, 1985, was well within the 10-year prescriptive period.[25] **STRANGELY**, the appellate court, in its challenged decision of May 31, 2006, appears to have reckoned the 10-year prescriptive period from the finality of the trial

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[21] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140,147.

[22] *Rollo*, p. 46.

[23] Vide *Land Bank of the Philippines v. Pamintuan Development Co.*, G.R. No. 167886, October 25, 2005, 474 SCRA 344, 349.

[24] Records, pp. 41-42.

[25] Civil Code, Article 1144:

The following actions must be commenced within ten years:

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

Article 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

court's decision up to the promulgation of its (the appellate court's) decision on May 31, 2006, hence, its ruling that 30 years had already passed from the finality of the trial court's decision.

As for respondents' claim that the trial court erred in modifying the revived judgment by awarding damages, the same fails. The damages awarded represented those suffered by petitioners on account of respondents' withholding possession of the lot since 1977 (when San Luis' lease contract expired and petitioners took over his rights and interests over the questioned portion of the lot) and attorney's fees and litigation expenses. It need not be underlined that the relief to which the judgment creditor-plaintiff in a complaint for revival of a judgment depends upon the contents of the judgment in said complaint, and not on what was granted in the judgment sought to be revived.

Thus, petitioners' complaint for revival of judgment and recovery of possession and damages had two causes of action. The first sought the revival of judgment in the case for forcible entry, which was in favor of former lessee San Luis. The second sought the recovery of possession and damages against respondents for violation of petitioners' right to the possession and fruits of the lot since 1977.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision dated May 31, 2006 and Resolution dated April 12, 2007 are *REVERSED* and *SET ASIDE*.

The July 8, 2002 Decision of Branch 32 of the Iloilo City Regional Trial Court in Civil Case No. 16681 is *REINSTATED*.

SO ORDERED.

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

EN BANC

[G.R. No. 178259. March 13, 2009]

ARTURO F. PACIFICADOR and JOVITO C. PLAMERAS, JR., *petitioners, vs.* **COMMISSION ON ELECTIONS (First Division) comprised of HON. COMMISSIONERS RESURRECION BORRA and ROMEO A. BRAWNER, THE NEW SPECIAL PROVINCIAL BOARD OF CANVASSERS OF THE PROVINCE OF ANTIQUE comprised of ATTY. DAISY DACUDAO-REAL, ATTY. JESSIE SUAREZ and ATTY. MAVIL V. MAJARUCON, and SALVACION Z. PEREZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE THAT CAN BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW; NOT PRESENT IN CASE AT BAR. —** The Court notes that petitioners failed to attach a copy of the assailed June 22, 2007 Resolution of the COMELEC, in violation of Sec. 5, Rule 64 of the Rules of Civil Procedure which provides: "Sec. 5. Form and contents of petition. — x x x **The petition shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof**, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. The requisite number of copies of the petition shall contain plain copies of all documents attached to the original copy of said petition. x x x The **failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition**." The Court has repeatedly held that the right to appeal is merely a statutory privilege that can be exercised only in the manner and in accordance with the provisions of law. Thus, save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice, and one who seeks to avail oneself of the right to appeal must comply with the requirements

of the Rules. Failure to do so often leads to the loss of the right to appeal.

2. **POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); THE COMELEC SITTING *EN BANC* HAS NO AUTHORITY TO HEAR AND DECIDE ELECTION CASES IN THE FIRST INSTANCE; RATIONALE. —** Under Sec. 2, Article IV-C of the 1987 Constitution, the COMELEC exercises original jurisdiction over all contests, relating to the election, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over election contests involving elective municipal and *barangay* officials, and has supervision and control over the board of canvassers. The COMELEC sitting *en banc*, however, does not have the authority to hear and decide election cases, including pre-proclamation controversies in the first instance, as the COMELEC in division has such authority. The COMELEC *en banc* can exercise jurisdiction only on motions for reconsideration of the resolution or decision of the COMELEC in division.

3. **ID.; ID.; BOARD OF CANVASSERS (BOC); CHOICE OF OFFICIALS TO SUBSTITUTE MEMBERS THEREOF; NOT LIMITED TO THOSE EXPRESSLY MENTIONED BY SECTION 21 OF REPUBLIC ACT NO. 6646. —** Petitioners' contention that the COMELEC's choice of officials to substitute the members of the BOC is limited only to those enumerated under Sec. 21 of Republic Act. No. 6646 is untenable. The said provision provides: Sec. 21. *Substitution of Chairman and Members of the Board of Canvassers.* — In case of non-availability, absence, disqualification due to relationship, or incapacity for any cause of the chairman, the Commission shall appoint as substitute, a ranking lawyer of the Commission. **With respect to the other members of the board, the Commission shall appoint as substitute the following in the order named: the Provincial Auditor, the Registrar of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official in the case of the provincial board of canvassers;** the officials in the city corresponding to those enumerated, in the case of the city board of canvassers; and the Municipal Administrator, the Municipal Assessor, the Clerk of Court nominated by the Executive Judge of the Municipal

Trial Court, or any other available appointive municipal officials, in the case of the municipal board of canvassers. (Emphasis supplied) Contrary to petitioners' assertion, the enumeration above is not exclusive. Members of BOCs can be filled up by the COMELEC not only from those expressly mentioned in the above-quoted provision, but **from others outside if the former are not available**.

4. **ID.; ID.; DECISIONS AND RESOLUTIONS OF ANY DIVISION OF THE COMELEC IN SPECIAL CASES BECOME FINAL AND EXECUTORY AFTER THE LAPSE OF FIVE DAYS, UNLESS A TIMELY MOTION FOR RECONSIDERATION IS LODGED WITH THE COMELEC *EN BANC*; APPLICATION IN CASE AT BAR. —** It bears noting that pursuant to Rule 18 of the Omnibus Election Code, decisions and resolutions of any division of the COMELEC in special cases become final and executory after the lapse of five days, unless a timely motion for reconsideration is lodged with the COMELEC *en banc*. The pertinent provision reads: Sec. 13. *Finality of Decisions or Resolutions.* — "(a) In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation. (b) In Special Actions and Special Cases a decision or resolution of the Commission *en banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court. (c) **Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases** and after fifteen (15) days in all other actions or proceedings, following its promulgation." Rule 37 of the COMELEC Rules of Procedure also provides: "Sec. 3. *Decisions Final After Five Days.* — **Decisions in pre-proclamation cases** and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections **shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court**." Clearly, not only does prohibition not lie against the COMELEC First Division which has the mandate and power to hear and decide pre-proclamation controversies; the assailed Resolution has also become final

and executory in view of the failure of petitioners to file a timely motion for reconsideration of said Resolution in accordance with the COMELEC Rules of Procedure and the Rules of Court.

APPEARANCES OF COUNSEL

John Mark F. Espera for J. Plameras, Jr.
Alcantara Law Office for S.Z. Perez.

D E C I S I O N

CARPIO MORALES, *J.*:

The present petition, the Court gathers from its allegations, is one for *Certiorari*, [1] Prohibition and Injunction.

During the May 14, 2007 elections, Arturo F. Pacificador and Jovito C. Plameras, Jr. (petitioners), and Salvacion Z. Perez (private respondent), then the incumbent Governor of Antique, ran as candidates for the position of Governor.

Alleging violation of Section 261,[2] paragraphs O, V and W of the Omnibus Election Code, petitioners filed on April 23,

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[1] Since the instant petition is grounded on grave abuse of discretion on the part of the Comelec, the same is considered as a Petition for *Certiorari* under Rule 65 of the Rules of Court pursuant to Section 2 of Rule 64.

[2] Sec. 261.

x x x x x x x x x

(o) Use of Public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign. — Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks or agencies; (2) any printing press, radio, or television station or audio-visual equipment operated by the Government or by its divisions, sub-divisions, agencies or instrumentalities, including government-owned or controlled corporations, or by the Armed Forces of the Philippines; or (3) any equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any election campaign or for any partisan political activity.

x x x x x x x x x

(v) Prohibition against release, disbursement or expenditure of public funds. – Any public official or employee including *barangay* officials and those of government-owned or controlled corporations and their subsidiaries, who during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: Provided, That not more than the average number of laborers or employees already employed therein during the six-month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or

2007 with the Office of the Provincial Election Supervisor a case[3] for disqualification (disqualification case) against respondent and other members of the Nationalist People's Coalition-Antique ticket.

Petitioners claimed that on April 4, 2007, under private respondent's order, Provincial Engineer Vicente Dalumpines sent a letter to the chairmen of the different *barangays* of Sibalom, Antique inviting them to attend a program for the resumption of the construction of the *Solong* Bridge on April 10, 2007 at 10 o'clock in the morning at the project site; and that, accordingly, the chairmen of sixteen (16) *barangays* went to the project site on April 10, 2007 to attend the program which turned out to also serve as a proclamation program for private respondent's party, the Nationalist People's Coalition, as the program of activities given out to the attendees showed.

Petitioners thus concluded that what was supposed to be a simple program heralding the resumption of the *Solong* Bridge project turned out to be a political rally where private respondent's party-mates took turns in speaking and soliciting the attendees' support for their respective candidacies, and culminated in private respondent's distribution of checks to the chairmen of six (6) *barangays* of Sibalom town, drawn from the account of the Provincial Government.

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member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and

(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. — During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.

[3] Annex "A" of the Petition, *rollo*, pp. 26-33.

Petitioners went on to allege that upon distributing the checks, private respondent instructed the recipients to direct their respective *barangay* treasurers to issue Official Receipts in favor of the Provincial Government, to be antedated to March 29, 2007 in order to circumvent COMELEC Resolution No. 7707 prohibiting disbursements or expenditures for public works, social services and development from March 30, 2007 to May 14, 2007.

Finally, petitioners alleged that after private respondent delivered her keynote speech, she, as the Nationalist People's Coalition candidate for governor, and the rest of the party's candidates for the position of Vice Governor down to the Sangguniang Bayan of Sibalom were presented and proclaimed.

The disqualification case remained unresolved even after the election.

After the elections or on May 18, 2007, petitioners filed a petition for suspension of the canvassing of votes for the position of Governor and/or suspension of the proclamation of private respondent before the COMELEC which docketed it as EM07-041 (suspension case). They alleged that the canvassing of votes on May 15, 2007 by the Provincial Board of Canvassers (PBOC) composed of Atty. Gil Barcenal as Chairman, Prosecutor Napoleon Abiera as Vice-Chairman, and Corazon Brown as Member-Secretary (Barcenal PBOC) was attended by fraud because the election returns were prepared under duress and bore fraudulent entries.

By Resolution of May 21, 2007, the Barcenal PBOC ruled against petitioner Pacificador due to insufficiency of evidence, hence, he appealed to the COMELEC, which appeal was denominated as REF No. 07-066 (PBOC appeal).

Meanwhile, the COMELEC's Second Division, by Resolution of May 28, 2007,[4] ruled against petitioners on the suspension case, finding "no overwhelming need to suspend the canvassing of votes as well as the proclamation of the candidate who garners

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[4] Annex "D" of Petition, *rollo*, pp. 60-62. Penned by Commissioner Nicodemo T. Ferrer and concurred in by Presiding Commissioner Florentino A. Tuason, Jr. and Commissioner Rene V. Sarmiento.

the most number of votes for the election for Governor of the province of Antique."

In the meantime, the COMELEC First Division, by Resolution[5] dated June 7, 2007, dismissed petitioners' PBOC appeal and created a new PBOC to be composed of Atty. Renato A. Mabutay as Chairman, Atty. Tomas Valera as Vice-Chairman, and Atty. Elizabeth Doronila as Member-Secretary (Mabutay PBOC). It noted that petitioners filed their Notice of Appeal on May 21, 2007, but that no appeal was filed within five days as required under Sec. 20 (f) of Republic Act No. 7166[6] and Sec. 9 of the COMELEC Rules of Procedure.[7]

In the *interregnum*, private respondent filed before the COMELEC an "Urgent Motion to Reconvene the New PBOC of Antique and Proclaim the Winning Candidate for the Position of Governor Down to the Position of Sangguniang Panlalawigan."[8] Acting on said Motion, the COMELEC First Division issued on June 22, 2007 a Resolution relieving the Mabutay PBOC and creating, in its stead, a still another PBOC composed of respondents Atty. Daisy Real, Atty. Jessie Suarez and Atty. Mavil Majarucon (Majarucon PBOC) as Chairman, Vice-Chairman and Member-Secretary, respectively, and ordering it to convene

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[5] *Rollo*, pp. 135-139. Penned by Presiding Commissioner Resurreccion Z. Borra and concurred in by Commissioner Romeo A. Brawner.

[6] Sec. 20. Procedure in Disposition of Contested Election returns. — x x x

(f) After all the uncontested returns have been canvassed and the contested return ruled upon by it, the board shall suspend the canvass. Within forty-eight hours, therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter an appeal may be taken to the Commission.

[7] Sec. 9. Procedure Before Board of Canvassers When Inclusion or Exclusion of Election Returns are Contested. — x x x

> (g) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the Board shall suspend the canvass. Within forty-eight hours therefrom, any party adversely affected by the ruling may file with the Board a written and verified Notice of Appeal; and within an inextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

[8] Annex "K" of the Petition, *rollo*, pp. 97-116.

and proclaim the winning candidates. On even date, the Marajucon PBOC issued a Notice[9] to the parties announcing that it would convene on June 29, 2007 at 10:00 in the morning, at the Capitol Building in San Jose, Antique, to proclaim the winning candidates, prompting petitioners to file the present petition against the COMELEC and the Marajucon PBOC to enjoin the proclamation of private respondent and the enforcement of the June 22, 2007 Resolution.

Petitioners contend that the Majarucon PBOC is illegal, being violative of Sec. 2 of COMELEC Resolution No. 7859 promulgated on April 17, 2007 which provides that the relief of the Board of Canvassers (BOC) must be for cause, and Sec. 21 of Republic Act. No. 6646 (An Act Introducing Additional Reforms in the Electoral System and for other Purposes) which states that the substitute BOC must be composed of the therein named officials in their order of appearance, *viz,* the Provincial Auditor, the Register of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official.

Petitioners maintain that the COMELEC First Division, in creating the Majarucon PBOC solely for the purpose of proclaiming the winning candidates, had the intention of "railroading" the proceedings, despite the fact that the votes garnered by the candidates for the position of Governor were, at the time of the filing of the petition, not yet recorded in the official Certificates of Canvass; that several actions were still pending before the COMELEC in Manila; and that they had not even received a copy of the June 22, 2007 Resolution.

Finally, petitioners claim that the June 22, 2007 Resolution is void *ab initio* as it was issued only by a Division, in contravention of Secs. 5 and 6, Rule 19 of the COMELEC Rules of Procedure[10]

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[9] Annex "M" of Petition, *rollo*, p. 130.

[10] Sec. 5. How Motion for Reconsideration Disposed Of. - Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

which provide that any Motion for Reconsideration filed before the COMELEC pertaining to any resolution, order or ruling of a Division shall be heard by the COMELEC *en banc*.

In its Comment[11] which was adopted by private respondent, the COMELEC First Division, through the Office of the Solicitor General, seeks the dismissal of the petition on the ground that the certified true copy of the assailed June 22, 2007 Resolution was not attached thereto, as required under Sec. 5, Rule 64 of the 1997 Rules of Procedure. And it posits that a petition for prohibition, such as the one at bar, will not lie to challenge a final and executory resolution of the COMELEC, following Sec. 3, Art. IX-C of the Constitution[12] *vis a vis* Sec. 13, Rule 18 of the COMELEC Rules of Procedure;[13] and that since petitioners did not move for the reconsideration of the June 22, 2007 Resolution before the COMELEC *en banc* prior to their direct resort to this Court, then the questioned resolution is deemed to have attained finality.

The COMELEC further posits that petitioners' prayer for a writ of preliminary injunction has become moot. It points out that what petitioners are questioning is the legality of the

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Sec. 6. Duty of Clerk of Court of Commission to Calendar Motion for Resolution. — The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof.

[11] *Rollo*, pp. 181-198.

[12] Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, **provided that motions for reconsideration of decisions shall be decided by the Commission *en banc***. (Emphasis supplied)

[13] Sec. 13. Finality of Decisions or Resolutions. —

x x x x x x x x x

(c) **Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special Action and Special Cases and after fifteen (15) days in all other actions or proceedings**, following its promulgation. (Emphasis supplied)

composition of the Majarucon PBOC which, under Sec. 241 of the Omnibus Election Code, is a pre-proclamation controversy. Hence, so it argues, private respondent's proclamation on June 29, 2007 as the winner of the gubernatorial elections has rendered the petition moot and academic. It adds that the proper remedy of petitioners should have been to institute an electoral protest.

Finally, the COMELEC emphasizes that under Sec. 277 of the Omnibus Election Code,[14] it has the power of direct control and supervision over BOCs, hence, its act of relieving the Mabutay PBOC, through its June 22, 2007 Resolution, due to the filing of indirect contempt and insubordination cases against its members, was valid.

In their Reply,[15] petitioners argue that they are not disputing the COMELEC's authority to change the PBOC's composition, but that the COMELEC's choice of substituting officials is restricted by Sec. 21 of Republic Act. No. 6646, hence, its choice of COMELEC officials Attys. Real, Suarez and Majarucon was tainted with grave abuse of discretion. The June 22, 2007 Resolution being null and void, petitioners concluded that all acts of the Marajucon PBOC, including private respondent's proclamation, is also null and void.

The petition is bereft of merit.

At the outset, the Court notes that petitioners <u>failed to attach a copy of</u> the assailed June 22, 2007 Resolution of the COMELEC, in violation of Sec. 5, Rule 64 of the Rules of Civil Procedure which provides:

Sec. 5. Form and contents of petition. —

x x x x x x x x x

The petition shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final

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[14] Sec. 277. Supervision and control over board of canvassers. — The Commission shall have direct control and supervision over the board of canvassers. Any member of the board of canvassers, may at any time, be relieved for cause and substituted *motu proprio* by the Commission.

[15] *Rollo*, pp. 204-207.

order or resolution subject thereof, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. The requisite number of copies of the petition shall contain plain copies of all documents attached to the original copy of said petition.

x x x x x x x x x

The **failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition**. (Emphasis supplied)

The Court has repeatedly held that the right to appeal is merely a statutory privilege that can be exercised only in the manner and in accordance with the provisions of law. Thus, save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice, and one who seeks to avail oneself of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[16]

Even if the Court relaxes the Rules to allow the present petition, however, just the same it fails, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC when it rendered the assailed June 22, 2007 Resolution.

x x x The office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. Stated differently, **prohibition is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.**[17] (Emphasis supplied)

Under Sec. 2, Article IV-C of the 1987 Constitution, the COMELEC exercises original jurisdiction over all contests, relating

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[16] Vide *Gabriel et al. v. Jamias*, G.R. No. 156482, September 17, 2008.

[17] *Gonzales, et al. v. Abaya*, G.R. No. 164007, August 10, 2006, 498 SCRA 445, 475-476.

to the election, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over election contests involving elective municipal and *barangay* officials, and has supervision and control over the board of canvassers. The COMELEC sitting *en banc*, however, does not have the authority to hear and decide election cases, including pre-proclamation controversies in the first instance, as the COMELEC in division has such authority. The COMELEC *en banc* can exercise jurisdiction only on motions for reconsideration of the resolution or decision of the COMELEC in division.[18]

In issuing the June 22, 2007 Resolution relieving the Mabutay PBOC and creating the Marajucon PBOC, the COMELEC First Division was merely exercising its mandate under Sec. 227 of the Omnibus Election Code which reads:

Sec. 227. Supervision and control over board of canvassers. — **The Commission shall have direct control and supervision over the board of canvassers.**

Any member of the board of canvassers may, at any time, be relieved for cause and substituted *motu proprio* by the Commission. (Emphasis supplied)

Petitioners' contention that the COMELEC's choice of officials to substitute the members of the BOC is limited only to those enumerated under Sec. 21 of Republic Act. No. 6646 is untenable. The said provision provides:

Sec. 21. *Substitution of Chairman and Members of the Board of Canvassers.* — In case of non-availability, absence, disqualification due to relationship, or incapacity for any cause of the chairman, the Commission shall appoint as substitute, a ranking lawyer of the Commission. **With respect to the other members of the board, the Commission shall appoint as substitute the following in the order named: the Provincial Auditor, the Registrar of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official in the case of the provincial board of**

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[18] *Vide Sarmiento v. COMELEC*, G.R. No. 105628, August 6, 1992, 212 SCRA 307, 313-314.

canvassers; the officials in the city corresponding to those enumerated, in the case of the city board of canvassers; and the Municipal Administrator, the Municipal Assessor, the Clerk of Court nominated by the Executive Judge of the Municipal Trial Court, or any other available appointive municipal officials, in the case of the municipal board of canvassers. (Emphasis supplied)

Contrary to petitioners' assertion, the enumeration above is not exclusive. Members of BOCs can be filled up by the COMELEC not only from those expressly mentioned in the above-quoted provision, but **from others outside if the former are not available.**[19]

It bears noting that pursuant to Rule 18 of the Omnibus Election Code, decisions and resolutions of any division of the COMELEC in special cases become final and executory after the lapse of five days, unless a timely motion for reconsideration is lodged with the COMELEC *en banc*. The pertinent provision reads:

Sec. 13. *Finality of Decisions or Resolutions.* — (a) In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation.

(b) In Special Actions and Special Cases a decision or resolution of the Commission *en banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(c) **Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases** and after fifteen (15) days in all other actions or proceedings, following its promulgation. (Emphasis supplied)

Rule 37 of the COMELEC Rules of Procedure also provides:

Sec. 3. *Decisions Final After Five Days.* — **Decisions in pre-proclamation cases** and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate

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[19] Vide AGPALO, *COMMENTS ON THE OMNIBUS ELECTION CODE*, Rev. Ed., 2004, p.121, citing *Aquino v. COMELEC*, 22 SCRA 388.

or to disqualify a candidate, and to postpone or suspend elections **shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court**.

Clearly, not only does prohibition not lie against the COMELEC First Division which has the mandate and power to hear and decide pre-proclamation controversies; the assailed Resolution has also become final and executory in view of the failure of petitioners to file a timely motion for reconsideration of said Resolution in accordance with the COMELEC Rules of Procedure and the Rules of Court.

In another vein, instead of filing a timely motion for reconsideration of the June 22, 2007 Resolution with the COMELEC *en banc*, petitioners filed the present action directly with the Court on June 26, 2007, without, it bears reiteration, attaching thereto a copy of the assailed Resolution, and of proof of service of a copy thereof on the COMELEC and the adverse party, as required under Sec. 5 of Rule 64 of the Rules of Court. Such fatal defect precludes petitioners from now invoking the Court's intervention to nullify the COMELEC June 22, 2007 Resolution and invalidate the acts of the Marajucon PBOC.

Private respondent having been proclaimed as Governor, discussion of the issues raised in the disqualification case is rendered unnecessary.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

Puno, C.J., on official leave.

SECOND DIVISION

[G.R. No. 178757. March 13, 2009]

RONALD CARINO and ROSANA ANDES, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; IDENTITY OF THE PROHIBITED DRUG MUST BE ESTABLISHED BEYOND DOUBT. —** To begin with, prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. In these cases, it is therefore essential that the identity of the prohibited drug be established beyond doubt.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY, DEFINED. —** The mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. Chain of custody is defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. As a method of authenticating evidence, it requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it

is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

3. ID.; ID.; ID.; ID.; IDENTITY OF THE DANGEROUS DRUG NOT ESTABLISHED BEYOND DOUBT IN CASE AT BAR. — In the case at bar, however, the prosecution evidence is insufficient to provide that assurance, for all the people who made contact with the sachets of *shabu* allegedly seized from petitioners, only Tayaban and Eugenio were able to testify in court as to the identity of the evidence. The desk officer at the police station to whom the specimens were purportedly surrendered by Tayaban and Eugenio was not even presented in court to observe the identity and uniqueness of the evidence. Even more to the point is the fact that the testimony of the investigator, who had taken custody of the plastic sachets after the same were reported to the desk officer, was likewise not offered in court to directly observe the evidence and admit the specific markings thereon as his own. The same is true with respect to Jabonillo, the forensic chemist at the crime laboratory who administered the chemical examination on the specimens and who could have testified on the circumstances under which he received the specimen at the laboratory for analysis and testing, as well as on the conduct of the examination which was administered on the specimen and what he did with it at the time it was in his possession and custody. Aside from that, the prosecution has not in fact reasonably explained why these same witnesses were not able to testify in court. While indeed the OSG claims that the testimony of Jabonillo has already been dispensed with by the parties at the pre-trial stage, there however seems to be not a single hint in the pre-trial order which implies that the parties indeed dispensed with said testimony. In view of these loopholes in the evidence adduced against appellant, it can be reasonably concluded that the

prosecution was unable to establish the identity of the dangerous drug and in effect failed to obliterate the hypothesis of petitioners' guiltlessness.

4. ID.; ID.; ID.; ID.; UNBROKEN CHAIN OF CUSTODY, WHEN INDISPENSABLE. — Be that as it may, while a 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.

5. ID.; ID.; ID.; ID.; APPLICATION OF A MORE STRINGENT STANDARD IS REQUIRED WHEN THE NARCOTIC SPECIMEN IS NOT READILY IDENTIFIABLE. — A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. Hence, the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. The danger, according to *Graham v. State,* is real. In that case, a substance later analyzed as heroin was excluded from the prosecution evidence because it was previously handled by two police officers prior to examination who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible. Indeed, the Court cannot reluctantly close its eyes to the likelihood, or at least the

possibility, that at any of the links in the chain of custody over a narcotic specimen there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

6. **ID.; ID.; SECTION 21 THEREOF; CUSTODY AND DISPOSITION OF DANGEROUS DRUGS SEIZED FROM DRUG OFFENDERS, GUIDELINES.** — Our drugs laws in fact establish reasonable safeguards for the protection of the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21 of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs to, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 21 of its implementing rules as well as in Section 2 of the Dangerous Drugs Board Regulation No. 1 series of 2002. The members of the arresting team in this case, however, do not seem to have complied with these guidelines. The prosecution has not even shown that they had extended reasonable efforts to comply with the statutory requirements in handling the evidence. From the testimonies of Tayaban and Eugenio, it is clear that after the arrest of petitioners they immediately seized the plastic sachets, took custody thereof and brought the same to the police station together with petitioners. It was at the police station — and not at the place where the item was seized from appellant — where, according to Tayaban and Eugenio, the unnamed police investigator had placed the markings on the specimens. What is more telling is the admission made by Tayaban to the effect that the markings were placed on the plastic sachet in his presence and not in the presence of petitioners as required by law.

7. ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR; QUANTUM OF EVIDENCE REQUIRED TO CONVICT THE ACCUSED-PETITIONERS, NOT SATISFIED. — All told, in view of the deviation of the apprehending officers from the mandated conduct of taking post-seizure custody of the dangerous drug in this case, there is no way to presume that the members thereof had performed their duties regularly. And even assuming that we can confidently rely on the credibility of the prosecution witnesses in this case, the evidence would still fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt because the evidence chain failed to conclusively connect petitioners with the seized drugs in a way that would establish that the specimens are one and the same as that seized in the first place and offered in court as evidence. In *Mallillin v. People, People v. Obmiranis* and *People v. Garcia,* we declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu,* and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflict with every proposition relative to the culpability of the accused. It is this same reason that now moves us to reverse the judgment of conviction in the present case.

8. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; OFFICIAL DUTY IS REGULARLY PERFORMED; ADVERSE PRESUMPTION ARISES WHEN THE OFFICIAL ACT IN QUESTION IS IRREGULAR ON ITS FACE. — These flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from petitioners, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibits before they were offered in evidence in court, militate against the prosecution's cause because they not only cast doubt on the identity of the *corpus delicti* but also tend to negate, if not totally discredit, the claim of regularity in the conduct of official police operation advanced by the OSG. Indeed, we cannot give much weight to the contention that the arresting officers in this case were not trained to apprehend and arrest drug offenders, because as agents of the government in law enforcement they are reasonably presumed to know the laws and the rules they are tasked to enforce. We take this occasion to reiterate, albeit

not needlessly, that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

In this petition for review on *certiorari*,[1] petitioners Ronald Carino and Rosana Andes assail the Decision[2] of the Court of Appeals in CA-G.R. CR No. 29867 dated 13 March 2007, which affirmed the joint decision[3] of the Regional Trial Court of Quezon City, Branch 103,[4] finding petitioners Ronald Carino and Rosana Andes guilty beyond reasonable doubt of illegal possession of methamphetamine hydrochloride, a dangerous drug locally known as *shabu.*

Petitioners Carino and Andes were apprehended on two separate but related incidents on 20 June 2003 at the corner of G. Araneta and E. Rodriguez Avenues in Quezon City. The apprehending

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[1] *Rollo*, pp. 12-31.

[2] CA *rollo*, pp. 78-89; The assailed decision was penned by Associate Justice Renato C. Dacudao, then chairperson of the Court of Appeals Seventh Division, and was concurred in by Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag.

[3] Records, pp. 126-130. In Criminal Case Nos. Q-03-118301 and Q-03-118302.

[4] The court was presided by Judge Jaime N. Salazar, Jr.

officers were allegedly members of the Central Police District (CPD)-Galas Police Station 11 and were part of the eight-man team[5] that was dispatched by the police district authorities to conduct the "Oplan *Sita*" — an operation which had for its object the suppression of rampant robbery in the vicinity. It was in the course of this operation that both petitioners were arrested without a warrant for allegedly having in their possession plastic sachets containing *shabu.*

After the arrest and investigation, petitioners were charged in two separate informations[6] with violation of Section 11, Article II of Republic Act No. 9165 (R.A. No. 9165).[7] Both of them entered a negative plea on arraignment.[8] The cases were thereafter jointly tried.

The prosecution offered the testimony of PO1 Joseph Tayaban (Tayaban) and PO1 Arnold Eugenio (Eugenio) to prove the charges against petitioners. Tayaban and Eugenio professed that they were the ones who arrested both petitioners.

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[5] Records, pp. 12 and 127.The other members of the team were SPO4 Rene Cruz, PO2 Nelson Pangan, PO2 Arvin Nicolas, PO1 Felicito Salvador, PO1 Glen Calima and PO1 Joel Espirito. See the Joint Affidavit of PO1 Arnold Eugenio and PO1 Joseph Tayaban,

[6] *Id.* at 2 and 4.

The inculpatory portion of the information against **Ronald Carino**, in **Criminal Case No. Q-03-118301**, reads:

> That on or about the 20th day of June 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there [willfully], unlawfully and knowingly have in his/her possession and control zero point zero four (0.04) gram of Methylamphetamine Hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.

The inculpatory portion of the information against **Rosana Andes**, in **Criminal Case No. Q-03-118302**, reads:

> That on or about the 20th day of [June 2003], in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there [willfully], unlawfully and knowingly have in his/her possession and control zero point zero three (0.03) gram of Methylamphetamine Hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.

[7] The Comprehensive Dangerous Drugs Act of 2002.

[8] Records, p. 22.

Tayaban testified that the members of "Oplan *Sita*," on 20 June 2003, had started patrolling the area of coverage as early as 9:00 o'clock in the morning of that day. At around 2:00 o'clock in the afternoon, his colleague, Eugenio, spotted Carino, about a meter away from their location and holding a plastic sachet in his hand. Right there and then, they placed Carino under arrest and Eugenio immediately seized the plastic sachet.[9] They asked Carino who the source of the plastic sachet was and the latter immediately identified petitioner Andes. They approached Andes, and she allegedly became hysterical when the policemen introduced themselves to her. It was then that Tayaban noticed the woman inserting something inside the pocket of her 5-year old male child. Tayaban was suspicious so he inspected the right pocket of the child and found a plastic sachet inside it containing *shabu.*[10] Petitioners were immediately brought to the Galas Police Station. The plastic sachets were allegedly submitted to the desk officer and then to the station investigator who in the presence of Tayaban marked each of the specimens with the initials "JT-RA" and "AE-RC."[11] The markings purportedly represented the initials of Eugenio and Tayaban and the initials of petitioners from whom they were seized.

Eugenio corroborated the testimony of Tayaban in its material respects. He admitted that he was the one who grabbed Carino when he noticed that the latter was holding a plastic sachet in his hand. He suspected the sachet to be containing *shabu* and he immediately told Carino of his offense. At that point Carino allegedly dropped the plastic sachet, so he (Eugenio) picked it up and after examining the same concluded that it indeed contained *shabu.*[12] He and his companions brought Carino to their team leader just across the street. The latter asked Carino who the source of the *shabu* was, and he was told that it was a certain woman.[13]

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[9] TSN, 8 March 2004, pp. 3-6.

[10] TSN, 8 March 2004, pp. 6-8.

[11] TSN, 8 March 2004, pp. 8-11.

[12] TSN, 17 August 2004, pp. 4-8.

[13] *Id.* at 10-11.

Some members of the team, including Tayaban, left Araneta Avenue and went to Banawe Avenue to the place where the woman allegedly could be found, but Eugenio was not able to catch up with them because he received a phone message moments later that the woman had already been arrested. He instead proceeded to the police station for the investigation.[14]

The prosecution also submitted the results of the qualitative examination administered on the contents of the two plastic sachets seized from petitioners. The chemistry report signed by Engineer Leonard M. Jabonillo (Jabonillo), chemist and forensic analyst at the CPD Crime Laboratory Office, revealed that the specimens submitted for analysis yielded positive of methamphetamine hydrochloride content.[15]

Both petitioners denied the charges. It was revealed during their testimony, however, that they had previously known each other as Carino was employed as a *"latero"* at the automobile repair shop owned by Andes's *"kumpare."*[16]

Carino testified that he was on his way to work when he was arrested along E. Rodriguez Avenue. He was allegedly grabbed by the hand by one of the policemen and asked him to come with them to the police station. He denied having been frisked at any time between his arrest and conveyance to the police station.[17] Quite boldly, he asserted that Tayaban was the source of the plastic sachet allegedly recovered from him as he in fact saw the said officer pull the sachet out of his own pocket at the time the arrest was taking place. At that point, Carino was asked who the source of the drug was, but when he replied that it was not his, one of the officers retorted, *"Nagmamaang-maangan ka pa."* At the police station, he was allegedly mauled by Tayaban because he again denied ownership of the plastic sachet.[18] When he was brought to the prosecutor's office for inquest proceedings,

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

[15] Records, p. 8. See Chemistry Report No. D-502-2003.

[16] TSN, 2 February 2005, pp. 8- 9.

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

[18] *Id.* at 5-7.

Carino continued, the fiscal allegedly told the police, *"Bakit hindi na lang natin i-further investigation ito? Wala namang ebidensiya sa kanya,"* suggesting that the police escort including Tayaban and Eugenio did not bring the supposed sachet of *shabu* seized from petitioners.[19]

Petitioner Andes, for her part, narrated that she and her 5-year old son were on their way home from the bakeshop when suddenly, Tayaban and a certain police officer Prado approached them and asked her whether she could identify the man inside the police car;[20] that she obliged, so she proceeded to the where the car was parked and seeing petitioner Carino inside with his hands cuffed told the officers that the man was familiar to her because he was an employee at his *"kumpare's"* shop but she could not place his name;[21] that she was then invited to come to the police station and once there, she saw Carino being frisked and the officers found nothing on him; and that she was also frisked by Tayaban but found nothing on her either.[22] She also claimed that Tayaban and his companions demanded from her and Carino ₱10,000.00 for their release but they were detained because they could not and did not pay.[23]

On 9 December 2005, the trial court rendered its joint decision[24] in these cases finding both petitioners guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs. It sentenced petitioners to suffer the prison term of twelve years and one day as minimum to thirteen years as maximum as well as to pay the fine of ₱300,000.00.[25]

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[19] TSN, 2 February 2005, pp. 14-15.

[20] TSN, 7 March 2005, pp. 5-6.

[21] *Id.* at 6-7.

[22] *Id.* at 7-10.

[23] *Id.* at 10-11. Ronnie Po, the nephew of the automobile repair shop owner in which Carino was employed, also testified that on the day petitioners were supposedly arrested, Carino indeed did not arrive at his place of work; TSN, 16 August 2005, pp. 1-5.

[24] Records, pp. 126-130.

[25] Records, p. 130. The trial court disposed of the cases as follows:

Petitioners interposed an appeal with the Court of Appeals,[26] but in its 13 March 2007 Decision the appellate court affirmed the findings and conclusions of the trial court.[27] Petitioners moved for reconsideration[28] but the same was denied.[29]

In this Petition for Review on *Certiorari*,[30] petitioners once again bid to establish that their guilt has not been proven beyond reasonable doubt. They capitalize on the alleged inconsistencies in the testimony of police officers Tayaban and Eugenio,[31] as well as on the inadmissibility, for failure to establish the chain

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ACCORDINGLY, judgment is hereby rendered finding both accused **GUILTY** beyond reasonable doubt of the violation of Section 11, R.A. 9165 as charged and each is sentenced as follows:

1. In Q-03-118301, accused **RONALD CARINO *y* ASUNZION** is sentenced to a jail term of **TWELVE (12) YEARS** and **ONE (1) DAY**, as minimum to **THIRTEEN (13) YEARS**, as maximum and to pay a fine of ₱300,000.00; and
2. In Q-03-118302, accused **ROSANA ANDES *y* NOBELO** is sentenced to a jail term of **TWELVE (12) YEARS** and **ONE (1) DAY**, as minimum to **THIRTEEN (13) YEARS**, as maximum and to pay a fine of ₱300,000.00; and

The methylamphetamine hydrochloride involved in these cases are ordered transmitted to the PDEA thru the DDB for proper disposition.

SO ORDERED.

[26] CA *rollo*, pp. 59-73.

[27] *Id.* at 88-89. The Court of Appeals disposed of the case as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Joint Decision dated December 9, 2005 of the Regional Trial Court, Branch 103, Quezon City, in Criminal Case Nos. Q-03-118301 and Q-03-118302, finding the accused-appellants Ronald Carino *y* Asunzion and Rosana Andes *y* Nobelo guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165, and sentencing them each to an indeterminate penalty of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, plus a fine of ₱300,000.00 is hereby **AFFIRMED** *in toto.* Costs shall also be taxed against accused-appellants.

SO ORDERED.

[28] *Id.* at 84-87.

[29] *Id.* at 195.

[30] *Supra* note 1.

[31] *Id.* at 22.

of custody, of the drug specimens supposedly seized from them on account of the failure of the forensic chemist who signed the chemistry report to testify in court.[32]

The OSG, for its part, advances that the evidence was sufficient to prove the petitioners' guilt in this case especially considering that the alleged inconsistencies in the testimonies of the prosecution witnesses in this case can no longer be challenged because they had already been accorded credibility by the trial court.[33] Besides, the OSG points out, petitioners advance no better defense than their self-serving claim of frame-up which must be dismissed in light of the presumption that the police officers involved in their apprehension have regularly performed their duty.[34] As to the claim that the evidence should not be admitted for failure of the forensic chemist to testify, the OSG points out that the parties had already agreed at the pre-trial to dispense with such testimony inasmuch as they had already stipulated that the drug specimens were actually submitted to the laboratory for analysis and that the results thereof were then reduced in written report.[35]

The Court grants the petition.

To begin with, prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[36] In these cases, it is therefore essential that the identity of the prohibited drug be established beyond doubt.[37]

The mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain

[32] *Id.* at 23.

[33] *Id.* at 105-106.

[34] *Id.* at 107-108.

[35] *Id.* at 108.

[36] *People v. Simbahon*, 449 Phil. 74, 81 (2003); *People v. Laxa,* 414 Phil. 156, 170 (2001); *People v. Dismuke; People v. Mapa.*

[37] *Id.*; *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70.

a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[38]

Chain of custody is defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[39] As a method of authenticating evidence, it 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.[40] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[41] It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

In the case at bar, however, the prosecution evidence is insufficient to provide that assurance, for all the people who made contact with the sachets of *shabu* allegedly seized from petitioners, only

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[38] ALLEN, RONALD J., *et al.*, *AN ANALYTICAL APPROACH TO EVIDENCE,* Little Brown & Co., USA (1989), p. 174.

[39] Dangerous Drugs Board Regulation No. 1, s. (2002).

[40] *United States v. Howard-Arias*, 679 F.2d 363, 366; *United States v. Ricco*, 52 F.3d 58.

[41] PARK C. ROGER, *ET AL.*, *EVIDENCE LAW* (1998), p. 507.

Tayaban and Eugenio were able to testify in court as to the identity of the evidence. The desk officer at the police station to whom the specimens were purportedly surrendered by Tayaban and Eugenio was not even presented in court to observe the identity and uniqueness of the evidence. Even more to the point is the fact that the testimony of the investigator, who had taken custody of the plastic sachets after the same were reported to the desk officer, was likewise not offered in court to directly observe the evidence and admit the specific markings thereon as his own. The same is true with respect to Jabonillo, the forensic chemist at the crime laboratory who administered the chemical examination on the specimens and who could have testified on the circumstances under which he received the specimen at the laboratory for analysis and testing, as well as on the conduct of the examination which was administered on the specimen and what he did with it at the time it was in his possession and custody.

Aside from that, the prosecution has not in fact reasonably explained why these same witnesses were not able to testify in court. While indeed the OSG claims that the testimony of Jabonillo has already been dispensed with by the parties at the pre-trial stage, there however seems to be not a single hint in the pre-trial order which implies that the parties indeed dispensed with said testimony.[42]

In view of these loopholes in the evidence adduced against appellant, it can be reasonably concluded that the prosecution was unable to establish the identity of the dangerous drug and in effect failed to obliterate the hypothesis of petitioners' guiltlessness.

Be that as it may, while a 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.[43] The same standard likewise obtains in case the evidence is susceptible

[42] Records, p. 24. The Pre-trial Order states that the accused in these cases are the same accused charged in the information who pleaded not guilty on arraignment, and that they were arrested without a warrant of arrest.

[43] 29A Am. Jur. 2d Evidence § 946.

to alteration, tampering, contamination[44] and even substitution and exchange.[45] 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.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. Hence, the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.[46] The danger, according to *Graham v. State,*[47] is real. In that case, a substance later analyzed as heroin was excluded from the prosecution evidence because it was previously handled by two police officers prior to examination who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.[48]

Indeed, the Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over a narcotic specimen there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable

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[44] 29A Am. Jur. 2d Evidence § 946.

[45] See *Graham v. State*, 255 N.E.2d 652, 655.

[46] *Graham v. State*, 255 N.E2d 652, 655.

[47] *Graham v. State*, 255 N.E2d 652.

[48] *Graham v. State*, 255 N.E2d 652, 655.

must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

Our drugs laws in fact establish reasonable safeguards for the protection of the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21[49] of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs to, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the

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[49] **SEC. 21.** ***Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments. Paraphernalia and/or Laboratory Equipment***. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner.

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided,* That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 21[50] of

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(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender; *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided*, *further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

[50] **SEC. 21.** x x x (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically

its implementing rules[51] as well as in Section 2[52] of the Dangerous Drugs Board Regulation No. 1 series of 2002.[53]

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inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided,* that the physical inventory and photograph shall be conducted at the place where the search warrant is served, or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. [emphasis supplied]

[51] Approved on 30 August 2002 and became effective upon its publication in three (3) newspapers of general circulation and registration with the Office of the National Administrative Register.

[52] **Section 2. Seizure or confiscation of drugs or controlled chemicals or laboratory equipment.**

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

(i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;

(ii) a representative from the media;

(iii) a representative from the department of Justice; and

(iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drug/equipment and who shall be given a copy thereof. *Provided*, that the physical inventory and photograph shall be conducted at the place where the search is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of a seizure without warrant; *Provided* further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizure of and custody over said items.

b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team [emphasis supplied].

[53] Adopted and approved on 22 November 2002 and became effective fifteen (15) days after its publication in two (2) newspapers of general circulation and registration with the Office of the National Administrative Register.

The members of the arresting team in this case, however, do not seem to have complied with these guidelines. The prosecution has not even shown that they had extended reasonable efforts to comply with the statutory requirements in handling the evidence. From the testimonies of Tayaban and Eugenio, it is clear that after the arrest of petitioners they immediately seized the plastic sachets, took custody thereof and brought the same to the police station together with petitioners. It was at the police station—and not at the place where the item was seized from appellant—where, according to Tayaban and Eugenio, the unnamed police investigator had placed the markings on the specimens. What is more telling is the admission made by Tayaban to the effect that the markings were placed on the plastic sachet in his presence and not in the presence of petitioners as required by law.

These flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from petitioners, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibits before they were offered in evidence in court, militate against the prosecution's cause because they not only cast doubt on the identity of the *corpus delicti* but also tend to negate, if not totally discredit, the claim of regularity in the conduct of official police operation advanced by the OSG. Indeed, we cannot give much weight to the contention that the arresting officers in this case were not trained to apprehend and arrest drug offenders, because as agents of the government in law enforcement they are reasonably presumed to know the laws and the rules they are tasked to enforce.

We take this occasion to reiterate, albeit not needlessly, that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law.[54]

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[54] *People v. Obmiranis*, G.R. No. 181492, December 16, 2008.

But where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[55]

All told, in view of the deviation of the apprehending officers from the mandated conduct of taking post-seizure custody of the dangerous drug in this case, there is no way to presume that the members thereof had performed their duties regularly. And even assuming that we can confidently rely on the credibility of the prosecution witnesses in this case, the evidence would still fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt because the evidence chain failed to conclusively connect petitioners with the seized drugs in a way that would establish that the specimens are one and the same as that seized in the first place and offered in court as evidence.

In *Mallillin v. People*,[56] *People v. Obmiranis*[57] and *People v. Garcia,*[58] we declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu,* and the irregularity which characterized the handling of the evidence before the same was finally offered in court, fatally conflict with every proposition relative to the culpability of the accused. It is this same reason that now moves us to reverse the judgment of conviction in the present case.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 29867 dated 13 March 2007, affirming the joint decision of the Regional Trial Court of Quezon City, Branch 103 in Criminal Case Nos. Q-03-118301 and Q-03-118302 is *REVERSED* and *SET ASIDE.* Petitioners Ronald Cariño *y* Asunzion and Rosana Andes *y* Nobelo are *ACQUITTED* on reasonable doubt and are accordingly ordered immediately released from custody unless they are lawfully held for another offense.

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[55] JONES ON EVIDENCE, p. 94, citing Arkansas R. COM. V. CHICAGO R.L. & P.R. CO., 274 U.S. 597, 71 L Ed 1221, 1224.

[56] G.R. No. 172953, April 30, 2008.

[57] *Supra*.

[58] G.R. No. 173480, 25 February 2009. The case cited the case of *Mallillin v. People,* G.R. No. 172953, April 30, 2008, as "*Lopez v. People*."

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179540. March 13, 2009]

PERFECTA CAVILE, JOSE DE LA CRUZ and RURAL BANK OF BAYAWAN, INC., *petitioners, vs.* **JUSTINA LITANIA-HONG, accompanied and joined by her husband, LEOPOLDO HONG and GENOVEVA LITANIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ONLY ERRORS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR. —** The Court notes prefatorily that in resolving the present case, an examination of the respective evidence of the parties must necessarily be undertaken. Although the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, we find that an exception to this rule is present in the instant case in that the Court of Appeals made findings of fact which were contrary to those of the RTC.

2. **ID.; EVIDENCE; EXCEPTION TO THE HEARSAY RULE; DECLARATIONS AGAINST INTEREST; ADMITTED AS EVIDENCE NOTWITHSTANDING THEY ARE HEARSAY;**

REASON. — As held by the Court of Appeals, the Confirmation of Extrajudicial Partition partakes of the nature of an admission against a person's proprietary interest. As such, the same may be admitted as evidence against Castor and petitioner spouses, his successors-in-interest. The theory under which declarations against interest are received in evidence, notwithstanding that they are hearsay, is that the necessity of the occasion renders the reception of such evidence advisable and, further, that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.

3. **ID.; ID.; BURDEN OF PROOF; IN CIVIL CASES, THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH HIS CASE BY PREPONDERANCE OF EVIDENCE; PREPONDERANCE OF EVIDENCE, DEFINED. —** Nevertheless, the Confirmation of Extrajudicial Partition is just one piece of evidence against petitioner spouses. It must still be considered and weighed together with respondents' other evidence *vis-à-vis* petitioner spouses' evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

4. **ID.; ID.; ID.; ID.; ID.; GUIDELINES IN DETERMINING PREPONDERANCE OF EVIDENCE. —** Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus: In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same

may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. Herein, despite the admission made by Castor in the Confirmation of Extrajudicial Partition against his own interest, the Court is still convinced that the evidence adduced by the petitioner spouses preponderated over that of the respondents.

5. **CIVIL LAW; LAND REGISTRATION; TAX DECLARATIONS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP OF THE PROPERTIES STATED THEREIN. —** Other than the Confirmation of Extrajudicial Partition, respondents were only able to present as evidence of their title to the subject lots tax declarations covering the same, previously, in the name of Susana and, subsequently, in their own names. We find such tax declarations insufficient to establish respondents' ownership of the subject lots. That the disputed property has been declared for taxation purposes in the name of any party does not necessarily prove ownership. Jurisprudence is consistent that tax declarations are not conclusive evidence of ownership of the properties stated therein. A disclaimer is even printed on the face of such tax declarations that they are "issued only in connection with real property taxation [and] should not be considered as title to the property." At best, tax declarations are *indicia* of possession in the concept of an owner. Conversely, non-declaration of a property for tax purposes does not necessarily negate ownership.

6. **ID.; ID.; A TORRENS TITLE ISSUED ON THE BASIS OF FREE PATENTS BECOME AS INDEFEASIBLE AS ONE WHICH WAS JUDICIALLY SECURED UPON THE EXPIRATION OF ONE YEAR FROM DATE OF ISSUANCE OF THE PATENT. —** Sometime in 1962, petitioner Perfecta applied for and was granted by the Bureau of Lands free patents over the subject lots. Pursuant thereto, Original Certificates of Title No. FV-4976, No. FV-4977, and No. FV-4978, covering the subject lots, were issued by the Registry of Deeds for the Province of Negros Oriental, on **9 October 1962**, in the name of petitioner Perfecta. Given this crucial fact, the Court pronounces that respondents' Complaint for reconveyance of the subject lots and damages filed only on **23 December 1974** is already barred. A Torrens title issued on the basis of the free patents become as indefeasible as one which was judicially

secured upon the expiration of one year from date of issuance of the patent. However, this indefeasibility cannot be a bar to an investigation by the State as to how such title has been acquired, if the purpose of the investigation is to determine whether or not fraud has been committed in securing the title. Indeed, one who succeeds in fraudulently acquiring title to public land should not be allowed to benefit from it.

7. **ID.; ID.; THE LEGALITY OF THE GRANT OF A FREE PATENT IS A QUESTION BETWEEN THE GRANTEE AND THE GOVERNMENT; PRIVATE PARTIES HAVE NO PERSONALITY TO CHALLENGE THE VALIDITY OF THE PATENT AND THE CORRESPONDING TITLE. —** On this matter, Section 101 of Commonwealth Act No. 141 provides that all actions for the reversion to the government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth [now Republic] of the Philippines. Such is the rule because whether the grant of a free patent is in conformity with the law or not is a question which the government may raise, but until it is so raised by the government and set aside, another claiming party may not question it. The legality of the grant is a question between the grantee and the government. Thus, private parties, like respondents in the instant case, cannot challenge the validity of the patent and the corresponding title, as they had no personality to file the suit. Although jurisprudence recognizes an exception to this case, the respondents may not avail themselves of the same.

8. **ID.; ID.; ACTION FOR RECONVEYANCE BASED ON IMPLIED OR CONSTRUCTIVE TRUST; PRESCRIPTIVE PERIOD. —** Verily, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, which prescribes in 10 years from the date of the issuance of the Certificate of Title over the property, provided that the property has not been acquired by an innocent purchaser for value. An action for reconveyance is one that seeks to transfer property, wrongfully or fraudulently registered by another, to its rightful and legal owner. If the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred, knew that the parcel of land described in the patent and in the Torrens title belonged to another, who together with

his predecessors-in-interest had been in possession thereof, and if the patentee and his successor-in-interest were never in possession thereof, the true owner may bring an action to have the ownership of or title to the land judicially settled. The court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens titled issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof. In the instant case, respondents brought the action for reconveyance of the subject lots before the RTC only on 23 December 2004, or **more than 12 years** after the Torrens titles were issued in favor of petitioner Perfecta on 9 October 1962. The remedy is, therefore, already time-barred.

9. REMEDIAL LAW; EVIDENCE; MERE ALLEGATION OF FRAUD IS NOT ENOUGH; SPECIFIC, INTENTIONAL ACTS TO DECEIVE AND DEPRIVE ANOTHER PARTY OF HIS RIGHT, OR IN SOME MANNER INJURE HIM, MUST BE ALLEGED AND PROVED. — Furthermore, respondents' allegation that petitioner Perfecta committed fraud and breach of trust in her free patent application is specious. The fact that the document evidencing the sale of the subject lots by Castor to petitioner Perfecta was not presented does not automatically mean that said contract was never in existence. Also undeserving of much consideration without sufficient proof is respondents' averment that the subject lots were private lands which could no longer be granted to any person *via* free patent. Respondents ought to remember that mere allegation of fraud is not enough. Specific, intentional acts to deceive and deprive another party of his right, or in some manner injure him, must be alleged and proved. Also, the issuance by Bureau of Lands of free patents over the subject property to petitioner Perfecta enjoys the presumption of regularity.

APPEARANCES OF COUNSEL

Victoriano Law Offices for petitioners.
Erames Law Offices for respondents.

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, which seeks to reverse and set aside the Decision[2] dated 8 March 2007 and the Resolution[3] dated 3 September 2007 of the Court of Appeals in CA-G.R. CV No. 66873. The assailed Decision of the appellate court reversed and set aside the Decision[4] dated 29 February 2000 of the Regional Trial Court (RTC) of Negros Oriental, Branch 35, in Civil Case No. 6111, dismissing the complaint of respondents Justina Litania-Hong, her husband Leopoldo Hong, and her sister Genoveva Litania; and declaring petitioner spouses Perfecta Cavile and Jose de la Cruz to be the absolute owners of the parcels of land subjects of this case. The assailed Resolution of the appellate court denied petitioner spouses' Motion for Reconsideration of its decision.

The factual and procedural antecedents of the case proceed as follows:

On 5 April 1937, a **Deed of Partition**[5] was entered into by the heirs of the spouses Bernardo Cavile and Tranquilina Galon. Said heirs included the legitimate children of Bernardo and Tranquilina, namely, (1) Susana Cavile, (2) Castor Cavile, and (3) Benedicta Cavile; as well as the children of Bernardo by his previous marriages, specifically: (4) Simplicia Cavile, (5) Fortunato Cavile, and (6) Vevencia Cavile.[6] Subject of the Deed of Partition

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[1] *Rollo*, pp. 8-36.

[2] Penned by Associate Justice Agustin S. Dizon with the concurrence of Associate Justices Arsenio J. Magpale and Francisco P. Acosta; *rollo*, pp. 38-44.

[3] *Rollo*, pp. 46-47.

[4] Penned by Judge Victor C. Patrimonio; *rollo*, pp. 116-127.

[5] Folder 2, Index of Exhibits, Exhibit 1.

[6] Having died before the execution of the Deed of Partition, Fortunato and Vevencia were merely represented therein by their eldest children, Lucio Cavile and Vicente Navarra, respectively.

were several parcels of land situated in the Municipality of Tolong, Negros Oriental, which were then covered by Tax Declarations No. 5615, No. 5729, No. 7143, No. 7421 and No. 7956, all under the name of Bernardo.

Of particular interest in this case are the lots covered by **Tax Declarations No. 7421 and No. 7956**. The lot covered by Tax Declaration No. 7421 was described in the Deed of Partition as "bounded on the North by Simplicio Cavile antes Roman Echaves, on the East by Rio Bayawan, on the South by Riachuelo Napasu-an, and on the West by Riachuelo Napasu-an *y* Julian Calibug antes Francisco Tacang." The lot covered by Tax Declaration No. 7956 was identified to be the one "bounded on the North by Hilario Navaro, on the East by Silverio Yunting, on the South by Fortunato Cavile, and on the West by Maximiano Balasabas."

In accordance with the Deed of Partition, the conjugal properties of Bernardo and Tranquilina were divided into two parts. The first part, corresponding to Bernardo's share, was further divided into six equal shares and distributed among his six heirs. The second part, corresponding to Tranquilina's share, was subdivided only into three shares and distributed among her children with Bernardo, *i.e.*, Susana, Castor, and Benedicta.

Also stated in the Deed of Partition was the sale by the other aforementioned legal heirs to their co-heir Castor of their aliquot shares in the lots covered by Tax Declarations No. 7143, No. 7421, and No. 7956; thus, making Castor the sole owner of the said properties. Similarly, the Deed of Partition acknowledged the sale by all the legal heirs to Ulpiano Cavile of their respective shares in the lot covered by Tax Declaration No. 5729, thus, transferring to the latter absolute ownership of said parcel of land.

Thereafter, on 5 August 1960, Castor and Susana executed a **Confirmation of Extrajudicial Partition**,[7] whereby Castor recognized and confirmed that the lots covered by **Tax Declarations No. 2039 and No. 2040** were the just and lawful

[7] Folder 2, Index of Exhibits, Exhibit A.

shares of Susana in the properties left by their deceased parents Bernardo and Tranquilina, and that Susana was in actual possession of the said properties. According to the Confirmation of Extrajudicial Partition, the lot covered by Tax Declaration No. 2039 was "bounded on the North by Simplicio Cavile, on the East by Rio Bayawan, on the South by Napasu-an, and on the West by Napasu-an Creek and Julian Calibog"; while the one covered by Tax Declaration No. 2040 was "bounded on the North by Hilario Navvaro (sic), on the South by Fortunato Cavile, on the East by Silverio Yunting, and on the West by Maximino (sic) Balasabas."

The descriptions of the lots covered by Tax Declarations No. 2039 and No. 2040 in the Confirmation of Extrajudicial Partition were strikingly close to those of the lots covered by Tax Declarations No. 7421 and No. 7956, respectively, in the Deed of Partition.

Fourteen years after the execution of the Confirmation of Extrajudicial Partition in 1960, respondents filed on 23 December 1974 a Complaint for Reconveyance and Recovery of Property with Damages before the RTC against Perfecta Cavile, the daughter of Castor, Jose de la Cruz, the husband of Perfecta (hereinafter petitioner spouses), and the Rural Bank of Bayawan, Inc. The Complaint was docketed as Civil Case No. 6111.[8]

Respondents averred in the Complaint that respondents Justina and Genoveva inherited two parcels of land, covered by **Tax Declarations No. 07408 and No. 07409** (subject lots),[9] from their mother Susana, who, in turn, inherited the same from her parents Bernardo and Tranquilina. Respondents invoked the

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[8] In 1985, the complaint was amended in view of the death of petitioner Jose de la Cruz. His children Solon de la Cruz and Don de la Cruz were impleaded as defendants. Felicitas L. Reston was also impleaded as a plaintiff, as she was likewise a daughter of Susana Cavile.

[9] The descriptions of the boundaries of the lots covered by **Tax Declarations No. 07408 and No. 07409** in the Complaint correspond to those of the lots covered by **Tax Declarations No. 7956 and No. 7421**, respectively, in the Deed of Partition, as well as to the lots covered by **Tax Declarations No. 2040 and No. 2039** in the Confirmation of Extrajudicial Partition.

Confirmation of Extrajudicial Partition dated 5 August 1960 wherein Castor purportedly recognized Susana's ownership of the subject lots. Susana had enjoyed undisputed ownership and possession of the subject lots, paying the realty taxes due and introducing improvements thereon. Susana was even able to obtain a loan from the Rural Bank of Dumaguete City sometime in 1960, mortgaging the subject lots as security for the same.

After Susana's death in 1965, the subject lots were inherited by her daughters, respondents Justina and Genoveva, who then assumed the mortgage thereon. However, respondents alleged that Castor and petitioner spouses eventually intruded upon and excluded respondents from the subject lots. When Castor died in 1968, petitioner spouses continued their unlawful occupancy of the subject lots, planting on the same and harvesting the products. Respondents claimed that they exerted efforts to settle the matter, but petitioner spouses stubbornly refused to accede. In 1974, prior to the filing of the Complaint, respondents again sought an audience with petitioner spouses, yet the latter only presented to them the Original Certificates of Title (OCTs) No. FV-4976,[10] No. FV-4977,[11] and No. FV-4978[12] covering the subject lots, issued by the Registry of Deeds for the Province of Negros Oriental, on 9 October 1962, in the name of petitioner Perfecta. Respondents were, thus, constrained to institute Civil Case No. 6111 against petitioner spouses and the Rural Bank of Bayawan, Inc., seeking the cancellation of the OCTs in the name of petitioner Perfecta or, alternatively, the reconveyance by petitioner spouses of the subject lots to respondents, plus award for damages. The Rural Bank of Bayawan, Inc. was impleaded as a defendant in the Complaint since petitioner spouses mortgaged the subject lots in its favor as security for a loan in the amount of ₱42,227.50. However, the bank was later dropped as a party after the aforesaid loan was settled.

Petitioner spouses countered in their Answer to the Complaint that, by virtue of the Deed of Partition dated 5 April 1937, the

[10] Folder 2, Index of Exhibits, Exhibits B to B-2.

[11] *Id.* at Exhibits C to C-2.

[12] *Id.* at Exhibits D to D-2.

heirs of both Bernardo and Tranquilina took exclusive possession of their respective shares in the inheritance. Castor fully possessed the lots covered by Tax Declarations No. 7143, No. 7421 and No. 7956, after his co-heirs sold to him their shares therein. In 1962, Castor sold to petitioner Perfecta the lots covered by Tax Declarations No. 7421 and No. 7956, which corresponded to the subject lots in the Complaint. Following the sale, petitioner Perfecta took possession of the subject lots and filed with the Bureau of Lands an application for the issuance of title over the same. The Bureau issued free patent titles over the subject lots in favor of petitioner Perfecta and, by virtue thereof, she was able to secure on 9 October 1962, OCTs No. FV-4976, No. FV-4977, and No. FV-4978 in her name.

Petitioner spouses asserted that the Confirmation of Extrajudicial Partition dated 5 August 1960 involving the subject lots was a nullity since said properties were never owned nor adjudicated in favor of Susana, respondents' predecessor-in-interest. Castor and Susana executed the Confirmation of Extrajudicial Partition merely to accommodate the latter who then needed security for the loan she was trying to obtain from the Rural Bank of Dumaguete City. Respondents would not be able to deny the said accommodation arrangement, given that neither Susana nor respondents actually possessed the subject lots or applied for titles thereto. Respondents did not even know that the subject lots were divided into three lots after a Government survey. If Susana and respondents paid realty taxes for the subject lots, it was only to convince the Rural Bank of Dumaguete to renew their loan from year to year, secured as it was by the mortgage on the subject lots. Thus, petitioner spouses posited that no ownership could then be transferred to respondents after Susana's death.

Trial in Civil Case No. 6111 thereafter ensued before the RTC.[13]

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[13] In the RTC, respondent Justina Litania-Hong was presented as a lone witness for the plaintiffs in 1975. In 1987, the Perdices Coliseum, upon which the trial court was situated, was burned. The original records of the case were, thus, lost and were only duly reconstituted on 16 September 1987. Afterwards, petitioner Perfecta Cavile testified for the defendants, followed by another witness, Leticia Navarra.

On 29 February 2000, the RTC promulgated its Decision, with the following dispositive portion:

> WHEREFORE, premises considered, judgment is hereby rendered declaring [herein petitioner spouses] as the absolute owners over the parcels of land in litigation. Consequently, [herein respondents'] complaint is ordered dismissed. [Respondents'] counterclaim is likewise entered dismissed for lack of merit.[14]

The RTC ruled that the petitioner spouses' evidence was more worthy of credence in establishing their ownership of the subject lots. As petitioner Perfecta testified before the RTC, Castor immediately took possession of the subject lots after the Deed of Partition was executed in 1937. This fact was supported by the unrebutted testimony of Luciana Navarra, petitioner Perfecta's cousin, who declared that her husband was petitioner Perfecta's tenant on the subject lots since 1947 and that respondents never actually occupied the said properties. The RTC observed that it was highly questionable and contrary to human experience that respondents waited nine long years after their ejection from the subject lots in 1965 before taking any legal step to assert their rights over the same.

The RTC further subscribed to the testimony of Perfecta that the Confirmation of Extrajudicial Partition was executed by Castor solely to accommodate Susana, enabling her to obtain a bank loan using the subject lots as collateral. It noted that Susana did not bother to apply for the issuance of title to the subject lots in her name. Contrarily, it was Perfecta who applied for and obtained title to the subject lots, which, surprisingly, respondents were not even aware of. The RTC found that the contemporaneous and subsequent acts of the parties after the execution of the Confirmation of Extrajudicial Partition evidently demonstrated their intention to merely accommodate Susana in her loan application. Hence, the RTC concluded that the Confirmation of Extrajudicial Partition was a simulated contract which was void and without any legal effect.

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[14] *Rollo,* p. 127.

Without seeking a reconsideration of the above RTC Decision, respondents challenged the same by way of appeal before the Court of Appeals, docketed as CA-G.R. CV No. 66873.

On 8 March 2007, the Court of Appeals rendered the assailed Decision in favor of respondents, the decretal portion of which provides:

> WHEREFORE, the assailed decision is **REVERSED AND SET ASIDE** and a new one entered **ORDERING** [herein petitioner spouses] and/or their heirs, assigns and representatives as follows:
>
> 1. To reconvey to [herein respondents] the possession and title to the litigated parcels of land.
> 2. Upon reconveyance of the litigated properties, the Register of Deeds of Dumaguete City is ordered to cancel Certificate of Title No. 4877 (sic), 4976 and 4978 and to issue a new certificate to [respondents] or their successors in interest.
> 3. With costs against [petitioner spouses].[15]

The Court of Appeals agreed in the respondents' contention that the Confirmation of Extrajudicial Partition was not a simulated document. The said document should be entitled to utmost respect, credence, and weight as it was executed by and between parties who had firsthand knowledge of the Deed of Partition of 1937. Moreover, the Confirmation of Extrajudicial Partition constituted evidence that was of the highest probative value against the declarant, Castor, because it was a declaration against his proprietary interest. Other than petitioner Perfecta's testimony, the appellate court found no other proof extant in the records to establish that the Confirmation of Extrajudicial Partition was a simulated document or that it did not express the true intent of the parties. The Court of Appeals likewise highlighted the fact that Castor did not attempt to have the subject lots declared in his name during his lifetime and that petitioner Perfecta herself admitted that she only started paying real estate taxes for the subject lots in 1993. It was Susana and, later, her children, respondents Justina and Genoveva, who had been paying for the realty taxes on the subject lots since 1937.

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[15] *Id.* at 43.

Petitioner spouses filed a Motion for Reconsideration[16] of the foregoing Decision, but it was denied by the Court of Appeals in a Resolution[17] dated 3 September 2007.

Petitioner spouses filed the instant Petition, raising the following issues for the Court's consideration:

I.

WHETHER [OR NOT] THE HONORABLE COURT OF APPEALS ACTED IN ACCORDANCE WITH LAW IN RULING THAT EXTRANEOUS EVIDENCE IN THE FORM OF AN AFFIDAVIT, THE "CONFIRMATION OF EXTRAJUDICIAL PARTITION," MAY BE ADMITTED IN EVIDENCE TO VARY THE TERMS OF A JUDICIALLY DECLARED VALID AGREEMENT ENTITLED "DEED OF PARTITION"?

II.

WHETHER [OR NOT] THE HONORABLE COURT OF APPEALS COMMITTED A LEGAL ERROR IN NOT DISMISSING THE COMPLAINT ON THE GROUND OF *RES JUDICATA*?

III.

WHETHER [OR NOT] THE COMPLAINT FILED BY THE RESPONDENTS SHOULD BE DISMISSED ON THE GROUND OF FORUM-SHOPPING?

IV.

WHETHER [OR NOT] THE FREE PATENT TITLES ISSUED TO THE PETITIONERS MAY BE RECONVEYED TO THE RESPONDENTS?[18]

Essentially, the Court finds that the fundamental issue that must be settled in this case is who, among the parties herein, have the better right to the subject lots.

The Court notes prefatorily that in resolving the present case, an examination of the respective evidence of the parties must necessarily be undertaken. Although the jurisdiction of the Court

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[16] *Id.* at 48-57.

[17] *Id.* at 46-47.

[18] *Id.* at 19.

in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, we find that an exception[19] to this rule is present in the instant case in that the Court of Appeals made findings of fact which were contrary to those of the RTC.

Before proceeding, the Court further establishes as a foregone fact, there being no issue raised on the matter, that the subject lots covered by Tax Declarations No. 07408 and No. 07409 described in the Complaint in Civil Case No. 6111 are the very same lots covered by Tax Declarations No. 7956 and No. 7421 included in the Deed of Partition, and by Tax Declarations No. 2040 and No. 2039 subject of the Confirmation of Extrajudicial Partition.

Respondents, as plaintiffs before the RTC in Civil Case No. 6111, sought the reconveyance and recovery of the subject lots purportedly illegally usurped by petitioner spouses who succeeded in having the same titled in the name of petitioner Perfecta. Respondent Justina testified in open court that the subject lots were inherited by her and co-respondent Genoveva's mother, Susana, from their grandparents, Bernardo and Tranquilina.[20] As proof of Susana's ownership of the subject lots, respondents presented the Confirmation of Extrajudicial

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[19] In a petition for review under Rule 45 of the Rules of Court, questions of fact may be determined by the Court when: (1) the conclusion of the Court of Appeals is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (See *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, 11 November 2005, 474 SCRA 500, 506, citing *Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 [1998]).

[20] TSN, 11 December 1975, pp. 8-9.

Partition executed on 5 August 1960 by Castor and Susana. In said document, Castor ostensibly recognized and confirmed Susana's ownership and possession of the subject lots.[21] Tax declarations[22] covering the subject lots in the names of Susana and respondents were also offered to the court *a quo* to lend support to respondents' claims of ownership.

On the other hand, to prove their entitlement to the subject lots, petitioner spouses presented before the RTC the Deed of Partition[23] entered into by the heirs of spouses Bernardo and Tranquilina on 5 April 1937. By virtue thereof, Castor acquired

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[21] The pertinent portions of the Confirmation of Extrajudicial Partition provide:

Confirmation of Extrajudicial Partition

KNOW ALL MEN BY THESE PRESENTS:

That I, CASTOR CAVILE, x x x, hereinafter called and referred to as the PARTY OF THE FIRST PART; and SUSANA CAVILE, xxx, hereinafter called and referred to as the PARTY OF THE SECOND PART,

WITNESSETH:

That the parties herein are the only legitimate children of the deceased spouses Bernardo Cavile and Tranquilina Alvier Galon, who both died intestate, in the Municipality of Bayawan, Negros Oriental, sometime on the year 1917, and February 19, 1945, respectively.

That the said deceased spouses left several parcels of agricultural land in the Municipality of Bayawan, province of Negros Oriental, and among said parcels of land are the following property described and bounded as follows:

x x x x x x x x x

That the PARTY OF THE FIRST PART hereby recognizes, agree, bind and confirm that the above-described parcels of land are (sic) the just and lawful share of the PARTY OF THE SECOND PART, and which property is actually in the possession of the latter.

x x x x x x x x x

IN WITNESS WHEREOF, we have hereunto signed this instrument on this 5th day of August, 1960, at the Municipality of Bayawan, Province of Negros Oriental, Philippines.

SGD CASTOR CAVILE (Party of the First Part) SGD SUSANA CAVILE (Party of the Second Part)

[22] Folder 2, Index of Exhibits, Exhibits E to L-2.

[23] The pertinent portions of the Deed of Partition read:

through sale the shares of his co-heirs in the subject lots. Petitioner Perfecta testified before the trial court that right after the execution of said Deed, she and her father, Castor, assumed

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DEED OF PARTITION

KNOW ALL MEN BY THESE PRESENTS:

THAT Susana Cavile, Castor Cavile, Benedicta Cavile, Simplicia Cavile, Lucio Cavile and Vicenta Navarra both (*sic*) of legal age and residents in the Municipality of Tolong, Province of Oriental Negros, Philippine Islands, after being duly sworn to in legal form, WITNESSETH:

That Susana Cavile, Castor Cavile and Benedicta Cavile are the only children of Bernardo Cavile with his wife Tranquilina Galon, and that Simplicia Cavile and Fortunato Cavile and Vevencia Cavile are the children of Bernardo Cavile outside from the conjugal home of Bernardo Cavile and Tranquilina Galon.

That Fortunato Cavile and Vevencia Cavile having already been dead are survived by their corresponding children and represented in this document by their oldest child, Lucio Cavile and Vicenta Navarra, respectively.

That during the union of Bernardo Cavile and Tranquilina Galon several properties have been acquired by them and declared under the name of Bernardo Cavile all situated in the Municipality of Tolong, Province of Oriental Negros, which properties are described as follows:

x x x x x x x x x

That by this document it is hereby agreed by the legal heirs of Bernardo Cavile and Tranquilina Galon to divide and by these presents it is hereby divided the above mentioned properties in the following manner:

1 - That the conjugal properties of said Bernardo Cavile and Tranquilina Galon which are already described are hereby divided into *two parts* ONE (1) part which corresponds to the share of Bernardo Cavile is also divided into SIX (6) equal parts, that is among Susana Cavile, Castor Cavile, Benedicta Cavile, Simplicia Cavile, Fortunato Cavile represented by his oldest son, Lucio Cavile, and Vevencia Cavile represented by her oldest child Vicenta Navarra.

2 - That the other ONE (1) part which corresponds to the share of Tranquilina Galon is also hereby equally divided into THREE (3) parts, that is among Susana Cavile, Castor Cavile and Benedicta Cavile.

SHARE OF BERNARDO CAVILE

x x x x x x x x x

That the share of Bernardo Cavile in parcels Tax Declaration Nos. 7421, 7143 and 7956 are sold by the legal heirs to Castor Cavile in consideration of the sum of ONE HUNDRED SIXTY(-) SIX PESOS (₱166.00), Philippine currency, which amount has been received and divided equally among them.

possession of the subject lots, planting coconuts, rice, and corn thereon.[24] She additionally testified that realty taxes on the subject lots had since been paid by Castor and, subsequently, by her.[25] Possession of the subject lots by Castor and petitioner spouses was corroborated by the testimony of Luciana Navarra, who insisted that respondents never occupied the said lots.[26] Finally, petitioner spouses presented OCTs No. FV-4976, No. FV-4977, and No. FV-4978, covering the subject lots, issued by the Registry of Deeds for the Province of Negros Oriental on 9 October 1962 in the name of petitioner Perfecta.

After a careful evaluation of the evidence adduced by the parties in the instant case, the Court rules in favor of petitioner spouses.

At this point, let it be stated that the validity and due execution of the Deed of Partition executed in 1937 is not directly assailed in this case, thus, the Court need not pass upon the same. Under the said Deed of Partition, the other heirs of Bernardo and Tranquilina clearly and unequivocally sold their shares in the subject lots to Castor, petitioner Perfecta's father. What appeared to be the clear right of ownership of Castor over the

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x x x x x x x x x

SHARE OF TRANQUILINA GALON

x x x x x x x x x

That the share of Tranquilina Galon in parcels Tax Declaration Nos. 7421, 7143 and 7956 are hereby sold by the heirs of said Tranquilina Galon to Castor Cavile in consideration of the sum of ONE HUNDRED SIXTY(-)SIX PESOS (₱166.00), Philippine currency(,) which sum has been received and divided equally among them.

That the said heirs of Bernardo Cavile and Tranquilina Galon above mentioned hereby agree and accept as it is hereby agreed and accepted all the items and conditions in this DEED OF PARTITION.

IN WITNESS HEREOF we have this 5th day of April, 1937, A.D., sign our names below in the Municipality of Tolong, Province of Oriental Negros, Philippine Islands. (Folder 2, Index of Exhibits, Exhibits 1 to 1-c.)

[24] TSN, 20 July 1994, pp. 9-10.

[25] Folder 2, Index of Exhibits, Exhibits 2 to 2-e.

[26] TSN, 24 April 1995, pp. 10-12.

subject lots was put in doubt by the execution of the Confirmation of Extrajudicial Partition by Castor and his sister Susana in 1960. Respondents, children and heirs of Susana, base their claim of ownership of the subject lots on the said document, while petitioner spouses denounce the same to be simulated, executed for purposes other than to transfer ownership of the subject lots, and cannot legally alter the terms of the previously duly executed Deed of Partition.

As held by the Court of Appeals, the Confirmation of Extrajudicial Partition partakes of the nature of an admission against a person's proprietary interest.[27] As such, the same may be admitted as evidence against Castor and petitioner spouses, his successors-in-interest. The theory under which declarations against interest are received in evidence, notwithstanding that they are hearsay, is that the necessity of the occasion renders the reception of such evidence advisable and, further, that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.[28]

Nevertheless, the Confirmation of Extrajudicial Partition is just one piece of evidence against petitioner spouses. It must still be considered and weighed together with respondents' other evidence *vis-à-vis* petitioner spouses' evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase which, in

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[27] Section 38 of Rule 130 of the Rules of Court provides:

SEC. 38. *Declaration against interest*. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors-in-interest and against third persons.

[28] *Parel v. Prudencio*, G.R. No. 146556, 19 April 2006, 487 SCRA 405, 416.

the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[29] Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus:

> In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Herein, despite the admission made by Castor in the Confirmation of Extrajudicial Partition against his own interest, the Court is still convinced that the evidence adduced by the petitioner spouses preponderated over that of the respondents.

In analyzing the two vital documents in this case, the Court discerns that while the Deed of Partition clearly explained how Castor came to fully own the subject lots, the Confirmation of Extrajudicial Partition, even though confirming Susana's ownership of the subject lots, failed to shed light on why or how the said properties wholly pertained to her when her parents Bernardo and Tranquilina clearly had other heirs who also had shares in the inheritance.

Other than the Confirmation of Extrajudicial Partition, respondents were only able to present as evidence of their title to the subject lots tax declarations covering the same, previously, in the name of Susana and, subsequently, in their own names. We find such tax declarations insufficient to establish respondents' ownership of the subject lots. That the disputed property has

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[29] *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001).

been declared for taxation purposes in the name of any party does not necessarily prove ownership. Jurisprudence is consistent that tax declarations are not conclusive evidence of ownership of the properties stated therein. A disclaimer is even printed on the face of such tax declarations that they are "issued only in connection with real property taxation [and] should not be considered as title to the property." At best, tax declarations are *indicia* of possession in the concept of an owner.[30] Conversely, non-declaration of a property for tax purposes does not necessarily negate ownership.[31]

On the other hand, the Court is at a loss as to how the Court of Appeals failed to give due consideration to the Torrens titles issued in the name of petitioner Perfecta when it rendered its assailed Decision.

Sometime in 1962, petitioner Perfecta applied for and was granted by the Bureau of Lands free patents over the subject lots. Pursuant thereto, Original Certificates of Title No. FV-4976, No. FV-4977, and No. FV-4978, covering the subject lots, were issued by the Registry of Deeds for the Province of Negros Oriental, on **9 October 1962**, in the name of petitioner Perfecta. Given this crucial fact, the Court pronounces that respondents' Complaint for reconveyance of the subject lots and damages filed only on **23 December 1974** is already barred.

A Torrens title issued on the basis of the free patents become as indefeasible as one which was judicially secured upon the expiration of one year from date of issuance of the patent.[32] However, this indefeasibility cannot be a bar to an investigation by the State as to how such title has been acquired, if the purpose of the investigation is to determine whether or not fraud has been committed in securing the title. Indeed, one who succeeds

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[30] *Azana v. Lumbo*, G.R. No. 157593, 22 March 2007, 518 SCRA 707, 718-719.

[31] *Id.* at 719.

[32] *Spouses De Ocampo v. Arlos,* 397 Phil. 799, 810 (2000); *Republic v. Court of Appeals*, 325 Phil. 636, 642-643 (1996).

in fraudulently acquiring title to public land should not be allowed to benefit from it.[33]

On this matter, Section 101 of Commonwealth Act No. 141[34] provides that all actions for the reversion to the government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth [now Republic] of the Philippines. Such is the rule because whether the grant of a free patent is in conformity with the law or not is a question which the government may raise, but until it is so raised by the government and set aside, another claiming party may not question it. The legality of the grant is a question between the grantee and the government.[35] Thus, private parties, like respondents in the instant case, cannot challenge the validity of the patent and the corresponding title, as they had no personality to file the suit.

Although jurisprudence recognizes an exception to this case, the respondents may not avail themselves of the same.

Verily, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, which prescribes in 10 years from the date of the issuance of the Certificate of Title over the property, provided that the property has not been acquired by an innocent purchaser for value. An action for reconveyance is one that seeks to transfer property, wrongfully or fraudulently registered by another, to its rightful and legal owner.[36] If the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred, knew that the parcel of land described in the patent and in the Torrens title belonged to another, who together with his predecessors-in-interest had been in possession thereof, and

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[33] *Republic of the Philippines v. Heirs of Angeles*, 439 Phil. 349, 357 (2002).

[34] Public Land Act.

[35] See *Maninang v. Consolacion,* 12 Phil. 342, 349 (1908).

[36] See *Heirs of Sanjorjo v. Heirs of Quijano*, G.R. No. 140457, 19 January 2005, 449 SCRA 15, 27.

if the patentee and his successor-in-interest were never in possession thereof, the true owner may bring an action to have the ownership of or title to the land judicially settled. The court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens titled issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof.[37]

In the instant case, respondents brought the action for reconveyance of the subject lots before the RTC only on 23 December 2004, or **more than 12 years** after the Torrens titles were issued in favor of petitioner Perfecta on 9 October 1962. The remedy is, therefore, already time-barred.

And even if respondents' Complaint was filed on time, the Court would still rule that respondents failed to satisfactorily prove that they were in possession of the subject lots prior to the grant of free patents and issuance of Torrens titles over the same in favor petitioner Perfecta. The bare testimony of respondent Justina that Susana had been in the peaceful and undisturbed possession of the subject lots since 1937 up to the time of her death in 1965 was entirely bereft of substantiation and details. No information was provided as to how said possession of the subject lots was actually exercised or demonstrated by Susana. In contrast, the possession of the subject lots by Castor, and later on by petitioner spouses, was established not just by the testimony of petitioner Perfecta, but was corroborated by the testimony of Luciana Navarra, whose husband was a tenant working on the subject lots. Petitioner spouses possessed the subject lots by planting thereon coconuts, rice, and corn — a claim which respondents were unable to refute.

Furthermore, respondents' allegation that petitioner Perfecta committed fraud and breach of trust in her free patent application is specious. The fact that the document evidencing the sale of the subject lots by Castor to petitioner Perfecta was not presented does not automatically mean that said contract was never in existence.

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[37] *Vital v. Anore*, 90 Phil. 855, 858-859 (1952).

Also undeserving of much consideration without sufficient proof is respondents' averment that the subject lots were private lands which could no longer be granted to any person *via* free patent. Respondents ought to remember that mere allegation of fraud is not enough. Specific, intentional acts to deceive and deprive another party of his right, or in some manner injure him, must be alleged and proved.[38] Also, the issuance by Bureau of Lands of free patents over the subject property to petitioner Perfecta enjoys the presumption of regularity.

WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court is hereby *GRANTED*. The assailed Decision dated 8 March 2007 and Resolution dated 3 September 2007 of the Court of Appeals in CA-G.R. CV No. 66873 are hereby *REVERSED AND SET ASIDE*. The Decision dated 29 February 2000 of the RTC of Negros Oriental, Branch 35, in Civil Case No. 6111 is hereby *REINSTATED*. No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 180122. March 13, 2009]

FELICISIMO F. LAZARTE, JR., *petitioner, vs.* **SANDIGANBAYAN (First Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

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[38] *Crisologo v. Court of Appeals,* 160-A Phil. 1085, 1093-1094 (1975).

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DENIAL THEREOF IS NOT CORRECTIBLE BY *CERTIORARI*; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. —** At the outset, it should be stressed that the denial of a motion to quash is not correctible by *certiorari*. Well-established is the rule that when a motion to quash in a criminal case is denied, the remedy is not a petition for *certiorari* but for petitioners to go to trial without prejudice to reiterating the special defenses invoked in their motion to quash. Remedial measures as regards interlocutory orders, such as a motion to quash, are frowned upon and often dismissed. The evident reason for this rule is to avoid multiplicity of appeals in a single court. This general rule, however, is subject to certain exceptions. If the court, in denying the motion to dismiss or motion to quash acts without or in excess of jurisdiction or with grave abuse of discretion, then *certiorari* or prohibition lies. And in the case at bar, the Court does not find the Sandiganbayan to have committed grave abuse of discretion.

2. **ID.; ID.; ID.; GROUNDS; THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE; FUNDAMENTAL TEST. —** The fundamental test in reflecting on the viability of a motion to quash on the ground that the facts charged do not constitute an offense is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in law. Matters *aliunde* will not be considered.

3. **ID.; ID.; COMPLAINT OR INFORMATION; WHEN SUFFICIENT; TEST; *RAISON d' ETRE* OF THE RULE. —** Corollarily, Section 6 of Rule 110 of the Rules of Court states that: SEC. 6. *Sufficiency of complaint or information.* — x x x. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be included therein must be determined by reference to the definition and elements of the specific crimes. The test is whether the crime is described in intelligible terms with

such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison d'etre* of the rule is to enable the accused to suitably prepare his defense. Another purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.

4. **CRIMINAL LAW; REPUBLIC ACT NO. 3019, SECTION 3(E) THEREOF; ELEMENTS. —** The essential elements for violation of Section 3(e) of R.A. No. 3019 are as follows: 1. The accused is a public officer or private person charged in conspiracy with him; 2. Said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position; 3. He causes undue injury to any party, whether the government or private party; 4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and 5. The public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

5. **ID.; ID.; ID.; PROPERLY ALLEGED IN THE INFORMATION IN CASE AT BAR. —** The Court finds that the Information in this case alleges the essential elements of violation of Section 3(e) of R.A. No. 3019. The Information specifically alleges that petitioner, Espinosa and Lobrido are public officers being then the Department Manager, Project Management Officer A and Supervising Engineer of the NHA respectively; in such capacity and committing the offense in relation to the office and while in the performance of their official functions, connived, confederated and mutually helped each other and with accused Arceo C. Cruz, with deliberate intent through manifest partiality and evident bad faith gave unwarranted benefits to the latter, A.C. Cruz Construction and to themselves, to the damage and prejudice of the government. The felonious act consisted of causing to be paid to A.C. Cruz Construction public funds in the amount of ₱232,628.35 supposedly for excavation and road filling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by said construction company as revealed by the Special Audit conducted by COA.

6. **ID.; CONSPIRACY; ELABORATED. —** On the contention that the Information did not detail the individual participation of

the accused in the allegation of conspiracy in the Information, the Court underscores the fact that under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition. When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. But when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar, there is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. The conspiracy is significant only because it changes the criminal liability of all the accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liability of the conspirators is collective and each participant will be equally responsible for the acts of others, for the act of one is the act of all.

7. ID.; ID.; CONSPIRACY AS A MODE OF COMMITTING THE OFFENSE; HOW ALLEGED IN THE INFORMATION. — Notably, in *People v. Quitlong*, as pointed out by respondent, the Court ruled on how conspiracy as a mode of committing the offense should be alleged in the Information, *viz*: x x x Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others. Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well. A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will

admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient "if it follows the words of the statute and reasonably informs the accused of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them. x x x.

8. **ID.; ID.; HOW PROVED; A STATEMENT OF THE EVIDENCE ON THE CONSPIRACY IS NOT NECESSARY IN THE INFORMATION. —** In addition, the allegation of conspiracy in the Information should not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of the evidence on the conspiracy is not necessary in the Information. The other details cited by petitioner, such as the absence of any damage or injury caused to any party or the government, likewise are matters of evidence best raised during trial.

9. **REMEDIAL LAW; COURTS; SANDIGANBAYAN; JURISDICTION; THE POSITION THAT THE ACCUSED HOLDS, NOT HIS SALARY GRADE, DETERMINES THE JURISDICTION OF THE SANDIGANBAYAN. —** Finally, the Court sustains the Sandiganbayan's jurisdiction to hear the case. As correctly pointed out by the Sandiganbayan, it is of no moment that petitioner does not occupy a position with Salary Grade 27 as he was a department manager of the NHA, a government-owned or controlled corporation, at the time of the commission of the offense, which position falls within the ambit of its jurisdiction. Apropos, the Court held in the case of *Geduspan v. People* which involved a regional Manager/Director of Region VI of the Philippine Health Insurance Corporation (Philhealth) with salary grade 26, to wit: It is of no moment that the position of petitioner is merely classified as salary grade 26. While the first part of the above–quoted provision

> covers only officials of the executive branch with the salary grade 27 and higher, the second part thereof "specifically includes" other executive officials whose positions may not be of grade 27 and higher but who are by express provision of law placed under the jurisdiction of the said court. Hence, respondent court is vested with jurisdiction over petitioner together with Farahmand, a private individual charged together with her. The position of manager in a government-owned or controlled corporation, as in the case of Philhealth, is within the jurisdiction of respondent court. It is the position that petitioner holds, not her salary grade, that determines the jurisdiction of the Sandiganbayan. x x x.

APPEARANCES OF COUNSEL

William Villanueva Cabrera for petitioner.
The Solicitor General for respondents.

D E C I S I O N

TINGA, *J.*:

This is a Petition for *Certiorari*[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolution[2] dated 2 March 2007 of the First Division of the Sandiganbayan in Criminal Case No. 26583 entitled, "*People of the Philippines v. Robert P. Balao, et al.*," which denied petitioner Felicisimo F. Lazarte, Jr.'s Motion to Quash. The Resolution[3] dated 18 October 2007 of said court denying petitioner's motion for reconsideration is likewise challenged in this petition.

The antecedents follow.

In June 1990, the National Housing Authority (NHA) awarded the original contract for the infrastructure works on the Pahanocoy

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[1] *Rollo*, pp. 3-50; Dated 5 November 2007.

[2] *Id.* at 51-57; Penned by Presiding Justice Teresita J. Leonardo-De Castro with the concurrence of Associate Justices Diosdado M. Peralta and Alexander G. Gesmundo.

[3] *Id.* at 58-62.

Sites and Services Project, Phase 1 in Bacolod City to A.C. Cruz Construction. The project, with a contract cost of ₱7,666,507.55, was funded by the World Bank under the Project Loan Agreement forged on 10 June 1983 between the Philippine Government and the IBRD-World Bank.[4]

A.C. Cruz Construction commenced the infrastructure works on 1 August 1990.[5] In April 1991, the complainant Candido M. Fajutag, Jr.(Fajutag, Jr.) was designated Project Engineer of the project.

A *Variation/Extra Work Order No. 1* was approved for the excavation of unsuitable materials and road filling works. As a consequence, Arceo Cruz of A.C. Cruz Construction submitted the fourth billing and Report of Physical Accomplishments on 6 May 1991. Fajutag, Jr., however, discovered certain deficiencies. As a result, he issued *Work Instruction No. 1* requiring some supporting documents, such as: (1) copy of approved concrete pouring; (2) survey results of original ground and finished leaks; (3) volume calculation of earth fill actually rendered on site; (4) test results as to the quality of materials and compaction; and (5) copy of work instructions attesting to the demolished concrete structures.[6]

The contractor failed to comply with the work instruction. Upon Fajutag, Jr.'s further verification, it was established that there was no actual excavation and road filling works undertaken by A.C. Cruz Construction. Fajutag, Jr.'s findings are summarized as follows:

> 1. No topographic map was appended, even if the same is necessary in land development works; a discarded drawing sheet: "Spot Elevations and Existing Gradelines" of the project site was found, but this contrasted significantly with the alleged joint-survey results in support of the Variation/Extra Work Order No. 1;
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> 2. No laboratory tests were conducted to ascertain unsuitability of materials, even if the same should have been required as essential basis thereof;

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[4] *Id.* at 8.

[5] *Id.* at 111.

[6] *Id.* at 112, 232.

3. There were no records of the excavation and disposal of unsuitable materials and of road filling works having been made by the previous engineers, Rodolfo de los Santos and Noel Lobrido at the time said activities were allegedly executed;

4. The excavation of unsuitable materials and road filling works were overestimated to the prejudice of the government:

a. in a 10.00 meter right-of-way (ROW) road, the entire width of 10.00 meters was used in calculating the volume of cut of unsuitable materials when the undisturbed natural grounds on both sides of the road was only 6.00 meters;

b. the mathematical calculation in determining the volume of cut of unsuitable materials are contrary to the contract's technical specifications which provides for cut measurements, *i.e.*[,] by end-area method;

c. in a 10.00 ROW road, an effective width of 8.70 meters was used in calculating the volume of road fill when the undisturbed natural grounds on both sides of the road was only 6.00 meters apart;

d. the mathematical calculations in determining the volume of roadfill are contrary to the contract's technical specifications, specifically Section 3.11 thereof, *i.e.*, by end-area method.

5. No laboratory test was made to ascertain the quality of imported road fill materials.[7]

In a Memorandum dated 27 June 1991, the Project Office recommended the termination of the infrastructure contract with A.C. Construction.[8]

In its Report dated 12 August 1991, the Inventory and Acceptance Committee determined the total accomplishment of the contractor at 40.89%, representing ₱3,433,713.10 out of the total revised contract amount of ₱8,397,225.09 inclusive of *Variation Order No. 1* in the amount of ₱710,717.54. Thereafter, said Committee recommended that the temporary project suspension imposed by the contractor, which incurred

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[7] *Id.* at 113-114.

[8] *Id.* at 233.

delays in the project completion, be referred to the Legal Department for appropriate action.[9]

On 19 August 1991, the Manager of the Legal Department issued a Memorandum addressed to the General Manager of NHA endorsing approval of the Regional Projects Department's (RPD's) recommendation. The NHA General Manager through a letter dated 29 August 1991 informed the contractor of the rescission of his contract for the development of the said project upon his receipt thereof without prejudice to NHA's enforcing its right under the contract in view of the contractor's unilateral and unauthorized suspension of the contract works amounting to abandonment of the project. Despite the rescission notice issued by the NHA per letter dated 29 August 1991, the contractor continued working intermittently with very minimal workforce until such time as the award of remaining infrastructure works is effected by NHA to another contractor.[10]

In March 1992, the NHA Board of Directors, per Resolution No. 2453, approved the mutual termination of the A.C. Cruz Construction contract and awarded the remaining work to Triad Construction and Development Corporation (Triad). The contract amount for the remaining work was ₱9,554,837.32.[11] Thereafter, representatives from A.C. Cruz Construction, Triad and NHA-Bacolod conducted a joint measurement at the site to determine the total accomplishment of A.C. Cruz Construction inclusive of accomplishments after NHA inventory.

The Project Office was subsequently informed by the Central Office that the accomplishments made by A.C. Cruz Construction after the NHA inventory would be paid directly to said contractor by Triad. As of 27 March 1992, Triad had issued checks in favor of A.C. Cruz Construction amounting to One Million Pesos (₱1,000,000.00) which were received by Arceo M. Cruz per Official Receipt No. 3003.[12]

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[9] *Id.*

[10] *Id.* at 233-234.

[11] *Id.* at 9.

[12] *Id.* at 235.

In its Memorandum dated 22 June 1992, the Regional Projects Department recommended to the General Manager that the fund settlement to A.C. Cruz Construction be effected.[13]

Thereafter, Triad discovered that certain work items that had been in under the inventory report as accomplished and acceptable were in fact non-existent. Fajutag, Jr. brought these irregularities to the attention of the Commission on Audit (COA).

After its special audit investigation, the COA uncovered some anomalies, among which, are ghost activities, specifically the excavation of unsuitable materials and road filling works and substandard, defective workmanship. Laboratory tests confirmed the irregularities.[14]

Further, according to the COA, while it is true that the fourth billing of A.C. Cruz Construction had not been paid its accomplishments after the August 1991 inventory found acceptable by NHA amounting to ₱896,177.08 were paid directly by Triad. Effectively, A.C. Cruz Construction had been overpaid by as much as ₱232,628.35, which amount is more than the net payment due per the computation of the unpaid fourth billing.[15]

Consequently, petitioner, as manager of the Regional Projects Department and Chairman of the Inventory and Acceptance Committee, and other NHA officials were charged in an Information[16] dated 5 March 2001, worded as follows:

INFORMATION

The undersigned Ombudsman Prosecutor II of the Office of the Ombudsman-Visayas, accuses ROBERT P. BALAO, FELICISIMO F. LAZARTE, JR., VIRGILIO V. DACALOS, JOSEPHINE O. ANGSICO, JOSEPHINE T. ESPINOSA, NOEL H. LOBRIDO AND ARCEO C. CRUZ for VIOLATION OF SECTION 3 (e) of REPUBLIC ACT No. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

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[13] *Id.*

[14] *Id.* at 236-237.

[15] *Id.* at 119.

[16] *Id.* at 63-64; Dated 5 March 1991.

> That in or about the month of March, 1992 at Bacolod City, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, above-named accused, ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA, and NOEL H. LOBRIDO, Public Officers, being the General Manager, Team Head, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused ARCEO C. CRUZ, a private individual and General Manager of A.C. Cruz Construction with address at 7486 Bagtikan Street, Makati City with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to A.C. Construction public funds in the amount of TWO HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED TWENTY-EIGHT PESOS and THIRTY-FIVE CENTAVOS (₱232,628.35) PHILIPPINE CURRENCY, supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact no such works were undertaken by A.C. Construction as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to accused Arceo C. Cruz and A.C. Construction and themselves to the damage and prejudice of the government.
>
> CONTRARY TO LAW.[17]

On 2 October 2006, petitioner filed a motion to quash the Information raising the following grounds: (1) the facts charged in the information do not constitute an offense; (2) the information does not conform substantially to the prescribed form; (3) the constitutional rights of the accused to be informed of the nature and cause of the accusations against them have been violated by the inadequacy of the information; and (4) the prosecution failed to determine the individual participation of all the accused

[17] *Id.* at 63-64.

in the information in disobedience with the Resolution dated 27 March 2005.[18]

On 2 March 2007, the Sandiganbayan issued the first assailed resolution denying petitioner's motion to quash. We quote the said resolution in part:

Among the accused-movants, the public officer whose participation in the alleged offense is specifically mentioned in the May 30, 2006 Memorandum is accused Felicisimo Lazarte, Jr., the Chairman of the Inventory and Acceptance Committee (IAC), which undertook the inventory and final quantification of the accomplishment of A.C. Cruz Construction. The allegations of Lazarte that the IAC, due to certain constraints, allegedly had to rely on the reports of the field engineers and/or the Project Office as to which materials were actually installed; and that he supposedly affixed his signature to the IAC Physical Inventory Report and Memoranda dated August 12, 1991 despite his not being able to attend the actual inspection because he allegedly saw that all the members of the Committee had already signed are matters of defense which he can address in the course of the trial. Hence, the quashal of the information with respect to accused Lazarte is denied for lack of merit.

WHEREFORE, in view of the foregoing, the Court hereby resolves as follows:

(1) Accused Robert Balao, Josephine Angsico and Virgilio Dacalos' Motion to Admit Motion to Quash dated October 4, 2006 is **GRANTED;** the Motion to Quash dated October 4, 2006 attached thereto, is **GRANTED.** Accordingly, the case is hereby **DISMISSED** insofar as the said accused-movants are concerned.

(2) The Motion to Quash dated October 2, 2006 of accused Engr. Felicisimo F. Lazarte, Jr. is hereby **DENIED** for lack of merit. Let the arraignment of the accused proceed as scheduled on March 13, 2007.

SO ORDERED. [19]

Subsequently, the Sandiganbayan issued the second assailed resolution denying petitioner's motion for reconsideration. Pertinently, it held:

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[18] *Id.* at 134-135.

[19] *Id.* at 56-57.

The Motion for Reconsideration of accused Lazarte, Jr. merely reiterated the grounds and arguments which had been duly considered and passed upon in the assailed Resolution. Nonetheless, after a careful review of the same, the Court still finds no cogent reason to disturb the finding of probable cause of the Office of the Ombudsman to indict accused Lazarte, Jr., Espinosa, Lobrido and Cruz of the offense charged. In its Memorandum dated July 27, 2004 and May 30, 2006, the prosecution was able to show with sufficient particularity the respective participation of the aforementioned accused in the commission of the offense charged. The rest of the factual issues by accused Lazarte, Jr. would require the presentation of evidence in the course of the trial of this case.

The Court also maintains the validity and sufficiency of the information against accused Lazarte, Jr., Espinosa, Lobrido and Cruz. The information has particularly alleged the ultimate facts constituting the essential elements of the offense charged which are as follows:

1. that accused Lazarte, Jr., Espinosa, and Lobrido are public officers being the Department Manager, Project Management Officer A, and Supervising Engineer of the NHA during the time material in the criminal information; and

2. that the said accused, in their respective official capacities and in conspiracy with accused Cruz, a private individual and the General manager of A.C. Cruz Construction, have acted with manifest partiality or evident bad faith and have given unwarranted benefits, preference, and advantage to Arceo C. Cruz and A.C. Cruz Construction or have caused damage and prejudice to the government, by "[causing] to be paid A.C. Cruz Construction public funds in the amount of Two Hundred Thirty-Two Thousand Six Hundred Twenty-Eight Pesos and Thirty-Five Centavos (₱232,628.35) supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by A.C. Cruz Construction as revealed by the Special Audit conducted by the Commission on Audit."

The other factual details which accused Lazarte, Jr. cited are matters of evidence best threshed out in the course of the trial.[20]

Hence, the instant petition which is a reiteration of petitioner's submissions. Petitioner ascribes grave abuse of discretion

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[20] *Id.* at 61-62.

amounting to lack or excess of jurisdiction to the Sandiganbayan in: (1) upholding the validity and sufficiency of the Information despite its failure to make out an offense and conform to the prescribed form; (2) denying his motion to quash considering that the remaining averments in the Information have been rendered unintelligible by the dismissal of the charges against some of his co-accused; and (3) using as bases the Prosecution's Memoranda dated 27 July 2004 and 30 May 2006 to supplement the inadequacies of the Information. In addition, petitioner avers that his constitutional right to be informed of the nature and cause of the accusation against him had been violated for failure of the Information to specify his participation in the commission of the offense. Petitioner also argues that the facts charged in the Information do not constitute an offense as no damage or injury had been made or caused to any party or to the government. Finally, petitioner maintains that the Sandiganbayan lost its jurisdiction over him upon the dismissal of the charges against his co-accused as the remaining accused are public officers whose salary grade is below 27.

In its Comment[21] dated 21 December 2007, the Office of the Ombudsman, through the Office of the Special Prosecutor, counters that separate allegations of individual acts perpetrated by the conspirators are not required in an Information and neither should they be covered by evidence submitted to establish the existence of probable cause. Allegations regarding the nature and extent of petitioner's participation and justification for his acts which constitute the offense charged are evidentiary matters which are more properly addressed during trial. The Ombudsman reiterates our ruling in *Ingco v. Sandiganbayan*[22] that the fundamental test in reflecting on the viability of a motion to quash is the sufficiency of the averments in the information that is, whether the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined by law. And relying on the case of *Domingo v. Sandiganbayan*,[23]

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[21] *Id.* at 229-250.

[22] 38 Phil. 1061 (1997).

[23] 379 Phil. 708 (2000).

the Ombudsman states that informations need only state the ultimate facts; the reasons therefor are to be proved during the trial.[24] The Ombudsman moreover maintains that the Sandiganbayan has jurisdiction over petitioner. The Ombudsman argues that it is of no moment that petitioner's position is classified as salary grade 26 as he is a manager within the legal contemplation of paragraph 1(g), Section 4(a) of Republic Act No. 8249.[25]

In his Reply[26] dated 9 October 2008, petitioner strongly asseverates that, according to the Constitution, in a conspiracy indictment the participation of each accused in the so-called conspiracy theory should be detailed in order to apprise the accused of the nature of the accusation against them in relation to the participation of the other accused. A general statement that all the accused conspired with each other without stating the participation of each runs afoul of the Constitution.[27] Petitioner

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[24] *Id.* at 1071.

[25] OTHERWISE KNOWN AS "AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED" which pertinently states:

SEC. 4. Section 4 of the same decree is hereby further amended to read as follows:

SEC. 4. *Jurisdiction*. — The Sandiganbayan shall exercise original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense;

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 'Grade 27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x x x x x x

(g) Presidents, directors or trustees, or managers of government-owned and controlled corporations, state universities or educational institutions or foundations.

[26] *Id.* at 253-272.

[27] *Id.* at 257.

adds that the ultimate facts intended by law refer to determinate facts and circumstances which should become the basis of the cause of action; statement of facts which would be in complete accord with the constitutional requirement of giving the accused sufficient information about the nature and the cause of the accusation against him.[28] Petitioner also avers that the Ombudsman's reliance on and citation of the cases of *Ingco v. Sandiganbayan*[29] and *Domingo v. Sandiganbayan*[30] is misplaced and misleading.

Petitioner's main argument is that the Information filed before the Sandiganbayan insufficiently averred the essential elements of the crime charged as it failed to specify the individual participation of all the accused.

The Court is not persuaded. The Court affirms the resolutions of the Sandiganbayan.

At the outset, it should be stressed that the denial of a motion to quash is not correctible by *certiorari*. Well-established is the rule that when a motion to quash in a criminal case is denied, the remedy is not a petition for *certiorari* but for petitioners to go to trial without prejudice to reiterating the special defenses invoked in their motion to quash. Remedial measures as regards interlocutory orders, such as a motion to quash, are frowned upon and often dismissed. The evident reason for this rule is to avoid multiplicity of appeals in a single court.[31]

This general rule, however, is subject to certain exceptions. If the court, in denying the motion to dismiss or motion to quash acts without or in excess of jurisdiction or with grave abuse of discretion, then *certiorari* or prohibition lies.[32] And in

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[28] *Id.* at 259.

[29] *Supra* note 22.

[30] *Supra* note 24.

[31] *Serana v. Sandiganbayan*, G.R. No. 162059, 22 January 2008, 542 SCRA 224, 236.

[32] *Id.* citing *Newsweek, Inc. v. IAC*, G.R. No. 63559, 30 May 1986, 142 SCRA 171.

the case at bar, the Court does not find the Sandiganbayan to have committed grave abuse of discretion.

The fundamental test in reflecting on the viability of a motion to quash on the ground that the facts charged do not constitute an offense is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in law.[33] Matters *aliunde* will not be considered.[34]

Corollarily, Section 6 of Rule 110 of the Rules of Court states that:

SEC. 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be included therein must be determined by reference to the definition and elements of the specific crimes.[35]

The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison d'etre* of the rule is to enable the accused to suitably prepare his defense.[36] Another

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[33] *Cabrera v. Sandiganbayan*, 484 Phil. 350, 359 (2004).

[34] *People of the Philippines v. Hon. Teresita Dizon-Capulong,* G.R. No. 106424, 18 June 1996, 257 SCRA 430, 445.

[35] *Serapio v. Sandiganbayan (Third Division),* 444 Phil. 499, 522 (2003).

[36] *Miranda v. Hon. Sandiganbayan,* G.R. No. 154098, 27 July 2005, 464 SCRA 165, 188-189.

purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.[37]

Pertinently, Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, reads:

> 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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> x x x x x x x x x
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> (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.[38]

The essential elements for violation of Section 3(e) of R.A. No. 3019 are as follows:

> 1. The accused is a public officer or private person charged in conspiracy with him;
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> 2. Said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position;
>
> 3. He causes undue injury to any party, whether the government or private party;
>
> 4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
>
> 5. The public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[39]

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[37] *Serapio v. Sandiganbayan (Third Division), supra.*

[38] Republic Act No. 3019 (1960), Sec. 3(e).

[39] *Cabrera v. Sandiganbayan,* 484 Phil. 350, 360 (2004).

The Court finds that the Information in this case alleges the essential elements of violation of Section 3(e) of R.A. No. 3019. The Information specifically alleges that petitioner, Espinosa and Lobrido are public officers being then the Department Manager, Project Management Officer A and Supervising Engineer of the NHA respectively; in such capacity and committing the offense in relation to the office and while in the performance of their official functions, connived, confederated and mutually helped each other and with accused Arceo C. Cruz, with deliberate intent through manifest partiality and evident bad faith gave unwarranted benefits to the latter, A.C. Cruz Construction and to themselves, to the damage and prejudice of the government. The felonious act consisted of causing to be paid to A.C. Cruz Construction public funds in the amount of ₱232,628.35 supposedly for excavation and road filling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by said construction company as revealed by the Special Audit conducted by COA.

On the contention that the Information did not detail the individual participation of the accused in the allegation of conspiracy in the Information, the Court underscores the fact that under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition.[40]

When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. But when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar, there is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. The conspiracy is significant only because it changes the criminal liability of all the accused

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[40] *Estrada v. Sandiganbayan*, 427 Phil. 820, 853-854 (2002).

in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liability of the conspirators is collective and each participant will be equally responsible for the acts of others, for the act of one is the act of all.[41]

Notably, in *People v. Quitlong*,[42] as pointed out by respondent, the Court ruled on how conspiracy as a mode of committing the offense should be alleged in the Information, *viz*:

> x x x Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others. Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.
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> A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient "if it follows the words of the statute and reasonably informs the accused of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them (15A C.J.S. 842-844).
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> x x x Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to

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[41] *Estrada v. Sandiganbayan*, 427 Phil. 820, 860 (2002).

[42] 354 Phil. 372 (1998).

commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words "conspired" or "confederated" or the phrase "acting in conspiracy," must aptly appear in the information in the form of definitive acts constituting conspiracy. In fine, the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as either by the use of the term "conspire" or its derivatives and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it. In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be inferred from shown acts and conduct of the accused.[43]

In addition, the allegation of conspiracy in the Information should not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of the evidence on the conspiracy is not necessary in the Information.[44]

The other details cited by petitioner, such as the absence of any damage or injury caused to any party or the government, likewise are matters of evidence best raised during trial.

As to the contention that the residual averments in the Information have been rendered unintelligible by the dismissal of the charges against some of his co-accused, the Court finds that the Information sufficiently makes out a case against petitioner and the remaining accused.

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[43] *Id.* at 388-390.

[44] *Estrada v. Sandiganbayan,* 427 Phil. 820, 862 (2002).

With regard to the alleged irregular use by the Sandiganbayan of the Prosecution's Memoranda dated 27 July 2004 and 30 May 2006 to supplement the inadequacies of the Information, the Court finds adequate its explanation in the first assailed resolution, to wit:

> It may be recalled that a reinvestigation of the case was ordered by this Court because the prosecution failed to satisfactorily comply with an earlier directive of the former Chairperson and Members of the First Division, after noting the inadequacy of the information, to clarify the participation of each of the accused. In ordering the reinvestigation, the Court noted that the prosecution's July 27, 2004 Memorandum did not address the apprehensions of the former Chairperson and Members of the First Division as to the inadequacy of the allegations in the information.
>
> This time, despite a reinvestigation, the prosecution's Memorandum dated May 30, 2006 still failed to specify the participation of accused-movants Balao, Angsico and Dacalos. The most recent findings of the prosecution still do not address the deficiency found by the Court in the information. The prosecution avers that pursuant to Section 3, Rule 117 of the Rules of Court, in determining the viability of a motion to quash based on the ground of "facts charged in the information do not constitute an offense," the test must be whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime as defined by law. The prosecution contends that matter *aliunde* should not be considered. However, in the instant case, the Court has found the information itself to be inadequate, as it does not satisfy the requirements of particularly alleging the acts or omissions of the said accused-movants, which served as the basis of the allegation of conspiracy between the aforementioned accused-movants and the other accused, in the commission of the offense charged in the information.[45]

Finally, the Court sustains the Sandiganbayan's jurisdiction to hear the case. As correctly pointed out by the Sandiganbayan, it is of no moment that petitioner does not occupy a position with Salary Grade 27 as he was a department manager of the NHA, a government-owned or controlled corporation, at the time of the commission of the offense, which position falls

[45] *Rollo*, p. 55.

within the ambit of its jurisdiction. Apropos, the Court held in the case of *Geduspan v. People*[46] which involved a regional Manager/Director of Region VI of the Philippine Health Insurance Corporation (Philhealth) with salary grade 26, to wit:

It is of no moment that the position of petitioner is merely classified as salary grade 26. While the first part of the above–quoted provision covers only officials of the executive branch with the salary grade 27 and higher, the second part thereof "specifically includes" other executive officials whose positions may not be of grade 27 and higher but who are by express provision of law placed under the jurisdiction of the said court.

Hence, respondent court is vested with jurisdiction over petitioner together with Farahmand, a private individual charged together with her.

The position of manager in a government-owned or controlled corporation, as in the case of Philhealth, is within the jurisdiction of respondent court. It is the position that petitioner holds, not her salary grade, that determines the jurisdiction of the Sandiganbayan.

This Court in *Lacson v. Executive Secretary, et al*. ruled:

A perusal of the aforequoted Section 4 of R.A. 8249 reveals that to fall under the exclusive jurisdiction of the Sandiganbayan, the following requisites must concur: (1) the offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act), (b) R.A. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, book II of the Revised Penal Code (the law on bribery), (d) Executive Order Nos. 1, 2, 14, and 14-A, issued in 1986 (sequestration cases), or (e) other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c), and (e) is a public official or employee holding any of the positions enumerated in paragraph a of section 4; and (3) the offense committed is in relation to the office.

To recapitulate, petitioner is a public officer, being a department manager of Philhealth, a government-owned and controlled corporation. The position of manager is one of those mentioned in paragraph a, Section 4 of RA 8249 and the offense for which she

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[46] G.R. No. 158187, 11 February 2005, 451 SCRA 187.

was charged was committed in relation to her office as department manager of Philhealth. Accordingly, the Sandiganbayan has jurisdiction over her person as well as the subject matter of the case.[47]

WHEREFORE, premises considered, the instant petition is *DISMISSED*. The Resolutions dated 2 March 2007 and 18 October 2007 of the First Division of the Sandiganbayan are *AFFIRMED.*

SO ORDERED.

Quisumbing, Acting C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, and *Brion, JJ.,* concur.

Leonardo-de Castro and *Peralta, JJ.,* no part.

Puno, C.J. on official leave.

EN BANC

[G.R. No. 180492. March 13, 2009]

ELPIDIO B. VALINO, *petitioner, vs.* **ALVIN P. VERGARA, TOMAS N. JOSON III, RAUL P. MENDOZA, ATTY. HAROLD A. RAMOS, *et al.*,*** *respondents.*

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[47] *Id.* at 192-193.

* Petitioner failed to properly and particularly implead all the respondents in this case. However, per Reply of the petitioner dated July 22, 2008 (*rollo*, pp. 169-184, at 170), he manifested that he was not merely charging respondents Alvin P. Vergara and COMELEC officer Atty. Harold A. Ramos but also all other elected and defeated candidates, party mates and their respective supporters, and all deputized personnel and agents of the COMELEC who caused and/or allowed the posting and installation of illegal propaganda materials within the designated polling places of Cabanatuan City.

SYLLABUS

1. **POLITICAL LAW; ELECTIONS; COMELEC; THE DETERMINATION OF THE MERITS OF A PRE-PROCLAMATION CASE INVOLVES THE EXERCISE OF ADJUDICATORY POWERS; QUASI-JUDICIAL POWER, EXPLAINED. —** We acknowledge that Resolution No. 8212 is an issuance in the exercise of the COMELEC's adjudicatory or quasi-judicial function pursuant to the second paragraph of Section 16 of R.A. No. 7166. The determination by the COMELEC of the merits of a pre-proclamation case definitely involves the exercise of adjudicatory powers, wherein the COMELEC examines and weighs the parties' pieces of evidence *vis-à-vis* their respective arguments, and considers whether, on the basis of the evidence thus far presented, the case appears to have merit. Where a power rests in judgment or discretion, so that the exercise thereof is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE JUDGMENT OR FINAL ORDER OF THE COMMISSION ON ELECTIONS; FAILURE OF THE PARTY TO SEASONABLY UNDERTAKE THE PROPER RECOURSE IS FATAL TO HIS CAUSE. —** Petitioner's pre-proclamation case was not in the list annexed to Resolution No. 8212. Simply put, the COMELEC *en banc,* in Resolution No. 8212, found petitioner's case unmeritorious and, thus, excluded it from the list of cases that would remain active beyond June 30, 2007. Accordingly, petitioner could no longer expect any favorable ruling from the COMELEC *en banc*. The appropriate recourse of petitioner should have been a petition for *certiorari* filed before this Court within thirty (30) days from notice of Resolution No. 8212, pursuant to Sections 2 and 3, Rule 64 in connection with Rule 65 of the Rules of Civil Procedure. However, petitioner failed to do so and, instead, filed a motion for reconsideration addressed to the COMELEC *en banc* through its Second Division. The failure of the petitioner to seasonably undertake the proper recourse before this Court is fatal to his cause.

3. POLITICAL LAW; ELECTIONS; 1993 COMELEC RULES OF PROCEDURE; MOTION FOR RECONSIDERATION OF AN *EN BANC* RULING IS A PROHIBITED PLEADING EXCEPT IN CASES INVOLVING ELECTION OFFENSES. — The filing of his Motion for Reconsideration is of no moment. Section 1(d), Rule 13 of the 1993 COMELEC Rules of Procedure categorically prohibits a motion to reconsider a resolution of the COMELEC *en banc* except in cases involving election offenses. As held in *Bautista v. COMELEC*: We hold that petitioner acted correctly in filing the present petition because the resolution of the COMELEC in question is not subject to reconsideration and, therefore, any party who disagreed with it only had one recourse, and that was to file a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. Rule 13, §1 of the COMELEC Rules of Procedure provides: *What Pleadings are Not Allowed*. — The following pleadings are not allowed: x x x d) motion for reconsideration of an *en banc* ruling, resolution, order or decision except in election offense cases; x x x As the case before the COMELEC did not involve an election offense, reconsideration of the COMELEC resolution was not possible and petitioner had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. For him to wait until the COMELEC denied his motion would be to allow the reglementary period for filing a petition for *certiorari* with this Court to run and expire.

4. REMEDIAL LAW; RULES OF PROCEDURE; NOT TO BE DISDAINED AS MERE TECHNICALITIES. — Time and again, we held that rules of procedure exist for a noble purpose, and to disregard such rules, in the guise of liberal construction, would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation; they help provide a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules. We see no cogent reason why we should exempt petitioner's case from this doctrine.

5. **ID.; CIVIL PROCEDURE; A RESOLUTION WHICH HAD BECOME FINAL AND EXECUTORY IS BEYOND THE PURVIEW OF THE COURT TO ACT UPON. —** Based on the foregoing disquisitions, Resolution No. 8212, with respect to petitioner, had already become final and executory and, therefore, beyond the purview of this Court to act upon.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE OFFICE THEREOF IS NOT THE CORRECTION OF SIMPLE ERRORS OF JUDGMENT BUT CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AMOUNTING TO LACK OF JURISDICTION, OR ARBITRARY AND DESPOTIC EXERCISE OF POWER BECAUSE OF PASSION OR PERSONAL HOSTILITY. —** Well-entrenched in this jurisdiction is the principle that the office of a petition for *certiorari* is not the correction of simple errors of judgment but capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility. In this regard, the COMELEC did not commit grave abuse of discretion in treating petitioner's case as a pre-proclamation controversy and in excluding the same, due to lack of merit, from the list annexed to Resolution No. 8212. This is consistent with the policy that pre-proclamation controversies should be summarily decided, consonant with the law's desire that the canvass and proclamation be delayed as little as possible. In the present case, the petition does not, in fact, ascribe grave abuse of discretion nor does it sufficiently show that the COMELEC gravely abused its discretion in excluding his case from the list of those that shall continue. Apart from petitioner's bare allegations, the record is bereft of any evidence to prove that petitioner's pre-proclamation case appears meritorious and warrants the annulment of the proclamation of Vergara as elected mayor of the city and of other respondents who were likewise elected and proclaimed but were not impleaded herein with particularity.

7. **POLITICAL LAW; ELECTIONS; COMELEC; REMEDIES AVAILABLE TO A PARTY *VIS-À-VIS* COMELEC RESOLUTION NO. 8212; GUIDELINES. —** Admittedly, the advent of COMELEC Resolution No. 8212 caused a measure of confusion among party litigants and even among lawyers. This is the reason why, in *Patalinghug v. Commission on*

Elections, we took the opportunity, for the guidance of the members of the bench and bar, to set the following guidelines: *First*, **if a pre-proclamation case is excluded from the list of those** (annexed to the *Omnibus Resolution on Pending Cases*) **that shall continue after the beginning of the term of the office involved,** the remedy of the aggrieved party is to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65, regardless of whether a COMELEC division is yet to issue a definitive ruling in the main case or the COMELEC *en banc* is yet to act on a motion for reconsideration filed if there is any. It follows that if the resolution on the motion for reconsideration by the *banc* precedes the exclusion of the said case from the list, what should be brought before the Court on *certiorari* is the decision resolving the motion. *Second*, **if a pre-proclamation case is dismissed by a COMELEC division and,** ***on the same date of dismissal or within the period to file a motion for reconsideration,*** **the COMELEC *en banc* excluded the said case from the list annexed to the Omnibus Resolution**, the remedy of the aggrieved party is also to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65. The aggrieved party need no longer file a motion for reconsideration of the division ruling. The rationale for this is that the exclusion by the COMELEC *en banc* of a pre-proclamation case from the list of those that shall continue is already deemed a final dismissal of that case not only by the division but also by the COMELEC *en banc*. As already explained earlier, the aggrieved party can no longer expect any favorable ruling from the COMELEC. And *third*, **if a pre-proclamation case is dismissed by a COMELEC division but,** ***on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC en banc included the case in the list annexed to the Omnibus Resolution****,* the remedy of the aggrieved party is to timely file a motion for reconsideration with the COMELEC *en banc*. The reason for this is that the challenge to the ruling of the COMELEC division will have to be resolved definitively by the entire body. These guidelines — and Section 16, R.A. No. 7166 - notwithstanding, we are constrained to express the view that the COMELEC should rule on pre-proclamation cases individually, even if the ruling is simply couched in a minute resolution. This will dispel qualms about lack of adequate notice

to party litigants, and obviate the confusion that generally results from the issuance of omnibus resolutions. In all, such a practice would be consistent with the constitutional principle of transparency, and lend itself to greater public confidence in our electoral system.

APPEARANCES OF COUNSEL

Eriberto S. Guerrero and *LMD Law Office* for petitioner.
Edgardo G. Villarin for A.P. Vergara.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for *Certiorari* under Rule 65 of the Rules of Civil Procedure, seeking the annulment of (a) the June 28, 2007 Resolution No. 8212[2] or the Omnibus Resolution on Pending Cases issued by the Commission on Elections (COMELEC) *en banc* (Resolution No. 8212) and (b) the October 18, 2007 Order[3] of the COMELEC Second Division (assailed Order).

The Facts

In the May 14, 2007 national and local elections, petitioner Elpidio B. Valino (petitioner), together with respondents Alvin P. Vergara (Vergara), Tomas N. Joson III (Joson) and Raul P. Mendoza (Mendoza) (respondents), vied for the local position of mayor in Cabanatuan City, Nueva Ecija (the City).[4] During the campaign period, petitioner complained about the illegal display and installation of campaign posters, streamers and other materials in all polling places, streets and highways of the City by local and national candidates. On May 8, 2007, petitioner

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[1] *Rollo,* pp. 3-9.

[2] *Id.* at 64-66.

[3] *Id.* at 69-79.

[4] *Id.* at 11-12.

wrote respondent Atty. Harold Ramos (Atty. Ramos), Election Officer of the COMELEC-Cabanatuan, about these violations and reminded the latter of his duty to remove illegal campaign materials and to impose sanctions on the erring candidates.[5] Petitioner also wrote Police Superintendent Eliseo D.C. Cruz (P/Supt. Cruz), City Chief of Police, on May 11, 2007, reiterating his complaint and demanding that the clean-up drive against illegal campaign materials be continuously implemented up to May 14, 2007.[6] On May 13 and 14, 2007, petitioner took pictures of several polling places showing the violations committed by respondents and other candidates.[7] No action was taken by anyone to remove the illegal campaign materials.

After the elections, Vergara won and was proclaimed City Mayor.[8] On May 25, 2007, petitioner filed with the COMELEC a Petition[9] for Violation of Republic Act (R.A.) No. 9006, otherwise known as the Fair Election Act, against respondents, docketed as Special Case (SPC) No. 07-152 (SPC 07-152). The petition sought the cancellation of the proclamation of respondent Vergara and the other elected city officials, and enjoined them from exercising their respective duties as elected city officials, for having intentionally caused the installation of illegal campaign materials outside the authorized common poster areas in violation of the law. The case was raffled to the COMELEC Second Division.

On June 28, 2007, the COMELEC *en banc* issued Resolution No. 8212 pursuant to Section 16 of R.A. No. 7166,[10] and SPC

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[5] *Id.* at 15.

[6] *Id.* at 16.

[7] *Id.* at 17-52.

[8] *Id.* at 53.

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

[10] Sec. 16 of R.A. No. 7166 reads:

SECTION 16. *Pre-proclamation Cases Involving Provincial, City and Municipal Offices.* — Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

No. 07-152 was not included in the list of pre-proclamation cases that shall remain active after June 30, 2007. Petitioner alleged that he came to know of Resolution No. 8212 from the newspaper, Manila Bulletin,[11] published on July 9, 2007, with its headline "Hundreds of Poll Cases Dismissed" by the COMELEC. Petitioner also alleged that he personally received a photocopy of the Resolution on July 16, 2007, and was advised that SPC 07-152 was already dismissed by the COMELEC Second Division.[12]

Aggrieved, petitioner, on July 18, 2007, without the assistance of counsel, filed a Motion for Reconsideration[13] praying that SPC 07-152 be included in the list of active cases, and the proceedings therein continue beyond June 30, 2007. Petitioner asseverated that he filed the Motion with the COMELEC *en banc* through its Second Division, claiming that only the COMELEC *en banc*, which issued Resolution No. 8212, had the jurisdiction to resolve his Motion. Petitioner, however, received no reply from the COMELEC *en banc*. Subsequently, on August 21, 2007 and October 4, 2007, petitioner filed a Manifestation and Motion,[14] and an Urgent Omnibus Motion,[15] respectively, reiterating his Motion for Reconsideration, but no immediate reply came from the COMELEC.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for *certiorari*. (Emphasis supplied.)

[11] *Rollo,* pp. 186-187.

[12] Reply dated July 22, 2008; *id.* at 169-184.

[13] *Id.* at 54-55.

[14] *Id.* at 57-59.

[15] *Id.* at 60-63.

On October 18, 2007, the COMELEC Second Division issued the assailed Order, forwarding to the Clerk of the COMELEC the original case folder of SPC 07-152, being a pre-proclamation case considered not to have survived pursuant to Resolution No. 8212. Petitioner averred that he received a copy of the assailed Order on November 13, 2007.[16] Hence, on November 28, 2007, petitioner filed the instant petition before this Court, assigning the following errors:

1. Violation of the due process clause of the Constitution;
2. Failure of the COMELEC to follow the prescribed laws regarding cases of disqualification and hearing thereof;
3. The complaint filed by the Petitioner is not among those considered pre-proclamation cases dismissed by the COMELEC; and
4. The COMELEC as the leading Constitutional Body tasked to implement Election Laws but which [was] not followed by its authorized representatives in Cabanatuan City, Province of Nueva Ecija.[17]

Petitioner argues that he was denied due process because no initial hearing or preliminary investigation was conducted on his petition to determine the guilt of respondents for violation of election laws. Petitioner adds that Resolution No. 8212 was issued only to accommodate and meet the deadline for the proclamation of duly elected officials at the expense of due process; and of honest, fair and credible elections. Moreover, petitioner alleges that Atty. Ramos and respondents conspired to circumvent the law in favor of Vergara by being silent about the complaint of petitioner. Lastly, petitioner manifests that Atty. Ramos, in dereliction of duty and with gross negligence, succumbed to the pressures, whims and caprices of respondents; and failed to conduct a summary hearing to resolve the complaint, without giving a formal notice to any of respondents and ordering the removal of their respective illegal campaign materials.[18]

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[16] Affidavit of Service dated January 17, 2008; *id.* at 109.

[17] Petitioner's Memorandum dated November 6, 2008; *id.* at 215-238.

[18] *Id.*

Only respondents Vergara and the COMELEC, through the Office of the Solicitor General (OSG), filed their comments and, subsequently, their respective memoranda. In our Resolution of February 24, 2009, we dispensed with the other respondents' memoranda.

Vergara claims that he was not charged with an election offense; that Atty. Ramos and P/Supt. Cruz did not send any notice to him requiring him to remove the alleged offending campaign materials; and that he was not aware at all of their existence. Vergara submits that the instant petition is insufficient in form and substance; hence, it ought to be dismissed.[19]

The COMELEC, through the OSG, reiterates the rule that a decision, order or resolution issued by a division of the COMELEC must be elevated first to the COMELEC *en banc* via a motion for reconsideration, and it is the final decision of the COMELEC *en banc* that can be brought to the Supreme Court on *certiorari* pursuant to Section 7,[20] Article IX-A of the 1987 Constitution; that petitioner does not dispute his failure to elevate the assailed Order of the COMELEC Second Division to the COMELEC *en banc*; and that this Court has no power to review via *certiorari* an interlocutory order or even a final resolution of a division of the COMELEC. The OSG postulates that a motion for reconsideration is the plain and adequate remedy under the law and, thus, the failure of petitioner to comply with this mandatory procedural requirement constitutes a ground for the dismissal of the instant petition.[21]

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[19] Vergara's Comment dated February 12, 2008; *id.* at 125-133.

[20] Sec. 7, Art. IX-A of the Constitution reads:

Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[21] OSG's Memorandum dated November 14, 2008; *rollo,* unpaged.

Our Ruling

The instant petition is bereft of merit.

We acknowledge that Resolution No. 8212 is an issuance in the exercise of the COMELEC's adjudicatory or quasi-judicial function pursuant to the second paragraph of Section 16[22] of R.A. No. 7166. The determination by the COMELEC of the merits of a pre-proclamation case definitely involves the exercise of adjudicatory powers, wherein the COMELEC examines and weighs the parties' pieces of evidence *vis-à-vis* their respective arguments, and considers whether, on the basis of the evidence thus far presented, the case appears to have merit. Where a power rests in judgment or discretion, so that the exercise thereof is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.[23]

Petitioner's pre-proclamation case was not in the list annexed to Resolution No. 8212. Simply put, the COMELEC *en banc,* in Resolution No. 8212, found petitioner's case unmeritorious and, thus, excluded it from the list of cases that would remain active beyond June 30, 2007. Accordingly, petitioner could no longer expect any favorable ruling from the COMELEC *en banc*. The appropriate recourse of petitioner should have been a petition for *certiorari* filed before this Court within thirty (30) days from notice of Resolution No. 8212, pursuant to Sections 2[24] and 3,[25] Rule 64 in connection with Rule 65 of the Rules of

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[22] *Supra* note 10.

[23] *Cipriano v. Commission on Elections*, 479 Phil. 677, 691 (2004).

[24] Sec. 2, Rule 64 of the Rules of Court provides:

SEC. 2. *Mode of review*. — A judgment or final order **or resolution of the Commission on Elections** and the Commission on Audit **may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65**, except as hereinafter provided. (Emphasis supplied.)

[25] Sec. 3, Rule 64 of the Rules of Court reads:

SEC. 3. *Time to file petition*. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment

Civil Procedure. However, petitioner failed to do so and, instead, filed a motion for reconsideration addressed to the COMELEC *en banc* through its Second Division. The failure of the petitioner to seasonably undertake the proper recourse before this Court is fatal to his cause.

The filing of his Motion for Reconsideration is of no moment. Section 1(d), Rule 13 of the 1993 COMELEC Rules of Procedure categorically prohibits a motion to reconsider a resolution of the COMELEC *en banc* except in cases involving election offenses. As held in *Bautista v. COMELEC*:[26]

We hold that petitioner acted correctly in filing the present petition because the resolution of the COMELEC in question is not subject to reconsideration and, therefore, any party who disagreed with it only had one recourse, and that was to file a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. Rule 13, §1 of the COMELEC Rules of Procedure provides:

What Pleadings are Not Allowed. — The following pleadings are not allowed:

x x x x x x x x x

d) motion for reconsideration of an *en banc* ruling, resolution, order or decision except in election offense cases;

x x x x x x x x x

As the case before the COMELEC did not involve an election offense, reconsideration of the COMELEC resolution was not possible and petitioner had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. For him to wait until the COMELEC denied his motion would be to allow the reglementary period for filing a petition for *certiorari* with this Court to run and expire.[27]

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or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[26] 460 Phil. 459 (2003), citing *Angelia v. Commission on Elections*, 388 Phil. 560, 566 (2000).

[27] *Id.* at 472-473.

Time and again, we held that rules of procedure exist for a noble purpose, and to disregard such rules, in the guise of liberal construction, would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation; they help provide a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[28] We see no cogent reason why we should exempt petitioner's case from this doctrine.

Based on the foregoing disquisitions, Resolution No. 8212, with respect to petitioner, had already become final and executory and, therefore, beyond the purview of this Court to act upon.[29]

Ostensibly, petitioner's case before the COMELEC-Cabanatuan was a complaint against the respondents for installing illegal campaign materials outside the common poster areas and near the polling places, which is technically an election offense. When Atty. Ramos of the COMELEC-Cabanatuan and P/Supt. Cruz allegedly failed to act on the matter, petitioner went to the COMELEC. We observe, however, that petitioner, from the start, failed to avail himself of the proper procedure. Rule 34[30]

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[28] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385. (Citations omitted.)

[29] *Zacate v. Commission on Elections*, 405 Phil. 960, 972-973 (2001).

[30] Rule 34 of the 1993 COMELEC Rules of Procedure provides:

Rule 34 — Prosecution of Election Offenses

SECTION 1. Authority of the Commission to Prosecute Election Offenses. — The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.

SEC. 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. — The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation

of the 1993 COMELEC Rules of Procedure clearly lays down the legal steps in the prosecution of election offenses. In *Laurel*

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of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

SEC. 3. Initiation of Complaint. — Initiation of complaint for election offenses may be done *motu proprio* by the Commission, or upon written complaint by any citizen of the Philippines, candidate, registered political party, coalition of political parties or organizations under the party-list system or any accredited citizens' arms of the Commission.

SEC. 4. Form of Complaint and Where to File. — (a) When not initiated *motu proprio* by the Commission, the complaint must be verified and supported by affidavits and/or any other evidence. *Motu proprio* complaints may be signed by the Chairman of the Commission, or the Director of the Law Department upon direction of the Chairman, and need not be verified;

(b) The complaint shall be filed with the Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal. If filed with any of the latter three (3) officials, investigation thereof may be delegated to any of their assistants;

(c) If filed with the Regional Election Directors or Provincial Election Supervisors, said officials shall immediately furnish the Director of the Law Department a copy of the complaint and the supporting documents, and inform the latter of the action taken thereon.

SEC. 5. Referral for Preliminary Investigation. — If the complaint is initiated *motu proprio* by the Commission, or is filed with the Commission by any aggrieved party, it shall be referred to the Law Department for investigation. Upon direction of the Chairman of the Commission, the preliminary investigation may be delegated to any lawyer of said Department, or to any of the Regional Election Directors or Provincial Election Supervisors, or any lawyer of the Commission.

SEC. 6. Conduct of Preliminary Investigation. — (a) If on the basis of the complaint, affidavits and the supporting evidence, the investigating officer finds no ground to continue with the inquiry, he shall recommend the dismissal of the complaint and shall follow the procedure prescribed in Section 8(c) of this Rule. Otherwise, he shall issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents giving said respondent ten (10) days from receipt within which to submit counter-affidavits and other supporting documents. The respondent shall have the right to examine all other evidence submitted by the complainant.

(b) Such counter-affidavits and other supporting evidence submitted by the respondent shall be furnished by him to the complainant.

(c) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten-day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(d) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(e) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

SEC. 7. Presumption of Existence of Probable Cause. — A complaint initiated *motu proprio* by the Commission is presumed to be based on sufficient probable cause and the investigating officer must forthwith issue the subpoena mentioned in the immediately preceding section.

SEC. 8. Duty of Investigating Officer. — The preliminary investigation must be terminated within twenty (20) days after receipt of the counter-affidavits and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter.

(a) If the investigating officer finds no cause to hold the respondent for trial, he shall recommend dismissal of the complaint.

(b) If the investigating officer finds cause to hold the respondent for trial, he shall prepare the resolution, and the corresponding information wherein he shall certify under oath that he has examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence.

(c) In either case, the investigating officer shall, within five (5) days from the rendition of his recommendation, forward the records of the case to

1) The Director of the Law Department of the Commission in cases investigated by any of the Commission lawyers or field personnel, and

2) The State Prosecutor, Provincial Fiscal or City Fiscal, as the case may be, pursuant to the continuing authority provided for in Section 2 of this Rule.

SEC. 9. Duty of the Law Department, State Prosecutor, Provincial or City Fiscal Upon Receipt of Records. — (a) Within ten (10) days from receipt of the records stated in paragraph (c) of the immediately preceding section, the State Prosecutor, Provincial or City Fiscal shall take appropriate action thereon, immediately informing the parties of said action.

v. Presiding Judge, RTC-Manila, Br. 10,[31] we applied the aforementioned rule. For purposes of clarity, we enumerate the lapses of petitioner, who, perhaps due to the lack of assistance of a lawyer, failed to follow the rules.

First, when petitioner reported to Atty. Ramos and to P/Supt. Cruz the alleged illegally posted campaign materials, his respective

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(b) In cases investigated by the lawyers or the field personnel of the Commission, the Director of the Law Department shall review and evaluate the recommendation of said legal officer, prepare a report and make a recommendation to the Commission affirming, modifying or reversing the same shall be included in the agenda of the succeeding meeting *en banc* of the Commission. If the Commission approves the filing of an information in court against the respondent/s, the Director of the Law Department shall prepare and sign the information for immediate filing with the appropriate court.

(c) In all other cases, if the recommendation to dismiss or the resolution to file the case in court is approved by State Prosecutor, Provincial or City Fiscal, they shall likewise approve the Information prepared and immediately cause its filing with the proper court.

(d) If the recommendation to dismiss is reversed on the ground that a probable cause exists, the State Prosecutor, or the Provincial or City Fiscal, may, by himself prepare and file the corresponding information against the respondent or direct any of his assistants to do so without conducting another preliminary investigation.

SEC. 10. Appeals from the Action of the State Prosecution, Provincial or City Fiscal. — Appeals from the resolution of the State Prosecutor, or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, provided, however that this shall not divest the Commission of its power to *motu proprio* review, revise, modify or reverse the resolution of the chief state prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final.

SEC. 11. Duty of State Prosecutor, Provincial or City Fiscal to Render Reports. — The State Prosecutor, Provincial or City Fiscal shall, within five (5) days from the rendition of their resolution on recommendation or resolution of investigating officers, make a written report thereof to the Commission. They shall likewise submit a monthly report on the status of cases filed with and/or prosecuted by them or any of their assistants pursuant to the authority granted them under Section 2 of this Rule.

SEC. 12. Private Prosecutor. — The appearance of a private prosecutor shall be allowed in cases where private rights involving recovery of civil liability are involved.

[31] G.R. No. 131778, January 28, 2000, 323 SCRA 778.

letter-complaints to them were unverified and the same appeared not to have been supported by affidavits and other evidence as required by the COMELEC Rules.

Second, when the complaint was not acted upon by Atty. Ramos and P/Supt. Cruz, petitioner did not file a verified complaint with the COMELEC Law Department.

Third, in his petition filed with the COMELEC, petitioner sought the annulment of the proclamation of all respondents instead of asking for a preliminary investigation and the eventual prosecution of said election offense. It is obvious that because of the relief sought, the COMELEC treated petitioner's case as a pre-proclamation controversy when, as to law,[32] the grounds relied upon were not at all proper grounds thereof.

Thus, since his petition was in the nature of a pre-proclamation contest not anchored on the exclusive issues that may be raised in a pre-proclamation contest under Section 243 of the Omnibus Election Code, the COMELEC properly dismissed the same by not including it in the list of cases that would remain active beyond June 30, 2007.

Well-entrenched in this jurisdiction is the principle that the office of a petition for *certiorari* is not the correction of simple errors of judgment but capricious and whimsical exercise of

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[32] Sec. 243 of Batas Pambansa Blg. 881 or the Omnibus Election Code provides:

SECTION 243. Issues that may be raised in pre-proclamation controversy. — The following shall be proper issues that may be raised in a pre-proclamation controversy:

(a) Illegal composition or proceedings of the board of canvassers;

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[33] In this regard, the COMELEC did not commit grave abuse of discretion in treating petitioner's case as a pre-proclamation controversy and in excluding the same, due to lack of merit, from the list annexed to Resolution No. 8212. This is consistent with the policy that pre-proclamation controversies should be summarily decided, consonant with the law's desire that the canvass and proclamation be delayed as little as possible.[34] In the present case, the petition does not, in fact, ascribe grave abuse of discretion nor does it sufficiently show that the COMELEC gravely abused its discretion in excluding his case from the list of those that shall continue. Apart from petitioner's bare allegations, the record is bereft of any evidence to prove that petitioner's pre-proclamation case appears meritorious and warrants the annulment of the proclamation of Vergara as elected mayor of the city and of other respondents who were likewise elected and proclaimed but were not impleaded herein with particularity.

However, as a Court of justice and equity, we cannot simply brush aside Atty. Ramos' failure to exercise his duty under Section 4(c), Rule 34 of the 1993 COMELEC Rules of Procedure. Atty. Ramos apparently failed to furnish the Director of the COMELEC Law Department a copy of petitioner's complaint, as required in Section 4(b), Rule 34 of the COMELEC Rules of Procedure. He should be made to explain why he ignored the complaint and breached the COMELEC Rules of Procedure. As to the petitioner, considering that election offenses prescribe in four (4) years, he may still file or revive his complaint, following COMELEC rules.

On the assailed Order, dated October 18, 2007, of the COMELEC Second Division, it is well to note that it did not

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[33] *Pedragoza v. Commission on Elections*, G.R. No. 169885, July 25, 2006, 496 SCRA 513, 524, citing *Navarosa v. Commission on Elections*, 411 SCRA 369, 386 (2003).

[34] *Dimaporo v. Commission on Elections*, G.R. No. 179285, February 11, 2008, 544 SCRA 381, 391, citing *Sanchez v. Commission on Elections*, 153 SCRA 67, 75 (1987).

dismiss petitioner's case. It merely forwarded the original case folder to the Clerk of the COMELEC. As already mentioned, what actually dismissed petitioner's case was Resolution No. 8212 issued by the COMELEC *en banc*. Inasmuch as one of the duties of the Clerk of the COMELEC is to keep and secure all records, papers, files, exhibits, the office seal and other public property committed to his charge,[35] no grave abuse of discretion may be imputed to the COMELEC Second Division when it issued the assailed Order because the same merely directed that the original case folder of petitioner's case be forwarded to the Clerk of the COMELEC — an act administrative in nature which does not involve an exercise of discretion.

In light of the foregoing discussion, the instant petition has no leg to stand on.

Admittedly, the advent of COMELEC Resolution No. 8212 caused a measure of confusion among party litigants and even among lawyers. This is the reason why, in *Patalinghug v. Commission on Elections*,[36] we took the opportunity, for the guidance of the members of the bench and bar, to set the following guidelines:

> *First*, **if a pre-proclamation case is excluded from the list of those** (annexed to the *Omnibus Resolution on Pending Cases*) **that shall continue after the beginning of the term of the office involved**, <u>the remedy of the aggrieved party is to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65, regardless of whether a COMELEC division is yet to issue a definitive ruling in the main case or the COMELEC *en banc* is yet to act on a motion for reconsideration filed if there is any.</u>
>
> It follows that if the resolution on the motion for reconsideration by the *banc* precedes the exclusion of the said case from the list, what should be brought before the Court on *certiorari* is the decision resolving the motion.
>
> *Second*, **if a pre-proclamation case is dismissed by a COMELEC division and, *on the same date of dismissal or within***

[35] 1993 COMELEC Rules of Procedure, Rule 38, Sec. 2.

[36] G.R. No. 178767, January 30, 2008, 543 SCRA 175.

***the period to file a motion for reconsideration*, the COMELEC *en banc* excluded the said case from the list annexed to the Omnibus Resolution**, the remedy of the aggrieved party is also to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65. The aggrieved party need no longer file a motion for reconsideration of the division ruling.

The rationale for this is that the exclusion by the COMELEC *en banc* of a pre-proclamation case from the list of those that shall continue is already deemed a final dismissal of that case not only by the division but also by the COMELEC *en banc*. As already explained earlier, the aggrieved party can no longer expect any favorable ruling from the COMELEC.

And *third*, **if a pre-proclamation case is dismissed by a COMELEC division but, *on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC en banc included the case in the list annexed to the Omnibus Resolution***, the remedy of the aggrieved party is to timely file a motion for reconsideration with the COMELEC *en banc*. The reason for this is that the challenge to the ruling of the COMELEC division will have to be resolved definitively by the entire body.[37]

These guidelines — and Section 16, R.A. No. 7166 — notwithstanding, we are constrained to express the view that the COMELEC should rule on pre-proclamation cases individually, even if the ruling is simply couched in a minute resolution. This will dispel qualms about lack of adequate notice to party litigants, and obviate the confusion that generally results from the issuance of omnibus resolutions. In all, such a practice would be consistent with the constitutional principle of transparency, and lend itself to greater public confidence in our electoral system.

In the case at bar, the petitioner may have been equally confused on the remedies available to him *vis-à-vis* Resolution No. 8212. We do not fault him for this, but we nonetheless dismiss his petition because we find no grave abuse of discretion in the assailed COMELEC Resolution and Order.

WHEREFORE, the instant petition is *DISMISSED.* No costs.

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[37] *Id.* at 186-187. (Underlining supplied.)

SO ORDERED.

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

Puno, C.J., on official leave.

THIRD DIVISION

[G.R. No. 181384. March 13, 2009]

MACAPANTON B. BATUGAN, *petitioner, vs.* **HON. RASAD G. BALINDONG, as Acting Presiding Judge of the Shari'a District Court, Fourth Shari'a Judicial District, Marawi City, BAULAN B. CANACAN, HEIRS OF RANGCALBE B. MAGARANG, represented by Palawan Batugan, and HEIRS OF GUIBONSALAM B. ACRAMAN, represented by Farmidah A. Macabando and TOMINORAY BATUGAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PARTY WHO SEEKS TO AVAIL THEREOF MUST STRICTLY OBSERVE THE RULES LAID DOWN BY LAW. —** It must be stressed that *certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law. A petition for *certiorari* under Rule 65 must be filed not later than 60 days from notice of judgment, order, or resolution. In case a motion for reconsideration is filed, the 60-day period shall be counted from notice of denial of said motion. Further, the petition must be accompanied by a certified true copy of the judgment, order or resolution.

2. **ID.; ID.; ID.; PETITION MAY BE DISMISSED WHERE THE PARTY FAILS TO INDICATE THEREIN ALL THE MATERIAL DATES; ESSENTIAL DATES TO BE STATED IN THE PETITION, ENUMERATED. —** In *Santos v. Court of Appeals*, we held that there are three (3) essential dates that must be stated in a petition for *certiorari* brought under Rule 65. *First*, the date when notice of the judgment or final order or Resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. In this case, petitioner failed to indicate all the three material dates, namely, the date of receipt of the June 18, 2007 Order, the date of filing of the motion for reconsideration, as well as the date of receipt of the denial thereof, which is the reckoning date of the 60-day period. Moreover, the certified true copies of the assailed orders were not attached to the petition. Thus, the petition must be dismissed.

3. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; WHEN IT EXISTS. —** As to the September 26, 2007 and November 12, 2007 Orders, we find that while the petition was seasonably filed, the same must nevertheless fail on the merits. The Shari'a Court did not commit grave abuse of discretion in denying petitioner's motion to fully implement the March 7, 2007 Writ of Execution. Grave abuse of discretion exists where an act is performed in a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. None of the foregoing circumstances are present in this case.

4. **ID.; RULES OF PROCEDURE; LIBERALITY OF CONSTRUCTION OF THE RULES SHOULD NOT BE A PANACEA FOR ALL PROCEDURAL MALADIES; CASE AT BAR. —** The March 7, 2007 Writ of Execution was issued to enforce the December 20, 2006 Order requiring respondent Tominoray to deliver petitioner's alleged share in the Coloi Farmland in the amount of Php450,580.00. However, this was later superseded by the June 18, 2007 and July 19, 2007 Orders of the Shari'a Court which recognized the extra-judicial partition

of the proceeds of the subject property, ordered its exclusion from the partition, and declared the controversy closed and terminated. As such, the writ of execution had become *functus officio* as there was nothing to enforce insofar as the Coloi Farmland is concerned. Indeed, the proceeds from the subject property had already been distributed among the heirs of Hadji. This was established during the proceedings and acknowledged by petitioner himself who admitted to having received the amount of Php150,000.00 from respondent Tominoray. At this point, we reiterate that the orders excluding the Coloi Farmland from the partition have attained finality and can no longer be assailed. Petitioner failed to timely appeal therefrom, whether in the form of an ordinary appeal or an appeal by *certiorari*. Instead, he filed a motion to fully implement and enforce the March 7, 2007 Writ of Execution which is actually a substitute for lost appeal. This is not allowed. While procedural irregularities are on occasion set aside in the interest of justice, it must be stressed that liberality of construction of the rules should not be a panacea for all procedural maladies.

APPEARANCES OF COUNSEL

Ganie G. Abubacar for petitioner.
Musor P. Muti for private respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition[1] for *certiorari* and *mandamus* with prayer for issuance of a writ of preliminary injunction assails the September 26, 2007 Order[2] of the Shari'a District Court, Fourth Judicial Region, Marawi City in Civil Case No. 02-99 which denied petitioner Macapanton B. Batugan's motion to fully implement the Writ of Execution dated March 7, 2007. Also assailed is the November 12, 2007 Order[3] denying the motion for reconsideration.

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[1] *Rollo*, pp. 3-35.

[2] *Id.* at 36; penned by Judge Rasad G. Balindong.

[3] *Id.* at 37.

During his lifetime, Hadji Abubakar Pandapatan Batugan (Hadji) contracted two marriages. His first marriage was with Enmong Basiron out of which were born five children, namely: petitioner Macapanton and respondents Guibonsalam B. Acraman, Baulan B. Canacan, Rangcalbe B. Magarang, and Tominoray Batugan.[4]

After the death of his first wife in 1945, Hadji married Kilaman Mocsi who bore him eight children, namely: Ali, Mahdi, Portre, Monazaman, Nasser, Idres, Minombao, and Usudan.

On September 6, 1990, Hadji died intestate leaving the following properties acquired during his first marriage:

a) Three (3) hectares of land located at Balagunun, Batangan, Saguairan, Lanao del Sur with an estimated value of Php75,000.00;

b) One and one-half (1½) hectares of land located at Coba O Hadji, Mipaga, Marawi City, valued at Php50,000.00;

c) One and one-half (1½) hectares of land located at Soiok, Mipaga, Marawi City, valued at Php50,000.00; and

d) Three (3) hectares of land located at Coloi, Mipaga, Marawi City with an estimated value of Php750,000.00 (Coloi Farmland).

The instant case involves the Coloi Farmland, a portion of which was subject of expropriation proceedings in Civil Case No. 154 instituted by the National Power Corporation (NPC) in 1981 before the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City. On July 29, 1991, the trial court rendered a decision finding that Hadji is entitled to just compensation thus ordering the NPC to pay him the amount of Php766,580.00. The NPC filed an appeal to the Court of Appeals which was dismissed in a decision dated February 26, 2001.[5] Sometime in March 2003, respondent Tominoray allegedly received payment from the NPC in the amount of Php600,580.00.

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[4] Guibonsalam B. Acraman and Rangcalbe B. Magarang are now deceased.

[5] Records, pp. 196-201.

On May 19, 1999, petitioner filed a special civil action for partition of real properties[6] before the Shari'a District Court, Marawi City. The case was docketed as Civil Case No. 02-99 and entitled, *Macapanton Batugan v. Baulan B. Canacan, Tominoray Batugan, Ali M. Batugan, Monazaman M. Batugan, Nasser M. Batugan, Minombao M. Batugan, Usudan M. Batugan, Kilaman M. Batugan, Heirs of Rangcalbe B. Magarang, represented by Palawan Batugan, and Heirs of Guibonsalam B. Acraman, represented by Faridah A. Macabando*.

On July 2, 2003, the Shari'a Court approved the petition for partition applying Article 123(b)[7] of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines.[8] It ordered that the properties of Hadji which were acquired during his first marriage be partitioned among petitioner and his full brothers and sisters. Further, it required the parties to submit the necessary instruments effecting the partition.[9]

On August 27, 2003, petitioner submitted a project plan of partition but respondent Tominoray and his co-respondents found the plan unacceptable. Thus, on January 6, 2004, petitioner submitted a second project plan of partition[10] which included the partition of the Coloi Farmland, as follows:

1. x x x x x x x x x

2. Hadji Macapanton Batugan will get Coloi Farmland three has. (sic) at Mipaga, Marawi City and give half hectare to our three sisters; provided Sultan Tominoray Batugan will

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[6] *Rollo*, pp. 38-42.

[7] Article 123. Exclusion among heirs. The exclusion of heirs from the inheritance shall be governed by the following rules:

x x x x x x x x x

(b) Full-blood relatives exclude the consanguine and the uterine.

x x x x x x x x x

[8] *Rollo*, pp. 43-46.

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

[10] *Id.* at 47.

give me the amount of money the National Power Corporation (NPC) payment of the part of Coloi Farmland.

3. x x x x x x x x x

The Shari'a Court directed the respondents to comment, stating that their failure to do so would be interpreted as their conformity with the second project plan of partition and that it shall issue an order affirming the same.[11] Respondents failed to comply with the directive and, consequently, the second project plan of partition was approved upon recommendation of the Committee of Commissioners in an Order dated May 6, 2005,[12] *viz:*

The project of partition embodied in the second one is as follows:

The Balagunun Farmland situated in Batangan, Saguiaran, Lanao del Sur with an area of three (3) hectares shall be partitioned as follows: two and a half (2½) hectares shall go to Sultan Tominoray Batugan and their sisters: Gibonsalam, represented by the heirs, Baulan and Rangcalbe, represented by the heirs, shall get half (½) a hectare.

The Coloi Farmland located at Mipaga, Marawi City with an area of three (3) hectares shall be partitioned as follows: two and a half (2½) goes to petitioner and one half (1/2) goes to their sisters.

The Coba o Hadji and Soiok estates, all situated at Mipaga, Marawi City and with areas of one and a half (1½) hectares each or a total of three (3) hectares shall pertain to respondents Gibonsalam, Baulan and Rangcalbe or their heirs.

In summation, petitioner Macapanton Batugan gets two and a half (2½) hectares; Sultan Tominoray Batugan, also two and a half (2½) hectares; and their sisters, four (4) hectares.

WHEREFORE, upon recommendation of the Committee of Commissioners, the second project-plan of partition above-indicated is hereby APPROVED.

SO ORDERED.[13] (Emphasis added)

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[11] *Id.* at 48.

[12] *Id.* at 49-51.

[13] *Id.* at 50-51.

On January 18, 2006, the Clerk of Court issued the corresponding writ of execution.[14]

Thereafter, on March 14, 2006, petitioner filed an Urgent Motion for Amendment and Full Implementation of the Writ of Execution[15] praying that an order be issued amending the writ to include the amount which was received by respondent Tominoray from the NPC for the Coloi Farmland. Meanwhile, respondents filed a Motion for Clarificatory Judgment on April 6, 2006.

The Shari'a Court granted petitioner's motion in its October 2, 2006 Order,[16] stating that:

On the motion to amend the May 6, 2005 order to include the purchase price of Coloi farmlot, the same has to be granted to have a full complete enforcement of the decision and the writ of execution.

WHEREFORE, the pertinent portions of the May 6, 2005 Order are hereby AMENDED as follows:

The Coloi Farmland located at Mipaga, Marawi City shall be partitioned as follows: two and a half (2½) **or its purchase price** goes to petitioners and one half (½) goes to their sisters.

In summation, petitioner Macapanton Batugan gets two and a half (2½) hectares **or its purchase price**; Sultan Tominoray Batugan, also two and a half (2½) hectares; and their sisters, four (4) hectares.

The dispositive portion is AMENDED as follows:

WHEREFORE, upon recommendation of the Committee of Commissioners, the second project-plan of partition above-indicated is hereby APPROVED. **As respondent Sultan Tominoray Batugan has received the ₱600,000.00 purchase price of petitioner's share from the NPC, the former is DIRECTED to deliver the said amount to the latter through the Clerk of Court within one (1) month from service.**

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[14] *Id.* at 53.

[15] *Id.* at 57-59.

[16] *Id.* at 60-62.

Petitioner's comments on the respondents' Motion for Clarificatory Judgment is ADOPTED *in toto.*

SO ORDERED.[17]

Respondents filed a motion for reconsideration with motion for new trial *ad cautelam* which was partially granted in an Order[18] dated December 20, 2006. The Shari'a Court noted that petitioner had already received Php150,000.00 from the proceeds of the Coloi Farmland and held:

WHEREFORE, motion for reconsideration of the order dated October 2, 2006 is partially granted. As respondent Sultan Tominoray Batugan has received the ₱450,580.00, a portion of the purchase price of petitioner's and sisters' share from the NPC, the former is DIRECTED to deliver the remaining unclaimed share of petitioner to the latter through the Clerk of Court within one (1) month from service hereof. The Motion for New Trial is DENIED for lack of merit.

SO ORDERED.[19]

On March 7, 2007, the Clerk of Court issued a writ of execution[20] to enforce the above order. On even date, respondents filed an Omnibus Motion for Modification of Judgment,[21] particularly the Orders dated May 6, 2005, October 2, 2006, and December 20, 2006.

In their Omnibus Motion, respondents argued that the Shari'a Court has no jurisdiction over the Coloi Farmland because it had already been adjudicated to the NPC pursuant to the July 29, 1991 Decision of the Regional Trial Court in Civil Case No. 154. Further, they claimed that the payment from NPC had already been partitioned extra-judicially among the heirs, including petitioner who received the amount of Php150,000.00

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[17] *Id.* at 61-62.

[18] *Id.* at 63-64.

[19] *Id.* at 64.

[20] *Id.* at 66.

[21] *Id.* at 67-72.

as his share.[22] Thus, respondents prayed that the Coloi Farmland be excluded from the list of properties to be partitioned and that the extra-judicial partition of the NPC payment be recognized.

The Shari'a Court granted respondents' motion in an Order[23] dated June 18, 2007, as follows:

> WHEREFORE, in view of the foregoing facts and jurisprudence, the above-enumerated orders are RECONSIDERED and SET ASIDE. The extra-judicial partition of the Coloi Farmland among the decedent's heirs is hereby RECOGNIZED. Accordingly, the controversy involving the Coloi Farmland is CLOSED, hence, this case is considered CLOSED and TERMINATED.
>
> SO ORDERED.[24]

Petitioner filed a motion for reconsideration which was denied in an Order dated July 19, 2007.[25] No appeal was taken therefrom.

Subsequently, on September 17, 2007, petitioner filed a Motion to Fully Implement and Enforce the Writ of Execution dated March 7, 2007.[26] The Shari'a Court denied the motion in its September 26, 2007 Order, stating that the controversy involving the Coloi Farmland was closed and terminated by virtue of its Order dated June 18, 2007. It held:

> The Motion to fully implement and enforce the writ of execution dated March 7, 2007 should be denied.
>
> The controversy involving the Coloi Farmland (which is the subject of the writ of execution) has been considered CLOSED and TERMINATED in an order dated June 18, 2007. A motion to reconsider this June 18, 2007 order was denied on July 19, 2007.
>
> WHEREFORE, the motion to enforce the writ of execution is DENIED.

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[22] Records, p. 173.

[23] *Rollo*, pp. 73-74.

[24] *Id.* at 74.

[25] *Id.* at 75.

[26] *Id.* at 76-83.

SO ORDERED.[27]

Petitioner's motion for reconsideration was denied,[28] hence, this petition.

While it appears that only the September 26, 2007 and November 12, 2007 Orders are being assailed, a reading of the body and prayer of the petition will show that the June 18, 2007 and July 19, 2007 Orders are sought to be annulled as well.

Petitioner contends that the Shari'a Court gravely abused its discretion in setting aside the May 6, 2005, October 2, 2006, and December 20, 2006 Orders which have already attained finality; that the March 7, 2007 Writ of Execution remains outstanding since it has not been quashed; and that the Shari'a Court left the action for partition unresolved.

The issues for resolution are as follows: 1) whether the Shari'a Court committed grave abuse of discretion when it issued the June 18, 2007 and July 19, 2007 Orders recognizing the extra-judicial partition of the proceeds from the Coloi Farmland; and 2) whether the Shari'a Court committed grave abuse of discretion when it issued the September 26, 2007 and November 12, 2007 Orders denying petitioner's motion to fully implement and enforce the March 7, 2007 Writ of Execution.

The petition lacks merit.

It must be stressed that *certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law.[29] A petition for *certiorari* under Rule 65 must be filed not later than 60 days from notice of judgment, order, or resolution. In case a motion for reconsideration is filed, the 60-day period shall be counted from notice of denial of said motion.[30] Further, the petition must be

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[27] *Id.* at 36.

[28] *Id.* at 37.

[29] *Seastar Marine Services, Inc. v. Lucio A. Bul-an, Jr.*, G.R. No. 142609, November 25, 2004, 444 SCRA 140, 153.

[30] Section 4, Rule 65.

accompanied by a certified true copy of the judgment, order or resolution.[31]

In *Santos v. Court of Appeals*,[32] we held that there are three (3) essential dates that must be stated in a petition for *certiorari* brought under Rule 65. *First*, the date when notice of the judgment or final order or Resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received.[33]

In this case, petitioner failed to indicate all the three material dates, namely, the date of receipt of the June 18, 2007 Order, the date of filing of the motion for reconsideration, as well as the date of receipt of the denial thereof, which is the reckoning date of the 60-day period. Moreover, the certified true copies of the assailed orders were not attached to the petition. Thus, the petition must be dismissed.

As to the September 26, 2007 and November 12, 2007 Orders, we find that while the petition was seasonably filed, the same must nevertheless fail on the merits. The Shari'a Court did not commit grave abuse of discretion in denying petitioner's motion to fully implement the March 7, 2007 Writ of Execution.

Grave abuse of discretion exists where an act is performed in a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[34] None of the foregoing circumstances are present in this case.

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[31] Section 1, Rule 65.

[32] 413 Phil. 41 (2001).

[33] *Id.* at 53.

[34] *Casent Realty & Development Corporation v. Premiere Development Bank*, G.R. No. 163902, January 27, 2006, 480 SCRA 426, 434.

The March 7, 2007 Writ of Execution was issued to enforce the December 20, 2006 Order requiring respondent Tominoray to deliver petitioner's alleged share in the Coloi Farmland in the amount of Php450,580.00. However, this was later superseded by the June 18, 2007 and July 19, 2007 Orders of the Shari'a Court which recognized the extra-judicial partition of the proceeds of the subject property, ordered its exclusion from the partition, and declared the controversy closed and terminated.

As such, the writ of execution had become *functus officio* as there was nothing to enforce insofar as the Coloi Farmland is concerned. Indeed, the proceeds from the subject property had already been distributed among the heirs of Hadji. This was established during the proceedings[35] and acknowledged by petitioner himself who admitted to having received the amount of Php150,000.00 from respondent Tominoray.[36]

At this point, we reiterate that the orders excluding the Coloi Farmland from the partition have attained finality and can no longer be assailed. Petitioner failed to timely appeal therefrom, whether in the form of an ordinary appeal or an appeal by *certiorari*. Instead, he filed a motion to fully implement and enforce the March 7, 2007 Writ of Execution which is actually a substitute for lost appeal. This is not allowed. While procedural irregularities are on occasion set aside in the interest of justice, it must be stressed that liberality of construction of the rules should not be a panacea for all procedural maladies.[37]

Finally, there is no merit to petitioner's contention that the Shari'a Court rendered the action for partition unresolved. It bears stressing that the court did not modify its May 6, 2005 Order with regard to the other properties mentioned in the second project plan of partition submitted by petitioner. The subsequent orders assailed by petitioner pertained only to the Coloi Farmland and to no other property. The partition of the Balagunun Farmland,

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[35] *Rollo*, p. 63.

[36] *Id.* at 87.

[37] *Mercado v. Court of Appeals*, G.R. No. 150241, November 4, 2004, 441 SCRA 463, 470.

Coba o Hadji, and Soiok estates was never at issue and, thus, the May 6, 2005 Order of the Shari'a Court with regard to these properties remains unchanged.

WHEREFORE, the petition is *DISMISSED.*

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182517. March 13, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MANUEL BRIOSO *y* TANDA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CONSUMMATED RAPE; REQUISITES. — For the accused to be held guilty of consummated rape, the prosecution must prove beyond reasonable doubt that: (1) there has been carnal knowledge of the victim by the accused; (2) the accused achieved the act through force or intimidation upon the victim because the latter was deprived of reason or otherwise unconscious. Considering that carnal knowledge is the central element in the crime of rape, it must be proven beyond reasonable doubt. Carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape has been committed and that the accused was the perpetrator thereof.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A FINDING THAT THE ACCUSED IS GUILTY OF RAPE MAY BE BASED SOLELY ON THE VICTIM'S TESTIMONY IF THE SAME MEETS THE TEST OF CREDIBILITY. —

A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility. This Court has ruled that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. However, the testimony of the victim must be scrutinized with extreme caution.

3. **CRIMINAL LAW; RAPE; ABSENT ANY SHOWING OF THE SLIGHTEST PENETRATION OF THE LABIA OF THE PUDENDUM BY THE PENIS, THERE CAN BE NO CONSUMMATED RAPE. —** In a number of cases, we have held that the mere touching of the external genitalia by the penis, capable of consummating the sexual act, is sufficient to constitute carnal knowledge. However, in *People v. Campuhan*, the Court clarified that the act of touching should be understood as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the *mons pubis* or the pudendum. In other words, to constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. There must be sufficient and convincing proof that the penis indeed touched the labia or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. Absent any showing of the slightest penetration of the labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness. Aside from the victim's testimony, there was no other evidence that could confirm whether there was penetration of the labia. As noted by the trial court, the medical examination report was of no use in relation to the first alleged rape incident as the examination was conducted only after the third incident which happened several months later.

4. **ID.; ID.; ACCUSED CANNOT BE CONVICTED THEREOF BASED SOLELY ON THE PAIN EXPERIENCED BY THE VICTIM AS A RESULT OF EFFORTS TO INSERT THE PENIS INTO THE VAGINA. —** A review of the Court's decisions dealing with relatively the same amount of evidence as in this case reveals that, in the absence of any evidence showing that there was even a slight penetration of the vagina, the Court was loath to convict an accused for rape solely on

the basis of the pain experienced by the victim as a result of efforts to insert the penis into the vagina.

5. **ID.; ID.; ID.; PENILE PENETRATION CANNOT BE PRESUMED FROM PAIN ALONE; ABSENT ANY SHOWING THAT ACCUSED SUCCEEDED IN HAVING CARNAL KNOWLEDGE OF THE VICTIM, ACCUSED CAN ONLY BE CONVICTED OF ATTEMPTED RAPE. —** The victim's testimony as to the first incident is sorely lacking in details. In *People v. Tolentino,* the Court criticized the prosecution for its failure to extract important details from the victim, which prevented a conviction for consummated rape, x x x. In the present case, no other evidence from which we could reasonably conclude that there was even a slight penetration of the vagina, and not just a mere touching, was presented in evidence. We reiterate that penile penetration cannot be presumed from pain alone. The prosecution must present some other piece of evidence from which the Court could reasonably deduce that there was indeed carnal knowledge by the accused of the victim, be it positive testimony that there was slight penetration of the vagina, or testimony that the penis was erect at the time that it was touching the vagina, or that her vagina bled due to the attempt to insert the penis, or that there were abrasions or contusions on the labia of the vagina. Since there was no showing that appellant succeeded in having carnal knowledge of the victim, appellant can only be convicted of attempted rape. There is only an attempt to commit rape when the offender commences its commission directly by overt acts but does not perform all acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

6. **ID.; AGGRAVATING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; PROPERLY APPRECIATED IN CASE AT BAR. —** The appellate court properly appreciated the twin aggravating circumstances of minority and relationship. The victim's minority and her relationship with appellant were alleged in the Informations and sufficiently established during trial. The victim's birth certificate was presented in evidence to show that she was born on October 15, 1990, which means that she was actually only 12 years old when she was first sexually assaulted. Appellant, during pre-trial, admitted that he is the common-law husband of the victim's mother.

7. ID.; RAPE; IMPOSABLE PENALTY; ATTEMPTED RAPE; IMPOSABLE PENALTY. — With the abolition of the death penalty by Republic Act No. 9346, the penalty for qualified rape is *reclusion perpetua*. Pursuant to *People v. Bon*, the penalty for attempted rape should also be reckoned from *reclusion perpetua*. In the scale of penalties in Article 71 of the Revised Penal Code, the penalty two degrees lower than *reclusion perpetua* is *prision mayor*. Applying the Indeterminate Sentence Law, absent any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision mayor* or from 8 years and 1 day to 10 years, while the minimum term is one degree lower than *prision mayor*, *i.e.*, *prision correccional,* from 6 months and 1 day to 6 years.

8. ID.; RAPE AND ATTEMPTED RAPE; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — The appellate court correctly awarded civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱25,000.00. For the attempted rape, appellant should also pay the victim ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J*.:

This is an appeal from the November 16, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02556 which affirmed with modifications the decision of the Regional Trial Court (RTC), Branch 57, Libmanan, Camarines Sur.

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Magdangal M. de Leon and Ricardo R. Rosario, concurring; *rollo*, pp. 2-27.

In three separate Informations, the prosecution charged appellant Manuel Brioso, 53 years old, with raping the 13-year-old daughter of his common-law wife. The cases were docketed as Criminal Case Nos. L-3844, L-3845, and L-3846.

Appellant pleaded not guilty to the three charges. During pre-trial, appellant admitted that he is the common-law husband of the victim's mother.

The victim narrated that, sometime in February 2003, at about 2:30 a.m., appellant arrived home from fishing. At that time, the victim and her younger siblings were at the upper level of their house, while their mother was working in Lucena. Appellant suddenly dragged the victim to the lower portion of their house where he forced her to lie down. He then removed her shorts and panty. She cried because she could do nothing. Afterwards, appellant also undressed himself and tried to insert his penis into her vagina but he did not succeed. She felt his penis touch her vagina and she felt pain because he was forcing his penis into her vagina. After around five minutes, appellant ceased trying and threatened to kill her siblings if she told anyone about the incident. After that, appellant and the victim dressed up and went upstairs.[2]

The victim recounted that the sexual abuse was repeated a week later (same month) also during the early morning. At that time, the victim's younger siblings were at the house while their mother was still in Lucena. This time, appellant inserted his penis into her vagina. After dismounting from her, appellant let her go upstairs. Appellant woke up her siblings and told them to segregate his fish catch from the shrimps. He again threatened to kill her and her siblings.[3]

On December 5, 2003, around 5:30 in the morning, appellant dragged the victim to the lower level of their house and onto the bed. He then caused her to remove her short pants and panty; afterwards, the former also undressed himself by removing

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[2] CA *rollo*, p. 16.

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

his short pants and brief. Appellant placed himself on top of her while she was lying down on the bed. He then inserted his penis into her vagina. She felt pain. The sexual abuse lasted for a while only, after which, appellant prepared his things to fish. Before leaving, appellant again threatened to kill her and her siblings.[4]

Feeling severely tormented, the victim told her mother about the incident when she arrived home that morning from the fishing port. Her mother was very angry when she learned about the rape incidents.[5] The victim further testified that appellant raped her so many times but she could only remember these three incidents. She cried several times in the course of her testimony. She also positively identified appellant in open court.[6]

The victim was brought to the Libmanan District Hospital for medical examination. The Medico-Legal Certificate stated the following findings:

– Old lacerated wound at one o'clock, three o'clock, seven o'clock, and nine o'clock
– Fresh contusion (L) labia minora, level four o'clock
– Fresh abrasion (R) labia majora level nine o'clock
– Admits 1 finger
– Presence of seminal fluid

The physician who conducted the medical examination having retired, Dr. Emma Rariza-Rana, a physician and officer-in-charge of the same hospital, testified on said findings.

The defense presented appellant as its sole witness. As to the first two charges of rape, appellant raised the defense of alibi. He claimed that he would usually go out to fish at 10:00 p.m. and return at about 4:00 a.m. and that there was never an instance that he did not go out to fish, as it was their source of livelihood. He added that the victim told him that it was a certain Richard, adopted child of the victim's mother, who raped her.

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[4] *Id.* at 16.

[5] *Id.*

[6] *Id.* at 17.

He allegedly mauled Richard in her defense, and then he told the victim's mother about the rape, but the latter did not file any complaint against Richard.[7]

As to the third charge of rape, appellant admitted that he had sexual intercourse with the victim but claimed that it was consensual. Appellant disclosed that he and the victim were sweethearts and were sexually active since August 20, 2003.[8]

On August 2, 2006, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of attempted rape in Criminal Case No. L-3844 and simple rape in Criminal Cases Nos. L-3845 and L-3846, thus:

> WHEREFORE, the prosecution having proved the guilt of [appellant] beyond reasonable [doubt] of the crime of attempted rape in Criminal Case No. L-3844, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of 3 years of *prision correccional* in its medium period as minimum to 9 years and 1 day of *prision mayor* as maximum; [appellant] is also ordered to pay [the] victim, the amount of ₱25,000.00 as moral damages and ₱30,000.00 as civil indemnity.
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> The prosecution also having proved the guilt of the accused beyond reasonable doubt in Criminal Case Nos. L-3845 & L-3846, he is hereby CONVICTED of the crime of RAPE, and in accordance with Republic Act No. 9346, which abolished the death penalty, this court hereby imposes upon him x x x the penalty of *reclusion perpetua* in each case, and further accused is also ordered to pay the victim the amount of ₱50,000.00 as moral damages and another ₱50,000.00 as civil indemnity in each case.
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> SO ORDERED.[9]

The RTC gave credence to the victim's testimony which was considered to be "clear, forthright, direct, detailed and unwavering, despite the close scrutiny of the defense." The trial court opined that this testimony, as corroborated by the

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[7] *Id.* at 18.

[8] *Id.* at 19.

[9] *Id.* at 55-56.

report of the medico-legal officer, was sufficient to erase any reasonable doubt as to the culpability of the accused.[10]

The RTC held that appellant's defense of alibi cannot prevail over the positive and credible declaration by the prosecution witnesses about the incident. It also dismissed appellant's claim that he and the victim were sweethearts. The trial court did not believe that the victim, who was only 13 years old, would consent to have sexual intercourse with appellant, her 53-year old stepfather, and to live with him as husband and wife.[11]

However, the RTC found no adequate evidence to sustain a finding of consummated rape in Criminal Case No. L-3844, only attempted rape. In this regard, the trial court noted the victim's testimony that appellant did not succeed in inserting his penis inside her vagina and that the medico-legal examination did not clearly establish that the hymenal lacerations were the result thereof.[12]

On appeal, the CA disagreed with the trial court's conclusion that only attempted rape was proven in Criminal Case No. L-3844 and that appellant is guilty of simple rape in Criminal Cases Nos. L-3845 and L-3846. On the contrary, the appellate court found appellant guilty beyond reasonable doubt of three counts of qualified rape.

The CA essentially concurred with the findings of the trial court that the victim had been sexually abused. However, relying on the victim's testimony that appellant's penis touched her vagina and that she felt pain, the CA held that the first incident of sexual abuse, subject of Criminal Case No. L-3844, warranted a conviction for consummated rape. Moreover, the CA held that appellant should be held guilty of three counts of qualified rape considering that the three Informations uniformly alleged that the accused, who is the "live-in partner/common law spouse of complainant's mother," had carnal knowledge of a 13-year

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[10] *Id.* at 20.

[11] *Id.* at 21.

[12] *Id.* at 21-22.

old and these circumstances were adequately established by the prosecution during the trial. The dispositive portion of the CA Decision dated November 16, 2007 states:

WHEREFORE, the appealed decision is AFFIRMED with modifications as follows:

1) finding accused-appellant Manuel Brioso *y* Tanda guilty of qualified rape in Criminal Case No. L-3844 and, accordingly, sentencing him to suffer the penalty of *reclusion perpetua*; and

2) ordering him to pay private complainant, for each count of rape, the following:

(a) civil indemnity in the amount of ₱75,000.00;
(b) moral damages in the amount of ₱75,000.00; and
(c) exemplary damages in the amount of ₱25,000.00.

SO ORDERED.[13]

On December 5, 2007, appellant filed a Notice of Appeal.[14] The CA gave due course to the appeal and directed the elevation of the records to this Court.[15]

In his Supplemental Brief, appellant argues that the CA erred in convicting him of consummated rape in Criminal Case No. L-3844. He emphasizes that although the victim testified that his penis touched her vagina and she felt pain, this testimony is not sufficient proof of carnal knowledge. It was not convincingly shown that the part allegedly touched was the *labia majora* or that the cause of the pain was the introduction of the male organ into the *labia*.

The appeal is partly meritorious.

We fully agree with the findings of the trial court, as affirmed by the appellate court, that the victim has been sexually abused on three occasions. The trial court and the CA were correct in giving credence to the victim's testimony, in dismissing appellant's

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[13] *Rollo,* p. 26.

[14] CA *rollo*, p. 118.

[15] *Id.* at 121.

defense of alibi, and disbelieving his allegations that he and the victim were sweethearts and that the victim's mother concocted the accusation.

Nonetheless, we find that the appellate court erred in finding that the prosecution was able to prove beyond reasonable doubt that appellant had carnal knowledge of the victim during the first alleged incident of sexual abuse so as to justify a conviction for consummated rape.

For the accused to be held guilty of consummated rape, the prosecution must prove beyond reasonable doubt that: (1) there has been carnal knowledge of the victim by the accused; (2) the accused achieved the act through force or intimidation upon the victim because the latter was deprived of reason or otherwise unconscious.[16] Considering that carnal knowledge is the central element in the crime of rape, it must be proven beyond reasonable doubt.[17] Carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape has been committed and that the accused was the perpetrator thereof.[18]

A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility.[19] This Court has ruled that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. However, the testimony of the victim must be scrutinized with extreme caution.[20]

The victim's account of the first alleged rape incident states as follows:

Q: You said you were dragged by your stepfather to that bed. When you were dragged to the bed, what happened next?

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[16] *People v. Sumarago*, 466 Phil. 956, 966 (2004).

[17] *People v. Sinoro,* G.R. Nos. 138650-58, April 22, 2003, 401 SCRA 371, 390.

[18] *People v. Sumarago*, *supra* note 16, at 966.

[19] *Id.*

[20] *Id.*

A: He forced me to lie down and he removed my shorts and panty.

Q: While doing this, what if anything did you do?
A: I cried because I could do nothing.

Q: When he removed your garments and you were made to lie on the bed, what happened next?
A: He also undressed himself and tried to insert his penis to my vagina, but it did not succeed.

Q: Now, on what part of your body did you feel that his penis touched?
A My vagina.

Q: So, what happened after that?
A: He dressed up and I also dressed up and went up stairs.

Q: So, how long therefore, was he on top of you?
A: Around five (5) minutes.

Q: While on top of you on that duration as you approximated it, what if anything did you feel?
A: Painful.

Q: Which is painful?
A: My vagina.

Q: Why is it painful?
A: Because he was trying to insert his penis to my vagina.[21]

Noticeably, the victim categorically denied that appellant's penis penetrated her vagina. In fact, during cross-examination, the victim was asked twice whether the accused was able to insert his penis into her vagina and in both instances, she replied in the negative.[22]

Significantly, the victim testified that appellant's penis merely *touched* her vagina and she felt *pain* because of his attempt to insert his penis into her vagina. The question, therefore, that begs to be answered is whether such testimony suffices to prove that there was even a slight penetration of the labia.

[21] TSN, April 21, 2005, pp. 11-12.

[22] TSN, August 15, 2005, pp. 7, 8.

In a number of cases, we have held that the mere touching of the external genitalia by the penis, capable of consummating the sexual act, is sufficient to constitute carnal knowledge.[23] However, in *People v. Campuhan*,[24] the Court clarified that the act of touching should be understood as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the *mons pubis* or the pudendum. In other words, to constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. There must be sufficient and convincing proof that the penis indeed touched the labia or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.[25]

Absent any showing of the slightest penetration of the labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[26] Aside from the victim's testimony, there was no other evidence that could confirm whether there was penetration of the labia. As noted by the trial court, the medical examination report was of no use in relation to the first alleged rape incident as the examination was conducted only after the third incident which happened several months later.

A review of the Court's decisions dealing with relatively the same amount of evidence as in this case reveals that, in the absence of any evidence showing that there was even a slight penetration of the vagina, the Court was loath to convict an accused for rape solely on the basis of the pain experienced by the victim as a result of efforts to insert the penis into the vagina.[27]

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[23] *People v. Lomerio,* 383 Phil. 434 (2000); *People v. Lerio,* 381 Phil. 80 (2000); *People v. Quiñanola,* 366 Phil. 390 (1999).

[24] 385 Phil. 912 (2000).

[25] *Id.* at 920-921.

[26] *Id.*

[27] But see *People v. Makilang,* 420 Phil. 188 (2001), wherein the Court convicted the accused of consummated rape even if he did not succeed in inserting his penis into the vagina solely on the basis of the victim's repeated assertion that she felt pain in her vagina when the accused tried to insert his penis into her vagina.

For instance, in *People v. Quarre*,[28] the evidence for the prosecution consisted only of the testimony of victim that the accused tried, but failed, to insert his penis into her vagina and she felt pain in the process. No medico-legal examination report was presented in evidence. The Court, therefore, convicted the accused of attempted rape only. The Court brushed aside the prosecution's contention that the statement of pain alone proves that the penis of the accused touched the labia, ratiocinating that —

> Clearly, it is carnal knowledge, not pain, that is the element to consummate rape. While pain may be deduced from the sexual act whatever worth this inference may have, we certainly cannot convict for rape by presuming carnal knowledge out of pain. It is truly a dangerous proposition to equate the victim's testimony of pain with proof of carnal knowledge. The peril lies in the absolute facility of manufacturing testimonies asserting pain. Pain is subjective and so easy to feign. Our jurisprudence dictates positive proof of even the slightest penetration, more accurately, the touching of the labias by the penis, before rape could be deemed consummated.[29]

Then again in *People v. Miranda*,[30] the Court convicted the accused only of attempted rape due to lack of evidence to establish that there was even a slight penile penetration. The victim testified that the accused tried to insert his penis into her private parts; when he did not succeed, he inserted his finger instead; and she felt pain. The medical examination report also did not establish that there was even a slight penile penetration, as it merely found that the abrasions on her vulva were caused only by the fingers.

The Court recently issued a similar ruling in *People v. Bon*,[31] wherein the prosecution's evidence consisted of the victim's testimony that the accused repeatedly tried to insert his penis into her vagina and that she felt pain in the process. In that

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[28] 427 Phil. 422 (2002).

[29] *Id.* at 434.

[30] G.R. No. 169078, March 10, 2006, 484 SCRA 555.

[31] G.R. No. 166401, October 30, 2006, 506 SCRA 168.

case, the Court affirmed appellant's conviction for attempted rape only, ratiocinating that the accused could not be convicted of rape by presuming carnal knowledge out of pain.[32]

In some cases, this Court held that even where penetration is not fully established, consummated rape can still be anchored on the victim's testimony that she felt pain in the attempt at penetration.[33] In such cases, however, there were at least some other details in the victim's testimony, or other pieces of evidence, that helped convince the Court that there was likely a penetration of the labia of the pudendum.

In *People v. Torres*,[34] other than the victim's testimony that she felt pain when the accused tried to insert his penis into her vagina, the National Bureau of Investigation medico-legal officer noted that, while there was no hymenal laceration, there were two contusions on the victim's vagina. The medico-legal office concluded that it was possible that a "mere partial or an incomplete hymenal penetration resulted in the sexual assault." Despite the victim's testimony that there was no penetration, the Court, therefore, held that the rape was consummated.

Also in *People v. Orande,*[35] the case cited by the CA, the finding of consummated rape was not solely based on the victim's testimony that she experienced pain. In that case, the victim specifically averred that appellant was able to slightly penetrate her because she felt pain and her vagina bled.

Earlier in *People v. Ombreso,*[36] the Court debated on whether to convict the accused of attempted or consummated rape. In the end, majority voted for his conviction of consummated rape

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[32] See also *People v. Sumarago*, *supra* note 16, wherein the Court pronounced that carnal knowledge cannot be presumed simply because the victim felt pain in her vagina after she regained consciousness.

[33] *People v. Torres,* 469 Phil. 602, 610-611 (2004); *People v. Orande*, 461 Phil. 403 (2003); *People v. Ombreso,* 423 Phil. 966 (2001).

[34] *Supra*.

[35] *Supra* note 33.

[36] *Id.*

while two members of the Court dissented. The Court stated that considering the pain caused, there could be no doubt that there was at least partial entry. Hence, while the medical examination of the victim showed that she did not suffer hymenal laceration or abrasion, the Court, nonetheless, concluded that there was a slight penetration of the victim's genitalia. In this case, the victim did not only state that appellant's penis touched her vagina, but she was made to demonstrate which part of her vagina it touched and she pointed to the upper part of her vaginal opening. Moreover, the victim testified that appellant's penis was "hard" while it was touching her vagina.

The victim's testimony as to the first incident is sorely lacking in details. In *People v. Tolentino,*[37] the Court criticized the prosecution for its failure to extract important details from the victim, which prevented a conviction for consummated rape, thus:

> The prosecution did not ask her the appropriate questions to get some more important details that would demonstrate beyond any shadow of doubt that TOLENTINO's penis reached the labia of the pudendum or the lips of RACHELLE's vagina. It should have, for instance, asked whether TOLENTINO's penis was firm and erect or whether RACHELLE's legs were spread apart to bring us to the logical conclusion that, indeed, TOLENTINO's penis was not flabby and had the capacity to directly hit the labia of the pudendum or the lips of RACHELLE's vagina. There is paucity of evidence that the slightest penetration ever took place. Consequently, TOLENTINO can only be liable for *attempted rape.*[38]

In the present case, no other evidence from which we could reasonably conclude that there was even a slight penetration of the vagina, and not just a mere touching, was presented in evidence. We reiterate that penile penetration cannot be presumed from pain alone. The prosecution must present some other piece of evidence from which the Court could reasonably deduce that there was indeed carnal knowledge by the accused of the

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[37] 367 Phil. 755 (1999).

[38] *Id.* at 764.

victim, be it positive testimony that there was slight penetration of the vagina, or testimony that the penis was erect at the time that it was touching the vagina, or that her vagina bled due to the attempt to insert the penis, or that there were abrasions or contusions on the labia of the vagina.

Since there was no showing that appellant succeeded in having carnal knowledge of the victim, appellant can only be convicted of attempted rape. There is only an attempt to commit rape when the offender commences its commission directly by overt acts but does not perform all acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[39]

The appellate court properly appreciated the twin aggravating circumstances of minority and relationship. The victim's minority and her relationship with appellant were alleged in the Informations and sufficiently established during trial. The victim's birth certificate was presented in evidence to show that she was born on October 15, 1990, which means that she was actually only 12 years old when she was first sexually assaulted. Appellant, during pre-trial, admitted that he is the common-law husband of the victim's mother.

With the abolition of the death penalty by Republic Act No. 9346, the penalty for qualified rape is *reclusion perpetua*. Pursuant to *People v. Bon*,[40] the penalty for attempted rape should also be reckoned from *reclusion perpetua*. In the scale of penalties in Article 71 of the Revised Penal Code, the penalty two degrees lower than *reclusion perpetua* is *prision mayor*. Applying the Indeterminate Sentence Law, absent any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision mayor* or from 8 years and 1 day to 10 years, while the minimum term is one degree lower than *prision mayor*, *i.e.*, *prision correccional,* from 6 months and 1 day to 6 years.

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[39] *People v. Bon*, *supra* note 31, at 188-189.

[40] *Supra* note 31.

The appellate court correctly awarded civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱25,000.00.[41] For the attempted rape, appellant should also pay the victim ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages pursuant to prevailing jurisprudence.[42]

WHEREFORE, the Court of Appeals Decision dated November 16, 2007 is *AFFIRMED WITH MODIFICATIONS.* Appellant Manuel Brioso *y* Tanda is found guilty of:

1. *ATTEMPTED QUALIFIED RAPE* in Criminal Case No. L-3844 and sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. In addition, appellant is *ORDERED* to indemnify the victim in the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages;

2. Two counts of *QUALIFIED RAPE* in Criminal Cases Nos. L-3845 and L-3846 and sentenced to suffer the penalty of *reclusion perpetua* for each count. For each count of rape, appellant is likewise *ORDERED* to indemnify the victim —

   a. civil indemnity in the amount of ₱75,000.00;
   b. moral damages in the amount of ₱75,000.00; and
   c. exemplary damages in the amount of ₱25,000.00.

SO ORDERED.

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

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[41] *People v. Capwa*, G.R. No. 174058, December 27, 2007, 541 SCRA 516; *People v. Bon*, *supra* note 31.

[42] *People v. Bon*, *supra* note 31.

EN BANC

[G.R. No. 182559. March 13, 2009]

COMMISSION ON AUDIT, represented by its Chairman, GUILLERMO CARAGUE, *petitioner, vs.* **LINK WORTH INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT; PROCUREMENT; REPUBLIC ACT NO. 9184; GENERAL RULE; ALL GOVERNMENT PROCUREMENT SHALL BE DONE BY COMPETITIVE BIDDING. — Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement process to the implementation of awarded contracts. It is particularly relevant in this case to distinguish between the steps in the procurement process, such as the declaration of eligibility of prospective bidders, the preliminary examination of bids, the bid evaluation, and the post-qualification stage, which the Bids and Awards Committee (BAC) of all government procuring entities should follow. Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding. This is initiated by the BAC, which advertises the Invitation to Bid for contracts under competitive bidding in order to ensure the widest possible dissemination thereof. The BAC then sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184 (IRR-A).

2. ID.; ID.; ID.; ID.; ID.; TECHNICAL SPECIFICATIONS OF THE PARTICULAR CONTRACT SPECIFIED IN THE INVITATION TO BID IS NOT REQUIRED TO DETERMINE THE PROSPECTIVE BIDDER'S ELIGIBILITY TO BID. — It is well to note at this point that among the technical documents required of prospective bidders to aid the BAC in determining their eligibility to bid is a statement of the

prospective bidder of all its ongoing and completed government and private contracts within the relevant period, including contracts awarded but not yet started. In relation to contracts which are ongoing, completed, or awarded but not yet started, the prospective bidder shall include in the statement the name of the contract, date of the contract, kinds of goods sold, amount of contract and value of outstanding contracts, date of delivery, end user's acceptance, if completed, and specification whether the prospective bidder is a manufacturer, supplier or distributor. The technical specifications of the particular contract specified in the Invitation to Bid is not among the documents required to determine the prospective bidder's eligibility to bid.

3. ID.; ID.; ID.; ID.; ID.; POST-QUALIFICATION PROCEDURE; DOES NOT GIVE OCCASION FOR THE PROCURING ENTITY TO ARBITRARILY EXERCISE ITS DISCRETION AND BRUSH ASIDE THE VERY REQUIREMENT IT SPECIFIES AS VITAL COMPONENTS OF THE GOODS IT BIDS OUT. — Assuming that there is no frame rate variance between *Audio Visual's* document camera and that required in the bid specifications, the TWG's, and the BAC's, disregard of the fact that *Audio Visual's* document camera exceeded the specified weight by 0.27 kg. and used a 6V power supply instead of the required 12V power supply, was still unwarranted and highly irregular. The post-qualification procedure, under which the Lowest Calculated Bid undergoes verification and validation to determine whether all the requirements and conditions specified in the Bidding Documents, have been met, should have effectively weeded out *Audio Visual's* bid. The function of post-qualification is to verify, inspect and test whether the technical specifications of the goods offered comply with the requirements of the contract and the bidding documents. It does not give occasion for the procuring entity to arbitrarily exercise its discretion and brush aside the very requirements it specified as vital components of the goods it bids out.

4. ID.; ID.; ID.; ID.; ID.; EACH BIDDER MUST BE ABLE TO BID ON THE SAME THING. — In *Agan, Jr. v. PIATCO,* petitioners questioned the validity of the Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III (referred to as the 1997 Concession Agreement), on the ground that it contains provisions that substantially depart from the draft

Concession Agreement included in the Bid Documents. PIATCO, on the other hand, maintained that the Concession Agreement attached to the Bid Documents was intended to be a draft, therefore, subject to change, alteration or modification. The Court declared that the amendments made on the 1997 Concession Agreement had resulted in substantial variance between the conditions under which the bids were invited and the contract executed after the award thereof. Thus, the 1997 Concession Agreement was declared null and void for being contrary to public policy. The Court held: An essential element of a publicly bidded contract is that all bidders must be on equal footing. Not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, *but more importantly, on the contract bidded upon. Each bidder must be able to bid on the same thing.* x x x The fact is all too glaring that during the post-qualification stage, the BAC considered some factors which were extraneous to and not included in the bid documents, such as ease of use, compactness and sturdiness, and the remote control of *Audio Visual's* document camera, and, at the same time, glossed over two of the requirements which *were* indicated in the bid documents, *i.e.,* the weight and power supply requirements. Had the prospective bidders known that all of the above factors formed part of the bid specifications, a different set of bids might have emerged. Essentially, it can be said that the eligible bidders did not bid upon the same thing.

5. CIVIL LAW; ESTOPPEL; A PARTY CANNOT BE HELD IN ESTOPPEL WHERE IT TIMELY OBJECTED AND SEASONABLY MOVED FOR RECONSIDERATION OF THE DECISION OF THE BIDS AND AWARDS COMMITTEE. — On the matter of estoppel, we agree with the appellate court's finding that *Link Worth* raised timely objections and seasonably filed motions for reconsideration of the decisions of the BAC and the TWG. It cannot, therefore, be held in estoppel. Its failure to object to the pass rating given to *Audio Visual* during the preliminary examination stage was satisfactorily explained by the fact that the technical specifications of the machines offered by the eligible bidders were not shown onscreen, an assertion COA never bothered to dispute.

6. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCY; COMMISSION ON AUDIT CANNOT BE SUED

WITHOUT ITS CONSENT EVEN IN THE EXERCISE OF PROPRIETARY FUNCTIONS INCIDENTAL TO ITS PRIMARILY GOVERNMENTAL FUNCTIONS. — No award of damages can be made in favor of *Audio Visual* in this case, however. COA is an unincorporated government agency which does not enjoy a separate juridical personality of its own. Hence, even in the exercise of proprietary functions incidental to its primarily governmental functions, COA cannot be sued without its consent. Assuming that the contract it entered into with *Audio Visual* can be taken as an implied consent to be sued, and further that incidental reliefs such as damages may be awarded in *certiorari* proceedings, *Link Worth* did not appeal the Court of Appeals' Decision deleting the award of damages against COA. Consequently, *Link Worth* is bound by the findings of fact and conclusions of law of the Court of Appeals, including the deletion of the award of exemplary damages, attorney's fees and costs.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Picazo Buyco Tan Fider and Santos for respondent.

D E C I S I O N

TINGA, *J.*:

The Commission on Audit (COA), through the Office of the Solicitor General (OSG), questions the Decision[1] dated April 21, 2008, of the Court of Appeals in CA-G.R. SP No. 94345, which affirmed the Decision[2] dated January 18, 2006 of the Regional Trial Court (RTC) of Quezon City, Branch 222, as amended by the RTC's orders dated February 13, 2006[3] and March 10, 2006,[4] nullifying the COA's award of a bidding contract

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[1] *Rollo*, pp. 29-45; Penned by Associate Justice Noel G. Tijam with the concurrence of Associate Justices Martin S. Villarama, Jr. and Myrna Dimaranan Vidal.

[2] *Id.* at 94-98; Penned by Judge Rogelio M. Pizarro.

[3] *Id.* at 101.

[4] *Id.* at 105-106.

in favor of Audio Visual Driver International, Inc. (*Audio Visual*). The assailed Decision, however, deleted the RTC's award of damages in favor of herein respondent Link Worth International, Inc. (*Link Worth*).

The undisputed facts are quoted from the Decision of the appellate court as follows:

On July 14, 2004, the Commission on Audit's Bids and Awards Committee (COA-BAC) conducted a bidding for various information communication technology equipment, specifically for Lot 6, which includes 3 units of document cameras.

Link Worth and Audio Visual were among the bidders declared by COA-BAC to have "passed" the technical specifications for the equipment. However, COA-BAC did not disclose the respective specifications of the equipment offered by the bidders. Thereafter, the COA-BAC opened the envelopes containing the financial bid for Lot 6, which were as follows:

Bidder	Bid Amount
All Visual	₱2,801,000.00
Columbia Tech	₱2,953,392.00
Audio Visual Driver	₱3,299,000.00
Link Worth	₱3,357,000.00
Ayala	₱3,599,251.00
Unison	₱4,000,000.00

Not having made the lowest financial bid among the "passing" bidders, Link Worth thought that it had lost the bidding, until the COA-BAC asked Link Worth and Audio Visual for product demonstration of their document camera. Link Worth, later, learned that the COA-BAC disqualified the first 2 lowest bidders for failure to meet the technical specifications.

On August 13, 2004, Link Worth and Visual Driver conducted the product demonstration. Link Worth told the Technical Working Group (TWG), before whom the project demonstration was conducted, that the equipment offered by Audio Visual failed to satisfy the technical specifications required for the document camera. Link Worth identified the following technical specifications which Audio Visual failed to satisfy:

	Bid Specifications	Audio Visual Specifications
Frame Rate	15 frame/second	2-way Filter Control
Power Supply	DC 12V	6V Power Supply
Maximum Weight	1.5 Kg.	1.7 Kg.

Link Worth insisted that the technical specifications should be strictly complied with. Audio Visual did not dispute that their equipment, the Ave Vision 300 camera, failed to meet the product specifications required. After the product demonstration, the TWG asked Audio Visual to submit a clarification as to the frame rate of the document camera. Thus, Audio Visual submitted a certification, dated September 6, 2004, issued by AverMedia Technologies, Inc., that Aver Vision 300, complies with the 15 frames/second specification. AverMedia, Inc. is the manufacturer of the Aver Vision 300, the document camera offered by Audio Visual.

In a Memorandum, dated August 16, 2004, the TWG recommended that the contract for Lot 6 be awarded to Audio Visual for the following reasons:

1. Performance, in terms of capture, projection of images on the screen, digital zoom and pan and 180^0 rotation function
2. Sharper image projection than that of the Lumens DC80A
3. Ease of Use
4. Compact and Sturdy
5. With remote Control
6. The 0.27kg. weight excess is immaterial

On September 2, 2004, Link Worth filed with COA-BAC a motion for the reconsideration of the TWG's Memorandum, alleging that the Audio Visual's document camera failed to comply with the technical specifications. Link Worth prayed for the reversal of the TWG's recommendation to declare Audio Visual as the lowest calculated responsive bid. Link Worth also alleged that the bidding rules and regulations were violated when TWG member Engr. Bernardita Geres, received Audio Visual's certification that its document camera complies with the 15 frame/second specifications.

On September 14, 2004, COA-BAC awarded the contract for Lot 6 to Audio Visual.

On September 20, 2004, Link Worth wrote to COA-BAC, questioning the award of the contract to Audio Visual and prayed that the COA-BAC award the same to Link Worth having submitted the lowest calculated responsive bid. On September 23, 2004, Link Worth received a faxed letter dated September 21, 2004, from COA-BAC dismissing its complaint.

On September 27, 2004, Link Worth filed a formal protest with the COA Chairman Guillermo Carague. However, the same was likewise dismissed in COA's Order dated December 9, 2004, issued by Assistant Commissioner Raquel R. Ramirez-Habitan, under authority of the Chairman.

On February 2, 2005, pursuant to Section 58 of R.A. No. 9184, otherwise known as the Government Procurement Reform Act, Link Worth filed a Petition for *Certiorari* under the 1997 Rules of Civil Procedure, ascribing grave abuse of discretion to the COA "*when it denied Petitioner's protest, which denial effectively sanctioned the disregard of technical specifications by COA-BAC in the subject procurement, and sanctioned the clear violations of the Procurement Law and its IRR-A.*"

On January 18, 2006, the RTC rendered the assailed Decision, as amended by the RTC's Orders, dated February 13, 2006 and March 10, 2006, disposing as follows:

> WHEREFORE, premises considered, the petition for *certiorari* is hereby GRANTED and accordingly, the assailed Resolution, dated December 9, 2004 is REVERSED and SET ASIDE for having been issued in grave abuse of discretion amounting to excess of its jurisdiction and accordingly, the award of the subject bidding in favor of private respondent Audio Visual Driver International, Inc. (AVD) is NULLIFIED and respondent COA is directed to pay petitioner the following amounts:
>
> (1) ₱100,000.00 as exemplary damages;
> (2) ₱100,000.00 as attorney's fees;
> (3) Cost.

Rejecting COA's assertion that the contract's technical specifications varied insignificantly with those submitted by Audio Visual, the RTC ruled that COA committed grave abuse of discretion in awarding the bid contract to Audio Visual and in denying Link Worth's protest. The RTC found that "*COA's manifest conduct in*

awarding the contract to a bidder which failed to comply with the requisite bid specifications from the very beginning smacks of favoritism and partiality toward [Audio Visual] to whom it awarded the contract. In sum, estoppel, whether by silence or laches, is unavailing in this case. Otherwise, it would stamp validity to an act that is against public policy."

The RTC rejected COA's assertion that "*even as the technical proposal of [Audio Visual] varied from the bid specifications, these variances were found to be insignificant and did not warrant the bidder's disqualification."* The RTC ruled that "*if COA knew that any such deviation would be immaterial, then it should not have specified the technical standards/requirements which must be met at the first step of the bid qualification.* The RTC notes that when COA found that *"the technical specifications submitted by [Audio Visual] were not the same as that of the bid specifications provided by COA, it should have rejected [Audio Visual's] bid upon opening of its technical bid envelope and not pronounce it as having 'passed' the bidding criteria."* The RTC further ruled that *"the certification xxx and information from the internet was received and obtained after the product demonstration had already been conducted,"* in violation of Section 26 of R.A. No. 9184.[5]

The Court of Appeals affirmed the RTC's finding that *Audio Visual* failed to comply with several technical specifications required of the document cameras, and that COA violated certain provisions of R.A. No. 9184 and its Implementing Rules. However, the appellate court deleted the award of damages to *Link Worth*, holding that COA cannot be held liable for damages as this would violate the commission's immunity from suit. COA and *Audio Visual* were directed to make mutual restitution.

In the instant petition[6] dated June 3, 2008, filed under Rule 45 of the Rules of Court but erroneously entitled Petition for *Certiorari*, COA asserts that the post-qualification proceedings it conducted showed that *Audio Visual's* document camera was compliant with the required technical specifications. Moreover, *Link Worth* is allegedly estopped from questioning the "pass" rating granted by COA to *Audio Visual* since the former failed

[5] *Id.* at 30-35.

[6] *Id.* at 7-27.

to raise an objection to the acceptability of the technical specifications of *Audio Visual's* bid during the preliminary examination stage.

Link Worth filed a Comment[7] dated July 30, 2008, asserting that COA had ignored the required technical specifications when it awarded the contract to *Audio Visual*. Specifically, *Link Worth* points out that *Audio Visual's* document camera merely provided a two (2)-level flicker filter which lessens but does not eliminate the flicker effect contrary to the required frame rate of 15 frames/second. The 12V power supply requirement was also not met because *Audio Visual's* document camera used a 6V power supply. The camera's weight of 1.77 kg. also exceeded the required maximum weight of 1.5 kg.

COA allegedly allowed subjectivity to come into play when it allowed end-users to participate in the decision-making process contrary to R.A. No. 9184,[8] which seeks to eliminate subjectivity in award of government contracts. *Link Worth* further insists that it availed of the remedies under R.A. No. 9184 in its effort to question the award to *Audio Visual* and can thus not be held in estoppel.

Finally, *Link Worth* claims that it suffered damages by reason of COA's breach of R.A. No. 9184 and should accordingly be allowed to recover its losses from COA.

The OSG deemed it best not to file a reply.[9]

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement process to the implementation of awarded contracts. It is particularly relevant in this case to distinguish between the steps in the

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[7] *Id.* at 111-137.

[8] ENTITLED "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES."

[9] *Id.* at 139-141.

procurement process, such as the declaration of eligibility of prospective bidders, the preliminary examination of bids, the bid evaluation, and the post-qualification stage, which the Bids and Awards Committee (BAC) of all government procuring entities should follow.

Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding.[10] This is initiated by the BAC, which advertises the Invitation to Bid for contracts under competitive bidding in order to ensure the widest possible dissemination thereof.[11] The BAC then sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid[12] and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184 (IRR-A).

It is well to note at this point that among the technical documents required of prospective bidders to aid the BAC in determining their eligibility to bid is a statement of the prospective bidder of all its ongoing and completed government and private contracts within the relevant period, including contracts awarded but not yet started. In relation to contracts which are ongoing, completed, or awarded but not yet started, the prospective bidder shall include in the statement the name of the contract, date of the contract, kinds of goods sold, amount of contract and value of outstanding contracts, date of delivery, end user's acceptance, if completed, and specification whether the prospective bidder is a manufacturer, supplier or distributor.[13] The technical specifications of the particular contract specified in the Invitation to Bid is not among the documents required to determine the prospective bidder's eligibility to bid.

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[10] Republic Act No. 9184 (2003), Art. IV, Sec. 10.

[11] Republic Act No. 9184 (2003), Rule VII, Sec. 21.

[12] Republic Act No. 9184 (2003), Art. VIII, Sec. 23.

[13] Memorandum Order No. 119 (2003), Rule VIII, Sec. 23.6(f).

The BAC then informs the eligible prospective bidders that they have been found eligible to participate in the bidding[14] and prepares a short list of bidders who shall be allowed to submit their respective bids.[15]

Sec. 25, Art. VIII of R.A. No. 9184 provides that, "A bid shall have two (2) components, namely, technical and financial components which should be in separate sealed envelopes and which shall be submitted simultaneously." Sec. 25.3, Rule VIII of IRR-A provides that, "The first envelope (Technical Proposal) shall contain the following technical information/documents, at the least:

A. For the procurement of goods:

1. The Bid Security as to form, amount and validity period;
2. Authority of the signatory;
3. Production/delivery schedule;
4. Manpower requirements;
5. After-sales service/parts, if applicable;
6. **Technical specifications;**
7. Commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid: *Provided, however,* That if the bidder previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice;
8. Certificate from the bidder under oath of its compliance with existing labor laws and standards, in the case of procurement of services; and
9. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of the Act in relation to other provisions of R.A. No. 3019; and
10. Other documents/materials as stated in the Instructions to Bidders. [Emphasis supplied]

The BAC shall first open and examine the technical proposal and, using "pass/fail" criteria, determine whether all required

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[14] Memorandum Order No. 119 (20033) Rule VIII, Sec. 23.3

[15] Republic Act No. 9184 (2003), Art. VIII, Sec. 24.

documents are present. Sec. 30, Art. IX of R.A. No. 9184 provides:

Sec. 30. *Preliminary Examination of Bids.* — Prior to Bid evaluation, the BAC shall examine first the technical components of the bid using "pass/fail" criteria to determine whether all required documents are present. Only bids that are determined to contain **all** the bid requirements of the technical component shall be considered for opening and evaluation of their financial component. [Emphasis supplied]

Sec. 30.1 of IRR-A echoes the provision, *viz*:

Sec. 30. *Preliminary Examination of Bids*

30.1. The BAC shall open the *first bid envelopes* (Technical Proposals) of eligible bidders in public to determine each bidder's compliance with the documents required to be submitted for the first component of the bid, as prescribed in this IRR-A. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the first bid envelope, using the non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instruction to Bidders. If a bidder submits the required documents, it shall be rated "passed" for that particular requirement. In this regard, **failure to submit a requirement, or an incomplete or patently insufficient submission shall be considered "failed" for that particular requirement concerned. x x x** [Emphasis supplied]

During the preliminary examination stage, the BAC checks whether all the required documents were submitted by the eligible bidders. Note should be taken of the fact that the technical specifications of the product bidded out is among the documentary requirements evaluated by the BAC during the preliminary examination stage. At this point, therefore, the BAC should have already discovered that the technical specifications of *Audio Visual's* document camera differed from the bid specifications in at least three (3) respects, namely: the 15 frames/second frame rate, the weight specification, and the power supply requirement. Using the non-discretionary criteria laid out in R.A. No. 9184 and IRR-A, therefore, the BAC should have rated *Audio Visual's* bid as "failed" instead of "passed."

After the preliminary examination stage, the BAC opens, examines, evaluates and ranks all bids and prepares the Abstract of Bids which contains, among others, the names of the bidders and their corresponding calculated bid prices arranged from lowest to highest.[16] The objective of the bid evaluation is to identify the bid with the lowest calculated price or the Lowest Calculated Bid.[17] The Lowest Calculated Bid shall then be subject to post-qualification to determine its responsiveness to the eligibility and bid requirements. If, after post-qualification, the Lowest Calculated Bid is determined to be post-qualified, it shall be considered the Lowest Calculated Responsive Bid and the contract shall be awarded to the bidder.

Sec. 34, Rule X of IRR-A outlines the post-qualification process as follows:

Sec. 34. *Objective and Process of Post-Qualification*

34.1. Within seven (7) calendar days from the determination of Lowest Calculated Bid or the Highest Rated Bid, as the case may be, the BAC shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated Bid/Highest Rated Bid, to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions for eligibility, the bidding of the contract, as specified in the bidding documents, in which case the bidder's bid shall be considered and declared as the "Lowest Calculated Responsive Bid" for the procurement of goods and infrastructure projects, or the *"Highest Rated Responsive Bid"* for the procurement of consulting services. In exceptional cases, the seven (7) calendar day period may be extended by the GPPB.

34.2. The post-qualification shall verify, validate and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instruction to Bidders. These criteria shall consider, but shall not be limited to, the following:

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[16] Memorandum Order No. 119 (2003), Rule IX, Sec. 32.5.

[17] Memorandum Order No. 119 (2003), Rule IX, Sec. 32.

b) Technical Requirements. To determine compliance of the goods, infrastructure projects or consulting services offered with the requirements of the contract and bidding documents, including, where applicable: (i) verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of infrastructure projects and consulting services; (ii) verification of availability and commitment, and/or inspection and testing, of equipment units to be owned or leased by the bidder, as well as checking the performance of the bidder in its ongoing government and private contracts (if any of these on-going contracts shows a reported negative slippage of at least fifteen percent (15%), or substandard quality of work as per contract plans and specifications, or unsatisfactory performance of his obligations as per contract terms and conditions, at the time of inspection, and if the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award), for the procurement of infrastructure projects; **(iii) verification and/or inspection and testing of the goods/product, after-sales and/or maintenance capabilities, in applicable cases, for the procurement of goods;** and (iv) ascertainment of the sufficiency of the Bid Security as to type, amount, form and wording, and validity period. [Emphasis supplied]

In this case, the bidders ranked as the two lowest bidders, *All Visual* and *Columbia Tech*, were disqualified by the BAC presumably at the post-qualification stage when their bids failed to meet the technical specifications for the project. Remarkably, however, despite the fact that there also existed technical variances between the bid specifications and *Audio Visual's* document camera, the BAC did not post-disqualify *Audio Visual*.

On the contrary, COA's Technical Working Group (TWG) declared, during post-qualification, that there is no frame speed variance between *Audio Visual's* document camera and the required specification because *Audio Visual's* document camera is compliant with the 15 frames/second requirement. It is well to point out that it was initially unclear whether *Audio Visual's* document camera met the bid specification requiring a frame rate of 15 frames/second. What *Audio Visual* indicated was that its document camera, Aver Vision 300, featured a "2-way

Filter Control." However, this feature does not even pertain to the camera's capture frame rate, or the frequency at which the camera produces unique consecutive images called frames.[18] As its User Manual indicates, the flicker filter refers to how the camera is synchronized with an external projector or display.[19]

The Aver Vision 300's compliance with the 15 frames/second frame rate specification was only made certain when the product's manufacturer, AverMedia Technologies, Inc. issued a certification dated September 6, 2004, upon the TWG's request, it should be added, that it indeed complies with the 15 frames/second specification.[20]

Assuming that there is no frame rate variance between *Audio Visual's* document camera and that required in the bid specifications, the TWG's, and the BAC's, disregard of the fact that *Audio Visual's* document camera exceeded the specified weight by 0.27 kg. and used a 6V power supply instead of the required 12V power supply, was still unwarranted and highly irregular. The post-qualification procedure, under which the Lowest Calculated Bid undergoes verification and validation to determine whether all the requirements and conditions specified in the Bidding Documents, have been met,[21] should have effectively weeded out *Audio Visual*'s bid.

The function of post-qualification is to verify, inspect and test whether the technical specifications of the goods offered comply with the requirements of the contract and the bidding documents. It does not give occasion for the procuring entity to arbitrarily exercise its discretion and brush aside the very requirements it specified as vital components of the goods it bids out.

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[18] http://en.wikipedia.org/wiki/Frame_rate.

[19] http://www.aver.com/2005home/support/downloads/User_Manual/AVerVision300.pdf.

[20] *Rollo*, p. 31.

[21] Republic Act No. 9184 (2003), Art. X, Sec. 34.

In *Agan, Jr. v. PIATCO,*[22] petitioners questioned the validity of the Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III (referred to as the 1997 Concession Agreement), on the ground that it contains provisions that substantially depart from the draft Concession Agreement included in the Bid Documents. PIATCO, on the other hand, maintained that the Concession Agreement attached to the Bid Documents was intended to be a draft, therefore, subject to change, alteration or modification. The Court declared that the amendments made on the 1997 Concession Agreement had resulted in substantial variance between the conditions under which the bids were invited and the contract executed after the award thereof. Thus, the 1997 Concession Agreement was declared null and void for being contrary to public policy. The Court held:

An essential element of a publicly bidded contract is that all bidders must be on equal footing. Not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, *but more importantly, on the contract bidded upon. Each bidder must be able to bid on the same thing.*[23]

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x x x By its very nature and characteristic, competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. It has been held that the three principles in public bidding are (1) the offer to the public; (2) opportunity for competition; and (3) a basis for the exact comparison of bids. A regulation of the matter which excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption. These are the basic parameters which every awardee of a contract bidded out must conform to, requirements of financing and borrowing notwithstanding. Thus, upon a concrete showing that, as in this case, the contract signed by the government and the contract-awardee is an entirely different contract from the contract bidded, courts should not hesitate to strike down said contract in its entirety for violation of public policy on public bidding. A strict adherence on the principles, rules and regulations

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[22] 450 Phil. 744 (2003).

[23] *Id.* at 814.

on public bidding must be sustained if only to preserve the integrity and the faith of the general public on the procedure.[24]

The fact is all too glaring that during the post-qualification stage, the BAC considered some factors which were extraneous to and not included in the bid documents, such as ease of use, compactness and sturdiness, and the remote control of *Audio Visual's* document camera, and, at the same time, glossed over two of the requirements which *were* indicated in the bid documents, *i.e.,* the weight and power supply requirements. Had the prospective bidders known that all of the above factors formed part of the bid specifications, a different set of bids might have emerged. Essentially, it can be said that the eligible bidders did not bid upon the same thing.

On the matter of estoppel, we agree with the appellate court's finding that *Link Worth* raised timely objections and seasonably filed motions for reconsideration of the decisions of the BAC and the TWG. It cannot, therefore, be held in estoppel. Its failure to object to the pass rating given to *Audio Visual* during the preliminary examination stage was satisfactorily explained by the fact that the technical specifications of the machines offered by the eligible bidders were not shown onscreen, an assertion COA never bothered to dispute.

No award of damages can be made in favor of *Audio Visual* in this case, however. COA is an unincorporated government agency which does not enjoy a separate juridical personality of its own. Hence, even in the exercise of proprietary functions incidental to its primarily governmental functions, COA cannot be sued without its consent.[25] Assuming that the contract it entered into with *Audio Visual* can be taken as an implied consent to be sued, and further that incidental reliefs such as damages may be awarded in *certiorari* proceedings,[26] *Link Worth*

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[24] *Id.* at 824.

[25] *Republic v. Nolasco*, G.R. No. 155108, April 27, 2005, 457 SCRA 400.

[26] The provenance of this case is the petition for *certiorari* filed with the RTC under Rule 65 of the Rules of Court in accordance with Sec. 58, Art. XVII of R.A. No. 9184, which provides:

did not appeal the Court of Appeals' Decision deleting the award of damages against COA. Consequently, *Link Worth* is bound by the findings of fact and conclusions of law of the Court of Appeals, including the deletion of the award of exemplary damages, attorney's fees and costs.[27]

It is remarkably ironic that COA, the constitutional watchdog, signed its imprimatur to a transaction which resulted from an irreparably flawed bidding process. The Commission, in this case, has displayed a lamentable disregard of its mandate as the sentinel of government resources. The nullification of the award of the contract to *Audio Visual* and the mutual restitution directed by the Court of Appeals are both appropriate consequences. It is, however, paramount that COA be reminded of its most important role, seemingly forgotten in this case, in the promotion of transparency and accountability in public financial transactions.

WHEREFORE, the Decision of the Court of Appeals dated April 21, 2008 is hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

Nachura, J., no part. Signed pleading as Solicitor General.

Puno, C.J., on official leave.

Sec. 58. *Resort to Regular Courts; Certiorari.* — Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

[27] *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 12, 2006, 504 SCRA 378.

THIRD DIVISION

[G.R. No. 184173. March 13, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUDITO MOLINA and JOHN DOE,** *accused,* **JOSELITO TAGUDAR,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS REGARDS THE ASSESSMENT THEREOF ARE ENTITLED TO GREAT WEIGHT AND RESPECT, PARTICULARLY WHEN THE COURT OF APPEALS AFFIRMS THE SAID FINDINGS. —** As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. There is nothing in the records that would impel this Court to deviate from the findings and conclusion of the trial court, which findings were also affirmed by the Court of Appeals. Indeed, this Court finds the testimonies of the prosecution witnesses credible and worthy of belief.

2. **ID.; ID.; ID.; THE NATURAL REACTION OF VICTIMS OF CRIMINAL VIOLENCE IS TO STRIVE TO SEE THE APPEARANCE OF THEIR ASSAILANT AND OBSERVE THE MANNER IN WHICH THE CRIME WAS COMMITTED. —** Contrary to the claim of the appellant, it can be gleaned from the testimonies of the prosecution witnesses that they did not remain standing while the shooting

incident was going on. In fact, Allan Montorio and Jomar Pillor sought refuge inside the house of Carmen Daganato. It was at this point that they saw two persons shooting at their direction with an armalite and clad in a black long-sleeved shirt, short pants and bonnets. They recognized them as the appellant and Judito Molina. **Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identities of criminals.** This Court has ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailant and observe the manner in which the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memories.

3. **ID.; ID.; ID.; NOT IMPAIRED BY WITNESS' DELAY IN REVEALING THE AUTHOR OF THE CRIME, ESPECIALLY IF SUCH DELAY IS SATISFACTORILY EXPLAINED.—** Neither can the appellant cast suspicion on the prosecution witnesses' failure to immediately report the crimes and the identities of their assailants. This Court has previously ruled that delay in revealing the author of the crime does not impair the credibility of witnesses, more so if such delay is satisfactorily explained. In this case, the delay in reporting the shooting incident and the identities of those responsible for the same were satisfactorily explained by the prosecution witnesses. As the Court of Appeals stated in its Decision, the delay and hesitation of Allan Montorio and Jomar Pillor to reveal the identities of the assailants to those people who interviewed them, *i.e.*, the police authorities of San Juan, Abra, a media practitioner, and the appellant himself, were attributable to fear for their lives and those of their families; more so, if the one asking about the identities of the assailants is the assailant himself. It must be remembered that the appellant in this case is a policeman, while his co-accused Judito Molina is a bodyguard of the Mayor. Considering their standing in the community, it is quite natural for the eyewitnesses to be scared and to keep the information to themselves until they found enough courage to disclose the same. Such fear was quite obvious on the part of the prosecution witnesses, as they were placed under the Witness Protection Program of the Department

of Justice the moment they revealed what they knew about the shooting incident and who were responsible for the same.

4. **ID.; ID.; DEFENSE OF ALIBI; CANNOT PREVAIL OVER THE CLEAR AND POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME. —** In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail. It is settled in this jurisdiction that the **defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime.** Moreover, in order to justify an acquittal based on this defense, the accused must establish by clear and convincing evidence that (a) he was in another place at the time of the commission of the offense; and (b) it was physically impossible for him to be at the scene of the crime at the time it was committed. These, appellant miserably failed to show.

5. **ID.; ID.; ID.; TO PROSPER, THE ACCUSED MUST SUBSTANTIATE THE ELEMENT OF PHYSICAL IMPOSSIBILITY. —** As the Court of Appeals has observed, the appellant failed to substantiate the element of physical impossibility. Records reveal that the distance and negligible time negate appellant's claim of alibi and destroy any attempt to prove that it was not possible for him to have been physically present at the *locus criminis* or its immediate vicinity at the time of the commission of the crime. It was even admitted by the defense during the pre-trial that appellant was at Bangued, Abra, on 4 October 2002. Emphasis must be given to the fact that Bangued, Abra, is a municipality not far from San Juan, Abra, where the shooting incident happened. Therefore, it was not physically impossible for the appellant to have been at the *locus criminis* at the time the crime was committed.

6. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; CASE AT BAR.—** Finally, as regards the presence of treachery as a qualifying circumstance, this Court holds that the attack was undoubtedly treacherous. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime,

depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim. As the appellate court enunciated in its Decision, the prosecution was able to show that the assault made upon the victims at the time of the shooting incident was so sudden and unexpected as to have caught them unprepared to meet the assault. At the time of the shooting incident, the victims were merely playing or watching the on going game of dice just outside the house of Carmen Daganato, who was lying in state. They had no foreboding of any danger, threat or harm upon their lives at the said time, place and occasion. Likewise, it was clearly established that the sudden and unexpected attack adopted by the appellant and his co-accused, who peppered the unsuspecting victims with bullets, deprived the latter of any chance to defend themselves, thereby, ensuring the commission of the crime without risk or any possible retaliatory attack on the aggressors.

7. ID.; ID.; ID.; PRESENT IN CASE AT BAR. — The presence of treachery qualifies the killings of the four victims to murder. With respect to the 14 injured victims, the crime committed by the appellant is attempted murder, as the appellant already commenced the criminal acts by overt acts but failed to perform all the acts of execution as to produce the felony by reason of some cause other than his own spontaneous desistance. Similarly, treachery qualifies the attempted killings.

8. ID.; MURDER; IMPOSABLE PENALTY. — All told, the appellant is guilty of four counts of murder qualified by treachery. Under Article 248 of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua* for each count, pursuant to Article 63, paragraph 2 of the Revised Penal Code.

9. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — 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. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of

the crime. We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under the prevailing jurisprudence, the award of ₱50,000.00 as civil indemnity for each count of murder, to be paid to the heirs of the victims, is proper. As to actual damages, the heirs of the victims of murder are not entitled thereto because said damages were not duly proved with a reasonable degree of certainty. Anent moral damages, the same are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages for each count of murder, to be given to the heirs of the four victims, is likewise in order. The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved. Thus, this Court similarly award ₱25,000.00 as temperate damages for each count of murder. The heirs of the four victims of murder are also entitled to exemplary damages in the amount of ₱25,000.00 each, since the qualifying circumstance of treachery was firmly established. The award of ₱20,000.00, as civil indemnity to each victim of attempted murder, is neither arbitrary nor excessive because such award is in line with this Court's ruling in *People v. Gutierrez,* citing *People v. Almazan*. The lower courts did not award moral and exemplary damages. To conform to this Court's current ruling in *People v. Domingo*, awards of moral and exemplary damages in the amounts of ₱10,000.00 and ₱25,000.00, respectively, to each victim, are in order.

10. ID.; ATTEMPTED MURDER; IMPOSABLE PENALTY. — The appellant is likewise guilty of 14 counts of attempted murder. The penalty prescribed by law for murder, which is *reclusion perpetua* to death, should be reduced by two degrees, conformably to Article 51 of the Revised Penal Code. Under paragraph 2 of Article 61, in relation to Article 71 of the Revised Penal Code, such a penalty is *prision mayor*. There being no mitigating or aggravating circumstance, the same should be imposed in its medium period pursuant to Article 64, paragraph 1 of the Revised Penal Code. Applying the Indeterminate Sentence Law in the case of attempted murder, the maximum shall be taken from the medium period of *prision*

mayor, which is 8 years and 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, the range of which is 6 months and 1 day to 6 years. Thus, this Court finds the indeterminate penalty of 2 years and 4 months of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, imposed by the lower courts on the appellant for each count of attempted murder, proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
M.Z. Bañaga, Jr. & Associates Law Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 16 January 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02327, which affirmed the Decision[2] dated 24 May 2006 of the Regional Trial Court (RTC) of Ilocos Norte, Laoag City, Branch 16, in Criminal Case Nos. 2003-011-16 to 2003-028-16, finding herein appellant Joselito Tagudar guilty beyond reasonable doubt of four counts of murder (Criminal Cases No. 2003-011-16 to 2003-014-16) and 14 counts of attempted murder (Criminal Cases No. 2003-015-16 to 2003-028-16). The appellant was sentenced to suffer the penalty of *reclusion perpetua* with all its accessory penalties for each count of murder and was ordered to pay the heirs of each victim the amount of ₱50,000.00 as civil indemnity. He was also sentenced to suffer an indeterminate penalty of 2 years and 4 months of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, for each

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[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; *rollo*, pp. 3-48.

[2] Penned by Judge Conrado A. Ragucos; CA *rollo*, pp. 123-146.

count of attempted murder and was ordered to pay each victim the amount of ₱20,000.00 as civil indemnity.

Appellant Joselito Tagudar, together with Judito Molina and a certain John Doe, both of whom remain-at-large, was charged before the RTC of Bangued, Abra, in 4 separate Informations for murder committed against Jansen Bersamin, Eric Pacurza, Rogee Montorio and Algie Pacurza; and 14 separate Informations for attempted murder committed against Ronald Ta-a, Jomar Pilor, Romel Pacurza, Jerome Bayubay, Gilbert Baruela, Crisanto Baruela, Roger Bersamin, Robert Baruela, Sammy Abundo, Albert Batalla, Carmelo Daganato, Filomeno Blosan, Allan Montorio and Eugene Philip Baruela.

The four separate Informations for murder[3] were docketed as Criminal Cases No. 2003-011-16 to No. 2003-014-16. Except for the names of the victims, the Informations in these four cases identically read:

"That on or about 11:30 to 12:00 midnight of [4 October 2002] at Barbarsic, Ba-ug, San Juan, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, in conspiracy with one another, with treachery, taking advantage of darkness and use of unlicensed firearms (unrecovered), unlawfully and feloniously shot [name], causing the latter's death, to the great damage and prejudice of the heirs of the victim."

The other 14 separate Informations for attempted murder[4] were docketed as Criminal Cases No. 2003-015-16 to No. 2003-028-16. Again, except for the names of the victims, the aforesaid Informations contained similar averments, to wit:

That on or about 11:30 to 12:00 midnight of [4 October 2002] at Barbarsic, Ba-ug, San Juan, Abra, Philippines and within the

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[3] Records, Vol. 1, pp. 1-2; Records, Vol. II, pp. 1-2; Records, Vol. III, pp. 1-2; and Records, Vol. IV, pp. 1-2.

[4] Records, Vol. V, pp. 1-2; Records, Vol. VI, pp. 1-2; Records, Vol. VII, pp. 1-2; Records, Vol. VIII, pp. 1-2; Records, Vol. IX, pp. 1-2; Records, Vol. X, pp. 1-2; Records, Vol. XI, pp. 1-2; Records, Vol. XII, pp. 1-2; Records, Vol. XIII, pp. 1-2; Records, Vol. XIV, pp. 1-2; Records, Vol. XV, pp. 1-2; Records, Vol. XVI, pp. 1-2; Records, Vol. XVII, pp. 1-2; and Records, Vol. XVIII, pp. 1-2.

jurisdiction of this Honorable Court, the said accused, did then and there, in conspiracy with one another, with treachery, taking advantage of darkness and use of unlicensed firearms (unrecovered), unlawfully and feloniously shot [name], inflicting gunshot wounds thereby commencing the commission of murder by overt acts but do not perform all the acts of execution necessary to commit murder as a consequence for reasons other than their spontaneous desistance, to the damage and prejudice of the victim.

A Warrant of Arrest[5] dated 10 February 2003 was issued against the appellant and Judito Molina. However, only the appellant was arrested while Judito Molina remains-at-large.

Upon arraignment, the appellant, assisted by counsel *de parte*, pleaded NOT GUILTY to the crimes charged.

On 13 October 2003, this Court issued a Resolution,[6] which granted appellant's Petition for Transfer of Venue. Thereupon, the complete records of the aforesaid cases were forwarded by the RTC of Bangued, Abra, to the Executive Judge of RTC Laoag, Ilocos Norte, and were raffled to Branch 16 thereof.

During the pre-trial conference,[7] the prosecution and the defense entered into the following stipulation of facts:

1. The identity of the [appellant] is admitted meaning that whenever the prosecution witnesses mention the name Joselito Tagudar they would be referring to the [appellant] Joselito Tagudar who was charged and arraigned under the information[s];
2. That on [4 October 2002] there was a wake at the Daganato house at Brgy. Barbarsic, Ba-ug, San Juan, Abra where the deceased Carmen Daganato was lying in state;
3. That many people adults and children were playing cards at the wake;

[5] Records, Vol. I, p. 35.

[6] *Id.* at 79-80.

[7] As evidenced by a Pre-trial Order dated 24 February 2004 issued by Judge Conrado A. Ragucos, *id.* at 89-91.

4. That on that night 4 people died, namely: Rog[e]e Montorio, Eric Pacur[z]a, Jansen [Bersamin] and Algie Parcur[z]a;
5. The defense admit (sic) their respective certificates of death;
6. That during the shooting incident 14 other people were injured, namely: Ronald Ta[-]a, Crisanto Bar[u]ela, Robert Bar[u]ela, Carmelo Daganato, Jomar Pillor, Allan Montorio, Filomeno Bulosan, Jerome Bayubay, Philip Eugene Bar[u]ela, Gilbert Bar[u]ela, Rommel Pacur[z]a, Sammy Abundo and [Roger] Bersamin;
7. That in the early morning of [5 October 2002] the [appellant] Joselito Tagudar went to visit some of the victims who were his relatives among them were Jomar Pillor and Allan Montorio;
8. That on [4 October 2002] the [appellant] Joselito Tagudar was at Bangued, Abra;
9. The existence of the following exhibits are admitted. Exhibit "1" which is a certification[8] issued by Police Inspector Lambert Alban Suerte regarding the holding of scout class at Camp Bado, Dangwa, La Trinidad, Benguet;
10. Exhibit "2" is the joint affidavit[9] of Police [Senior] Inspector Reguel Sta. Maria, PO1 Robert Banatao, PO1 Gregorio Pari[ñ]as, PO2 Engel Perez, PO1 June Beleno, PO1 Joel Semanero and PO1 Rogelio Federico;
11. Exhibit "3" is the joint affidavit[10] of Jerome Bersamin, Darwin Bersamin and Robinson Bersamin;
12. Exhibit "4" the joint affidavit[11] of PO3 [Florante] S[o]berano and PO1 Norman Labanen.[12]

Upon termination of the pre-trial proceedings, trial ensued.

The prosecution presented the victims, Allan Montorio and Jomar Pillor, as witnesses.

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[8] *Id.* at 181.

[9] *Id.* at 182.

[10] *Id.* at 183.

[11] *Id.* at 184.

[12] *Id.* at 89-90.

Allan Montorio testified that on 4 October 2002, between 11:00 p.m. and 12:00 midnight, he was at the wake of Carmen Daganato at the latter's house located in Barangay Barbarsic, Ba-ug, San Juan, Abra. He was then in front of the said house playing "*dado*" (a game of dice) with some people. Among those present were Algie Pacurza, Eric Pacurza, Jansen Bersamin, Rogee Montorio, Jomar Pillor, Crisanto Baruela, Carmelo Daganato, Jerome Bayubay and Roger Bersamin. While they were playing "*dado*," he heard a gunshot. He then crawled to a cemented bench to hide. After a gap of two to three seconds, the first gun report was followed by successive gun reports. He immediately stood up proceeding inside the house of Carmen Daganato. Allan Montorio then saw two persons shooting at their direction with an armalite and clad in black long-sleeves shirts, short pants and bonnets. However, despite the fact that the aforesaid persons were wearing bonnets, Allan Montorio still recognized them as the appellant and Judito Molina because the masks that they were wearing were like those of a ski-mask, which exposed their faces. Further, he was only three to four meters away from them. There was also a bright light coming from a 50-watt bulb positioned directly parallel above the gambling table.[13]

When the gunshots had stopped, he peeped from inside the house of Carmen Daganato and saw Eric Pacurza already sprawled, lying prostrate on the ground. Also, Algie Pacurza was not moving anymore. He too was not spared as he was also hit by shrapnel on his left arm. Thereafter, Allan ran towards their house, which was around 100 meters away from the house of the deceased, and there he saw Jansen Bersamin lying at their door. He helped carry Jansen Bersamin's body to a vehicle to be brought to the hospital. Unfortunately, Jansen Bersamin died.[14]

Allan Montorio was also treated at the Abra Provincial Hospital and was given a medical certificate, since he was injured as a result of the aforesaid shooting incident. Afterwards, he was

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[13] TSN, 24 February 2004, pp. 2-12, 16.

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

investigated by the police authorities at the San Juan, Abra, Police Station. He never revealed to the police authorities what he witnessed on the late evening of 4 October 2002 out of fear, as the appellant was an incumbent policeman of Bangued, Abra; and Judito Molina was a bodyguard of the Mayor of San, Juan, Abra.[15] It was only after the lapse of almost two months from the time of the shooting incident that he disclosed to the National Bureau of Investigation (NBI) what happened on that fateful night of 4 October 2002 and who were the perpetrators thereof.[16]

Another prosecution witness, Jomar Pillor, who was also at the wake of Carmen Daganato in the evening of 4 October 2002 between 11:00 p.m. and 12:00 midnight, similarly testified that he saw thereat Filomino Blosan, Eric Pacurza, Algie Pacurza, Rogee Montorio, Allan Montorio, Jerome Bayubay, Jansen Bersamin, Ronald Ta-a, Chris Baruela, Carmelo Daganato, Albert Batalla, Gilbert Baruela, Eugene Baruela and many others. While he was watching those who were playing "*dado*," he suddenly heard a burst of gunfire. Thereafter, he heard successive gun reports. He was standing when he heard the gunshots. Then, he saw two men coming from the western part (ricefields) of Carmen Daganato's house. These two men went to the cemented pavement and kept shooting their firearms at their direction. As he was only five meters away from these two men and the light coming from the fluorescent lamp placed above the gambling table illuminated the place, he was able to recognize them as the appellant and Judito Molina. The appellant and Judito Molina were wearing black sweaters, short pants and black bonnets with the faces exposed. He stated that he knew the appellant as a policeman assigned at Bangued, Abra, because they were from the same *barangay*. He had known the appellant since the age of reason. Likewise, he knew Judito Molina; he used to see him whenever their Mayor went to their place, as he was a bodyguard of the Mayor.[17]

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[15] *Id.* at 21-22, 31-32.

[16] *Id.* at 26, 30.

[17] TSN, 20 August 2004, pp. 3-4, 7-12.

When he saw the appellant and Judito Molina coming up to the cemented pavement while continuously firing their firearms at them, he immediately went inside Carmen Daganato's house to seek refuge, but he was hit on his thigh and shoulder. When the gunshots had stopped, he saw Algie Pacurza and Eric Pacurza dead. He also saw that those who were playing "*dado*" were injured. They were all brought to the provincial hospital where he stayed for a week. He heard that Rogee Montorio and Jansen Bersamin likewise died as a result of that shooting incident.[18]

He admitted before the court *a quo* that he was also investigated by the police authorities from the San Juan, Abra, Police Station while he was still at the hospital. But he refused to give them any information as regards the shooting incident because he was afraid, as the perpetrators were a policeman and a bodyguard of the Mayor. On 28 November 2002, when it was already the National Bureau of Investigation (NBI) who handled the investigation, he finally revealed what he witnessed on the night of the shooting incident. He also disclosed to the NBI the identities of the assailants.[19]

For its part, the defense presented the appellant, who interposed the defense of alibi; Julieta Pacurza, one of the daughters of Carmen Daganato; Ricky Lopera, a media practitioner; Police Inspector 3 (PO3) Dante Cardona, an Assistant Investigator at the San Juan, Abra, Police Station; and Robert Banatao, appellant's companion in going back from Camp Dangwa, La Trinidad, Benguet to Bangued, Abra.

The appellant narrated before the court *a quo* that on 4 October 2002, he and his fellow policemen were at Camp Dangwa, La Trinidad, Benguet, for their Annual General Inspection. On the same day, at around 5:00 o'clock in the afternoon, they all started to board an owner type jeep owned by PO1 Robert Banatao, as they would already go home to Bangued, Abra. It was already 11:45 p.m. of 4 October 2002 when they arrived in Bangued, Abra. Upon his arrival thereat, he received a text

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

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

message from his brother that there was a massacre that transpired in Barbarsic, San Juan, Abra. Accordingly, he waited along the highway at Zone 7, Bangued, Abra, for the ambulance in which the victims were, as he expected that they would be transported by an ambulance to the hospital. His neighbors, however, told him that the ambulance had already passed by; thus, he proceeded to the hospital.[20]

When he arrived at the hospital, the other victims were already there so he helped in carrying them in. There he saw Allan Montorio and Jomar Pillor, who were also victims of the shooting incident. He was able to talk to them. He asked them if they were able to recognize those persons who were responsible for the shooting incident. Both Allan Montorio and Jomar Pillor replied in the negative and stated that it was dark and the assassins wore bonnets. The following day, he came to know that those who were killed in the shooting incident were Jansen Bersamin, Rogee Montorio, Algie Pacurza and another Pacurza whose first name he could not remember. He admitted that he knew his co-accused, Judito Molina, because the latter was employed with the Municipal Government of San Juan, Abra as a utility worker.[21]

Julieta Pacurza claimed that she was outside her mother's house serving coffee when the shooting incident happened. She stated that the moment she heard the gun reports, she witnessed those who were playing "*dado*" in the gambling table hide themselves. While the gun reports were being heard, she looked at the western part of her mother's house and did not see anything, as it was dark. She saw Allan Montorio hide himself at the cemented bench, while Jomar Pillor went upstairs to hide. After the shooting incident, she assisted those who were injured including her son, Carmelo Daganato, and brought them to the hospital. While she was at the hospital, she saw the appellant talking to Allan Montorio and Jomar Pillor.[22]

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[20] TSN, 26 October 2005, pp. 5-12.

[21] *Id.* at 12-19, 21.

[22] TSN, 23 February 2005, pp. 5-15.

Ricky Lopera confirmed that he came to know of the massacre that happened in Barbarsic, San Juan, Abra, only in the early morning of 5 October 2002. Subsequently, he went to the Abra Provincial Hospital where the victims were brought and treated. He stated that he was able to interview one of the victims whose surname was Montorio. When he asked Montorio about the identities of the assailants, Montorio replied that he was not able to identify them as it was dark. He was also able to interview a parent of one of the victims, but the same answer was given to him.[23] On cross-examination, he professed that he was a friend of the wife of the appellant. It was the appellant's wife who requested him to go to Laoag to help her with her problem regarding her husband's involvement in the shooting incident in Barbarsic, San Juan, Abra.[24]

PO3 Dante Cardona testified that he was on tour of duty on 4 October 2002 as an Assistant Investigator in the San Juan, Abra, Police Station. While he was on duty, he heard gunshots coming from Sitio Barbarsic, San Juan, Abra. Their Chief of Police then ordered him, together with three other policemen, to proceed to the area to verify the same. Right in the place of the crime, they conducted an investigation and made a sketch of the crime scene. There they asked questions from the people as to the identities of the assailants and they all replied in the negative. He admitted, however, that he was not able to interview Allan Montorio and Jomar Pillor.[25]

Robert Banatao stated that he was with the appellant when they arrived in Bangued, Abra, at around 11:45 p.m. of 4 October 2002. However, after dropping the appellant at Zone 7, Bangued, Abra, he did not see him anymore.[26]

On rebuttal, the prosecution presented Irene Pacurza, Julieta Pacurza's sister. Irene Pacurza testified that at the exact moment

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[23] TSN, 29 April 2005, pp. 3-8.

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

[25] TSN, 8 July 2002, pp. 5-11, 21.

[26] TSN, 7 September 2005, pp. 5-14.

that the shooting incident was taking place, Julieta Pacurza was with her, together with their brother, inside the kitchen of the house of Carmen Daganato, as they were preparing coffee to be served to the people present at the wake of their mother. They just stayed there until the gun reports stopped. Thereafter, they went outside and saw the bodies of the victims lying prostrate on the ground.[27]

On sur-rebuttal, the defense presented the testimony of Primitivo Pillor. He stated that he was, indeed, at the wake of Carmen Daganato on 4 October 2002. He said that while he was there, he saw Julieta Pacurza as they were all sitting outside the house of the deceased. However, he only stayed there until 11:00 p.m. Thus, he was not there anymore when the shooting incident happened.[28]

After trial, a Decision was rendered by the court *a quo* on 24 May 2006 finding the appellant guilty beyond reasonable doubt of four counts of murder and 14 counts of attempted murder. Its dispositive portion reads:

> WHEREFORE, PREMISES CONSIDERED, the Court finds the [appellant] Joselito Tagudar GUILTY BEYOND REASONABLE DOUBT of four (4) separate crimes of Murder qualified by treachery. He is hereby sentenced to *Reclusion Perpetua* with all its accessory penalties for each crime of Murder committed and to pay the heirs of each victim Fifty Thousand Pesos (₱50,000.00) as civil indemnity.
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> Likewise, the Court finds him GUILTY of Fourteen (14) separate crimes of Attempted Murder for which he is sentenced, applying the Indeterminate Sentence Law, to Two (2) years and Four (4) months of *Prision Correccional* minimum as minimum to Eight (8) years and One (1) day of *Prision Mayor* medium as maximum for each crime of Attempted Murder committed and to pay each victim Twenty Thousand Pesos (₱20,000.00) as civil indemnity.[29]

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[27] TSN, 4 January 2006, pp. 4-7.

[28] TSN, 2 February 2002, pp. 2-6.

[29] CA *rollo*, p. 146.

The appellant appealed the aforesaid Decision to the Court of Appeals. In his brief, the appellant made the following assignment of errors:

I. The trial court erred in giving full credence to prosecution witnesses Allan Montorio and Jomar Pillor and their long delayed, uncorroborated and uniform testimony they allegedly saw the [appellant] Joselito Tagudar on the night in question, standing 3, 4 or 5 meters away from them, clad in black attire, wearing black mask (bonnet), or ski mask but with face exposed, and firing at them continuously with a long firearm and at the others attending the wake that night of the late Carmen Daganato in Sitio Barbarsic, Ba-ug, San Juan, Abra.

II. The trial court erred in finding that there was positive identification by these 2 prosecution witnesses [Allan] Montorio and [Jomar] Pillor of the [appellant] Joselito Tagudar as one of the perpetrators of the crimes charged in these cases.

III. The trial court erred in not finding these 2 prosecution witnesses and their said testimony of identification to be unworthy of belief, for being doubtful, unreliable, incredible, and contrary to the common experience and observation of mankind.

IV. The trial court erred in discrediting arbitrarily and entirely the [appellant] Joselito Tagudar, his witnesses, and his defense of alibi, despite the clear, corroborative and substantial evidentiary support thereof in the records of these cases.

V. The trial court erred in not acquitting the [appellant] Joselito Tagudar of the crimes charged in all these cases, on ground of reasonable doubt.

VI. Independently of the appellant's defense of alibi as discussed above under the five (5) assigned errors in this appeal, the appellant submits the trial court erred in awarding the victims in fourteen (14) cases of attempted murder, damages as civil indemnity in the unwarranted, arbitrary and excessive fixed sum, or flat rate of ₱20,000.00 for each of the victims involved, regardless of the nature, extent, and required treatment of the injury suffered, and despite the lack of legal

basis, or sufficient evidentiary support in the records of these cases, insofar as the figure ₱20,000.00 is concerned.[30]

On 16 January 2008, the Court of Appeals rendered a Decision affirming the trial court's Decision dated 24 May 2006. The appellate court held that, indeed, the prosecution was able to discharge the burden of proving the guilt of the appellant beyond reasonable doubt for the crimes of murder and attempted murder.[31] The prosecution witnesses Allan Montorio and Jomar Pillor were able to positively identify the appellant and his co-accused Judito Molina (still at-large) as the assailants through the bright light from a bulb attached to the roof directly above the gambling table.[32] The light coming from the bulb just above the table, where the people were playing or watching the ongoing game of dice at the time of the shooting, was sufficient to illuminate the place where the appellant was and to enable Allan Montorio and Jomar Pillor to identify the appellant as the person present at the crime scene.[33] The appellate court ruled that in light of the positive identification by the prosecution witnesses that the appellant was one of the perpetrators of the crimes, the latter's defenses of denial and alibi must necessarily fail.[34] The appellate court thus decreed:

WHEREFORE, premises considered, the Decision dated 24 May 2006 of the [RTC] of Ilocos Norte, Laoag City, Branch 16 finding [appellant] Joselito Tagudar guilty beyond reasonable doubt for the four (4) crimes of murder in *Crim. Case Nos. 2003-011-16 to 2003-014-16* and sentencing him to *reclusion perpetua* with all its accessory penalties for each crime of murder and to pay the heirs of each victim Php50,000.00 as civil indemnity, and for the fourteen (14) crimes of attempted murder in *Crim. Case Nos. 2003-015-16 to 2003-028-16* and sentencing him to an indeterminate penalty of 2 years and 4 months of *prision correccional*, as minimum, to 8 years and

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[30] *Id.* at 104-115.

[31] *Rollo*, p. 27.

[32] *Id.* at 29.

[33] *Id.* at 36-37

[34] *Id.* at 38.

1 day of *prision mayor*, as maximum, for each crime of attempted murder and to pay each victim Php20,000.00 as civil indemnity, is **AFFIRMED**.[35]

The appellant filed a Notice of Appeal.[36] Thereupon, the Court of Appeals forwarded the records of this case to this Court.

This Court notified the parties that they may submit their respective supplemental briefs. In compliance therewith, the appellant submitted his Supplemental Brief[37] dated 28 November 2008. The Office of the Solicitor General, on the other hand, made a Manifestation[38] that it would no longer file a Supplemental Brief since all the issues raised by the appellant in his appeal had already been extensively discussed and refuted in its Appellee's Brief dated 19 June 2007 filed before the appellate court.

In essence, the issue boils down to the credibility of the prosecution witnesses to convict the appellant beyond reasonable doubt.

The appellant argues that the testimonies of Allan Montorio and Jomar Pillor — that they saw the appellant on the night of the shooting, together with one or two other assailants, just 3, 4 or 5 meters away from them continuously firing long firearms at their direction — are unworthy of belief, for it is an unnatural and uncommon reaction to a sudden, startling and shocking massacre for the prosecution witnesses to remain standing and to note the details of what the perpetrators were wearing, including the firearms they used, instead of immediately protecting themselves to avoid being hit upon hearing the sudden burst of gunfire.

The appellant underscores that almost two months had passed from the time of the shooting before the prosecution witnesses disclosed to the NBI their knowledge about the incident and

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[35] *Id.* at 45.

[36] *Id.* at 49-50.

[37] *Id.* at 55-75.

[38] *Id.* at 77-78.

who the perpetrators were. Their failure to immediately report to the police authorities that they saw the appellant on the night of the shooting as one of the assailants therein militates against their credibility. The same raises grave doubts as to its veracity, and it weakens the prosecution's evidence of positive identification of the appellant. Thus, the defense firmly believes that there was no positive identification of the appellant by the prosecution witnesses.

Finally, the appellant holds that although alibi is a weak defense, the same assumes importance where the identification of the accused is weakened and rendered unreliable. He avers that none of those investigated by the Philippine National Police (PNP)-San Juan, Abra, and the NBI could recognize the culprits, except Allan Montorio and Jomar Pillor, who corroborated each other's testimony as regards the details of the shooting incident and the identities of the assailants. Similarly, his alibi finds substantial evidentiary support in the records of these cases. The shooting incident happened at around 11:35 p.m. of 4 October 2002 or long before his arrival at Zone 7, Bangued, Abra, which was allegedly 27 kilometers away from Barbarsic, San Juan, Abra. There was no showing what means of transportation he used in going to and getting away from the scene of the crime. Also, the facts showed that he was seen at the hospital attending to the victims and talking to Allan Montorio and Jomar Pillor. For these reasons, the courts should examine his defense of alibi with care.

The appellant's contentions are bereft of merit.

As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.[39] Further, factual

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[39] *People v. Castillon III*, 419 Phil. 92, 102-103 (2001).

findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings,[40] and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[41]

There is nothing in the records that would impel this Court to deviate from the findings and conclusion of the trial court, which findings were also affirmed by the Court of Appeals. Indeed, this Court finds the testimonies of the prosecution witnesses credible and worthy of belief.

In the present case, the trial court gave full faith and credit to the testimonies of the prosecution witnesses, Allan Montorio and Jomar Pillor. The court *a quo* characterized their testimonies as vivid and straightforward. Both prosecution witnesses narrated before the court *a quo* the details of the shooting incident that happened in Barbarsic, Ba-ug, San Juan, Abra, in the late evening of 4 October 2002. Likewise, they positively identified the perpetrators as the appellant and Judito Molina.

Truly, the appellant and his co-accused were wearing bonnets at the time of the commission of the crimes; however, their bonnets were akin to ski masks, which exposed their faces. It also bears stressing that the place where the shooting incident happened was properly illuminated by a light coming from a 50-watt bulb, which was attached to the roof directly above the gambling table where the people were playing "*dado*." Further, the prosecution witnesses were only three to five meters away from the assailants. The prosecution witnesses were familiar with the appearance of the appellant, as they all came from the same *barangay*. In fact, Jomar Pillor even stated in his testimony before the trial court that he had known the appellant since the age of reason. With respect to accused

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[40] *Perez v. People*, G.R. No. 150443, 20 January 2006, 479 SCRA 209, 219-220.

[41] *Yulo v. People*, G.R. No. 142762, 4 March 2005, 452 SCRA 705, 713.

Judito Molina, the prosecution witnesses were also familiar with his appearance, as they always saw him whenever the mayor of San Juan, Abra, came to visit their place, as he was the bodyguard of the mayor. Given the foregoing circumstances, it was not impossible for the prosecution witnesses to positively identify the appellant and Judito Molina as the authors of the shooting incident in Barbarsic, Ba-ug, San Juan, Abra, which resulted in the deaths of Jansen Bersamin, Rogee Montorio, Algie Pacurza and Eric Pacurza; and injuries to 14 other individuals.

Contrary to the claim of the appellant, it can be gleaned from the testimonies of the prosecution witnesses that they did not remain standing while the shooting incident was going on. In fact, Allan Montorio and Jomar Pillor sought refuge inside the house of Carmen Daganato. It was at this point that they saw two persons shooting at their direction with an armalite and clad in a black long-sleeved shirt, short pants and bonnets. They recognized them as the appellant and Judito Molina. **Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identities of criminals**. This Court has ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailant and observe the manner in which the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memories.[42]

Neither can the appellant cast suspicion on the prosecution witnesses' failure to immediately report the crimes and the identities of their assailants. This Court has previously ruled that delay in revealing the author of the crime does not impair the credibility of witnesses, more so if such delay is satisfactorily explained.[43] In this case, the delay in reporting the shooting incident and the identities of those responsible for the same were satisfactorily explained by the prosecution witnesses. As

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[42] *People v. SPO3 Mendoza*, 401 Phil. 496, 510-511 (2000).

[43] *People v. Albacin*, 394 Phil. 565, 581 (2000).

the Court of Appeals stated in its Decision, the delay and hesitation of Allan Montorio and Jomar Pillor to reveal the identities of the assailants to those people who interviewed them, *i.e.*, the police authorities of San Juan, Abra, a media practitioner, and the appellant himself, were attributable to fear for their lives and those of their families; more so, if the one asking about the identities of the assailants is the assailant himself. It must be remembered that the appellant in this case is a policeman, while his co-accused Judito Molina is a bodyguard of the Mayor. Considering their standing in the community, it is quite natural for the eyewitnesses to be scared and to keep the information to themselves until they found enough courage to disclose the same.[44] Such fear was quite obvious on the part of the prosecution witnesses, as they were placed under the Witness Protection Program of the Department of Justice the moment they revealed what they knew about the shooting incident and who were responsible for the same.

In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail. It is settled in this jurisdiction that the **defense of alibi**, being inherently weak, **cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime**.[45] Moreover, in order to justify an acquittal based on this defense, the accused must establish by clear and convincing evidence that (a) he was in another place at the time of the commission of the offense; and (b) it was physically impossible for him to be at the scene of the crime at the time it was committed.[46] These, appellant miserably failed to show.

As the Court of Appeals has observed, the appellant failed to substantiate the element of physical impossibility. Records reveal

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[44] *Rollo*, pp. 39-40.

[45] *People v. Cañete*, 350 Phil. 933, 946 (1998).

[46] *People v. Diopita*, 400 Phil. 653, 664 (2000).

that the distance and negligible time negate appellant's claim of alibi and destroy any attempt to prove that it was not possible for him to have been physically present at the *locus criminis* or its immediate vicinity at the time of the commission of the crime. It was even admitted by the defense during the pre-trial that appellant was at Bangued, Abra, on 4 October 2002.[47] Emphasis must be given to the fact that Bangued, Abra, is a municipality not far from San Juan, Abra, where the shooting incident happened. Therefore, it was not physically impossible for the appellant to have been at the *locus criminis* at the time the crime was committed.

Finally, as regards the presence of treachery as a qualifying circumstance, this Court holds that the attack was undoubtedly treacherous. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[48]

As the appellate court enunciated in its Decision, the prosecution was able to show that the assault made upon the victims at the time of the shooting incident was so sudden and unexpected as to have caught them unprepared to meet the assault. At the time of the shooting incident, the victims were merely playing or watching the on going game of dice just outside the house of Carmen Daganato, who was lying in state. They had no foreboding of any danger, threat or harm upon their lives at the said time, place and occasion. Likewise, it was clearly established that the sudden and unexpected attack adopted by the appellant and his co-accused, who peppered the unsuspecting victims with bullets, deprived the latter of any chance to defend themselves, thereby, ensuring the commission of the crime without risk or any possible retaliatory attack on the aggressors.[49]

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[47] *Rollo*, pp. 38-39.

[48] *People v. Gutierrez*, 426 Phil. 752, 767 (2002).

[49] *Rollo*, pp. 43.

The presence of treachery qualifies the killings of the four victims to murder. With respect to the 14 injured victims, the crime committed by the appellant is attempted murder, as the appellant already commenced the criminal acts by overt acts but failed to perform all the acts of execution as to produce the felony by reason of some cause other than his own spontaneous desistance. Similarly, treachery qualifies the attempted killings.

As to penalty. All told, the appellant is guilty of four counts of murder qualified by treachery. Under Article 248[50] of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua* for each count, pursuant to Article 63, paragraph 2[51] of the Revised Penal Code.

The appellant is likewise guilty of 14 counts of attempted murder. The penalty prescribed by law for murder, which is *reclusion perpetua* to death, should be reduced by two degrees, conformably to Article 51[52] of the Revised Penal Code. Under paragraph 2 of Article 61, in relation to Article 71 of the Revised Penal Code, such a penalty is *prision mayor*. There being no mitigating or aggravating circumstance, the same should be

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[50] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstance:

1. With treachery, x x x.

x x x x x x x x x.

[51] ART. 63. *Rules for the application of indivisible penalties*. — x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof;

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[52] ART. 51. *Penalty to be imposed upon principals of attempted crime*. — The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principal in an attempt to commit a felony.

imposed in its medium period pursuant to Article 64, paragraph 1[53] of the Revised Penal Code. Applying the Indeterminate Sentence Law in the case of attempted murder, the maximum shall be taken from the medium period of *prision mayor*, which is 8 years and 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, the range of which is 6 months and 1 day to 6 years. Thus, this Court finds the indeterminate penalty of 2 years and 4 months of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, imposed by the lower courts on the appellant for each count of attempted murder, proper.

As to damages. 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.[54]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[55] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under the prevailing jurisprudence,[56] the award of ₱50,000.00 as civil indemnity for each count of murder, to be paid to the heirs of the victims, is proper.

As to actual damages, the heirs of the victims of murder are not entitled thereto because said damages were not duly proved with a reasonable degree of certainty.[57]

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

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

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

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

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

[57] *People v. Tubongbanua*, *supra* note 55 at 742.

Anent moral damages, the same are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[58] The award of ₱50,000.00 as moral damages for each count of murder, to be given to the heirs of the four victims, is likewise in order.

The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[59] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.[60] Thus, this Court similarly award ₱25,000.00 as temperate damages for each count of murder.

The heirs of the four victims of murder are also entitled to exemplary damages in the amount of ₱25,000.00 each, since the qualifying circumstance of treachery was firmly established.[61]

The award of ₱20,000.00, as civil indemnity to each victim of attempted murder, is neither arbitrary nor excessive because such award is in line with this Court's ruling in *People v. Gutierrez,*[62] citing *People v. Almazan*.[63] The lower courts did not award moral and exemplary damages. To conform to this Court's current ruling in *People v. Domingo*,[64] awards of moral and exemplary damages in the amounts of ₱10,000.00 and ₱25,000.00, respectively,[65] to each victim, are in order.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02327 — finding

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

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

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

[61] *People v. Beltran, Jr.*, *supra* note 54 at 741.

[62] *Supra* note 48.

[63] 417 Phil. 697 (2001).

[64] G.R. No. 184343, 2 March 2009.

[65] *People v. Beltran, Jr.*, *supra* note 54 at 740.

herein appellant guilty beyond reasonable doubt of four counts of murder and sentencing him to suffer the penalty of *reclusion perpetua* for each count and to pay ₱50,000.00 as civil indemnity for each count; and of 14 counts of attempted murder and sentencing him to suffer the indeterminate penalty of 2 years and 4 months of *prision correccional*, as minimum, to 8 years and 1 day of *prision mayor*, as maximum, for each count, and to pay ₱20,000.00 as civil indemnity for each count — is hereby *AFFIRMED with the modifications* that (1) moral damages in the amount of ₱50,000.00, temperate damages in the amount of ₱25,000.00 and exemplary damages in the amount of ₱25,000.00, should also be awarded for each count of murder; and (2) moral damages of ₱10,000 and exemplary damages of ₱25,000.00 for each count of attempted murder should also be given to each victim. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185278. March 13, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROLANDO LLAMADO *y* CRUZ,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF "*SHABU*"; ELEMENTS. — In this case, appellant is charged with selling "*shabu*," which is a dangerous drug. Section 3 (ii), Article I of R.A. No. 9165 defines "selling" as "any act of giving away any dangerous

drugs and/or controlled precursors and essential chemicals whether for money or any other consideration." For the prosecution of illegal sale of drugs to prosper, the following elements must be proven: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.

2. **ID.; ID.; ID.; THE COURTS MUST STRICTLY SCRUTINIZE THE MANNER BY WHICH THE INITIAL CONTACT WAS MADE, THE OFFER TO PURCHASE THE DRUG, THE PAYMENT OF THE BUY-BUST MONEY AND THE DELIVERY OF THE ILLEGAL DRUG; REASON. —** In the instant case, the prosecution positively identified appellant as the seller of the substance which was found to be Methylamphetamine hydrochloride, a dangerous drug. Appellant sold the drug to PO2 Brubio, a police officer who acted as poseur-buyer for a sum of ₱200.00. The prosecution positively and categorically testified that the transaction or sale actually took place. The subject *shabu* weighing 0.02 grams and the money amounting to ₱200.00 pesos were likewise identified by the prosecution witnesses when presented in court. It has been held that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation from initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. The manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

3. **ID.; ID.; ID.; FAILURE TO TAKE PHOTOGRAPHS AND MAKE INVENTORY OF THE DRUGS SEIZED, NOT FATAL. —** Moreover, the failure on the part of the police officers to take photographs and make an inventory of the drugs seized from the appellant was not fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court evidence of *corpus delicti*. PO2 Brubio was able to put the

necessary markings on the sachet of *shabu* bought from appellant, for identification purposes, immediately after the consummation of the drug sale. He personally delivered the same specimen to the PNP Crime Laboratory for chemical analysis on the same day the entrapment was conducted. Lastly, PO2 Brubio was able to identify the said markings in court.

4. **REMEDIAL LAW; EVIDENCE; DENIAL; AS BETWEEN THE CATEGORICAL TESTIMONY AND A BARE DENIAL, THE FORMER GENERALLY PREVAILS. —** Appellant's defense of denial is unavailing. There was no evidence that PO2 Brubio was motivated by reasons other than his duty to enforce the law. In fact, appellant was caught *in flagrante delicto* in a legitimate entrapment operation and was positively identified by the police officers who conducted the operation. As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.

5. **ID.; ID.; ID.; ABSENT PROOF OF MOTIVE TO FALSELY IMPUTE SUCH A SERIOUS CRIME AGAINST THE ACCUSED, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY AS WELL AS THE FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES, PREVAIL OVER ACCUSED'S SELF-SERVING AND UNCORROBORATED DENIAL. —** In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial.

APPEARANCES OF COUNSEL

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

DECISION

YNARES-SANTIAGO, *J.*:

This is an appeal from the May 6, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 02799, which affirmed the May 21, 2007 Decision[2] of the Regional Trial Court of Marikina City, Branch 192, finding appellant Rolando Llamado guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

In an Information[3] filed on February 21, 2005, appellant was charged with the crime of illegal sale of dangerous drugs, the accusatory portion of which reads as follows:

> That on or about the 12th day of February 2005, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell to poseur buyer PO2 Ferdinand Brubio for and in consideration of Php200.00, 0.02 gram of methylamphetamine hydrochloride (shabu), which is a dangerous drug, in violation of the above-cited law.
>
> Contrary to law.

Appellant pleaded "not guilty" when arraigned on March 14, 2005.

After the pre-trial conference, trial on the merits ensued.

The facts as narrated by the prosecution are as follows:

> Around 6:50 in the evening of February 12, 2005, PO2 Ferdinand Brubio, PO2 Ramiel Soriano, PO1 Christopher Anos and P/Supt.

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[1] *Rollo*, pp. 3-16; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Magdangal M. De Leon and Normandie B. Pizarro.

[2] CA *rollo*, pp. 32-41; penned by Judge Geraldine C. Fiel-Macaraig.

[3] Record (Main Folder), p. 1.

Romeo Abaring were on duty at the Station of the Anti-Illegal Drugs Special Operations Task Force located in Sta. Elena Marikina City, when a police informant came to the station, informing them of the rampant selling of *shabu* by appellant Rolando Llamado *alias* "Pusa" in E. Dela Paz St., Sto. Niño, Marikina City.

Upon learning of the information, P/Supt. Abaring formed a buy-bust team and designated PO2 Brubio as the poseur-buyer. After PO2 Brubio coordinated their plan with the Philippine Drug Enforcement Agency (PDEA), P/Supt. Abaring gave two (2) one hundred peso bills, dusted with fluorescent powder, to PO2 Brubio to be used as buy-bust money.

PO2 Brubio went with the confidential informant to the pinpointed place of operation. PO3 Soriano and PO1 Anos were assigned as "back-up." Upon reaching the area, the police informant saw appellant, who was then wearing a basketball uniform, and pointed him to PO2 Brubio. When PO2 Brubio and the informant approached him, the informant introduced PO2 Brubio as the "scorer." Appellant asked PO2 Brubio how much he would buy and the latter answered "*dos lang,*" meaning two hundred pesos. Appellant gave a sachet of *shabu* to PO2 Brubio who, in turn, gave the buy-bust money to appellant. Amid their transaction, another blonde-haired male arrived and also bought *shabu* from appellant.

PO2 Brubio held the shoulder of the police informant, the pre-arranged signal to their back-up police officers that the drug sale transaction had been consummated. PO2 Brubio introduced himself as a police officer and arrested appellant and the blonde-haired male who, unfortunately, was able to escape later on. PO2 Brubio placed the markings "RCL-FB BUYBUST 02-12-05" on the sachet of *shabu* bought from appellant and the buy-bust money. "RCL" and "FB" markings are appellant's and PO2 Brubio's initials, respectively.

Appellant was taken to the Anti-Illegal Drugs Special Operations Task Force where the affidavit of arrest and request for laboratory examination and urine test were prepared. Thereafter, PO2 Brubio personally brought appellant to the Philippine National Police (PNP) Crime Laboratory, together with the confiscated *shabu* and the request for laboratory examination.

P/Sr. Insp. Maridel Rodis, Forensic Chemist of the PNP Crime Laboratory based in Camp Crame, Quezon City, personally received the request for laboratory examination and the attached specimen

from PO2 Brubio. She conducted a physical, chemical and confirmatory examination on the specimen recovered from appellant. In Chemistry Report No. D-115-05 prepared by P/Sr. Insp. Rodis, the specimen recovered from appellant was positive for methylamphetamine Hydrochloride or *shabu*, thus:

"FINDINGS:

Qualitative examination conducted on specimen A and B gave positive result to the tests for methylamphetamine hydrochloride, a dangerous drugs.

x x x x x x x x x

CONCLUSION:

Specimen A and B contain Methylamphetamine hydrochloride, a dangerous drugs.[4]

Appellant admitted that his *alias* is "Pusa"; however, he denied having sold *shabu* to a poseur-buyer and having held the buy-bust money. He claimed that the police officers were the ones in possession of the buy-bust money when they arrested him.

Luningning Llamado, mother of the appellant, substantially corroborated the testimony of her son. She claimed that four persons suddenly barged into their house while they were having dinner; that they invited her son "Jun" to go with them but appellant refused claiming that he did not do anything wrong; that the men started frisking her son; that the policemen did not have any warrant but justified the intrusion as buy-bust operation; that the officers did not recover anything from appellant except money amounting to ₱140.00 and his cellphone.

The trial court found the prosecution's version more credible and accordingly found appellant guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds the accused, ROLANDO LLAMADO *y* CRUZ, GUILTY BEYOND REASONABLE DOUBT of Violation of Section 5, Article II of Republic Act 9165. Applying

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[4] CA *rollo*, pp. 88-90.

Article 63 of the Revised Penal Code, and there being no mitigating or aggravating circumstance attending the commission of the crime, the accused is hereby sentenced to suffer the penalty of Life Imprisonment and ordered to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.

The *shabu* subject matter of this case is hereby confiscated in favor of the Government and to be turned over to the Dangerous Drugs Board for proper disposition, without delay.

SO ORDERED.[5]

On appeal, appellant alleged that the evidence seized from him was a product of illegal search; hence, inadmissible; that the acts of the policemen could not be accorded the presumption of regularity because they failed to secure either a search warrant or warrant of arrest; that the police officers failed to comply with Section 21 of R.A. No. 9165 when they failed to make an inventory and take photographs of the paraphernalia seized during the buy-bust operation.

On May 6, 2008, the Court of Appeals rendered the assailed Decision[6] denying the appeal and affirming the decision of the court *a quo*. The appellate court held that the failure of the police officers to coordinate with the local *barangay* officials prior to the conduct of the buy-bust operation did not invalidate the undertaking of the police officers; that the prosecution has established the authenticity of the buy-bust operation; that non-compliance with the requirements set forth in Section 21 of R.A. No. 9165 did not render void and invalid the seizure of and custody over the confiscated items considering that the integrity and evidentiary value of the seized items were properly preserved by the apprehending team.

Hence, the instant appeal.

Section 5, Article II of R.A. No. 9165 provides in part:

SEC 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled

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[5] *Id*. at 41.

[6] *Id*. at 120.

Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

In this case, appellant is charged with selling "*shabu*," which is a dangerous drug. Section 3 (ii), Article I of R.A. No. 9165 defines "selling" as "any act of giving away any dangerous drugs and/or controlled precursors and essential chemicals whether for money or any other consideration." For the prosecution of illegal sale of drugs to prosper, the following elements must be proven: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[7]

In the instant case, the prosecution positively identified appellant as the seller of the substance which was found to be Methylamphetamine hydrochloride, a dangerous drug. Appellant sold the drug to PO2 Brubio, a police officer who acted as poseur-buyer for a sum of ₱200.00. The prosecution positively and categorically testified that the transaction or sale actually took place. The subject *shabu*[8] weighing 0.02 grams and the money amounting to ₱200.00[9] pesos were likewise identified by the prosecution witnesses when presented in court.

It has been held that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation from initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. The manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-

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[7] *People v. Ong*, G.R. No. 175940, February 6, 2008, 544 SCRA 123, 132.

[8] Folder of Documentary Exhibits, Exhibit "B", p. 2.

[9] *Id.*, Exhibit "G", p. 10.

bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.[10]

Appellant's defense of denial is unavailing. There was no evidence that PO2 Brubio was motivated by reasons other than his duty to enforce the law. In fact, appellant was caught *in flagrante delicto* in a legitimate entrapment operation and was positively identified by the police officers who conducted the operation. As between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.[11]

Moreover, the failure on the part of the police officers to take photographs and make an inventory of the drugs seized from the appellant was not fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court evidence of *corpus delicti.*[12] PO2 Brubio was able to put the necessary markings on the sachet of *shabu* bought from appellant, for identification purposes, immediately after the consummation of the drug sale. He personally delivered the same specimen to the PNP Crime Laboratory for chemical analysis on the same day the entrapment was conducted. Lastly, PO2 Brubio was able to identify the said markings in court.

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there

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[10] *People v. Ong*, *supra*.

[11] *People v. Torres*, G.R. No. 170837, September 12, 2006, 501 SCRA 591, 611-612.

[12] *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187, 197-198.

be evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial.[13]

WHEREFORE, the appeal is *DENIED*. The May 6, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 02799, affirming the Decision of the Regional Trial Court of Marikina City, Branch 192, finding appellant Rolando Llamado guilty of violation of Section 5, Article II of R.A. No. 9165, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, is *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177121. March 16, 2009]

JP LATEX TECHNOLOGY, INC., *petitioner, vs.* **BALLONS GRANGER BALLOONS, INC. and CHRISTOS SANTORINEOS, THE OFFICE OF THE CLERK OF COURT and *EX-OFFICIO* SHERIFF OF BIÑAN, LAGUNA, TATSUYA OGINO and KATSUMI WATANABE,** *respondents.*

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[13] *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 522-523.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT PROSPER UNLESS THE INFERIOR COURT HAS BEEN GIVEN, THROUGH A MOTION FOR RECONSIDERATION, A CHANCE TO CORRECT THE ERRORS IMPUTED TO IT; EXCEPTIONS; CASE AT BAR. —** As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions, namely: (1) when the issue raised is purely of law; (2) when public interest is involved; or (3) in case of urgency. As a fourth exception, the Court has ruled that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a *sine qua non*, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court. In the instant case, the issue raised is purely an issue of law. Moreover, following the fourth exception, a motion for reconsideration of the RTC order allowing the immediate execution of its decision is no longer necessary in view of the fact that the RTC had already passed upon the propriety of respondents' motion for execution "pending appeal" on two occasions. It should be noted that on the first occasion, the RTC denied respondents' motion for execution "pending appeal," prompting them to seek reconsideration of its denial. In the second instance, the RTC reversed itself and allowed the execution "pending appeal." On these two occasions, the parties had been accorded ample avenue to squarely and exhaustively argue their positions and the RTC more than enough opportunity to study the matter and to deliberate upon the issues raised by the parties. Thus, the filing of another motion for reconsideration of the order of execution "pending appeal" by petitioner could not be considered a plain and adequate remedy but a mere superfluity under the circumstances of the case.

2. **ID.; JUDGMENTS; EXECUTION OF JUDGMENTS; DISCRETIONARY EXECUTION; WHEN ALLOWED. —** Execution pending appeal or immediate execution, which is now called discretionary execution under Rule 39, Section 2(a), 1997 Rules of Civil Procedure, as amended, is allowed pending

appeal of a judgment or final order of the trial court, upon good reasons to be stated in a special order after due hearing. Section 2 (a) of Rule 39 expressly states: SEC. 2. *Discretionary execution.* — (a) *Execution of a judgment or a final order pending appeal.* — x x x. It is clear from the caption of the provision that discretionary execution is allowed only when the period to appeal has commenced but before the trial court loses jurisdiction over the case. The period to appeal where a motion for reconsideration has been filed as in the instant case commences only upon the receipt of a copy of the order disposing of the motion for reconsideration. The pendency of a motion for reconsideration, therefore, prevents the running of the period to appeal.

3. ID.; ID.; ID.; ID.; THE PENDENCY OF THE MOTION FOR EXECUTION PRECLUDES EXECUTION OF THE LOWER COURT'S DECISION. — In the instant case, petitioner filed a motion for reconsideration of the RTC decision. The records of the case show that the motion had **not** been acted upon by the RTC before it ruled on the motion for execution "pending appeal." That being the case, the pendency of the motion for reconsideration has prevented the period to appeal from even commencing. The period within which a party may move for an execution pending appeal of the trial court's decision has not yet also started. Where there is a pending motion for reconsideration of the RTC decision, an order execution pending appeal is improper and premature. The pendency of the motion for reconsideration legally precludes execution of the RTC decision because the motion serves as the movant's vehicle to point out the findings and conclusions of the decision which, in his view, are not supported by law or the evidence and, therefore, gives the trial judge the occasion to reverse himself. In the event that the trial judge finds the motion for reconsideration meritorious, he can of course reverse the decision.

4. ID.; ID.; ID.; ID.; ABSENT AN APPEAL FROM THE DECISION, AS THE MOTION FOR RECONSIDERATION IS STILL UNRESOLVED, THE EXECUTION ORDERED BY THE LOWER COURT CANNOT BE PROPERLY CONSIDERED AS EXECUTION PENDING APPEAL. — In the absence of an appeal from the decision, as the motion for reconsideration is still unresolved, the execution ordered by the RTC cannot be

properly considered as execution pending appeal. All references to the assailed order as an order of execution "pending appeal" are mislabeled. The need to resolve first, or better still deny, petitioner's motion for reconsideration before the RTC could grant the discretionary execution becomes more imperative in the light of the rule that executions pending appeal are frowned upon. Without preempting the resolution of petitioner's motion for reconsideration one way or the other, a perusal thereof shows that petitioner had raised questions and issues which were not thoroughly discussed and passed upon in the RTC decision. The RTC should have resolved these issues first before allowing the discretionary execution of its judgment if only to preclude any speculation that the order of execution "pending appeal" was issued in haste. Said failure constitutes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC judge.

5. **ID.; ID.; ID.; EXECUTION PENDING APPEAL; THE GOOD REASONS TO JUSTIFY EXECUTION PENDING APPEAL MUST CONSTITUTE SUPERIOR CIRCUMSTANCES DEMANDING URGENCY THAT WILL OUTWEIGH THE INJURIES TO THE ADVERSE PARTY IF THE DECISION IS REVERSED. —** In any event, the Court does not find any good reason to justify the execution of the RTC decision pending finality. The RTC's finding that the machinery under litigation was deteriorating is not supported by the evidence on record. Nor is the possibility that petitioner would not be able to pay the judgment award a good reason to order discretionary execution. The good reasons allowing execution pending appeal must constitute superior circumstances demanding urgency that will outweigh the injuries or damages to the adverse party if the decision is reversed.

APPEARANCES OF COUNSEL

Maria Elena C. Ramiro for petitioner.
De Castro & Cagampang Law Offices for Katsumi Wanabe.
Jimenez Gonzalez Liwanag Bello Valdez Caluya & Fernandez for Ballons Granger Balloons, Inc. and C. Santorineos.

DECISION

TINGA, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, which seeks the reversal of the Court of Appeals decision[2] and resolution[3] in CA-G.R. SP No. 96926 and the issuance of a temporary restraining order to enjoin respondents from enforcing the order of execution pending appeal issued by Hon. Romeo C. De Leon, Presiding Judge of the Regional Trial Court (RTC), Branch 24 of Biñan, Laguna.

The following factual antecedents are matters of record.

Respondent Ballons Granger Balloons, Inc. (Granger) is a foreign corporation duly organized and existing under the laws of Canada. Anchoring on an isolated transaction, respondent Granger filed a complaint for rescission and damages against petitioner JP Latex Technology, Inc., a domestic corporation primarily engaged in the manufacture of latex and balloons. Also named defendants were the officers of the corporation, namely; Katsumi Watanabe and Tatsuya Ogino, and several John and Jane Does. Respondent Granger's president and chief executive officer, Christos Santorineos, who is also a respondent in this case, joined as plaintiff.

The complaint,[4] docketed as Civil Case No. B-6527, alleged that Ogino, representing himself as the president of petitioner corporation, and respondent Santorineos entered into a contract for the sale of respondent Granger's machinery consisting of four dipping lines and all associated equipment for the amount

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[1] *Rollo*, pp. 18-37.

[2] *Id.* at 39-79; Dated 22 December 2006 and penned by Justice Arturo G. Tayag and concurred in by Justices Remedios A. Salazar-Fernando, Chairperson of the 10th Division, and Noel G. Tijam.

[3] *Id.* at 76-80; Dated 23 March 2007.

[4] *Rollo*, pp. 118-148.

of US$1,230,000.00 and other non-cash considerations consisting of a 20% shareholding in petitioner's distribution company and the distributorship of its balloons in Canada and Greece. Although respondent Granger had performed its end of the bargain by re-assembling the subject machinery in petitioner's factory in Biñan and transferring its dipping formulations and technology to petitioner, the latter allegedly paid only a partial sum of US$748,262.87 and reneged on its other non-cash commitments. According to respondent Granger, it made several written and verbal demands for the full payment of the purchase price to no avail. The complaint was accompanied by an application for the issuance of a writ of replevin.[5]

Petitioner and Ogino separately filed their respective answers with counterclaims while Watanabe failed to submit any responsive pleading. Watanabe was thereafter declared in default. After declaring in default for his non-appearance at the scheduled pre-trial conference, the RTC allowed respondent Granger to present *ex-parte*. On 10 August 2006, the RTC rendered its decision in favor of respondent Granger.

While the case was pending or on 05 August 2006, respondent Granger moved for the execution pending appeal[6] of the RTC decision,[7] which was promulgated on 10 August 2006 or a few days after it filed the motion. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> a. Resolving/rescinding the subject agreement between the parties and confirming plaintiffs' right of ownership and possession over the subject machines/equipments and their accessories including plaintiffs' dipping technology, formulations and recipes;
>
> b. Ordering defendant JP LATEX Technology, Inc., its officers or any other person in possession thereof to immediately

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[5] *Id.* at 118.

[6] *Id.* at 169.

[7] *Id.* at 336.

return and deliver to the plaintiffs or any of its representatives the ownership and possession of dipping lines one (1) and two (2) including their accessories;

c. Ordering defendant JP LATEX Technology, Inc., its officers or any of its representatives to cease and desist from using the plaintiffs' dipping formulations and technology;

d. Ordering defendants to pay the plaintiffs jointly and severally the amount of U.S. $1,500,000.00 by way of actual damages plus legal interest until fully paid; and

e. Ordering defendants to pay plaintiff Christos Santorineos the amount of ₱1,000,000.00 by way of moral damages and to pay plaintiffs the amount of ₱500,000.00 by way of exemplary damages and ₱500,000.00 as attorney's fees and expenses of litigation.

Send copy of this decision to the parties in this case.

SO ORDERED.[8]

After it received a copy of the RTC decision on 30 August 2006, petitioner filed a motion for reconsideration[9] thereof on 13 September 2006. Petitioner also opposed[10] respondent Granger's motion for execution "pending appeal," which was denied in an Order[11] dated 01 September 2006. Respondent Granger then filed on 05 October 2006 an Omnibus Motion for Reconsideration and Ocular Inspection,[12] which petitioner opposed.

In the Order[13] dated 10 November 2006, the RTC denied respondent Granger's prayer for an ocular inspection but granted the plea for execution "pending appeal." The RTC reconsidered its earlier position and consequently granted the execution "pending

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[8] *Id.* at 347.

[9] *Id.* at 439-469.

[10] *Id.* at 419-436.

[11] *Id.* at 437-438.

[12] *Id.* at 180-196.

[13] *Id.* at 331-332.

appeal" after finding that the equipment under litigation were deteriorating and that petitioner might not have sufficient funds to pay for the damages, thereby leaving respondents with an empty judgment.

On 15 November 2006, the writ of execution "pending appeal" was issued.[14] On the following day, Joel Arellano, in his capacity as Sheriff IV of the RTC of Biñan, served on petitioner at its office address a copy each of the writ and the Order dated 10 November 2006. Thereupon, Arellano successfully effected the dismantling of the machinery.

Thus, petitioner and Ogino filed a special civil action for *certiorari* under Rule 65 before the Court of Appeals. Named respondents were Judge Romeo C. De Leon, Clerk of Court Rowena A.M. Galeon, Sheriff Joel Arellano, respondents Granger and Santorineos.[15] The petition for *certiorari* averred that Judge De Leon had seriously erred and gravely abused his discretion amounting to lack or in excess of jurisdiction in arbitrarily and unreasonably issuing the Order dated 10 November 2006 and in directing the Clerk of Court to issue the writ of execution "pending appeal."

On 22 December 2006, the Court of Appeals promulgated the assailed decision, denying the petition for *certiorari* mainly on the ground that petitioner failed to file a motion for reconsideration of the assailed RTC Order dated 10 November 2006.[16] Petitioner sought reconsideration but its motion was denied per the appellate court's Resolution dated 23 March 2007.[17]

Hence, the instant petition with urgent application for immediate issuance of a temporary restraining order (TRO) or writ of preliminary injunction.

In a Resolution dated 23 May 2007, the Court issued a TRO to prevent respondents from implementing the writ of execution

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[14] *Id.* at 333-335.

[15] *Id.* at 310-330.

[16] *Supra* note 2.

[17] *Supra* note 3.

"pending appeal" conditioned upon the filing of a cash or surety bond.[18] Forthwith, petitioner posted a bond[19] and the TRO was released and served.[20] Upon motion by petitioner,[21] the Court directed the Office of the *Ex-Officio* Sheriff to release to petitioner the properties levied under the restrained order of execution "pending appeal."[22]

The petition raises the following questions of law:

A. WHETHER EXECUTION PENDING APPEAL MAY BE ISSUED AND IMPLEMENTED WHEN THE DECISION SOUGHT TO BE EXECUTED IS NOT YET FINAL BECAUSE OF THE PENDING AND UNRESOLVED MOTION FOR RECONSIDERATION OF THE DECISION SOUGHT TO BE EXECUTED PENDING APPEAL.

B. WHETHER A MOTION FOR RECONSIDERATION IS A MANDATORY REQUIREMENT FOR FILING A PETITION FOR *CERTIORARI* UNDER RULE 65 UNDER THE CIRCUMSTANCES OF THE CASE.[23]

The Court of Appeals denied the petition for *certiorari* only because petitioner had failed to seek reconsideration of the RTC order directing the execution "pending appeal" of its decision or to show that the circumstances of the case fall under any of the exceptions to the rule that a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.

For its part, petitioner claims before this Court that as exceptions to the aforesaid rule, the following circumstances exist in the instant case: (1) the question is purely legal; (2) juridical intervention is urgent; (3) the application of the general rule may cause

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[18] *Id.* at 494-496.

[19] *Id.* at 510.

[20] *Id.* at 519-521.

[21] *Id.* at 639-644.

[22] *Id.* at 670-671.

[23] *Id.* at 27-28.

great and irreparable damage; (4) the controverted acts violate due process.[24]

As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions, namely: (1) when the issue raised is purely of law; (2) when public interest is involved; or (3) in case of urgency. As a fourth exception, the Court has ruled that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a *sine qua non*, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[25]

In the instant case, the issue raised is purely an issue of law. Moreover, following the fourth exception, a motion for reconsideration of the RTC order allowing the immediate execution of its decision is no longer necessary in view of the fact that the RTC had already passed upon the propriety of respondents' motion for execution "pending appeal" on two occasions. It should be noted that on the first occasion, the RTC denied respondents' motion for execution "pending appeal," prompting them to seek reconsideration of its denial. In the second instance, the RTC reversed itself and allowed the execution "pending appeal." On these two occasions, the parties had been accorded ample avenue to squarely and exhaustively argue their positions and the RTC more than enough opportunity to study the matter and to deliberate upon the issues raised by the parties. Thus, the filing of another motion for reconsideration of the order of execution "pending appeal" by petitioner could not be considered a plain and adequate remedy but a mere superfluity under the circumstances of the case.

Now to the issue of the propriety and viability of the order of immediate execution.

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[24] *Id.* at 29.

[25] *Government of the United States of America v. Hon. Purganan*, 438 Phil. 417, 437 (2002).

Execution pending appeal or immediate execution, which is now called discretionary execution under Rule 39, Section 2(a), 1997 Rules of Civil Procedure, as amended, is allowed pending appeal of a judgment or final order of the trial court, upon good reasons to be stated in a special order after due hearing.[26] Section 2 (a) of Rule 39 expressly states:

SEC. 2. *Discretionary execution*. —

(a) *Execution of a judgment or a final order pending appeal*. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

It is clear from the caption of the provision that discretionary execution is allowed only when the period to appeal has commenced but before the trial court loses jurisdiction over the case. The period to appeal where a motion for reconsideration has been filed as in the instant case commences only upon the receipt of a copy of the order disposing of the motion for reconsideration. The pendency of a motion for reconsideration, therefore, prevents the running of the period to appeal.

In the instant case, petitioner filed a motion for reconsideration of the RTC decision. The records of the case show that the motion had **not** been acted upon by the RTC before it ruled on the motion for execution "pending appeal." That being the case, the pendency of the motion for reconsideration has prevented the period to appeal from even commencing. The period within which a party may move for an execution pending appeal of the trial court's decision has not yet also started.

[26] *Heirs of the Late Justice Jose BL Reyes v. Court of Appeals*, G.R. Nos. 135180-81; 135425-26, 16 August 2000.

Where there is a pending motion for reconsideration of the RTC decision, an order execution pending appeal is improper and premature. The pendency of the motion for reconsideration legally precludes execution of the RTC decision because the motion serves as the movant's vehicle to point out the findings and conclusions of the decision which, in his view, are not supported by law or the evidence[27] and, therefore, gives the trial judge the occasion to reverse himself. In the event that the trial judge finds the motion for reconsideration meritorious, he can of course reverse the decision.

In the absence of an appeal from the decision, as the motion for reconsideration is still unresolved, the execution ordered by the RTC cannot be properly considered as execution pending appeal. All references to the assailed order as an order of execution "pending appeal" are mislabeled.

The need to resolve first, or better still deny, petitioner's motion for reconsideration before the RTC could grant the discretionary execution becomes more imperative in the light of the rule that executions pending appeal are frowned upon. Without preempting the resolution of petitioner's motion for reconsideration one way or the other, a perusal thereof shows that petitioner had raised questions and issues which were not thoroughly discussed and passed upon in the RTC decision. The RTC should have resolved these issues first before allowing the discretionary execution of its judgment if only to preclude any speculation that the order of execution "pending appeal" was issued in haste. Said failure constitutes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC judge.

In any event, the Court does not find any good reason to justify the execution of the RTC decision pending finality. The RTC's finding that the machinery under litigation was deteriorating is not supported by the evidence on record. Nor is the possibility that petitioner would not be able to pay the

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[27] See *Mauricio v. National Labor Relations Commission*, G.R. No. 164635, 17 November 2005.

judgment award a good reason to order discretionary execution. The good reasons allowing execution pending appeal must constitute superior circumstances demanding urgency that will outweigh the injuries or damages to the adverse party if the decision is reversed.[28]

WHEREFORE, the instant petition for review on *certiorari* is *GRANTED* and the decision and resolution of the Court of Appeals in CA-G.R. SP No. 96926, as well as the Order dated 10 November 2006 and the writ of execution issued pursuant thereto by the Regional Trial Court, Branch 24 of Biñan, Laguna in Civil Case No. B-6527, are *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. MTJ-08-1699. March 17, 2009]
(Formerly OCA IPI No. 04-1610-MTJ)

RODOLFO B. BAYGAR, SR., *complainant, vs.* **JUDGE LILIAN D. PANONTONGAN and PROCESS SERVER ALADINO V. TIRAÑA, BOTH OF THE MUNICIPAL TRIAL COURT, BINANGONAN, RIZAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED. — There is no reason for this Court to disturb

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[28] *Heirs of the Late Justice Jose BL Reyes v. Court of Appeals*, *supra* note 26.

the findings of Investigating Judge Fernandez, affirmed by the OCA, as regards respondent Process Server Tiraña. Respondent Process Server Tiraña's plain denial of the acts imputed to him cannot overcome the categorical and positive declarations made by complainant and his wife, Wilfreda, that said respondent demanded money from Wilfreda with the promise that he would assist in facilitating complainant's release from jail. In her Affidavit, Wilfreda clearly established the participation of respondent Process Server Tiraña in the corrupt scheme. x x x The statements made by complainant and his wife, Wilfreda, in their Affidavits present a consistent and coherent narration of the events which immediately preceded complainant's release from jail. These constitute substantial evidence against respondent Process Server Tiraña. In an administrative proceeding, such as this case, only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, is required.

2. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; TO BE BELIEVED, THE SAME MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY. —** In comparison, respondent Process Server Tiraña merely denied the allegations against him but failed to set forth in his Comment the substance of the matters upon which he relies to support his denial. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE MERE ACT OF ASKING FOR AND RECEIVING MONEY FROM A PARTY TO A PENDING CASE TO FACILITATE THE ISSUANCE OF A COURT PROCESS IS INAPPROPRIATE AND HIGHLY SUSPECT. —** Respondent Process Server Tiraña clearly stepped beyond the bounds of propriety when he asked for and received from complainant's wife, Wilfreda, the amount of ₱3,020.00, and then gave her the assurance that complainant would be released from jail. In so doing, respondent Process Server Tiraña created the impression that he had the power and authority to discharge complainant from detention. Worse still, the MTC Decision, which declared complainant guilty after entering a plea of guilty during the arraignment, merely imposed a fine of ₱300.00 against

complainant. The said decision was handed down in the afternoon of 12 August 2002. When respondent Process Server Tiraña asked complainant's wife to return after two hours, he actually knew that a decision would be released on that day; thus, there was really no need for bail and complainant was actually free to leave the prison already. Complainant reasonably concluded that respondent Process Server Tiraña merely pocketed the money. The latter's claim that he did not benefit from the transaction does not exculpate him from administrative liability. At the very least, he should have known that, as a court employee, the mere act of asking for and receiving money from a party to a pending case to facilitate the issuance of a court process would be inappropriate and highly suspect.

4. **ID.; ID.; ID.; REQUIRED TO ACT WITH MORE CIRCUMSPECTION AND TO STEER CLEAR OF ANY SITUATION WHICH MAY CAST THE SLIGHTEST SUSPICION ON THE CONDUCT THEREOF. —** The Court cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent Process Server Tiraña to act with more circumspection and to steer clear of any situation which may cast the slightest suspicion on his conduct.

5. **ID.; ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL, CANON I THEREOF; DEMAND FOR AND RECEIPT OF MONEY FROM COMPLAINANT IN EXCHANGE FOR HIS LIBERTY IS A VIOLATION THEREOF. —** Respondent Process Server Tiraña's solicitation of money from complainant and his wife Wilfreda in exchange for complainant's liberty violates Canon I of the Code of Conduct for Court Personnel which took effect on 1 June 2004 pursuant to A.M. No. 03-06-13-SC. Sections 1 and 2, Canon I of the said Code, expressly provide that: SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemption for themselves or for others. SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions." By demanding and

receiving ₱3,020.00 from complainant's wife, Wilfreda, respondent committed an act of impropriety which immeasurably affects the honor and dignity of the judiciary and the people's confidence in it.

6. ID.; ID.; ID.; MUST PRESERVE THE JUDICIARY'S GOOD NAME AND STANDING AS TRUE TEMPLE OF JUSTICE. — A public office is a public trust, public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. Indeed, the image of the court of justice is necessarily mirrored in the conduct even of minor employees; thus, they must preserve the judiciary's good name and standing as a true temple of justice. This Court has often reminded its personnel of the high norm of public service it requires: [W]e condemn and would 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 or even just tend to diminish the faith of the people in the Judiciary. Every one connected in the task of delivery of justice, from the lowliest employee to the highest official, must at all times be fully aware of the sacramental nature of their function.

7. ID.; ID.; ID.; PENALTY OF SUSPENSION IMPOSED UPON THE RESPONDENT PROCESS SERVER FOR VIOLATION OF CANON I OF THE CODE OF CONDUCT FOR COURT PERSONNEL. — Respondent Process Server Tiraña clearly failed to observe the standard of conduct and behavior required of an employee in the judiciary, and he cannot avoid responsibility for his acts. However, the Court finds the recommendation of dismissal by the OCA to be too harsh, it appearing that this is respondent Process Server Tiraña's first offense in his 21 years in government service. Suspension for one year without pay is already sufficient penalty given the circumstances.

8. ID.; ID.; ADMINISTRATIVE PROCEEDING; BURDEN OF SUBSTANTIATING THE CHARGES AGAINST COURT EMPLOYEES FALLS ON COMPLAINANT; MERE ALLEGATION IS NOT EVIDENCE AND IS NOT EQUIVALENT TO PROOF. — The burden of substantiating the charges in an administrative proceeding against court employees falls on complainant, who must be able to prove the allegations in the

complaint with substantial evidence. Complainant failed to substantiate the allegation in his complaint that respondent Judge Panontongan maneuvered and orchestrated the proceedings including, but not limited to, the proceedings resulting in the release of complainant from detention. Complainant did not present any proof directly connecting respondent Judge Panontongan to the demand for and receipt of money in exchange for complainant's release from jail. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.

9. **JUDICIAL ETHICS; JUDGES; IN THE ABSENCE OF COGENT PROOF, BARE ALLEGATIONS OF MISCONDUCT CANNOT PREVAIL OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS. —** It is also worthy to note that the Decision dated 12 August 2002 of respondent Judge Panontongan recounts that complainant was properly arraigned x x x. In the absence of evidence to the contrary, the presumption that respondent Judge Panontongan regularly performed her duties will prevail. In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.

10. **ID.; ID.; ENJOY THE PRESUMPTIONS OF REGULARITY IN THE PERFORMANCE OF THEIR FUNCTIONS NO LESS THAN OTHER PUBLIC OFFICERS; PRESUMPTION OF REGULARITY MAY BE REBUTTED BY AFFIRMATIVE EVIDENCE OF IRREGULARITY OR FAILURE TO PERFORM A DUTY. —** Administrative complaints leveled against judges must always be examined with a discriminating eye, for their consequential effects are, by their nature, highly penal, such that respondents stand to face the sanction of dismissal and/or disbarment. A judge enjoys the presumption of regularity in the performance of his function no less than any other public officer. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being

lawful or unlawful, construction should be in favor of its lawfulness. Thus, the Court cannot give credence to charges based on mere suspicion and speculation.

11. **ID.; ID.; SHOULD EXERCISE CLOSE SUPERVISION OVER COURT PERSONNEL. —** Nonetheless, judges must not only be fully cognizant of the state of their dockets; likewise, they must keep a watchful eye on the level of performance and conduct of the court personnel under their immediate supervision who are primarily employed to aid in the administration of justice. The leniency of a judge in the administrative supervision of his employees is an undesirable trait. It is therefore necessary that judges should exercise close supervision over court personnel. Respondent Judge Panontongan must therefore be warned to be more circumspect in her supervision of court personnel, such as respondent Process Server Tiraña.

12. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; PLAY A KEY ROLE ON THE COMPLEMENT OF THE COURT AND CANNOT BE PERMITTED TO SLACKEN ON THEIR JOBS UNDER ONE PRETEXT OR ANOTHER. —** The Clerk of Court is an essential officer in any judicial system. His office is the nucleus of activities, adjudicative and administrative. As such, he must be reminded that his administrative functions are just as vital to the prompt and proper administration of justice. He is charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. Clerks of Court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

This is an administrative complaint for violation of Republic Act No. 3019 filed by complainant Rodolfo B. Baygar, Sr., against respondents Judge Lilian D. Panontongan (Judge Panontongan) and Process Server Aladino V. Tiraña (Process Server Tiraña), both of the Municipal Trial Court (MTC) of Binangonan, Rizal.

On 11 August 2002, complainant and a certain Arsenio Larga (Larga) were apprehended for violation of Presidential Decree No. 449 (Cockfighting Law of 1974), in relation to Presidential Decree No. 1602 (Prescribing Stiffer Penalties on Illegal Gambling), by three policemen, namely, Senior Police Officer 1 (SPO1) Arnel Anore, Police Officer (PO) Oligario Salvador, and Ian Gatchalian Voluntad. The criminal complaint against complainant was docketed as Criminal Case No. 02-0843 and raffled to MTC, Branch 1 of Binangonan, Rizal.

Complainant and Larga were brought to the Police Precinct of Binangonan, Rizal, for detention. Larga was released in the morning of 12 August 2002 allegedly after payment of bail in the aggregate amount of ₱2,300.00 to PO Reynaldo Gonzaga.[1] Complainant was released only in the afternoon of the same day after his wife Wilfreda Baygar (Wilfreda), upon the instructions of PO Joaquin Arcilla (Arcilla), paid ₱3,020.00[2] to respondent Process Server Tiraña.

It so happened that in the afternoon of the same day, 12 August 2002, respondent Judge Panontongan already promulgated her Decision in Criminal Case No. 02-0843, the dispositive portion of which reads:

> WHEREFORE, finding accused Rodolfo Bactol Baygar guilty beyond reasonable doubt and appreciating in his favor voluntary plea of guilt, accused is hereby sentenced to pay a fine of THREE

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[1] According to complainant, the police officers offered to facilitate his and Larga's bail bonds, requiring them to pay the amount of ₱1,000.00 each, plus an additional amount of ₱150.00. Since Larga had no means to pay for his bail, he requested complainant to advance the amount for him, promising that he would reimburse complainant later. Complainant's wife, Wilfreda, then had a certain Feliciano Gaa, complainant's neighbor, deliver the amount of ₱2,300.00 to the Police Precinct. Complainant was brought by police officers Anore, Salvador, Gonzaga and Arcilla to a room, where complainant handed the money to PO Gonzaga. However, only Larga was released from detention after such payment.

[2] PO Arcilla originally told complainant's wife, Wilfreda, that ₱4,000.00 was needed, but later agreed to the reduced amount of ₱3,000.00. When Wilfreda personally brought the ₱3,000.00 to respondent Process Server Tiraña, the latter asked for additional ₱20.00.

HUNDRED (₱300.00) PESOS each and the Jail Warden of Binangonan Municipal Jail, Binangonan, Rizal is hereby directed to release the accused, Rodolfo Bactol Baygar unless he should be detained further for some other legal cause/s.[3]

Following his release from police custody, complainant filed on 17 September 2002 before the Office of the Ombudsman a complaint for arbitrary detention and violation of Section 3(e) of Republic Act No. 3019, against five police officers; Atty. Fernando B. Mendoza, a lawyer from the Public Attorney's Office (PAO); and respondents Judge Panontongan and Process Server Tiraña of the MTC. The complaint was docketed as OMB-P-C-02-0984-I.

In a Memorandum[4] dated 14 April 2004, the Office of the Ombudsman held in abeyance the filing of criminal charges against all the respondents in OMB-P-C-02-0984-I pending the determination by this Court of the administrative liability of respondents Judge Panontongan and Process Server Tiraña. The Office of the Ombudsman then referred certified true copies of the case records of OMB-P-C-02-0984-I to this Court.

On 9 August 2009, complainant filed a final complaint against Presiding Judge Lilian G. Dinulos-Panontongan for illegal, improper and unethical conduct.

According to complainant, respondents Judge Panontongan and Process Server Tiraña of the MTC, in conspiracy with PO Arcilla and Atty. Mendoza of PAO, "orchestrated and made it appear that he pleaded guilty to a crime for which he was detained, during the simulated arraignment in the *sala* of [respondent Judge Panontongan], when in truth and in fact he did not attend any proceeding." Complainant further averred that his wife Wilfreda gave ₱3,020.00 to respondent Tiraña in what they understood to be bail for his temporary liberty; only to find out later that he was released because respondent Judge Panontongan had already rendered a Decision dated 12 August

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[3] *Rollo*, p. 60.

[4] *Id.* at 45-51.

2002 in Criminal Case No. 02-0843 finding him guilty beyond reasonable doubt, appreciating in his favor his voluntary plea of guilt, and sentencing him to pay a fine in the amount of ₱300.00.

On 9 September 2004, the Office of the Court Administrator (OCA) required[5] respondents Judge Panontongan and Process Server Tiraña to file their comment on the complaint within 10 days from receipt of notice.

In her Counter-Affidavit,[6] respondent Judge Panontongan substantially denied the allegations of complainant and his wife, averring that they were false and untrue and intended only to harass her. The arraignment of complainant actually took place on 12 August 2002 and Atty. Mendoza of PAO, complainant's counsel, participated therein. Respondent Judge Panontongan, together with co-respondent Process Server Tiraña, were at a loss as to why they were impleaded in OMB-P-C-02-0984-I considering that complainant was questioning only his alleged illegal detention by the arresting police officers after he was apprehended for engaging in illegal cockfighting. Respondent Judge Panontongan's only involvement was the exercise of her official function as judge in entertaining complainant's plea of guilt and imposing upon the latter the penalty of a fine.

Respondent Process Server Tiraña in his Comment adopted the afore-mentioned Counter-Affidavit of his co-respondent Judge Panontongan. He also categorically denied the allegation that he received ₱3,020.00 as bail of complainant.

After initial evaluation of the pleadings filed by the parties, the Court referred[7] the administrative matter against respondents Judge Panontongan and Process Server Tiraña to the Executive Judge of the Regional Trial Court (RTC) of Rizal for investigation, report, and recommendation.

Investigating Judge Bernelito R. Fernandez (Judge Fernandez) reported:

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[5] *Id.* at 109.

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

[7] *Id.* at 177.

During the initial hearing of the Complaint before the undersigned, both parties agreed that they would just submit the matter for resolution considering that there were no new matters that need to be ventilated and that all documents and pleadings already form part of the records of this complaint. x x x.[8]

So without further hearings, Investigating Judge Fernandez evaluated the pleadings, affidavits, and other documents submitted by the parties, as well as the findings of the Office of the Ombudsman, and found that respondents Judge Panontongan and Process Server Tiraña should be held administratively accountable for what happened to complainant. Investigating Judge Fernandez submitted the following recommendations[9]:

WHEREFORE, IN VIEW OF THE FOREGOING, the undersigned Investigating Judge hereby respectfully recommends the following —

For respondent Judge Lilian G. Dinulos-Panontongan — a REPRIMAND and to pay a fine of Twenty Thousand Pesos (₱20,000.00); and,

For respondent Process Server Aladino Tiraña — DISMISSAL from the service. Further, let the appropriate Criminal Information be filed against said respondent for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[10]

On 21 January 2008, the OCA submitted its Report[11] affirming the administrative liability of respondents Judge Panontongan and Process Server Tiraña, recommending thus:

In view thereof, it is respectfully recommended for the consideration of the Honorable Court that:

1. Judge Lilian G. Dinulos-Panontongan, Acting Presiding Judge, MTC, Branch 1, Binangonan, Rizal, be SUSPENDED from office for one (1) month with a STERN WARNING

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[8] *Id.* at 246.

[9] *Id.* at 245-259.

[10] *Id.* at 259.

[11] *Id.* at 261-272.

that a similar infraction in the future shall be dealt with more severely;

2. Aladino Tiraña, Process Server, MTC, Branch 1, Binangonan, Rizal be DISMISSED from the service with forfeiture of all retirement benefits, except accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations;

3. Call the attention of Agnes S. Mechilina, Clerk of Court of the Municipal Trial Court, Branch 1, Binangonan, Rizal (1) for being too lax in the supervision of court personnel in their failure to complete the entries required of (sic) in the Minutes of the hearing and other court records; and (2) failure to ensure the reliability of court records reflecting court proceedings with a STERN WARNING that a similar infraction in the future shall be dealt with more severely.

4. As requested, the Office of the Ombudsman be furnished with a copy of the Decision in this administrative matter for its information and appropriate action.[12]

On 27 February 2008, the Court directed[13] the parties to manifest within ten days from notice if they were willing to submit the administrative matter for resolution based on the pleadings filed. Complainant submitted such a manifestation[14] on 25 April 2008; while respondents Judge Panontongan and Process Server Tiraña failed to file their manifestations despite receipt of the notices sent to them and were deemed to have waived the filing of the same.[15] Resultantly, the matter was submitted for decision based on the pleadings previously filed by the parties.

After an examination of the records, the Court affirms the findings and conclusions of the OCA, but modifies the recommended penalties.

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[12] *Id.* at 272.

[13] *Id.* at 274.

[14] *Id.* at 275.

[15] *Id.* at 291.

As to the liability of respondent Process Server Tiraña:

There is no reason for this Court to disturb the findings of Investigating Judge Fernandez, affirmed by the OCA, as regards respondent Process Server Tiraña.

Respondent Process Server Tiraña's plain denial of the acts imputed to him cannot overcome the categorical and positive declarations made by complainant and his wife, Wilfreda, that said respondent demanded money from Wilfreda with the promise that he would assist in facilitating complainant's release from jail.

In her Affidavit,[16] Wilfreda clearly established the participation of respondent Process Server Tiraña in the corrupt scheme. To quote:

> 9. *Na pagkaraan nito, na sinabi sa akin ni* Police Officer Joaquin Arcilla *na puwede daw na ₱3,000.00 na lamang ang aking ibayad, at matapos na ako ay pumayag, kaagad nilang ginawa and ilang papel at ito ay ipinadala niya sa akin sa* Municipal Trial Court *ng* Binangonan Branch 1 *at doon ko daw ibayad ang pera*;
>
> 10. *Na pagdating ko sa korte mga bandang alas 11:30 ng umaga, pinakita ko kay G. Allan Terana ang papel na ibinigay sa akin ni* Police Officer Joaquin Arcilla *at ako ay bumalik na lang sa hapon dahil wala pa ang kanilang* clerk of court.
>
> 11. *Na pagbalik ko ng hapon, hiningi na ni Allan Terana ang pera na may halagang ₱3,000.00. Bukod pa dito, ako ay hiningian pa niya ng karagdagang ₱20.00 kung kayat ₱3,020.00 ang kabuuang perang naibigay ko sa kanya.*
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> 12. *Na matapos kong maghintay na may dalawang oras, binigay na sa akin ni Allan Terana ang kopya ng Desisyon na dapat kong dalhin sa jail para makalabas na ang aking mister ko*.[17]

The statements made by complainant and his wife, Wilfreda, in their Affidavits present a consistent and coherent narration

[16] *Id.* at 61-62.

[17] *Id.* at 61.

of the events which immediately preceded complainant's release from jail. These constitute substantial evidence against respondent Process Server Tiraña. In an administrative proceeding, such as this case, only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, is required.[18]

In comparison, respondent Process Server Tiraña merely denied the allegations against him but failed to set forth in his Comment[19] the substance of the matters upon which he relies to support his denial. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value.[20]

Respondent Process Server Tiraña clearly stepped beyond the bounds of propriety when he asked for and received from complainant's wife, Wilfreda, the amount of ₱3,020.00, and then gave her the assurance that complainant would be released from jail. In so doing, respondent Process Server Tiraña created the impression that he had the power and authority to discharge complainant from detention. Worse still, the MTC Decision, which declared complainant guilty after entering a plea of guilty during the arraignment, merely imposed a fine of ₱300.00 against complainant. The said decision was handed down in the afternoon of 12 August 2002. When respondent Process Server Tiraña asked complainant's wife to return after two hours, he actually knew that a decision would be released on that day; thus, there was really no need for bail and complainant was actually free to leave the prison already. Complainant reasonably concluded that respondent Process Server Tiraña merely pocketed the money. The latter's claim that he did not benefit from the transaction does not exculpate him from administrative liability. At the very least, he should have known that, as a court employee, the

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[18] *Mamba v. Garcia*, 412 Phil. 1, 10 (2001).

[19] *Rollo*, pp. 14-15.

[20] *Jugueta v. Estacio,* A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10, 16.

mere act of asking for and receiving money from a party to a pending case to facilitate the issuance of a court process would be inappropriate and highly suspect.

The Court cannot overemphasize that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. As a court employee, it therefore behooves respondent Process Server Tiraña to act with more circumspection and to steer clear of any situation which may cast the slightest suspicion on his conduct.

Respondent Process Server Tiraña's solicitation of money from complainant and his wife Wilfreda in exchange for complainant's liberty violates Canon I of the Code of Conduct for Court Personnel which took effect on 1 June 2004 pursuant to A.M. No. 03-06-13-SC. Sections 1 and 2, Canon I of the said Code, expressly provide that:

> SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemption for themselves or for others.
>
> SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions." (Underscoring supplied.)

By demanding and receiving ₱3,020.00 from complainant's wife, Wilfreda, respondent committed an act of impropriety which immeasurably affects the honor and dignity of the judiciary and the people's confidence in it.

A public office is a public trust, public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. Indeed, the image of the court of justice is necessarily mirrored in the conduct even of minor employees; thus, they must preserve the judiciary's good name and standing as a true temple of justice. This Court

has often reminded its personnel of the high norm of public service it requires:

> [W]e condemn and would 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 or even just tend to diminish the faith of the people in the Judiciary. Every one connected in the task of delivery of justice, from the lowliest employee to the highest official, must at all times be fully aware of the sacramental nature of their function.[21]

Respondent Process Server Tiraña clearly failed to observe the standard of conduct and behavior required of an employee in the judiciary, and he cannot avoid responsibility for his acts. However, the Court finds the recommendation of dismissal by the OCA to be too harsh, it appearing that this is respondent Process Server Tiraña's first offense in his 21 years in government service. Suspension for one year without pay is already sufficient penalty given the circumstances.

Liability of Respondent Judge Panontongan

The Court likewise agrees in the conclusion made by both Investigating Judge Fernandez and the OCA that respondent Judge Panontongan had no direct participation "in what appears to be manipulation or misrepresentation of the records of proceedings during the session of 12 August 2000 other than merely preparing the Decision which eventually resulted in the release of complainant."

Asserting that Judge Panontongan was also in on the scheme, complainant presented (1) the Counter-Affidavit of Atty. Mendoza, the PAO lawyer assigned to represent complainant in Criminal Case No. 02-0843, in which he attested that he had no personal knowledge of the alleged arraignment of complainant held on 12 August 2002; (2) Atty. Mendoza's copy of the 12 August 2002 court calendar which showed that Criminal Case No. 02-0843 was not included among those scheduled for

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[21] *Hidalgo v. Magtibay,* A.M. No. P-02-1661, 7 October 2004, 440 SCRA 175, 185.

arraignment; and (3) Certification[22] of the Jail Warden of the Bureau of Jail Management and Penology, Region IV, stating that he escorted seven detainees *to their court hearings on 12 August 2002* but complainant was not one of them. Complainant also pointed out that Criminal Case No. 02-0843 appeared to have been merely added on the third (3rd) page of the calendar of cases for hearing on 12 August 2002.

Respondent Judge Panontongan, however, asserted that complainant's arraignment did take place on 12 August 2002 and offered the following explanation as to why such fact was not properly supported by court documents:

> [J]udicial notice can be had to the effect that Trial Calendars were usually prepared and distributed to the Prosecutor's Office and Public Attorney's Office day(s) ahead of the scheduled hearings, and if there be any case(s) omitted thereto or been requested to be included in the court calendar for the day, all the same were naturally included/inserted by handwritten note in the type written court calendar.
>
> Criminal Case No. 02-0843 x x x was filed in the morning of August 12, 2002, and therefore, it was naturally not among those typewritten cases scheduled for hearing on that day because the court calendar has already been prepared, and its inclusion x x x was merely prompted by the request made. Thus, x x x the absence of the same in the trial calendar in the possession of the Public Attorney's Office x x x which has already been given day ahead thereof.
>
> x x x x x x x x x
>
> [T]hat judicial notice can also [be] had to the effect that Minutes of Hearing were likewise prepared ahead of the scheduled date of hearing, and were based on the already typewritten court calendar. Thus, as the said case against complainant below was merely and urgently included in the court calendar as requested, the Minutes of Hearing for the same must hurriedly be prepared and of course, any variance will be observable.
>
> [N]ot in all instances had counsels been able to sign minutes of hearing nor certificates of arraignment, for any reason, and such

[22] *Rollo*, p. 18.

omission which may have also been happening in other places cannot and should not be a cause to hold the court at fault.[23]

The burden of substantiating the charges in an administrative proceeding against court employees falls on complainant, who must be able to prove the allegations in the complaint with substantial evidence. Complainant failed to substantiate the allegation in his complaint that respondent Judge Panontongan maneuvered and orchestrated the proceedings including, but not limited to, the proceedings resulting in the release of complainant from detention. Complainant did not present any proof directly connecting respondent Judge Panontongan to the demand for and receipt of money in exchange for complainant's release from jail. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.[24]

Complainant's presentation of Atty. Mendoza's copy of the 12 August 2002 court calendar which did not include complainant's arraignment on said date is not sufficient evidence that no such arraignment took place. As explained by respondent Judge Panontongan, the court calendar was prepared and distributed to the Prosecutor's Office and the PAO days ahead; and, upon request, complainant's arraignment was merely included and inserted in the schedule of the court for 12 August 2002. Moreover, the Minutes of Hearing and Certificate of Arraignment dated 12 August 2002 were signed by complainant; and complainant did not refute his signature thereon. This would mean that complainant was present during his arraignment on 12 August 2002.

It is also worthy to note that the Decision dated 12 August 2002 of respondent Judge Panontongan recounts that complainant was properly arraigned, to wit:

> When arraigned in a language known to him, assisted by counsel *de officio* (sic) Atty. Fernando Mendoza, accused Rodolfo Bactol Baygar entered a plea of guilty to the charge.[25]

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[23] *Rollo,* pp. 160-161.

[24] *Navarro v. Cerezo,* A.M. No. P-05-1962, 17 February 2005, 451 SCRA 626, 629.

[25] *Rollo*, p. 7.

In the absence of evidence to the contrary, the presumption that respondent Judge Panontongan regularly performed her duties will prevail. In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.

Administrative complaints leveled against judges must always be examined with a discriminating eye, for their consequential effects are, by their nature, highly penal, such that respondents stand to face the sanction of dismissal and/or disbarment.[26] A judge enjoys the presumption of regularity in the performance of his function no less than any other public officer.[27] The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.[28] The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.[29]

Thus, the Court cannot give credence to charges based on mere suspicion and speculation.

The Court further quotes with approval the following observations of the OCA:

> [R]espondent Judge presides over Municipal Trial Court, Branch 1, Binangonan, Rizal merely in an acting capacity, she being the presiding judge of Branch 2, same court. Further, records with the Statistical Reports Division, this Office, reveal that there were nine hundred twenty-six (926) and six hundred twenty-four (624) cases pending with Branches 1 and 2, respectively, as of August 2002.

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[26] *Dayag v. Judge Gonzales*, A.M. No. RTJ-05-1903, 27 June 2006, 493 SCRA 51, 61.

[27] *People v. Belaro,* 367 Phil. 91, 100 (1999). See also Rule 131, Section 3(m) of the Rules of Court.

[28] *People v. De Guzman*, G.R. No. 106025, 9 February 1994, 229 SCRA 795, 799.

[29] *Magsucang v. Judge Balgos*, 446 Phil. 217, 224-225 (2003).

Taking the workload into consideration, it would be humanely impossible for a judge to remember the respective dates when each of the accused and/or parties to the cases pending before the two (2) salas took place. Corrolarily, a judge will have to rely on the records of the case when signing orders and/or decisions similar to that in issue (*i.e.*, a simple decision issued on the basis of a plea of guilty of the accused appearing on the certificate of arraignment).[30]

Nonetheless, judges must not only be fully cognizant of the state of their dockets; likewise, they must keep a watchful eye on the level of performance and conduct of the court personnel under their immediate supervision who are primarily employed to aid in the administration of justice. The leniency of a judge in the administrative supervision of his employees is an undesirable trait. It is therefore necessary that judges should exercise close supervision over court personnel.[31] Respondent Judge Panontongan must therefore be warned to be more circumspect in her supervision of court personnel, such as respondent Process Server Tiraña.

As to the liability of Clerk of Court Agnes S. Mechilina

The Court deems it imperative to call the attention of Agnes S. Mechilina, Clerk of Court of the MTC, Branch 1, Binangonan, Rizal, for being too lax in the supervision of court personnel which resulted in incomplete entries in the following documents:

1. The Certificate of Arraignment lacks the following entries: name of the prosecutor; name and signature of the counsel for the accused; and signature of the Clerk of Court who issued the very Certificate of Arraignment.

2. Minutes of August 12, 2002 lacks the following entries: name and signature of the public prosecutor and the private prosecutor; remarks as to what transpired in the proceedings; and signature of the personnel-in-charge who prepared the Minutes [merely typewritten at the bottom of the Minutes is the name of the clerk of court]; and

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[30] *Rollo,* p. 270.

[31] *Dysico v. Judge Dacumos*, 330 Phil. 834, 842 (1996).

3. Certificate of Notice which does not bear the signature of the prosecutor and the counsel for the accused.

As what happened in this case, incomplete entries in court records and documents can easily cause confusion and raise doubts on the facts contained therein and, consequently, undermine the reliability of said records and documents. Ultimately, it is the Clerk of Court's responsibility to ensure that such records and documents are complete and well-kept.

The Clerk of Court is an essential officer in any judicial system. His office is the nucleus of activities, adjudicative and administrative. As such, he must be reminded that his administrative functions are just as vital to the prompt and proper administration of justice. He is charged with the efficient recording, filing and management of court records, besides having administrative supervision over court personnel. Clerks of Court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another.[32]

WHEREFORE, the Court hereby *RESOLVES* to:

1. *SUSPEND* for a period of ONE (1) YEAR without pay respondent process server Aladino V. Tiraña, commencing upon notice of this Decision;

2. *WARN* Judge Lilian D. Panontongan to be more circumspect in her duties;

3. *CALL THE ATTENTION* of Agnes S. Mechilina, Clerk of Court of the Municipal Trial Court, Branch 1, Binangonan, Rizal for (1) being too lax in the supervision of court personnel for their failure to complete the entries required in the Minutes of the Hearing and other court records; and (2) failing to ensure the reliability of court records reflecting court proceedings, with a *STERN WARNING* that a similar infraction in the future shall be dealt with more severely; and

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[32] *In Re: Report on the Judicial and Financial Audit conducted in the Municipal Trial Court in Cities, Koronadal City*, A.M. No. 02-9-233-MTCC, 27 April 2005, 457 SCRA 356, 374.

4. *FURNISH* the Office of the Ombudsman with a copy of the Decision in this administrative matter for its information and appropriate action.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Nachura,* and *Peralta, JJ.,* concur.

EN BANC

[A.M. No. RTJ-09-2171. March 17, 2009]
(Formerly A.M. No. 09-94-RTC)

RE: JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT, BRANCH 6, TACLOBAN CITY

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; MUST DECIDE CASES PROMPTLY AND EXPEDITIOUSLY. —** The Supreme Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that 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.; ID.; MUST MANAGE THEIR COURT WITH A VIEW TO THE PROMPT AND CONVENIENT DISPOSITION OF ITS BUSINESS. —** Verily, a judge must manage his court with

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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.

a view to the prompt and convenient disposition of its business. The Court, in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges. It remains sympathetic to seasonably filed requests for extensions of time to decide cases.

3. **ID.; ID.; ID.; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD, WITHOUT STRONG AND JUSTIFIABLE REASON, CONSTITUTES GROSS INEFFICIENCY; IMPOSABLE PENALTY. —** Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of an administrative sanction on the defaulting judge. The penalty imposed varies in each case; from fine, suspension, suspension and fine, and even dismissal, depending chiefly on the number of cases left undecided within the reglementary period, and other factors, such as the damage suffered by the parties as a result of the delay, the health and age of the judge. In view of Judge Gil's retirement on August 20, 2008, the only penalty that we can impose against him is a fine. On various occasions, the Court had imposed different amounts of fine on account of distinct circumstances in certain cases, thus: [I]n one case, we set the fine at ten thousand pesos (₱10,000.00) for failure of a judge to decide eighty-two (82) cases within the reglementary period, taking into consideration the mitigating circumstance that it was the judge's first offense. In another case, the fine imposed was sixty thousand pesos (₱60,000.00), for the judge had not decided about 25 or 27 cases. Still in other cases, the fine was variably set at fifteen thousand (₱15,000.00), for nineteen (19) undecided cases, taking into consideration that it was the judge's first offense, twenty thousand pesos (₱20,000.00), for three (3) undecided criminal cases; eight thousand pesos (₱8,000.00) for not deciding a criminal case for three (3) years; forty thousand pesos (₱40,000.00), for not deciding two hundred seventy-eight (278) cases within the prescribed period, taking note of the judge's failing health and age; and ten thousand pesos (₱10,000.00), for belatedly rendering a judgment of acquittal in a murder case after one year and one-half years from the date the case was submitted for decision. In another case, suspension without pay for a period of six (6) months was imposed since, besides the judge's failure to timely decide an election protest for eight (8) months, the judge submitted false

certificates of service and was found guilty of habitual absenteeism.

4. ID.; ID.; ID.; PENALTY OF FINE OF ₱50,000.00 IMPOSED UPON RESPONDENT JUDGE FOR UNDUE DELAY IN RESOLVING CASES. — Judge Gil's actuations indicate an indifference to the plight of litigants and a blatant disregard of their right to speedy disposition of their cases. Hence, we find that the penalty of ₱50,000.00 is commensurate to his infractions particularly because this is not the first time that Judge Gil has been sanctioned by this Court for undue delay in resolving cases. Judge Gil has been previously fined ₱5,000.00 for undue delay in resolving a land registration case. In another case, Judge Gil was also fined ₱2,000.00 for not complying promptly with an order of this Court to conduct an investigation on an administrative complaint against a lawyer. In both cases, the Court sternly warned Judge Gil that repetition of the same or similar offense will be dealt with more severely.

R E S O L U T I O N

NACHURA, *J*.:

A judicial audit was conducted in the Regional Trial Court (RTC), Branch 6, of Tacloban City on November 28 and 29, 2008. Judge Santos T. Gil was Presiding Judge of the court until his retirement on August 20, 2008.

On May 14, 2008, prior to Judge Gil's retirement, Chief Justice Reynato S. Puno designated Judge Alphinor C. Serrano, Presiding Judge of RTC, Branch 38, Gamay, Northern Samar, as Assisting Judge of RTC, Branch 6, Tacloban City. He was directed to hear and decide newly filed cases raffled to the said *sala* to give Judge Gil the time to decide all cases submitted for decision within four months. Judge Serrano assumed office on July 1, 2008.[1]

In its Report dated February 9, 2009, the Office of the Court Administrator (OCA) found that prior to his retirement, Judge Gil —

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[1] Administrative Order No. 77-2008, May 14, 2008.

1. Failed to take action on **sixteen (16)** criminal cases [05-02-59, 05-02-60, 07-01-14, 08-03-127, 08-05-245, 08-03-153, 07-05-285, 08-05-228, 08-05-229, 08-06-301, 08-06-302, 08-06-310, 08-07-326, 08-07-332, 08-07-333 and 08-08-429] from the time of their filing;

2. Failed to take further action or to set for hearing **seventy-six (76)** criminal cases [94-06-315, 06-02-132, 05-11-668, 06-01-39, 06-02-75, 06-02-82, 06-02-100, 06-02-114, 06-02-126, 06-04-230, 05-11-670, 06-07-415, 06-86-376, 06-05-327, 06-04-242, 06-04-259, 06-05-313, 06-05-314, 06-06-349, 06-09-552, 06-09-512, 06-8-473, 06-12-665, 07-12-675, 96-10-340, 97-08-343, 06-12-664, 06-07-404, 06-08-455, 06-09-350, 06-09-540, 06-09-555, 06-10-594, 06-11-619, 06-11-645, 07-06-357, 07-06-356, 07-06-355, 06-07-431, 06-08-485, 06-12-671, 06-09-502, 06-09-536, 06-10-607, 07-03-177, 07-02-106, 07-01-38, 07-01-46, 07-02-105, 07-01-82, 07-3-154, 07-04-228, 07-05-308, 06-08-457, 07-06-362, 07-06-368, 06-10-573, 06-10-574, 07-06-361, 07-07-393, 07-07-398, 07-07-406, 07-07-407, 07-08-428, 07-08-457, 07-08-460, 07-11-629, 07-11-630, 07-11-631, 07-11-632, 07-11-633, 07-10-560, 07-10-561, 07-11-606, 07-12-649, and 07-12-652] and **seven (7)** civil cases [92-07-15, CAD 99-04-14, 99-09-136, 05-03-38, CAD 96-09-01, 06-10-125 and CAD 98-08-35] for a considerable length of time;

3. Failed to resolve the pending incidents/motions in **four (4)** criminal cases [93-10-639, 94-01-015, 04-11-701, 04-11-702] and **five (5)** civil cases [93-12-241, 95-11-145, CAD 06-06-21, 05-01-07 and 07-12-124];

4. Failed to decide **thirty-four (34)** criminal cases [93-01-38, 93-01-39, 92-05-216, 97-02-82, 89-06-261, 89-06-262, 98-09-392, 98-12-540, 98-09-400, 97-06-301, 92-03-119, 93-08-505, 98-05-230, 98-05-231, 98-08-339, 01-11-727, 00-01-01, 00-01-27, 01-09-646, 99-06-249, 02-10-582, 02-11-629, 99-04-158, 02-12-670, 02-12-671, 01-10-673, 01-10-675, 00-08-435, 00-08-454, 00-03-200, 02-04-174, 01-01-34, 99-01-40 and 99-01-42] and **four (4)** civil cases [05-11-124, 92-02-36, 95-08-105 and CAD 03-08-38]; and

5. Failed to promulgate the decision in **five (5)** criminal cases (97-01-07, 89-06-262, 92-05-214, 2001-11-727 and 2000-01-01).

The OCA disclosed that the audit team likewise discovered that several warrants of arrest were in the possession of the

Process Server and were not properly indorsed to the concerned police officers; some certificates of detention were signed by Atty. Edna V. Maceda, Branch Clerk of Court; there were no orders directing the payment of postponement fees in civil cases; some motions were not properly received (without stamp of the date of receipt) as in the motion to set bail hearing in Criminal Cases Nos. 04-01-16 and 04-01-62; Pre-Trial Orders (PTOs) were signed only by the judge; records of cases jointly tried are incomplete; there were typographical errors found in several orders; the January to June Semestral Docket Inventory for 2008 manifested wrong case numbers; and the case records were not paginated. There were also firearms, ammunition and illegal drugs, and evidence in decided criminal cases that were still in the possession of the court.

Thus, the OCA made the following recommendations:

I. That this judicial audit report **be redocketed** as an administrative complaint against Retired Judge Santos T. Gil, Presiding Judge, Regional Trial Court, Branch 6, Tacloban City, for gross incompetence, inefficiency, negligence and dereliction of duty;

II. That **RETIRED JUDGE SANTOS T. GIL** be **FINED** the amount of **Fifty Thousand Pesos (₱50,000.00)** to be deducted from his retirement benefits or terminal leave benefits for his failure to:

1. To take appropriate action on sixteen (16) criminal cases from the time of their filing and seventy-six (76) criminal and seven (7) civil cases without further action or setting for considerable length of time;
2. To resolve motions in four (4) criminal and five (5) civil cases;
3. To decide thirty-four (34) criminal and four (4) civil cases; and
4. To promulgate the decisions in five (5) criminal cases.

III. **HON. ALPHINOR C. SERRANO**, Assisting Judge, Regional Trial Court, Branch 6, Tacloban City, be directed to:

1. **Take appropriate action**, within thirty (30) days from notice, on the following cases: Criminal Case[s] Nos. 05-02-59; 05-02-60; 07-01-14, 08-03-127, 08-05-245, 08-03-153, 07-05-285, 08-05-228, 08-05-229, 08-06-301, 08-06-302, 08-06-310, 08-07-326, 08-07-332, 08-07-333, 08-

08-429, 08-08-453, 08-08-459, 08-08-470, 08-08-471, 08-08-473, 08-09-487, 08-10-536, 08-10-537, 08-10-538, 08-10-539, 08-10-540, and 08-10-541; Criminal Case[s] Nos. 94-06-315, 06-02-132, 05-11-668, 06-01-39, 06-02-75, 06-02-82, 06-02-100, 06-02-114, 06-02-126, 06-04-230, 05-11-670, 06-07-415, 06-86-376, 06-05-327, 06-04-242, 06-04-259, 06-05-313, 06-05-314, 06-06-349, 06-09-552, 06-09-512, 06-8-473, 06-12-665, 07-12-675, 96-10-340, 97-08-343, 06-12-664, 06-07-404, 06-08-455, 06-09-350, 06-09-540, 06-09-555, 06-10-594, 06-11-619, 06-11-645, 07-06-357, 07-06-356, 07-06-355, 06-07-431, 06-08-485, 06-12-671, 06-09-502, 06-09-536, 06-10-607, 07-03-177, 07-02-106, 07-01-38, 07-01-46, 07-02-105, 07-01-82, 07-3-154, 07-04-228, 07-05-308, 06-08-457, 07-06-362, 07-06-368, 06-10-573, 06-10-574, 07-06-361, 07-07-393, 07-07-398, 07-07-406, 07-07-407, 07-08-428, 07-08-457, 07-08-460, 07-11-629, 07-11-630, 07-11-631, 07-11-632, 07-11-633, 07-10-560, 07-10-561, 07-11-606, 07-12-649, 07-12-652, 00-11-642, 08-01-07, 08-01-15, 08-01-16, 08-01-18, 08-01-19, 08-01-40, 07-10-562, 08-04-205, 08-04-217, 07-04-199, and 94-06-324; Civil Cases Nos. 92-07-15, CAD 99-04-14, 99-09-136, 05-03-38, CAD 96-09-01, 06-10-125, CAD 98-08-35, SP 07-02-14, 08-05-45, and 08-04-42; and Civil Case[s] Nos. 08-03-26, 08-04-40, 08-06-62 (appeal), 08-07-77 (appeal) and 08-10-105 (appeal);

2. Resolve the pending incidents with dispatch, giving priority to those earlier filed, in the following cases and submit a copy of each resolution within ten (10) days from their issuance: Criminal Case[s] Nos. 93-10-639, 94-01-015, 04-11-701, 04-11-702, 03-03-186, 03-03-087, 06-08-497, 04-01-61, 04-01-62, 99-11-603, 08-10-567, 08-05-244, 08-11-620 and 08-10-543; and Civil Case[s] Nos. 93-12-241, 95-11-145, CAD 06-06-21, 05-01-07, 07-12-124, 06-02-16, SP 05-11-62, 08-07-67, 07-03-24, 00-02-11, 08-02-16 (appeal), 05-03-37, CAD 07-11-56, 08-10-102, 06-08-100, 00-11-148, 00-02-19 and CAD 06-03-11;

3. **Decide** with dispatch, giving priority to those cases earlier submitted for decision, and submit a copy of each decision to this Office within ten (10) days from their rendition: Criminal Case[s] Nos. 93-01-38, 93-01-39, 92-05-216,

97-02-82, 89-06-261, 89-06-262, 98-09-392, 98-12-540, 98-09-400, 97-06-301, 92-03-119, 93-08-505, 98-05-230, 98-05-231, 98-08-339, 01-11-727, 00-01-01, 00-01-27, 01-09-646, 99-06-249, 02-10-582, 02-11-629, 99-04-158, 02-12-670, 02-12-671, 01-10-673, 01-10-675, 00-08-435, 00-08-454, 00-03-200, 02-04-174, 01-01-34, 99-01-40 and 99-01-42, 08-09-522, 01-01-31 and 08-10-573; Criminal Case[s] Nos. 97-01-07, 89-06-262, 92-05-214, 2001-11-727 and 2000-01-01; and Civil Case[s] Nos. 92-02-36, 95-08-105, CAD 03-08-38 and 05-11-124;

4. Issue orders requiring the payment of postponement fees in proper cases;

IV. **ATTY. EDNA V. MACEDA**, Branch Clerk of Court, be directed to:

1. **APPRISE** the Assisting/Presiding Judge from time to time of cases submitted for resolution/decision and those cases that require immediate action;

2. **CONDUCT** the required **actual inventory of cases** with the Acting/Assisting/Presiding Judge as provided for in Administrative Circular No. 1 dated January 28, 1988, as amended by Administrative Circular No. 10-94 dated June 29, 1994 and Administrative Circular No. 2-2001 dated January 2, 2001 with emphasis on the actual examination of each case records (sic) as well as its <u>accurate reporting</u>;

3. **SUPERVISE** the periodic updating of the court's docket books, the proofreading of all orders, minutes and notices issued by the court as well as the pagination of all court records;

4. **PERMANENTLY REFRAIN** from issuing certificate of detention, the function of which pertains to members of the Bench;

5. **INDORSE** to the proper **government agency** the firearms. Ammunitions and drug[s] confiscate[d] in decided/disposed criminal cases;

6. **MAINTAIN** separate log books for all incoming pleadings and documents and warrants of arrest and to keep abreast of the status thereof; and

7. **SUBMIT** compliance therewith within thirty (30) days from notice.

The Court re-docketed the case as an administrative complaint against Judge Gil pursuant to the OCA's recommendation.

The OCA recommendations are well taken.

The Supreme Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that 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]

Judge Gil was given 120 days prior to his retirement to decide and resolve the cases submitted for decision, during which period, he was directed to desist from hearing cases. Despite the ample time given, he failed to decide all cases submitted for decision. In fact, upon his retirement, he left unresolved thirty-four (34) criminal cases and four (4) civil cases submitted for decision. Apart from this, Judge Gil also failed to take appropriate action for a considerable length of time in a total of ninety-two (92) criminal cases and seven (7) civil cases; resolve pending motions in nine (9) cases; and promulgate five (5) decisions.

Glaringly, two of the pending criminal cases (Criminal Cases Nos. 93-01-38 and 93-01-39) were submitted for decision way back in 2002 while one civil case (Civil Case No. 92-02-36) was deemed submitted for decision in 1999. In other words, these two criminal cases have been pending resolution for six years, and the civil case for seven years, at the time Judge Gil retired from the service. When viewed in light of the constitutional prescription that lower courts are given only a period of 90 days within which to decide or resolve a case from the time it is submitted for decision, this delay clearly illustrates the gravity of Judge Gil's incompetence.

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[2] *Re: Judicial Audit of the RTC, Br. 14, Zamboanga City, Presided Over by Hon. Ernesto R. Gutierrez,* A.M. No. RTJ-05-1950, February 13, 2006, 482 SCRA 310, 320.

Verily, a judge must manage his court with a view to the prompt and convenient disposition of its business. The Court, in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges. It remains sympathetic to seasonably filed requests for extensions of time to decide cases.[3] However, verification with the Docket Division of the OCA disclosed no such request for extension of time to decide the cases submitted for decision or any pending motions in the reported cases.

Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of an administrative sanction on the defaulting judge.[4] The penalty imposed varies in each case; from fine, suspension, suspension and fine, and even dismissal, depending chiefly on the number of cases left undecided within the reglementary period, and other factors, such as the damage suffered by the parties as a result of the delay, the health and age of the judge.[5] In view of Judge Gil's retirement on August 20, 2008, the only penalty that we can impose against him is a fine. On various occasions, the Court had imposed different amounts of fine on account of distinct circumstances in certain cases, thus:

> [I]n one case, we set the fine at ten thousand pesos (₱10,000.00) for failure of a judge to decide eighty-two (82) cases within the reglementary period, taking into consideration the mitigating circumstance that it was the judge's first offense. In another case, the fine imposed was sixty thousand pesos (₱60,000.00), for the judge had not decided about 25 or 27 cases. Still in other cases, the

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[3] *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City,* A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1, 10, citing *Re: Report on the Judicial Audit Conducted in the MTCC, Branch 5, Bacolod City,* 443 SCRA 425 (2004).

[4] *Gonzalez v. Torres,* A.M. No. MTJ- 06-1653, July 30, 2007, 528 SCRA 490, 503.

[5] *Re: Report on the Judicial Audit,* 391 Phil. 222, 229 (2000), citing *Re: Report on the Judicial Audit conducted in RTC Branches 29 and 59, Toledo City,* 292 SCRA 8, 23 (1998).

fine was variably set at fifteen thousand (₱15,000.00), for nineteen (19) undecided cases, taking into consideration that it was the judge's first offense, twenty thousand pesos (₱20,000.00), for three (3) undecided criminal cases; eight thousand pesos (₱8,000.00) for not deciding a criminal case for three (3) years; forty thousand pesos (₱40,000.00), for not deciding two hundred seventy-eight (278) cases within the prescribed period, taking note of the judge's failing health and age; and ten thousand pesos (₱10,000.00), for belatedly rendering a judgment of acquittal in a murder case after one year and one-half years from the date the case was submitted for decision. In another case, suspension without pay for a period of six (6) months was imposed since, besides the judge's failure to timely decide an election protest for eight (8) months, the judge submitted false certificates of service and was found guilty of habitual absenteeism.[6]

Recently, the Court imposed a fine of ₱80,000.00 on a judge, who has been previously fined twice for undue delay in deciding cases, based on the following lapses: 1) 83 cases were not decided within the reglementary period; (2) pending incidents in 230 other cases remained unresolved even beyond the prescribed period to resolve; and (3) no appropriate action was made on 221 others (193 cases with no further action, 19 cases with no further settings and 9 cases with no action taken yet since the filing thereof), despite the lapse of considerable time.[7]

Judge Gil's actuations indicate an indifference to the plight of litigants and a blatant disregard of their right to speedy disposition of their cases. Hence, we find that the penalty of ₱50,000.00 is commensurate to his infractions particularly because this is not the first time that Judge Gil has been sanctioned by this Court for undue delay in resolving cases. Judge Gil has been previously fined ₱5,000.00 for undue delay in resolving a land registration case.[8] In another case, Judge Gil was also fined

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[6] *Id*. at 229-230. (Citations omitted.)

[7] *Re: Judicial Audit Conducted in the RTC, Br. 14, Davao City, etc./AM OCA IPI 04-2055-RTJ (Paul Cansino v. Judge William Layague, etc./AM 05-2177-RTJ (DBP v. Judge William M. Layague, RTC, Br. 14, Davao City)*, A.M. RTJ-07-2039, April 18, 2008.

[8] *Concillo v. Judge Gil,* 438 Phil. 245 (2002).

₱2,000.00 for not complying promptly with an order of this Court to conduct an investigation on an administrative complaint against a lawyer.[9] In both cases, the Court sternly warned Judge Gil that repetition of the same or similar offense will be dealt with more severely.

ACCORDINGLY, Retired **JUDGE SANTOS T. GIL** is hereby found *GUILTY* of gross inefficiency for his undue delay in rendering decisions or orders and is hereby *FINED* in the amount of Fifty Thousand Pesos (₱50,000.00), to be deducted from his retirement benefits.

JUDGE ALPHINOR C. SERRANO is *DIRECTED* to:

a. Take appropriate action, within thirty (30) days from notice, on the following cases: Criminal Cases Nos. 05-02-59; 05-02-60; 07-01-14, 08-03-127, 08-05-245, 08-03-153, 07-05-285, 08-05-228, 08-05-229, 08-06-301, 08-06-302, 08-06-310, 08-07-326, 08-07-332, 08-07-333, 08-08-429, 08-08-453, 08-08-459, 08-08-470, 08-08-471, 08-08-473, 08-09-487, 08-10-536, 08-10-537, 08-10-538, 08-10-539, 08-10-540, and 08-10-541; Criminal Cases Nos. 94-06-315, 06-02-132, 05-11-668, 06-01-39, 06-02-75, 06-02-82, 06-02-100, 06-02-114, 06-02-126, 06-04-230, 05-11-670, 06-07-415, 06-86-376, 06-05-327, 06-04-242, 06-04-259, 06-05-313, 06-05-314, 06-06-349, 06-09-552, 06-09-512, 06-8-473, 06-12-665, 07-12-675, 96-10-340, 97-08-343, 06-12-664, 06-07-404, 06-08-455, 06-09-350, 06-09-540, 06-09-555, 06-10-594, 06-11-619, 06-11-645, 07-06-357, 07-06-356, 07-06-355, 06-07-431, 06-08-485, 06-12-671, 06-09-502, 06-09-536, 06-10-607, 07-03-177, 07-02-106, 07-01-38, 07-01-46, 07-02-105, 07-01-82, 07-3-154, 07-04-228, 07-05-308, 06-08-457, 07-06-362, 07-06-368, 06-10-573, 06-10-574, 07-06-361, 07-07-393, 07-07-398, 07-07-406, 07-07-407, 07-08-428, 07-08-457, 07-08-460, 07-11-629, 07-11-630, 07-11-631, 07-11-632, 07-11-633, 07-10-560, 07-10-561, 07-11-606, 07-12-649, 07-12-652, 00-11-642, 08-01-07, 08-01-15, 08-01-16, 08-01-18, 08-01-19, 08-01-40, 07-10-562, 08-04-205, 08-04-217,

[9] *Navidad v. Lagado,* A.M. No. P-03-1682, September 30, 2004, 439 SCRA 524, 537.

07-04-199, and 94-06-324; Civil Cases Nos. 92-07-15, CAD 99-04-14, 99-09-136, 05-03-38, CAD 96-09-01, 06-10-125, CAD 98-08-35, SP 07-02-14, 08-05-45, and 08-04-42; and Civil Cases Nos. 08-03-26, 08-04-40, 08-06-62 (appeal), 08-07-77 (appeal) and 08-10-105 (appeal);

b. Resolve the pending incidents with dispatch, giving priority to those earlier filed, in the following cases and submit a copy of each resolution within ten (10) days from their issuance: Criminal Cases Nos. 93-10-639, 94-01-015, 04-11-701, 04-11-702, 03-03-186, 03-03-087, 06-08-497, 04-01-61, 04-01-62, 99-11-603, 08-10-567, 08-05-244, 08-11-620 and 08-10-543; and Civil Cases Nos. 93-12-241, 95-11-145, CAD 06-06-21, 05-01-07, 07-12-124, 06-02-16, SP 05-11-62, 08-07-67, 07-03-24, 00-02-11, 08-02-16 (appeal), 05-03-37, CAD 07-11-56, 08-10-102, 06-08-100, 00-11-148, 00-02-19 and CAD 06-03-11;

c. Decide with dispatch, giving priority to those cases earlier submitted for decision, and submit a copy of each decision to this Office within ten (10) days from their rendition: Criminal Cases Nos. 93-01-38, 93-01-39, 92-05-216, 97-02-82, 89-06-261, 89-06-262, 98-09-392, 98-12-540, 98-09-400, 97-06-301, 92-03-119, 93-08-505, 98-05-230, 98-05-231, 98-08-339, 01-11-727, 00-01-01, 00-01-27, 01-09-646, 99-06-249, 02-10-582, 02-11-629, 99-04-158, 02-12-670, 02-12-671, 01-10-673, 01-10-675, 00-08-435, 00-08-454, 00-03-200, 02-04-174, 01-01-34, 99-01-40 and 99-01-42, 08-09-522, 01-01-31 and 08-10-573; Criminal Cases Nos. 97-01-07, 89-06-262, 92-05-214, 2001-11-727 and 2000-01-01; and Civil Cases Nos. 92-02-36, 95-08-105, CAD 03-08-38 and 05-11-124;

d. Issue orders requiring the payment of postponement fees in proper cases.

ATTY. EDNA V. MACEDA is *DIRECTED* to:

a. *APPRISE* the Assisting/Presiding Judge from time to time of cases submitted for resolution/decision and those cases that require immediate action;

b. *CONDUCT* the required actual inventory of cases with the Acting/Assisting/Presiding Judge as provided for in Administrative Circular No. 1 dated January 28, 1988, as

amended by Administrative Circular No. 10-94 dated June 29, 1994 and Administrative Circular No. 2-2001 dated January 2, 2001, with emphasis on the actual examination of each case record as well as its accurate reporting;

c. *SUPERVISE* the periodic updating of the court's docket books, the proofreading of all orders, minutes and notices issued by the court, as well as the pagination of all court records;

d. *PERMANENTLY REFRAIN* from issuing certificate of detention, a function which pertains to members of the Bench;

e. *INDORSE* to the proper government agency the firearms, ammunitions and drugs confiscated in decided/disposed criminal cases;

f. *MAINTAIN* separate log books for all incoming pleadings and documents and warrants of arrest and to keep abreast of the status thereof; and

g. *SUBMIT* compliance therewith within thirty (30) days from notice.

SO ORDERED.

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

Austria-Martinez and *Tinga, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 170689. March 17, 2009]

PANTRANCO EMPLOYEES ASSOCIATION (PEA-PTGWO) and PANTRANCO RETRENCHED EMPLOYEES ASSOCIATION (PANREA), *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (NLRC), PANTRANCO NORTH EXPRESS, INC. (PNEI), PHILIPPINE NATIONAL BANK (PNB), PHILIPPINE NATIONAL BANK-MANAGEMENT AND DEVELOPMENT CORPORATION (PNB-MADECOR), and MEGA PRIME REALTY AND HOLDINGS CORPORATION (MEGA PRIME),** *respondents.*

[G.R. No. 170705. March 17, 2009]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **PANTRANCO EMPLOYEES ASSOCIATION, INC. (PEA-PTGWO), PANTRANCO RETRENCHED EMPLOYEES ASSOCIATION (PANREA) AND PANTRANCO ASSOCIATION OF CONCERNED EMPLOYEES (PACE), *ET AL.*, PHILIPPINE NATIONAL BANK-MANAGEMENT DEVELOPMENT CORPORATION (PNB-MADECOR), and MEGA PRIME REALTY HOLDINGS, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; EXECUTION OF; THE POWER OF THE COURT IN EXECUTING JUDGMENTS EXTENDS ONLY TO PROPERTIES UNQUESTIONABLY BELONGING TO THE JUDGMENT DEBTOR ALONE. —** Stripped of the non-essentials, the sole issue for resolution raised by the former PNEI employees is whether they can attach the properties (specifically the Pantranco properties) of PNB, PNB-Madecor and Mega Prime to satisfy their unpaid labor claims against PNEI. We answer in the negative. ***First,*** the subject property is not owned by the judgment debtor, that is, PNEI. Nowhere in the records was it shown that PNEI owned

the Pantranco properties. Petitioners, in fact, never alleged in any of their pleadings the fact of such ownership. What was established, instead, in *PNB MADECOR v. Uy* and *PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB* was that the properties were owned by Macris, the predecessor of PNB-Madecor. Hence, they cannot be pursued against by the creditors of PNEI. We would like to stress the settled rule that the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. To be sure, one man's goods shall not be sold for another man's debts. A sheriff is not authorized to attach or levy on property not belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person.

2. **COMMERCIAL LAW; CORPORATION LAW; CORPORATION; HAS A PERSONALITY SEPARATE AND DISTINCT FROM THOSE OF ITS STOCKHOLDERS AND OTHER CORPORATIONS TO WHICH IT MAY BE CONNECTED.** — ***Second,*** PNB, PNB-Madecor and Mega Prime are corporations with personalities separate and distinct from that of PNEI. PNB is sought to be held liable because it acquired PNEI through NIDC at the time when PNEI was suffering financial reverses. PNB-Madecor is being made to answer for petitioners' labor claims as the owner of the subject Pantranco properties and as a subsidiary of PNB. Mega Prime is also included for having acquired PNB's shares over PNB-Madecor. The general rule is that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. This is a fiction created by law for convenience and to prevent injustice. Obviously, PNB, PNB-Madecor, Mega Prime, and PNEI are corporations with their own personalities. The "separate personalities" of the first three corporations had been recognized by this Court in *PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB* where we stated that PNB was only a stockholder of PNB-Madecor which later sold its shares to Mega Prime; and that PNB-Madecor was the owner of the Pantranco properties. Moreover, these corporations are registered as separate entities and, absent any valid reason, we maintain their separate identities and we cannot treat them as one.

3. **ID.; ID.; ID.; WHERE ONE CORPORATION SELLS OR OTHERWISE TRANSFERS ALL ITS ASSETS TO ANOTHER CORPORATION FOR VALUE, THE LATTER IS NOT, BY THAT FACT ALONE, LIABLE FOR THE DEBTS AND LIABILITIES OF THE TRANSFEROR. —** Neither can we merge the personality of PNEI with PNB simply because the latter acquired the former. Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.

4. **ID.; ID.; ID.; PIERCING THE VEIL OF CORPORATE FICTION; DOCTRINE. — *Lastly*,** while we recognize that there are peculiar circumstances or valid grounds that may exist to warrant the piercing of the corporate veil, none applies in the present case whether between PNB and PNEI; or PNB and PNB-Madecor. Under the doctrine of "piercing the veil of corporate fiction," the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same. Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

5. **ID.; ID.; ID.; ID.; PRONOUNCEMENT IN A.C. RANSOM LABOR UNION-CCLU *vs.* NLRC [226 PHIL. 199 (1986)], INAPPLICABLE TO CASE AT BAR. —** As between PNB and PNEI, petitioners want us to disregard their separate personalities, and insist that because the company, PNEI, has already ceased operations and there is no other way by which the judgment in favor of the employees can be satisfied, corporate officers can be held jointly and severally liable with the company. Petitioners rely on the pronouncement of this

Court in *A.C. Ransom Labor Union-CCLU v. NLRC* and subsequent cases. This reliance fails to persuade. We find the aforesaid decisions inapplicable to the instant case. For one, in the said cases, the persons made liable after the company's cessation of operations were the officers and agents of the corporation. The rationale is that, since the corporation is an artificial person, it must have an officer who can be presumed to be the employer, being the person acting in the interest of the employer. The corporation, only in the technical sense, is the employer. In the instant case, what is being made liable is another corporation (PNB) which acquired the debtor corporation (PNEI).

6. ID.; ID.; ID.; ID.; WHEN APPLICABLE; CORPORATE OFFICER CANNOT BE MADE PERSONALLY LIABLE FOR CORPORATE LIABILITIES ABSENT MALICE, BAD FAITH, OR A SPECIFIC PROVISION OF LAW MAKING A CORPORATE OFFICER LIABLE. — Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) *alter ego* cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.

7. ID.; ID.; ID.; ID.; OWNERSHIP OF ALL OF THE STOCKS OF ANOTHER CORPORATION, TAKEN ALONE, IS NOT SUFFICIENT TO JUSTIFY THEIR BEING TREATED AS ONE ENTITY. — Assuming, for the sake of argument, that PNB may be held liable for the debts of PNEI, petitioners still cannot proceed against the Pantranco properties, the same being owned by PNB-Madecor, notwithstanding the fact that PNB-Madecor was a subsidiary of PNB. The general rule remains that PNB-Madecor has a personality separate and distinct from PNB. The mere fact that a corporation owns all

of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective businesses.

8. **ID.; ID.; ID.; ID.; SUBSIDIARY CORPORATION; WHEN CONSIDERED A MERE INSTRUMENTALITY OF THE PARENT-CORPORATION. —** In *PNB v. Ritratto Group, Inc.,* we outlined the circumstances which are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation, to wit: 1. The parent corporation owns all or most of the capital stock of the subsidiary; 2. The parent and subsidiary corporations have common directors or officers; 3. The parent corporation finances the subsidiary; 4. The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation; 5. The subsidiary has grossly inadequate capital; 6. The parent corporation pays the salaries and other expenses or losses of the subsidiary; 7. The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation; 8. In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own; 9. The parent corporation uses the property of the subsidiary as its own; 10. The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation; 11. The formal legal requirements of the subsidiary are not observed. None of the foregoing circumstances is present in the instant case. Thus, piercing of PNB-Madecor's corporate veil is not warranted. Being a mere successor-in-interest of PNB-Madecor, with more reason should no liability attach to Mega Prime.

9. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; PROCEEDINGS IN COURT MUST BE INSTITUTED BY THE REAL PARTY IN INTEREST. —** It has been repeatedly stated that the Pantranco properties which were the subject of execution sale were owned by Macris and later, the PNB-Madecor. They were never owned by PNEI or

PNB. Following our earlier discussion on the separate personalities of the different corporations involved in the instant case, the only entity which has the right and interest to question the execution sale and the eventual right to annul the same, if any, is PNB-Madecor or its successor-in-interest. Settled is the rule that proceedings in court must be instituted by the real party in interest.

10. **ID.; ID.; ID.; ID.; ID.; REAL PARTY-IN-INTEREST, EXPLAINED. —** A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The interest of the party must also be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party. Real interest, on the other hand, means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.

11. **ID.; ID.; ID.; ID.; ID.; ONE WHO IS NOT INTERESTED OR IS NOT INJURED BY THE EXECUTION SALE CANNOT QUESTION ITS VALIDITY. —** Specifically, in proceedings to set aside an execution sale, the real party in interest is the person who has an interest either in the property sold or the proceeds thereof. Conversely, one who is not interested or is not injured by the execution sale cannot question its validity.

12. **ID.; ID.; APPEAL; A PARTY WHO HAS NOT APPEALED CANNOT OBTAIN FROM THE APPELLATE COURT ANY AFFIRMATIVE RELIEF OTHER THAN THE ONES GRANTED IN THE APPEALED DECISION. —** Besides, the issue of whether PNB has a substantial interest over the Pantranco properties has already been laid to rest by the Labor Arbiter. It is noteworthy that in its Resolution dated September 10, 2002, the Labor Arbiter denied PNB's Third-Party Claim primarily because PNB only has an inchoate right over the Pantranco properties. Such conclusion was later affirmed by the NLRC in its Resolution dated June 30, 2003. Notwithstanding said conclusion, PNB did not elevate the matter to the CA via a petition for review. Hence it is presumed to be satisfied with the adjudication therein. That decision

of the NLRC has become final as against PNB and can no longer be reviewed, much less reversed, by this Court. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.

Salvador J. Bagamasbad for Mega Prime Realty and Holdings Corp. and PNB-Madecor.

Celestino S. Caingat, Jr. for Pantranco Employees Association, Inc. and Pantranco Retrenched Employees Association.

D E C I S I O N

NACHURA, *J*.:

Before us are two consolidated petitions assailing the Court of Appeals (CA) Decision[1] dated June 3, 2005 and its Resolution[2] dated December 7, 2005 in CA-G.R. SP No. 80599.

In **G.R. No. 170689**, the Pantranco Employees Association (PEA) and Pantranco Retrenched Employees Association (PANREA) pray that the CA decision be set aside and a new one be entered, declaring the Philippine National Bank (PNB) and PNB Management and Development Corporation (PNB-Madecor) jointly and solidarily liable for the ₱722,727,150.22 National Labor Relations Commission (NLRC) judgment in favor of the Pantranco North Express, Inc. (PNEI) employees;[3] while in **G.R. No. 170705**, PNB prays that the auction sale of the Pantranco properties be declared null and void.[4]

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Marina L. Buzon and Hakim S. Abdulwahid, concurring; *rollo* (G.R. No. 170689), pp. 25-39.

[2] *Id.* at 41.

[3] *Rollo* (G.R. No. 170689), pp. 17-18.

[4] *Rollo* (G.R. No. 170705), p. 63.

The facts of the case, as found by the CA,[5] and established in *Republic of the Phils. v. NLRC,*[6] *Pantranco North Express, Inc. v. NLRC,*[7] and *PNB MADECOR v. Uy,*[8] follow:

The Gonzales family owned two corporations, namely, the PNEI and Macris Realty Corporation (Macris). PNEI provided transportation services to the public, and had its bus terminal at the corner of Quezon and Roosevelt Avenues in Quezon City. The terminal stood on four valuable pieces of real estate (known as Pantranco properties) registered under the name of Macris.[9] The Gonzales family later incurred huge financial losses despite attempts of rehabilitation and loan infusion. In March 1975, their creditors took over the management of PNEI and Macris. By 1978, full ownership was transferred to one of their creditors, the National Investment Development Corporation (NIDC), a subsidiary of the PNB.

Macris was later renamed as the National Realty Development Corporation (Naredeco) and eventually merged with the National Warehousing Corporation (Nawaco) to form the new PNB subsidiary, the PNB-Madecor.

In 1985, NIDC sold PNEI to North Express Transport, Inc. (NETI), a company owned by Gregorio Araneta III. In 1986, PNEI was among the several companies placed under sequestration by the Presidential Commission on Good Government (PCGG) shortly after the historic events in EDSA. In January 1988, PCGG lifted the sequestration order to pave the way for the sale of PNEI back to the private sector through the Asset Privatization Trust (APT). APT thus took over the management of PNEI.

In 1992, PNEI applied with the Securities and Exchange Commission (SEC) for suspension of payments. A management committee was thereafter created which recommended to the

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[5] *Rollo* (G.R. No. 170689), pp. 25-33.

[6] 331 Phil. 608 (1996).

[7] 373 Phil. 520 (1999).

[8] 415 Phil. 348 (2001).

[9] *Rollo* (G.R. No. 170689), p. 26.

SEC the sale of the company through privatization. As a cost-saving measure, the committee likewise suggested the retrenchment of several PNEI employees. Eventually, PNEI ceased its operation. Along with the cessation of business came the various labor claims commenced by the former employees of PNEI where the latter obtained favorable decisions.

On July 5, 2002, the Labor Arbiter issued the Sixth *Alias* Writ of Execution[10] commanding the NLRC Sheriffs to levy on the assets of PNEI in order to satisfy the ₱722,727,150.22 due its former employees, as full and final satisfaction of the judgment awards in the labor cases. The sheriffs were likewise instructed to proceed against PNB, PNB-Madecor and Mega Prime.[11] In implementing the writ, the sheriffs levied upon the four valuable pieces of real estate located at the corner of Quezon and Roosevelt Avenues, on which the former Pantranco Bus Terminal stood. These properties were covered by Transfer Certificate of Title (TCT) Nos. 87881-87884, registered under the name of PNB-Madecor.[12] Subsequently, Notice of Sale of the foregoing real properties was published in the newspaper and the sale was set on July 31, 2002. Having been notified of the auction sale, motions to quash the writ were separately filed by PNB-Madecor and Mega Prime, and PNB. They likewise filed their Third-Party Claims.[13] PNB-Madecor anchored its motion on its right as the registered owner of the Pantranco properties, and Mega Prime as the successor-in-interest. For its part, PNB sought the nullification of the writ on the ground that it was not a party to the labor case.[14] In its Third-Party Claim, PNB alleged that PNB-Madecor was indebted to the former and that the Pantranco properties would answer for such debt. As such, the scheduled auction sale of the aforesaid properties was not legally in order.[15]

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[10] *Id.* at 42-45.

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

[12] *Id.* at 26.

[13] *Id.* at 49.

[14] CA *rollo*, pp. 113-120.

[15] *Id.* at 138-143.

On September 10, 2002, the Labor Arbiter declared that the subject Pantranco properties were owned by PNB-Madecor. It being a corporation with a distinct and separate personality, its assets could not answer for the liabilities of PNEI. Considering, however, that PNB-Madecor executed a promissory note in favor of PNEI for ₱7,884,000.00, the writ of execution to the extent of the said amount was concerned was considered valid.[16]

PNB's third-party claim — to nullify the writ on the ground that it has an interest in the Pantranco properties being a creditor of PNB-Madecor, — on the other hand, was denied because it only had an inchoate interest in the properties.[17]

The dispositive portion of the Labor Arbiter's September 10, 2002 Resolution is quoted hereunder:

> WHEREFORE, the Third Party Claim of PNB Madecor and/or Mega Prime Holdings, Inc. is hereby GRANTED and concomitantly the levies made by the sheriffs of the NLRC on the properties of PNB Madecor should be as it (sic) is hereby LIFTED subject to the payment by PNB Madecor to the complainants the amount of ₱7,884,000.00.
>
> The Motion to Quash and Third Party Claim of PNB is hereby DENIED.
>
> The Motion to Quash of PNB Madecor and Mega Prime Holdings, Inc. is hereby PARTIALLY GRANTED insofar as the amount of the writ exceeds ₱7,884,000.00.
>
> The Motion for Recomputation and Examination of Judgment Awards is hereby DENIED for want of merit.
>
> The Motion to Expunge from the Records claimants/complainants Opposition dated August 3, 2002 is hereby DENIED for lack of merit.
>
> SO ORDERED.[18]

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[16] *Rollo* (G.R. No. 170689), pp. 52-55.

[17] *Id.* at 55.

[18] *Id.* at 56-57.

On appeal to the NLRC, the same was denied and the Labor Arbiter's disposition was affirmed.[19] Specifically, the NLRC concluded as follows:

(1) PNB-Madecor and Mega Prime contended that it would be impossible for them to comply with the requirement of the labor arbiter to pay to the PNEI employees the amount of ₱7.8 million as a condition to the lifting of the levy on the properties, since the credit was already garnished by Gerardo Uy and other creditors of PNEI. The NLRC found no evidence that Uy had satisfied his judgment from the promissory note, and opined that even if the credit was in *custodia legis*, the claim of the PNEI employees should enjoy preference under the Labor Code.

(2) The PNEI employees contested the finding that PNB-Madecor was indebted to the PNEI for only ₱7.8 million without considering the accrual of interest. But the NLRC said that there was no evidence that demand was made as a basis for reckoning interest.

(3) The PNEI employees further argued that the labor arbiter may not properly conclude from a decision of Judge Demetrio Macapagal Jr. of the RTC of Quezon City that PNB-Madecor was the owner of the properties as his decision was reconsidered by the next presiding judge, nor from a decision of the Supreme Court that PNEI was a mere lessee of the properties, the fact being that the transfer of the properties to PNB-Madecor was done to avoid satisfaction of the claims of the employees with the NLRC and that as a result of a civil case filed by Mega Prime, the subsequent sale of the properties by PNB to Mega Prime was rescinded. The NLRC pointed out that while the Macapagal decision was set aside by Judge Bruselas and hence, his findings could not be invoked by the labor arbiter, the titles of PNB-Madecor are conclusive and there is no evidence that PNEI had ever been an owner. The Supreme Court had observed in its decision that PNEI owed back rentals of ₱8.7 million to PNB-Madecor.

(4) The PNEI employees faulted the labor arbiter for not finding that PNEI, PNB, PNB-Madecor and Mega Prime were all jointly and severally liable for their claims. The NLRC underscored the fact that PNEI and Macris were subsidiaries of NIDC and had passed

[19] *Id.* at 59-73.

through and were under the Asset Privatization Trust (APT) when the labor claims accrued. The labor arbiter was correct in not granting PNB's third-party claim because at the time the causes of action accrued, the PNEI was managed by a management committee appointed by the PNB as the new owner of PNRI (sic) and Macris through a deed of assignment or transfer of ownership. The NLRC says at length that the same is not true with PNB-Madecor which is now the registered owner of the properties.[20]

The parties' separate motions for reconsideration were likewise denied.[21] Thereafter, the matter was elevated to the CA by PANREA, PEA-PTGWO and the Pantranco Association of Concerned Employees. The latter group, however, later withdrew its petition. The former employees' petition was docketed as CA-G.R. SP No. 80599.

PNB-Madecor and Mega Prime likewise filed their separate petition before the CA which was docketed as CA-G.R. SP No. 80737, but the same was dismissed.[22]

In view of the ₱7,884,000.00 debt of PNB-Madecor to PNEI, on June 23, 2004, an auction sale was conducted over the Pantranco properties to satisfy the claim of the PNEI employees, wherein CPAR Realty was adjudged as the highest bidder.[23]

On June 3, 2005, the CA rendered the assailed decision affirming the NLRC resolutions.

The appellate court pointed out that PNB, PNB-Madecor and Mega Prime are corporations with personalities separate and distinct from PNEI. As such, there being no cogent reason to pierce the veil of corporate fiction, the separate personalities of the above corporations should be maintained. The CA added that the Pantranco properties were never owned by PNEI; rather, their titles were registered under the name of PNB-Madecor. If PNB and PNB-Madecor could not answer for the liabilities of

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[20] *Id.* at 27-28. (Citations omitted.)

[21] *Id.* at 74-77.

[22] *Rollo* (G.R. No. 170705), p. 139.

[23] CA *rollo*, p. 537.

PNEI, with more reason should Mega Prime not be held liable being a mere successor-in-interest of PNB-Madecor.

Unsatisfied, PEA-PTGWO and PANREA filed their motion for reconsideration;[24] while PNB filed its Partial Motion for Reconsideration.[25] PNB pointed out that PNB-Madecor was made to answer for ₱7,884,000.00 to the PNEI employees by virtue of the promissory note it (PNB-Madecor) earlier executed in favor of PNEI. PNB, however, questioned the June 23, 2004 auction sale as the ₱7.8 million debt had already been satisfied pursuant to this Court's decision in *PNB MADECOR v. Uy.*[26]

Both motions were denied by the appellate court.[27]

In two separate petitions, PNB and the former PNEI employees come up to this Court assailing the CA decision and resolution. The former PNEI employees raise the lone error, thus:

> The Honorable Court of Appeals palpably departed from the established rules and jurisprudence in ruling that private respondents Pantranco North Express, Inc. (PNEI), Philippine National Bank (PNB), Philippine National Bank Management and Development Corporation (PNB-MADECOR), Mega Prime Realty and Holdings, Inc. (Mega Prime) are not jointly and severally answerable to the ₱722,727,150.22 Million NLRC money judgment awards in favor of the 4,000 individual members of the Petitioners.[28]

They claim that PNB, through PNB-Madecor, directly benefited from the operation of PNEI and had complete control over the funds of PNEI. Hence, they are solidarily answerable with PNEI for the unpaid money claims of the employees.[29] Citing *A.C. Ransom Labor Union-CCLU v. NLRC,*[30] the employees insist

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[24] *Id.* at 504-515.

[25] *Id.* at 534-549.

[26] *Supra* note 8.

[27] *Supra* note 2.

[28] *Rollo* (G.R. No. 170689), p. 8.

[29] *Id.* at 10-11.

[30] 226 Phil. 199 (1986).

that where the employer corporation ceases to exist and is no longer able to satisfy the judgment awards in favor of its employees, the owner of the employer corporation should be made jointly and severally liable.[31] They added that malice or bad faith need not be proven to make the owners liable.

On the other hand, PNB anchors its petition on this sole assignment of error, *viz.*:

THE AUCTION SALE OF THE PROPERTY COVERED BY TCT NO. 87884 INTENDED TO PARTIALLY SATISFY THE CLAIMS OF FORMER WORKERS OF PNEI IN THE AMOUNT OF ₱7,884,000.00 (THE AMOUNT OF PNB-MADECOR'S PROMISSORY NOTE IN FAVOR OF PNEI) IS NOT IN ORDER AS THE SAID PROPERTY IS NOT OWNED BY PNEI. FURTHER, THE SAID PROMISSORY NOTE HAD ALREADY BEEN GARNISHED IN FAVOR OF GERARDO C. UY WHICH LED TO THREE (3) PROPERTIES UNDER THE NAME OF PNB-MADECOR, NAMELY TCT NOS. 87881, 87882 AND 87883, BEING LEVIED AND SOLD ON EXECUTION IN THE "*PNB-MADECOR VS. UY*" CASE (363 SCRA 128 [2001]) AND "*GERARDO C. UY VS. PNEI*" (CIVIL CASE NO. 95-72685, RTC MANILA, BRANCH 38).[32]

PNB insists that the Pantranco properties could no longer be levied upon because the promissory note for which the Labor Arbiter held PNB-Madecor liable to PNEI, and in turn to the latter's former employees, had already been satisfied in favor of Gerardo C. Uy. It added that the properties were in fact awarded to the highest bidder. Besides, says PNB, the subject properties were not owned by PNEI, hence, the execution sale thereof was not validly effected.[33]

Both petitions must fail.

G.R. No. 170689

Stripped of the non-essentials, the sole issue for resolution raised by the former PNEI employees is whether they can attach

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[31] *Rollo* (G.R. No. 170689), p. 11.

[32] *Rollo* (G.R. No. 170705), p. 56.

[33] *Id.* at 61-62.

the properties (specifically the Pantranco properties) of PNB, PNB-Madecor and Mega Prime to satisfy their unpaid labor claims against PNEI.

We answer in the negative.

First, the subject property is not owned by the judgment debtor, that is, PNEI. Nowhere in the records was it shown that PNEI owned the Pantranco properties. Petitioners, in fact, never alleged in any of their pleadings the fact of such ownership. What was established, instead, in *PNB MADECOR v. Uy*[34] and *PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB*[35] was that the properties were owned by Macris, the predecessor of PNB-Madecor. Hence, they cannot be pursued against by the creditors of PNEI.

We would like to stress the settled rule that the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone.[36] To be sure, one man's goods shall not be sold for another man's debts.[37] A sheriff is not authorized to attach or levy on property not belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person.[38]

Second, PNB, PNB-Madecor and Mega Prime are corporations with personalities separate and distinct from that of PNEI. PNB is sought to be held liable because it acquired PNEI through NIDC at the time when PNEI was suffering financial reverses. PNB-Madecor is being made to answer for petitioners' labor claims as the owner of the subject Pantranco properties and as

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[34] *Supra* note 8.

[35] G.R. Nos. 173454 and 173456, October 6, 2008.

[36] *Cleodia U. Francisco, et al. v. Sps. Jorge C. Gonzales and Purificacion W. Gonzales*, G.R. No. 177667, September 17, 2008; *Yao v. Hon. Perello*, 460 Phil. 658,662 (2003).

[37] *Id.*

[38] *Cleodia U. Francisco, et al. v. Sps. Jorge C. Gonzales and Purificacion W. Gonzales*, *supra*; see *Tanongon v. Samson*, 431 Phil. 729 (2002).

a subsidiary of PNB. Mega Prime is also included for having acquired PNB's shares over PNB-Madecor.

The general rule is that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected.[39] This is a fiction created by law for convenience and to prevent injustice.[40] Obviously, PNB, PNB-Madecor, Mega Prime, and PNEI are corporations with their own personalities. The "separate personalities" of the first three corporations had been recognized by this Court in *PNB v. Mega Prime Realty and Holdings Corporation/Mega Prime Realty and Holdings Corporation v. PNB*[41] where we stated that PNB was only a stockholder of PNB-Madecor which later sold its shares to Mega Prime; and that PNB-Madecor was the owner of the Pantranco properties. Moreover, these corporations are registered as separate entities and, absent any valid reason, we maintain their separate identities and we cannot treat them as one.

Neither can we merge the personality of PNEI with PNB simply because the latter acquired the former. Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.[42]

Lastly, while we recognize that there are peculiar circumstances or valid grounds that may exist to warrant the piercing of the corporate veil,[43] none applies in the present case whether between PNB and PNEI; or PNB and PNB-Madecor.

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[39] *China Banking Corporation v. Dyne-Sem Electronics Corporation*, G.R. No. 149237, July 11, 2006, 494 SCRA 493, 499; see *General Credit Corporation v. Alsons Development and Investment Corporation*, G.R. No. 154975, January 29, 2007, 513 SCRA 225, 237-238.

[40] *China Banking Corporation v. Dyne-Sem Electronics Corporation*, *supra*, at 499.

[41] *Supra* note 35.

[42] *China Banking Corporation v. Dyne-Sem Electronics Corporation*, *supra* note 39, at 501.

[43] *Id.* at 499.

Under the doctrine of "piercing the veil of corporate fiction," the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group.[44] Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.[45]

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.[46]

As between PNB and PNEI, petitioners want us to disregard their separate personalities, and insist that because the company, PNEI, has already ceased operations and there is no other way by which the judgment in favor of the employees can be satisfied, corporate officers can be held jointly and severally liable with the company. Petitioners rely on the pronouncement of this Court in *A.C. Ransom Labor Union-CCLU v. NLRC*[47] and subsequent cases.[48]

This reliance fails to persuade. We find the aforesaid decisions inapplicable to the instant case.

For one, in the said cases, the persons made liable after the company's cessation of operations were the officers and agents

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[44] *General Credit Corporation v. Alsons Development and Investment Corporation*, *supra* note 39, at 238.

[45] *Id.*

[46] *Id.*

[47] *Supra* note 30.

[48] *Restaurante Las Conchas v. Llego*, 372 Phil. 697 (1999); *Naguiat v. NLRC*, 336 Phil. 545 (1997); *Valderrama v. NLRC*, 326 Phil. 477 (1996).

of the corporation. The rationale is that, since the corporation is an artificial person, it must have an officer who can be presumed to be the employer, being the person acting in the interest of the employer. The corporation, only in the technical sense, is the employer.[49] In the instant case, what is being made liable is another corporation (PNB) which acquired the debtor corporation (PNEI).

Moreover, in the recent cases *Carag v. National Labor Relations Commission*[50] and *McLeod v. National Labor Relations Commission,*[51] the Court explained the doctrine laid down in *AC Ransom* relative to the personal liability of the officers and agents of the employer for the debts of the latter. In *AC Ransom,* the Court imputed liability to the officers of the corporation on the strength of the definition of an employer in Article 212(c) (now Article 212[e]) of the Labor Code. Under the said provision, *employer* includes any person acting in the interest of an employer, directly or indirectly, but does not include any labor organization or any of its officers or agents except when acting as employer. It was clarified in *Carag* and *McLeod* that Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. It added that the governing law on personal liability of directors or officers for debts of the corporation is still Section 31[52] of the Corporation Code.

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[49] *A.C. Ransom Labor Union-CCLU v.* NLRC, *supra* note 30, at 205.

[50] G.R. No. 147590, April 2, 2007, 520 SCRA 28.

[51] G.R. No. 146667, January 23, 2007, 512 SCRA 222.

[52] Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

More importantly, as aptly observed by this Court in *AC Ransom*, it appears that Ransom, foreseeing the possibility or probability of payment of backwages to its employees, organized Rosario to replace Ransom, with the latter to be eventually phased out if the strikers win their case. The execution could not be implemented against Ransom because of the disposition posthaste of its leviable assets evidently in order to evade its just and due obligations.[53] Hence, the Court sustained the piercing of the corporate veil and made the officers of Ransom personally liable for the debts of the latter.

Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) *alter ego* cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[54] In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[55]

Applying the foregoing doctrine to the instant case, we quote with approval the CA disposition in this wise:

> It would not be enough, then, for the petitioners in this case, the PNEI employees, to rest on their laurels with evidence that PNB was the owner of PNEI. Apart from proving ownership, it is necessary to show facts that will justify us to pierce the veil of corporate fiction and hold PNB liable for the debts of PNEI. The burden

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[53] *Carag v. National Labor Relations Commission*, *supra* note 50, at 54-55.

[54] *General Credit Corporation v. Alsons Development and Investment Corporation*, *supra* note 39, at 235, 238, 239; *PNB v. Ritratto Group, Inc.,* 414 Phil. 494, 505 (2001).

[55] *McLeod v. National Labor Relations Commission*, *supra* note 51, at 253.

undoubtedly falls on the petitioners to prove their affirmative allegations. In line with the basic jurisprudential principles we have explored, they must show that PNB was using PNEI as a mere adjunct or instrumentality or has exploited or misused the corporate privilege of PNEI.

We do not see how the burden has been met. Lacking proof of a nexus apart from mere ownership, the petitioners have not provided us with the legal basis to reach the assets of corporations separate and distinct from PNEI.[56]

Assuming, for the sake of argument, that PNB may be held liable for the debts of PNEI, petitioners still cannot proceed against the Pantranco properties, the same being owned by PNB-Madecor, notwithstanding the fact that PNB-Madecor was a subsidiary of PNB. The general rule remains that PNB-Madecor has a personality separate and distinct from PNB. The mere fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective businesses.[57]

In *PNB v. Ritratto Group, Inc.,*[58] we outlined the circumstances which are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation, to wit:

1. The parent corporation owns all or most of the capital stock of the subsidiary;
2. The parent and subsidiary corporations have common directors or officers;
3. The parent corporation finances the subsidiary;
4. The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;

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[56] *Rollo* (G.R. No. 170689), pp. 36-37.

[57] *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 258; *MR Holdings, Ltd. v. Sheriff Bajar*, 430 Phil. 443, 469-470 (2002); *PNB v. Ritratto Group, Inc., supra* note 54, at 503.

[58] *Supra* note 54.

5. The subsidiary has grossly inadequate capital;
6. The parent corporation pays the salaries and other expenses or losses of the subsidiary;
7. The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;
8. In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;
9. The parent corporation uses the property of the subsidiary as its own;
10. The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation;
11. The formal legal requirements of the subsidiary are not observed.

None of the foregoing circumstances is present in the instant case. Thus, piercing of PNB-Madecor's corporate veil is not warranted. Being a mere successor-in-interest of PNB-Madecor, with more reason should no liability attach to Mega Prime.

G.R. No. 170705

In its petition before this Court, PNB seeks the annulment of the June 23, 2004 execution sale of the Pantranco properties on the ground that the judgment debtor (PNEI) never owned said lots. It likewise contends that the levy and the eventual sale on execution of the subject properties was null and void as the promissory note on which PNB-Madecor was made liable had already been satisfied.

It has been repeatedly stated that the Pantranco properties which were the subject of execution sale were owned by Macris and later, the PNB-Madecor. They were never owned by PNEI or PNB. Following our earlier discussion on the separate personalities of the different corporations involved in the instant

case, the only entity which has the right and interest to question the execution sale and the eventual right to annul the same, if any, is PNB-Madecor or its successor-in-interest. Settled is the rule that proceedings in court must be instituted by the real party in interest.

A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[59] "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[60] The interest of the party must also be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.[61] Real interest, on the other hand, means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.[62]

Specifically, in proceedings to set aside an execution sale, the real party in interest is the person who has an interest either in the property sold or the proceeds thereof. Conversely, one who is not interested or is not injured by the execution sale cannot question its validity.[63]

In justifying its claim against the Pantranco properties, PNB alleges that Mega Prime, the buyer of its entire stockholdings in PNB-Madecor was indebted to it (PNB). Considering that

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[59] *Republic v. Agunoy, Sr.*, G.R. No. 155394, February 17, 2005, 451 SCRA 735, 746.

[60] *Cañete v. Genuino Ice Company, Inc.*, G.R. No. 154080, January 22, 2008, 542 SCRA 206, 222; *VSC Commercial Enterprises, Inc. v. Court of Appeals*, 442 Phil. 269, 276 (2002).

[61] *Cañete v. Genuino Ice Company, Inc.*, *supra*, at 222; *VSC Commercial Enterprises, Inc. v. Court of Appeals*, *supra*, at 276-277.

[62] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation,* G.R. Nos. 169080, 172936, 176226 and 176319, December 19, 2007, 541 SCRA 166, 203; *Cañete v. Genuino Ice Company, Inc.*, *supra* note 60, at 222; *VSC Commercial Enterprises, Inc. v. Court of Appeals*, *supra* note 60, at 277.

[63] *De Leon v. CA*, 343 Phil. 254, 265 (1997).

said indebtedness remains unpaid, PNB insists that it has an interest over PNB-Madecor and Mega Prime's assets.

Again, the contention is bereft of merit. While PNB has an apparent interest in Mega Prime's assets being the creditor of the latter for a substantial amount, its interest remains inchoate and has not yet ripened into a present substantial interest, which would give it the standing to maintain an action involving the subject properties. As aptly observed by the Labor Arbiter, PNB only has an inchoate right to the properties of Mega Prime in case the latter would not be able to pay its indebtedness. This is especially true in the instant case, as the debt being claimed by PNB is secured by the accessory contract of pledge of the entire stockholdings of Mega Prime to PNB-Madecor.[64]

The Court further notes that the Pantranco properties (or a portion thereof) were sold on execution to satisfy the unpaid obligation of PNB-Madecor to PNEI. PNB-Madecor was thus made liable to the former PNEI employees as the judgment debtor of PNEI. It has long been established in *PNB-Madecor v. Uy* and other similar cases that PNB-Madecor had an unpaid obligation to PNEI amounting to more or less ₱7 million which could be validly pursued by the creditors of the latter. Again, this strengthens the proper parties' right to question the validity of the execution sale, definitely not PNB.

Besides, the issue of whether PNB has a substantial interest over the Pantranco properties has already been laid to rest by the Labor Arbiter.[65] It is noteworthy that in its Resolution dated September 10, 2002, the Labor Arbiter denied PNB's Third-Party Claim primarily because PNB only has an inchoate right over the Pantranco properties.[66] Such conclusion was later affirmed by the NLRC in its Resolution dated June 30, 2003.[67] Notwithstanding said conclusion, PNB did not elevate the matter

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[64] *Rollo* (G.R. No. 170689), p. 55.

[65] *Id.* at 46-58.

[66] *Id.* at 55.

[67] *Id.* at 60-73.

to the CA via a petition for review. Hence it is presumed to be satisfied with the adjudication therein.[68] That decision of the NLRC has become final as against PNB and can no longer be reviewed, much less reversed, by this Court.[69] This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[70]

WHEREFORE, premises considered, the petitions are hereby *DENIED* for lack of merit.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171085. March 17, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODOLFO "RUDY" SORIANO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL NOT DISTURB THE CREDENCE ACCORDED BY THE TRIAL COURT TO THE

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[68] *Sps. Custodio v. CA*, 323 Phil. 575, 583 (1996).

[69] *Id.* at 583-584.

[70] *Universal Staffing Services, Inc. v. NLRC and Grace M. Morales*, G.R. No. 177576, July 21, 2008.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 568 dated February 12, 2009.

TESTIMONIES OF WITNESSES; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — Well-entrenched in our jurisprudence is the doctrine that the assessment of the credibility of witnesses lies within the province and competence of trial courts. This doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh the testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence accorded by the trial court to the testimonies of witnesses unless it is clearly shown that the trial court has overlooked or disregarded arbitrarily facts and circumstances of significance in the case. None of the exceptions, we note, was shown in the case at bar.

2. **ID.; ID.; ID.; PRESENCE OF PERSONAL MOTIVES ON THE PART OF THE WITNESS TO TESTIFY IN FAVOR OF THE VICTIM AND AGAINST THE ACCUSED SHOULD BE SUPPORTED BY SATISFACTORY PROOF BEFORE HIS TESTIMONY MAY BE CONSIDERED BIASED. —** Appellant's argument that Genaro was impelled by ill motive to testify falsely against him must be rejected since the presence of personal motives on the part of a witness to testify in favor of the victim and against the accused should be supported by satisfactory proof before his testimony may be considered biased. The records are barren of any satisfactory proof to show such bias on the part of Genaro.

3. **ID.; ID.; WITNESSES; NON-PRESENTATION OF CORROBORATIVE WITNESSES DOES NOT CONSTITUTE SUPPRESSION OF EVIDENCE AND IS NOT FATAL TO THE PROSECUTION'S CASE. —** Well settled is the rule that the testimony of a single, trustworthy and credible witness is sufficient for conviction. Likewise, the prosecution has the exclusive prerogative to determine whom to present as witnesses. It need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with if they are merely corroborative in nature. We have ruled that the non-presentation of corroborative witnesses

does not constitute suppression of evidence and is not fatal to the prosecution's case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated June 6, 2005 of the Court of Appeals in CA-G.R. CR No. 00978, which affirmed the Decision[2] dated April 29, 2002 of the Regional Trial Court, Branch 46 of Urdaneta City. The trial court found appellant Rodolfo "Rudy" Soriano guilty of murder in Criminal Case No. U-11465.

The Information dated July 17, 2001 charging appellant and one Ireneo "Rene" Lumilay with murder, defined and penalized under Article 248[3] of the Revised Penal Code, reads as follow:

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[1] *Rollo*, pp. 3-12. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Romeo A. Brawner and Edgardo P. Cruz concurring.

[2] Records, pp. 147-161. Penned by Acting Presiding Judge Alicia B. Gonzalez-Decano.

[3] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua,* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

x x x x x x x x x

That on or about May 2, 2001 at Brgy. Oraan West, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, armed and with the use of unlicensed firearms, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot Diodito Broniola, inflicting upon him two (2) gunshot wounds which cause[d] his death to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code as amended by R.A. No. 7659 in relation to R.A. [No.] 8294.[4]

Appellant was arrested by the police authorities while Ireneo "Rene" Lumilay remained at large. Upon arraignment, appellant pleaded not guilty. Trial thereafter ensued.

The prosecution presented, as witnesses, Genaro R. Lumilay, an eyewitness; PO3 Dante N. Marmolejo, the police investigator of the PNP Manaoag, Pangasinan; and Dr. Arnulfo T. Bacorro, Rural Health Physician of Manaoag, Pangasinan.

Genaro R. Lumilay[5] testified that on May 2, 2001 at 2:00 p.m., he attended a birthday party at Barangay Oraan, Manaoag, Pangasinan. At around 7:00 p.m., he left the party with Diodito "Perlito" Broniola and the latter's live-in partner, Rowena P. Cariño. While walking on their way home, appellant and Ireneo suddenly emerged from nowhere and faced them. Appellant shot Diodito below the neck. Genaro moved Diodito to the canal along the left side of the road but Ireneo shot Diodito again at the left side of his body. As Diodito fell to the ground, Genaro ran home. Later that evening, the police fetched him and brought him to the police station where he gave his statement.

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5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (*As amended by R.A. No. 7659.*)

[4] Records, p. 1.

[5] TSN, October 15, 2001, pp. 4-9.

PO3 Dante N. Marmolejo[6] testified that upon receiving a report that there was a shooting incident at Barangay Oraan, Manaoag, Pangasinan, he immediately proceeded to the place of the incident. He saw the lifeless body of Diodito lying on the side of the road. Rowena told him that it was appellant who shot Diodito. Thereafter, he searched for and arrested appellant at his house.

Dr. Arnulfo T. Bacorro conducted an autopsy on Diodito. In his Autopsy Report[7] and testimony,[8] he declared that Diodito's body bore two gunshot wounds. The first wound was fatal because it trajected the inferior lobe of the left lung up to the upper lobe of the right lung thereby causing massive bleeding.

On the other hand, the defense presented, as witnesses, appellant Rudy Soriano; Elvira Soriano, appellant's wife; and Edwina C. de Jesus.

Elvira Soriano[9] testified that at around 7:00 p.m. of May 2, 2001, they heard a single gun burst while she, her husband and daughter, were eating supper. They proceeded to the road which was about ten meters away from their house. She saw Genaro running westward. Eastward, she saw Diodito lying on the ground with Rowena beside him. Appellant flagged down a tricycle to help Diodito but the driver refused to board them. When Genaro came back, he pointed to appellant as the one responsible for Diodito's death.

Elvira declared that Genaro hated appellant for the following reasons: *First*, appellant borrowed a male duck which they failed to return because it died. *Second*, appellant was close to Ireneo, who won a land dispute case against Genaro's father, and to one Jonathan Fernandez,[10] the private complainant in a robbery case against Genaro.

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[6] TSN, October 8, 2001, pp. 4-5.

[7] Records, p. 28.

[8] TSN, October 1, 2001, pp. 3-5.

[9] TSN, December 4, 2001, pp. 3-12.

[10] Appears as Jonathan Bautista in some parts of the records.

Appellant Rudy Soriano[11] testified that at around 7:00 p.m. of May 2, 2001, he was at home with his wife and daughter. While they were eating supper, they heard a burst of gun fire. They went out of their house and saw Genaro running eastward. He also saw Diodito lying at the side of the road face up. He tried to help him but the tricycle driver refused to board them. He was not able to report the incident since he was already arrested by PO3 Marmolejo.

Appellant added that Genaro testified against him because he failed to return the male duck he borrowed. He was also very close to Ireneo who won a land dispute case against Genaro's father, and Jonathan Fernandez, the private complainant in a robbery case against Genaro.

Edwina C. de Jesus[12] testified that she was selling cooked food near the place of the incident on the night of May 2, 2001. While thereat, she heard a woman shouting, *"bay-am, bay-am"* (leave it, leave it), and saw two men and a woman. After a while, she heard a gun burst. She recognized the victim as Diodito, the woman as Rowena and the one who ran away as Genaro. As Rowena cried for help, Edwina approached her. She flagged down a tricycle but the driver told them not to bring Diodito to the hospital anymore since he was already dead.

Edwina added that she knows appellant but does not know if he was at the place of the incident because many people were there.

On April 29, 2002, the trial court convicted appellant. It gave credence to Genaro's testimony and rejected appellant's defense of denial and alibi. It also did not give weight to the insinuation of ulterior motive on Genaro's part. It held that Genaro and Rowena's statements were taken immediately after the incident and there could have been no time to fabricate their statements. Moreover, Genaro withstood the rigors of cross-examination and was firm in his testimony that it was appellant who shot Diodito.

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[11] TSN, December 11, 2001, pp. 3-12.

[12] TSN, January 22, 2002, pp. 2-7.

The trial court appreciated treachery which qualified the killing to murder. It ruled that Diodito was attacked in a swift and unexpected manner affording him no chance to defend himself.

The dispositive portion of the decision reads:

> WHEREFORE, the court finds the accused guilty of murder penalized by Article 248 as amended by R.A. 7659 and sentences him to suffer the penalty of [*Reclusion Perpetua*] and to pay the heirs of the victim Diodito Broniola *alias* "Perlito" the civil indemnity of ₱50,000.00 and with costs against the said accused.
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> SO ORDERED.[13]

On June 6, 2005, the Court of Appeals affirmed the decision of the trial court. *First*, it noted that Genaro's testimony regarding the details of the shooting incident was substantiated by the findings of Dr. Bacorro. Dr. Bacorro confirmed that Diodito sustained two fatal gunshot wounds. *Second*, it observed that Genaro's testimony was reliable as he did not immediately report the matter to the police. He ran home since he could no longer help Diodito. He had no time to fabricate or concoct any story as the incident was still fresh in his memory. He was cross-examined and was never shaken. His story was consistent throughout. *Third*, it held that the prosecution's failure to present Rowena was not fatal. Since the witness was equally available or accessible to the defense, no negative inference can be made out of it. The presumption of suppression of evidence is inapplicable where the evidence was at the disposal of both the defense and the prosecution and would have the same weight against one party as against the other. *Fourth*, it ruled that appellant's defense of denial and alibi deserved no weight. His alibi cannot prevail over his positive identification by the prosecution witness as one of the perpetrators of the crime. He failed to discharge the burden of proving that it was physically impossible for him to be at the scene of the crime at the time it was committed. *Fifth*, it concluded that appellant's ill-motive theory was speculative and insufficient to impel Genaro to perjure himself and put appellant behind bars for life.

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[13] Records, p. 161.

The appellate court likewise affirmed that treachery attended the killing. Diodito and his companions were merely walking when appellant suddenly appeared and shot him. Appellant consciously adopted said mode of nighttime attack to insure the success of his purpose without any risk to himself. Diodito was unaware of the attack and was not in a position to defend himself. There was treachery not only because of the suddenness of the attack but also because of the absence of an opportunity on Diodito's part to repel appellant's attack.

Dissatisfied, appellant appealed to this Court. As appellant and the Office of the Solicitor General opted not to submit their supplemental briefs, we shall review the decision of the appellate court based on the lone assignment of error before it:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[14]

Appellant contends that the trial court erred in relying on Genaro's positive identification since he was impelled by ill motive in testifying against appellant. This motive allegedly stemmed from an incident wherein Ireneo won a land dispute case against Genaro's father. Allegedly, Genaro also testified falsely against him because at that time, appellant was close to one Jonathan Fernandez who was the private complainant in a robbery case against Genaro. Appellant also contends that the failure to present Rowena, the other eyewitness, to corroborate Genaro's testimony raised the suspicion that Genaro was not telling the truth.

Appellee counters that the testimony of a prosecution witness is entitled to full faith and credit *sans* any indication of ill motive in testifying. The fact that Genaro's father lost a land dispute case against Ireneo is insignificant. For one, Genaro did not testify against Ireneo but against appellant. For another, the land dispute case was between Genaro's father and Ireneo which

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[14] *Rollo*, pp. 7-8.

only indicates that any ill motive Genaro may have would have been against Ireneo and not appellant. On the other hand, the robbery case against Genaro does not involve appellant. It is foolhardy that Genaro would testify falsely against appellant just because his close friend filed the robbery case against Genaro. Appellee contends that the testimony of a lone eyewitness, if found convincing and trustworthy by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt.

In our considered view, the appeal is without merit.

Appellant's assigned error basically refers to the trial court's assessment of the credibility of the prosecution's witnesses, particularly of Genaro R. Lumilay. According to appellant, Genaro was impelled by ill motive to testify falsely against him and that Genaro's testimony was uncorroborated.

Well-entrenched in our jurisprudence is the doctrine that the assessment of the credibility of witnesses lies within the province and competence of trial courts. This doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh the testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence accorded by the trial court to the testimonies of witnesses unless it is clearly shown that the trial court has overlooked or disregarded arbitrarily facts and circumstances of significance in the case. None of the exceptions, we note, was shown in the case at bar.[15]

Appellant's argument that Genaro was impelled by ill motive to testify falsely against him must be rejected since the presence of personal motives on the part of a witness to testify in favor of the victim and against the accused should be supported by

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[15] *People v. Escote*, G.R. No. 151834, June 8, 2004, 431 SCRA 345, 350-351; *People v. Bolivar*, G.R. No. 130597, February 21, 2001, 352 SCRA 438, 451.

satisfactory proof before his testimony may be considered biased.[16] The records are barren of any satisfactory proof to show such bias on the part of Genaro.

The trial court gave credence to Genaro's testimony after noting that he had no time to fabricate or concoct any story since his statement was taken immediately after the incident. It also observed that Genaro withstood the rigors of cross-examination and was consistent that it was appellant who shot Diodito. In the same vein, the Court of Appeals noted that the alleged ill motive on Genaro's part was speculative and insufficient to impel him to perjure himself and put appellant behind bars for life. As appellee also pointed out, although Genaro's father lost a land dispute case against Ireneo, Genaro did not testify against Ireneo but against appellant. Any ill motive Genaro may have would have been against Ireneo and not appellant. Moreover, the robbery case against Genaro did not involve appellant. It was filed by appellant's close friend and it would be stretching the imagination too far to conclude that Genaro would take that circumstance against appellant in order to testify falsely against him.

Finally, the testimony of prosecution witness Genaro, as corroborated by the medical findings of Dr. Bacorro, suffices for conviction. Dr. Bacorro confirmed Genaro's testimony that Diodito sustained two fatal gunshot wounds.

Well settled is the rule that the testimony of a single, trustworthy and credible witness is sufficient for conviction.[17] Likewise, the prosecution has the exclusive prerogative to determine whom to present as witnesses. It need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with if they are merely corroborative in

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[16] *People v. Baniega*, G.R. No. 139578, February 15, 2002, 377 SCRA 170, 181; *People v. Baltazar*, G.R. No. 129933, February 26, 2001, 352 SCRA 678, 686.

[17] *People v. Manansala*, G.R. No. 147149, July 9, 2003, 405 SCRA 481, 490; *People v. Mira*, G.R. No. 123130, October 2, 2000, 341 SCRA 631, 642.

nature. We have ruled that the non-presentation of corroborative witnesses does not constitute suppression of evidence and is not fatal to the prosecution's case.[18]

All told, we rule that the appeal lacks merit.

WHEREFORE, the appeal is *DENIED*. The Decision dated June 6, 2005 of the Court of Appeals in CA-G.R. CR No. 00978, which affirmed the Decision dated April 29, 2002 of the Regional Trial Court, Branch 46 of Urdaneta City, finding appellant Rodolfo "Rudy" Soriano guilty of murder in Criminal Case No. U-11465, is *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura,[*] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171378. March 17, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **MARIA TERESA S.A. CORDERO,** *respondent.*

[G.R. No. 171388. March 17, 2009]

EMPLOYEES' COMPENSATION COMMISSION, *petitioner, vs.* **MARIA TERESA S.A. CORDERO,** *respondent.*

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[18] *People v. Pidoy*, G.R. No. 146696, July 3, 2003, 405 SCRA 339, 346-347; *People v. Mallari*, G.R. No. 103547, July 20, 1999, 310 SCRA 621, 629-630 citing *People v. Jumamoy*, G.R. No. 101584, April 7, 1993, 221 SCRA 333, 344.

[*] Designated member of Second Division pursuant to Special Order No. 571 in place of Associate Justice Dante O. Tinga who is on sabbatical leave.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYEES COMPENSATION; COMPENSABILITY; OCCUPATIONAL DISEASES; IF NOT LISTED AS AN OCCUPATIONAL DISEASE UNDER THE EMPLOYEES COMPENSATION COMMISSION (ECC) RULES, COMPENSATION MAY BE RECOVERED IF THE ILLNESS IS CAUSED OR PRECIPITATED BY FACTORS INHERENT IN THE EMPLOYEE'S WORK AND WORKING CONDITIONS. —** After a careful consideration of the submissions of the parties, we are unanimous in finding that Cordero has substantially proved her claim to compensability. Under Section 1(b), Rule III implementing P.D. No. 626, sickness or death is compensable if the cause is included in the list of occupational diseases annexed to the Rules. If not so listed, compensation may still be recovered if the illness is caused or precipitated by factors inherent in the employee's work and working conditions. Here, strict rules of evidence are not applicable since the quantum of evidence required under P.D. No. 626 is merely substantial evidence, which means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." What the law requires is a reasonable work-connection and not a direct causal relation. It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty, is the touchstone.

2. **ID.; ID.; ID.; ID.; RESPONDENT HAS SUBSTANTIALLY PROVED HER CLAIM TO COMPENSABILITY; WHILE CHRONIC GLOMERULONEPHRITIS IS NOT AMONG THOSE ENUMERATED AS AN OCCUPATIONAL DISEASE UNDER ANNEX "A" OF THE ECC RULES, IT IS SCIENTIFICALLY LINKED TO HYPERTENSION, A COMPENSABLE DISEASE. —** Inasmuch as Cordero's disease was not listed as an occupational disease, it is incumbent upon her to adduce substantial proof that would show that the nature of her employment or working conditions increased the risk of End Stage Renal Disease or Chronic Glomerulonephritis. The evidence presented by Cordero shows that her Chronic Glomerulonephritis that led to End Stage Renal Disease was caused by hypertension. At the onset, Cordero was given a clean bill of health and declared fit-to-work when she was employed

by GSIS in 1987. But in 1995, she contracted hypertension. While End Stage Renal Disease secondary to Chronic Glomerulonephritis is not among those enumerated as an Occupational Disease under Annex "A" of the ECC Rules, it is scientifically linked to hypertension, a compensable illness. Hence, we cannot close our eyes to the reasonable connection of her work *vis-à-vis* her ailment. Years after Cordero contracted hypertension, her health condition worsened when she was hospitalized in April 2000, June 2001 and October 2001 and she was diagnosed as having End Stage Renal Disease secondary to Chronic Glomerulonephritis. Her attending physician certified that based on medical examinations, her hypertension has led to the development of her End Stage Renal Disease. In our jurisdprudence, a doctor's certification as to the nature of the claimant's disability normally deserves full credence because in the normal course of things, no medical practitioner will issue certifications indiscriminately, considering the serious and far-reaching effects of false certifications and its implications upon his own interests as a professional.

APPEARANCES OF COUNSEL

Legal Services Group (GSIS) for GSIS.

D E C I S I O N

QUISUMBING, *J.*:

These consolidated petitions for review on *certiorari* assail the Decision[1] dated February 3, 2006 of the Court of Appeals in CA-G.R. SP No. 74399, which reversed and set aside the Decision[2] dated September 6, 2002 of the Employees' Compensation Commission (ECC) in ECC Case No. GM-12987-202 and granted respondent Maria Teresa S.A. Cordero's claim

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[1] *Rollo* (G.R. No. 171378), pp. 70-81. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Renato C. Dacudao and Lucas P. Bersamin concurring.

[2] *Id.* at 82-84.

for compensation benefits under Presidential Decree No. 626 (P.D. No. 626),[3] as amended.

The antecedent facts are as follows:

From October 1987, Cordero occupied several contractual and casual positions in the Government Service Insurance System (GSIS) until she was extended a permanent appointment on May 7, 1990. On December 10, 1996, she was promoted as Senior General Insurance Specialist,[4] her position to date.

In her post, Cordero examines insured government properties to verify the existence of overinsurance or underinsurance, the degree of risks, correctness of rate charged and paying capacity of the insurer; gathers situations and conditions of insurance risks exposure and rates, previous losses and other pertinent data and information relative to non-life insurance; inspects damaged properties and reports the value of a claim payable to the insured, in accordance with established policies in force; and interviews or corresponds with claimants and witnesses to determine the extent of GSIS' liability for insurance claims.[5]

From April 12 to 17, 2000, Cordero was confined at the Quezon City Medical Center and was diagnosed with Chronic Glomerulonephritis with Hypertension. Then, from June 25 to 28, 2001 and from October 10 to 14, 2001, she was confined at St. Luke's Medical Center in Quezon City. The final diagnosis was Chronic Renal Failure secondary to Chronic Glomerulonephritis. Also, based on her medical records, she had hypertension since 1995.[6]

Accordingly, Cordero filed with the GSIS a claim for compensation benefits under P.D. No. 626, as amended. She stated that in her pre-employment physical and medical

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[3] FURTHER AMENDING CERTAIN ARTICLES OF PRESIDENTIAL DECREE NO. 442 ENTITLED "LABOR CODE OF THE PHILIPPINES," done on December 27, 1974 and took effect on January 1, 1975.

[4] *Rollo* (G.R. No. 171378), p. 71.

[5] Records, p. 26.

[6] *Rollo* (G.R. No. 171378), p. 83.

examinations, she was in perfect health when she entered GSIS in 1987. But later, she was diagnosed with hypertension, and then hospitalized in April 2000, June 2001 and October 2001 because of Chronic Renal Failure secondary to Chronic Glomerulonephritis.

To prove that her illness is work-connected, she presented a medical certificate[7] dated December 6, 2001 issued by Dr. Florencio J. Pine, M.D., F.P.C.P., F.P.S.N., Internal Medicine, Kidney Diseases and Hypertension of the UERM Memorial Hospital and National Kidney Institute. Dr. Pine certified that based on the history and available diagnostic examinations, the predominant evidence indicates that Cordero's end stage renal disease is secondary to the combined damage inflicted by the urinary tract infection and hypertension since 1995. He likewise certified that both conditions are work-related.

Cordero also presented a Certification[8] issued by Mr. Arnulfo Q. Canivel, Division Chief III, GSIS Claims Department, stating that **"[t]he nature of her work and working conditions outside the office increased the risk and is probably a big factor in the development of her hypertension which led to her End Stage Renal Disease secondary to Chronic Gl[o]merulonephritis requiring three times a week hemodialysis."**

On January 16, 2002, the GSIS denied her claim on the ground that her illness is not work-connected and her duties did not increase the risk of contracting the same.[9] Cordero sought reconsideration, but to no avail. Aggrieved, Cordero appealed to the ECC.

On September 6, 2002, the ECC affirmed the Decision of the GSIS and held that:

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As Sr. General Insurance Specialist, there was no proof that she was significantly exposed to occupational hazards that would result

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[7] Records, p. 28.

[8] *Id.* at 41.

[9] *Id.* at 8.

to kidney injury. Her job does not involve exposure to chemicals implicated in Chronic Glomerulonephritis. Thus, the ailment cannot be considered work-related.

WHEREFORE, the assailed decision is hereby **AFFIRMED** and the instant appeal is dismissed for lack of merit.

SO ORDERED.[10]

Pursuant to Rule 43[11] of the Rules of Court, Cordero filed a petition for review with the Court of Appeals. In its Decision dated February 3, 2006, the Court of Appeals reversed the ECC ruling and held that Cordero contracted Chronic Glomerulonephritis during her employment in the GSIS and that the risk of contracting the same was increased by her working conditions. It pointed out that in her pre-employment physical and medical examination with the GSIS in 1987, Cordero was in perfect health condition. But sometime in 1995, she was diagnosed with hypertension, which eventually led to the development of her End Stage Renal Disease secondary to Chronic Glomerulonephritis. The Court of Appeals agreed with her physician that both conditions are work-related. The *fallo* of the decision reads:

WHEREFORE, premises considered, the Petition for Review is **GRANTED DUE COURSE.** The Decision of the Employees' Compensation Commission in ECC Case No. GM-12987-202 approved on 06 September 2002 under Board Resolution No. 02-09-646, is **REVERSED** and **SET ASIDE** and the Government Service Insurance System is hereby **DIRECTED** to pay petitioner Maria Teresa S.A. Cordero her claim for compensation benefits pursuant to P.D. 626, as amended. No costs.

SO ORDERED.[12]

Hence these petitions. Petitioner GSIS raises the following issues:

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[10] *Rollo* (G.R. No. 171378), p. 84.

[11] APPEALS FROM THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS.

[12] *Rollo* (G.R. No. 171378), p. 80.

I.

WHETHER THE RESPONDENT'S AILMENT DENOMINATED AS "CHRONIC GLOMERULONEPHRITIS" MAY BE CONSIDERED WORK-CONNECTED PURSUANT TO SECTION 1 (B), RULE III OF THE AMENDED RULES OF P.D. NO. 626, AS AMENDED.

II.

WHETHER THE COURT OF APPEALS WAS CORRECT IN ALLOWING THE RESPONDENT'S CLAIM FOR COMPENSATION BENEFITS UNDER P.D. 626, AS AMENDED, MAINLY DUE TO A HUMANITARIAN IMPULSE.[13]

Petitioner ECC, for its part, raises a single issue:

[WHETHER] THE COURT OF APPEALS ERRED IN CONSIDERING CHRONIC GLOMERULONEPHRITIS AS A WORK-RELATED DISEASE AND COMPENSABLE UNDER THE THEORY OF "INCREASED RISK."[14]

In her Memorandum[15] dated February 22, 2007, covering both G.R. No. 171378 and G.R. No. 171388, respondent Cordero presents the following "statement of issues":

I. THAT RESPONDENT WAS ABLE TO DISCHARGE THE BURDEN OF SHOWING THAT THE RISK OF CONTRACTING HER AILMENT, CHRONIC GLOMERULONEPHRITIS, WAS INCREASED BY HER WORKING CONDITIONS, HENCE, COMPENSABLE UNDER THE LAW.

II. THAT THE COMPENSABILITY OF THE CLAIM IS CONSISTENT WITH APPLICABLE LAWS AND PREVAILING JURISPRUDENCE.

III. THAT PRESIDENTIAL DECREE 626, AS AMENDED, IS A SOCIAL LEGISLATION THAT MUST BE INTERPRETED AND CONSTRUED IN FAVOR OF ITS INTENDED BENEFICIARIES.[16]

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[13] *Id.* at 51.

[14] *Rollo* (G.R. No. 171388), p. 15.

[15] *Rollo* (G.R. No. 171378), pp. 235-265.

[16] *Id.* at 243-244.

Simply stated, the issue posed for our resolution is: Is respondent's End Stage Renal Disease secondary to Chronic Glomerulonephritis compensable under P.D. No. 626, as amended?

GSIS contends that Chronic Glomerulonephritis is not an occupational disease; accordingly, Cordero should adduce proof that the risk of contracting her disease was increased by her working conditions. But Cordero failed to do so; hence, her illness is not compensable under the law.

Cordero counters that her illness is compensable even if Chronic Glomerulonephritis is not an occupational disease because her working conditions increased the risk of contracting the illness. She contends that she started with the GSIS in perfect health but years later, because of the strenuous nature of her work, she suffered from hypertension, which eventually led to the damage of her kidney resulting to End Stage Renal Disease.

After a careful consideration of the submissions of the parties, we are unanimous in finding that Cordero has substantially proved her claim to compensability.

Under Section 1(b),[17] Rule III implementing P.D. No. 626, sickness or death is compensable if the cause is included in the list of occupational diseases annexed to the Rules. If not so listed, compensation may still be recovered if the illness is caused or precipitated by factors inherent in the employee's work and working conditions.[18] Here, strict rules of evidence are not applicable since the quantum of evidence required under P.D. No. 626 is merely substantial evidence, which means "such

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[17] SECTION 1. **Grounds**. — . . .

(b) For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

x x x x x x x x x

[18] *Jacang v. Employees' Compensation Commission*, G.R. No. 151893, October 20, 2005, 473 SCRA 520, 525-526.

relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[19]

What the law requires is a reasonable work-connection and not a direct causal relation.[20] It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty, is the touchstone.[21]

Inasmuch as Cordero's disease was not listed as an occupational disease, it is incumbent upon her to adduce substantial proof that would show that the nature of her employment or working conditions increased the risk of End Stage Renal Disease or Chronic Glomerulonephritis. The evidence presented by Cordero shows that her Chronic Glomerulonephritis that led to End Stage Renal Disease was caused by hypertension.[22]

At the onset, Cordero was given a clean bill of health and declared fit-to-work when she was employed by GSIS in 1987. But in 1995, she contracted hypertension. While End Stage Renal Disease secondary to Chronic Glomerulonephritis is not among those enumerated as an Occupational Disease under Annex "A" of the ECC Rules,[23] it is scientifically linked to hypertension, a compensable illness.[24] Hence, we cannot close our eyes to the reasonable connection of her work *vis-à-vis* her ailment.

Years after Cordero contracted hypertension, her health condition worsened when she was hospitalized in April 2000, June 2001 and October 2001 and she was diagnosed as having

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[19] *Castor-Garupa v. Employees' Compensation Commission*, G.R. No. 158268, April 12, 2006, 487 SCRA 171, 180.

[20] *Salalima v. Employees' Compensation Commission*, G.R. No. 146360, May 20, 2004, 428 SCRA 715, 723.

[21] *Limbo v. Employees' Compensation Commission*, 434 Phil. 703, 707 (2002).

[22] *Castor-Garupa v. Employees' Compensation Commission*, *supra* note 19.

[23] *Id.* at 179.

[24] *Republic v. Mariano*, G.R. No. 139455, March 28, 2003, 400 SCRA 86, 92-93.

End Stage Renal Disease secondary to Chronic Glomerulonephritis. Her attending physician certified that based on medical examinations, her hypertension has led to the development of her End Stage Renal Disease. In our jurisprudence, a doctor's certification as to the nature of the claimant's disability normally deserves full credence because in the normal course of things, no medical practitioner will issue certifications indiscriminately, considering the serious and far-reaching effects of false certifications and its implications upon his own interests as a professional.[25]

Premised on the aforementioned considerations, this Court affirms the findings and conclusions reached by the Court of Appeals upholding Cordero's claim to compensability.

WHEREFORE, the instant petitions are *DENIED*. The Decision dated February 3, 2006 of the Court of Appeals in CA-G.R. SP No. 74399 is hereby *AFFIRMED*. Petitioner Government Service Insurance System is hereby *ORDERED* to pay respondent Maria Teresa S.A. Cordero the compensation benefits due her under Presidential Decree No. 626, as amended.

SO ORDERED.

Carpio Morales, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.,* concur.

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[25] *Ijares v. Court of Appeals*, G.R. No. 105854, August 26, 1999, 313 SCRA 141, 151-152.

[*] Designated member of Second Division pursuant to Special Order No. 586 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.

SECOND DIVISION

[G.R. No. 171656. March 17, 2009]

ERLINDA K. ILUSORIO, *petitioner, vs.* **SYLVIA ILUSORIO-YAP,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPELLATE COURT DOCKET FEES; MUST BE PAID WITHIN THE PERIOD FOR TAKING AN APPEAL TO AVOID DISMISSAL OF APPEAL; CASE AT BAR. —** Appellate court docket and other lawful fees must be paid within the period for taking an appeal. The rule is stated in Section 4, Rule 41 of the Rules of Court, which reads as follows: SEC. 4. *Appellate court docket and other lawful fees*. — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. On August 18, 2003, Erlinda received the RTC's July 1, 2003 Order which denied her motion for reconsideration. She had 15 days from August 18, 2003 or until September 2, 2003 within which to appeal and pay the appeal fees. But it appears that Erlinda's payment of the appeal fees was made only on December 15, 2003, more than three months late, thus rendering the RTC's Orders dated February 12, 2003 and July 1, 2003 final. Thus, we have no recourse but to affirm the Order of the Court of Appeals dismissing Erlinda's appeal. Pursuant to Section 1(c), Rule 50 of the Rules of Court, the Court of Appeals, on its own motion or that of the appellee, may dismiss the appeal on the ground that appellant failed to pay the docket and other lawful fees. Pertinently, this Court's ruling in *Cu-Unjieng v. Court of Appeals* is instructive: With the reality obtaining in this case that payment of the appellate [court] docket fees was belatedly made four (4) months after the lapse of the period for appeal, <u>it appears clear to us that the CA did not acquire jurisdiction over petitioner's appeal</u> except to order its dismissal, as it rightfully did. Thus, the September 1, 1998 decision of

the RTC has passed to the realm of finality and became executory by operation of law.

2. **ID.; ID.; ID.; THE BARE INVOCATION OF THE PHRASE "THE INTEREST OF JUSTICE" IS NOT A MAGIC SPELL THAT WILL AUTOMATICALLY ALLOW THE COURT TO SUSPEND PROCEDURAL RULES DESPITE THE JURISDICTIONAL BAR. —** We hold that the RTC erred in giving due course to the notice of appeal, supposedly in the interest of substantial justice. The bare invocation of the phrase, "the interest of substantial justice," is not a magic spell that will automatically allow the Court to suspend procedural rules, despite the jurisdictional bar. The rules may be relaxed only in exceptionally meritorious cases. In this case, the messenger's alleged inadvertence to secure a postal money order for the appellate court docket fees is not a meritorious reason to justify an exception in our jurisprudence.

APPEARANCES OF COUNSEL

Singson Valdez & Associates for petitioner.
Paris G. Real for respondent.

R E S O L U T I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated November 30, 2005 and Resolution[2] dated February 15, 2006 of the Court of Appeals in CA-G.R. CV No. 82943.

The case arose from a Complaint[3] for a Collection of Sum of Money with Preliminary Attachment filed by petitioner Erlinda K. Ilusorio (Erlinda) against her daughter, respondent Sylvia Ilusorio-Yap (Sylvia), before the Regional Trial Court (RTC)

[1] *Rollo*, pp. 23-28. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Mariano C. Del Castillo and Magdangal M. De Leon concurring.

[2] *Id.* at 29-31.

[3] Records, pp. 1-8.

of Makati City. Erlinda alleged that sometime in August 1997 Sylvia borrowed ₱7 million from her and that she issued PCIBank Check No. 0013311 which Sylvia deposited in her own bank account. Sylvia, however, later refused to pay the loan despite her demands.

Sylvia moved to dismiss the complaint on the following grounds: (1) Erlinda's claim was paid, waived, abandoned, or extinguished; (2) no earnest efforts were made to compromise although the parties belong to the same family; and (3) the venue was improper.[4]

The RTC granted the motion to dismiss in its Order[5] dated February 12, 2003. The RTC ruled that the loan had already been extinguished, no earnest efforts were made to compromise, and the venue was improper. The RTC denied Erlinda's motion for reconsideration on July 1, 2003.[6]

Erlinda appealed. But the Court of Appeals dismissed the appeal for late payment of docket fees and failure to justify the late payment. The *fallo* of the Court of Appeals decision reads:

WHEREFORE, the appeal is hereby **DISMISSED** for failure to perfect the same within the reglementary period.

SO ORDERED.[7]

Upon the denial of her motion for reconsideration, Erlinda filed this petition, anchored on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THE APPEAL OF PETITIONER BASED ON HER ASSIGNMENT OF ERROR AND INSTEAD RULING ON ITS DISMISSAL BASED ON TECHNICALITIES WHICH HAVE ALREADY BEEN SETTLED BY THE COURT *A QUO*.

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[4] *Id.* at 44-52.

[5] *Id.* at 136-140.

[6] *Id.* at 170-172.

[7] *Rollo*, p. 27.

II.

THE COURT OF APPEALS PATENTLY ERRED IN DISMISSING PETITIONER'S APPEAL ON THE GROUND THAT SHE FAILED TO PERFECT THE SAME WITHIN THE REGLEMENTARY PERIOD.

III.

IN ANY CASE, PETITIONER'S APPEAL IS MERITORIOUS.[8]

The basic issue is: Did the Court of Appeals err in dismissing Erlinda's appeal for late payment of docket fees?

Erlinda argues that the Court of Appeals should have considered that she had already paid the appeal fees instead of summarily dismissing her appeal on a mere technicality.[9]

Sylvia counters that the Court of Appeals did not err in dismissing the appeal since failure to pay the appeal fees within the 15-day reglementary period to appeal is a fatal defect.[10]

We agree with Sylvia's contention.

Appellate court docket and other lawful fees must be paid within the period for taking an appeal. The rule is stated in Section 4, Rule 41 of the Rules of Court, which reads as follows:

> SEC. 4. *Appellate court docket and other lawful fees*. — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

On August 18, 2003,[11] Erlinda received the RTC's July 1, 2003 Order which denied her motion for reconsideration. She had 15 days from August 18, 2003 or until September 2, 2003

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

[9] *Id.* at 15.

[10] *Id.* at 294.

[11] Records, p. 173.

within which to appeal[12] and pay the appeal fees. But it appears that Erlinda's payment of the appeal fees was made only on December 15, 2003,[13] more than three months late, thus rendering the RTC's Orders dated February 12, 2003 and July 1, 2003 final.[14]

Thus, we have no recourse but to affirm the Order of the Court of Appeals dismissing Erlinda's appeal. Pursuant to Section 1(c),[15] Rule 50 of the Rules of Court, the Court of Appeals, on its own motion or that of the appellee, may dismiss the appeal on the ground that appellant failed to pay the docket and other lawful fees.[16] Pertinently, this Court's ruling in *Cu-Unjieng v. Court of Appeals*[17] is instructive:

> With the reality obtaining in this case that payment of the appellate [court] docket fees was belatedly made four (4) months after the lapse of the period for appeal, it appears clear to us that the CA did not acquire jurisdiction over petitioner's appeal except to order its dismissal, as it rightfully did. Thus, the September 1, 1998 decision of the RTC has passed to the realm of finality and became executory by operation of law.[18] (Stress supplied.)

Finally, we hold that the RTC erred in giving due course to the notice of appeal, supposedly in the interest of substantial justice.

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[12] See *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 644-646.

[13] Records, pp. 190-191.

[14] See *M.A. Santander Construction, Inc. v. Villanueva*, G.R. No. 136477, November 10, 2004, 441 SCRA 525, 530; *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005, 468 SCRA 77, 85.

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

x x x x x x x x x

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

x x x x x x x x x

[16] *Lazaro v. Court of Appeals*, G.R. No. 137761, April 6, 2000, 330 SCRA 208, 210.

[17] G.R. No. 139596, January 24, 2006, 479 SCRA 594.

[18] *Id.* at 603-604.

The bare invocation of the phrase, "the interest of substantial justice," is not a magic spell that will automatically allow the Court to suspend procedural rules, despite the jurisdictional bar. The rules may be relaxed only in exceptionally meritorious cases.[19] In this case, the messenger's alleged inadvertence to secure a postal money order for the appellate court docket fees[20] is not a meritorious reason to justify an exception in our jurisprudence.[21]

WHEREFORE, we *DENY* the petition for lack of merit and hereby *AFFIRM* the assailed Decision dated November 30, 2005 and Resolution dated February 15, 2006 of the Court of Appeals in CA-G.R. CV No. 82943.

Costs against petitioner.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura,[*] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173017. March 17, 2009]

FELIMON BIGORNIA, SPO3 BORROMEO GORRES, ADELIANO RICO, SPO3 JOVENTINO BIGORNIA, SPO3 ALMANZOR JANGAO, SPO2 MESTERIOSO ARANCO, *petitioners, vs.* **COURT OF APPEALS (23rd Division), and MELCHOR AROMA,** *respondents.*

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[19] *Lazaro v. Court of Appeals*, *supra* at 214.

[20] Records, p. 188.

[21] See *M.A. Santander Construction, Inc. v. Villanueva*, *supra*.

[*] Designated member of Second Division pursuant to Special Order No. 571 in place of Associate Justice Dante O. Tinga who is on sabbatical leave.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT OF APPEALS MAY DISMISS AN APPEAL FOR FAILURE OF APPELLANT TO FILE APPELLANTS' BRIEF ON TIME; SAID DISMISSAL, HOWEVER, IS DIRECTORY, NOT MANDATORY AND THE COURT HAS DISCRETION TO DISMISS OR NOT TO DISMISS THE APPEAL. —** Technically, the Court of Appeals may dismiss an appeal for failure of the appellant to file the appellants' brief on time. But, the dismissal is *directory*, not *mandatory*. Hence, the court has discretion to dismiss or not to dismiss the appeal. It is a power conferred on the court, not a duty. The discretion, however, must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

2. **ID.; ID.; ID.; CONSIDERING THE FACT THAT AMOUNT OF DAMAGES INVOLVED IS RELATIVELY SUBSTANTIAL AND THE PETITIONERS ARE POLICE OFFICERS AND GOVERNMENT EMPLOYEES WHO RECEIVE MEAGER SALARIES FOR RISKING LIFE AND LIMB, IT IS BUT FAIR THAT THEY BE HEARD ON THE MERITS OF THEIR CASE BEFORE BEING MADE TO PAY DAMAGES, FOR WHAT COULD BE, A PERFORMANCE OF DUTY. —** Petitioners had 45 days or until March 4, 2004 to file an appellants' brief. Unfortunately, petitioners could not be located as some of them retired while the rest were assigned to other places. It was their counsel who took the liberty of filing a brief in their behalf, but 14 days late and without a motion for leave of court for its admission. Nonetheless, the more pressing consideration of substantial justice compels this Court to heed the plea of petitioners. The amount of damages involved in this case is relatively substantial. Petitioners are police officers, and government employees who receive meager salaries for risking life and limb. It is but fair that they be heard on the merits of their case before being made to pay damages, for what could be, a faithful performance of duty.

3. **ID.; ID.; ID.; A DEVIATION OF THE RIGID ENFORCEMENT OF TECHNICAL AND PROCEDURAL RULES MAY BE ALLOWED TO ATTAIN THEIR PRIME OBJECTIVE**

WHICH IS THE DISPENSATION OF JUSTICE, THE CORE REASON FOR THE EXISTENCE OF COURTS. — The circulars of this Court prescribing technical and other procedural requirements are meant to promptly dispose of unmeritorious petitions that clog the docket and waste the time of the courts. These technical and procedural rules, however, are intended to ensure, not suppress, substantial justice. A deviation from their rigid enforcement may thus be allowed to attain their prime objective for, after all, the dispensation of justice is the core reason for the existence of courts. Thus, in a considerable number of cases, the Court has deemed it fit to suspend its own rules or to exempt a particular case from its strict operation where the appellant failed to perfect his appeal within the reglementary period, resulting in the appellate court's failure to obtain jurisdiction over the case. With more reason, there should be wider latitude in exempting a case from the strictures of procedural rules when the appellate court has already obtained jurisdiction over the appealed case and, as in this case, petitioners failed to file the appellants' brief on time.

APPEARANCES OF COUNSEL

Abundiente Subejano and Macaan Law Offices for petitioners.
Federico R. Maranda for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* assails the Resolutions dated July 22, 2004[1] and April 3, 2006[2] of the Court of Appeals in CA-G.R. CV No. 73091. The appellate court dismissed petitioners' appeal and denied their motion for reconsideration.

The pertinent facts are as follows:

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[1] *Rollo*, pp. 57-58. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Estela M. Perlas-Bernabe and Edgardo A. Camello concurring.

[2] *Id.* at 46-47. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario concurring.

Private respondent Melchor Aroma filed an action for *replevin* with damages against petitioners before the Regional Trial Court (RTC) of Lanao del Norte. Petitioners allegedly detained Aroma's fishing vessel for 14 days after it was seized in a seaborne patrol.

On August 28, 2001, the RTC rendered a Decision[3] in favor of respondent. It ordered petitioners to pay jointly and severally the sums of ₱350,000 by way of actual and compensatory damages; ₱100,000 as moral and exemplary damages; attorney's fees of ₱20,000; and the costs of suit.

Petitioners appealed. On January 19, 2004, the office of Atty. Arthur L. Abundiente, counsel for petitioners, received notice requiring petitioners to file an appellants' brief within 45 days or until March 4, 2004. Petitioners however, filed their brief only on March 18, 2004, 14 days beyond the deadline. On July 22, 2004, the Court of Appeals issued the challenged Resolution. Its *fallo* states:

> Having been unjustifiably filed out of time, the Appellant[s'] Brief is **ORDERED EXPUNGED FROM/STRICKEN OFF THE RECORDS.** This instant appeal is accordingly **DISMISSED** pursuant to Section 1(e), Rule 50 of the 1997 Rules on Civil Procedure for appellants' failure to file their Brief within the time provided for under the Rules.
>
> SO ORDERED.[4]

Petitioners moved for reconsideration, but the same was denied in a Resolution dated April 3, 2006, as follows:

> WHEREFORE, the motion for reconsideration is DENIED for lack of merit.
>
> SO ORDERED.[5]

Hence, the instant petition which presents the single issue:

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[3] *Id.* at 41-45. Penned by Judge Mamindiara P. Mancotara.

[4] *Id.* at 58.

[5] *Id.* at 47.

WHETHER OR NOT THE 23RD DIVISION OF THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT ADMITTING THE APPELLANTS' BRIEF, AND IN ORDERING THAT THE SAME BE EXPUNGED FROM THE RECORD.[6]

Stated simply, the lone issue for our consideration is whether the Court of Appeals gravely abused its discretion in dismissing the appeal.

Petitioners explain that their counsel was unable to file the brief on time because he was busy campaigning as candidate for Vice Governor of Lanao del Norte.[7] Petitioners fault the Court of Appeals for giving notice to file brief only two years after they appealed.[8] They claim that they could have immediately submitted a brief had notice been sent earlier.

Petitioners contend that dismissal of an appeal under Section 1(e),[9] Rule 50 of the Rules of Court is directory, not mandatory. They cite the case of *United Feature Syndicate, Inc. v. Munsingwear Creation Manufacturing Company*,[10] where a lapsed appeal was allowed by the Court in the interest of substantial justice. According to them, a lesser offense of delay in filing of brief should merit the same consideration. Petitioners argue that rules of procedure should be liberally construed so that cases may be resolved on the merits, and not on technicalities.

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[6] *Id.* at 11.

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

[8] *Id.* at 9.

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

x x x x x x x x x

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

x x x x x x x x x

[10] G.R. No. 76193, November 9, 1989, 179 SCRA 260.

Private respondent counters that technical rules of procedure were designed to effect expediency. Thus, a party seeking liberal application of the rules must adequately explain his failure to abide by them. Respondent believes that petitioners failed in this respect.

Technically, the Court of Appeals may dismiss an appeal for failure of the appellant to file the appellants' brief on time. But, the dismissal is *directory*, not *mandatory*. Hence, the court has discretion to dismiss or not to dismiss the appeal. It is a power conferred on the court, not a duty. The discretion, however, must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[11]

Petitioners had 45 days or until March 4, 2004 to file an appellants' brief. Unfortunately, petitioners could not be located as some of them retired while the rest were assigned to other places. It was their counsel who took the liberty of filing a brief in their behalf, but 14 days late and without a motion for leave of court for its admission. Nonetheless, the more pressing consideration of substantial justice compels this Court to heed the plea of petitioners. The amount of damages involved in this case is relatively substantial. Petitioners are police officers, and government employees who receive meager salaries for risking life and limb. It is but fair that they be heard on the merits of their case before being made to pay damages, for what could be, a faithful performance of duty.

The circulars of this Court prescribing technical and other procedural requirements are meant to promptly dispose of unmeritorious petitions that clog the docket and waste the time of the courts. These technical and procedural rules, however, are intended to ensure, not suppress, substantial justice. A deviation from their rigid enforcement may thus be allowed to attain their prime objective for, after all, the dispensation of justice is the

[11] *Aguam v. Court of Appeals*, G.R. No. 137672, May 31, 2000, 332 SCRA 784, 789.

core reason for the existence of courts.[12] Thus, in a considerable number of cases,[13] the Court has deemed it fit to suspend its own rules or to exempt a particular case from its strict operation where the appellant failed to perfect his appeal within the reglementary period, resulting in the appellate court's failure to obtain jurisdiction over the case. With more reason, there should be wider latitude in exempting a case from the strictures of procedural rules when the appellate court has already obtained jurisdiction over the appealed case and, as in this case, petitioners failed to file the appellants' brief[14] on time.

WHEREFORE, in the interest of substantial justice, the instant petition is *GRANTED.* The Resolutions dated July 22, 2004 and April 3, 2006 of the Court of Appeals in CA-G.R. CV No. 73091 are *SET ASIDE;* petitioners' appeal is reinstated; and the instant case is *REMANDED* to the Court of Appeals for further proceedings.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura,[*] and *Brion, JJ.,* concur.

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[12] *Acme Shoe, Rubber & Plastic Corp. v. Court of Appeals*, G.R. No. 103576, August 22, 1996, 260 SCRA 714, 719.

[13] *Tamayo v. Court of Appeals*, G.R. No. 147070, February 17, 2004, 423 SCRA 175; *Sapad v. Court of Appeals*, G.R. No. 132153, December 15, 2000, 348 SCRA 304.

[14] *Tamayo v. Court of Appeals*, *id.* at 179-180.

[*] Designated member of Second Division pursuant to Special Order No. 571 in place of Associate Justice Dante O. Tinga who is on sabbatical leave.

EN BANC

[G.R. No. 173471. March 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNESTO MALIBIRAN,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF VICTIM, CATEGORICAL AND CREDIBLE. —** As determined by the CA, confirming the findings of the RTC, AAA's testimony was positive and credible, deserving to be accorded great weight. To recall, AAA recounted how her grandfather sexually ravaged her, at least, per her count, about 20 times. The molestations were perpetrated around noon time or in the afternoon when her mother and siblings were out of the house. Describing how AAA deported herself on the witness stand, the trial court said: "Under rigid examinations, AAA remained steadfast and never wavered in her assertion that Erning raped her several times." Be this as it may, we cannot but agree with the probative value given by the courts *a quo* to AAA's testimony.

2. **ID.; ID.; ID.; VICTIM'S TESTIMONY OUGHT TO BE TAKEN IN THE LIGHT OF HER TENDER YEARS AND HER BEING INNOCENT TO THE WAYS OF THE WORLD. —** Ernesto would have this Court believe AAA's testimony bordered on the absurd when she testified that Ernesto was on top of her with his penis on her vagina, doing an up-and-down movement, mashing her breast, and sucking her nipple at the same time. It was, according to Ernesto, physically impossible for him to have performed the foregoing overt acts simultaneously. We are not persuaded. AAA's above testimony ought to be taken in the light of her tender years and of her being innocent to the ways of the world. As the CA observed aptly: x x x [AAA's] testimony, although imperfect, does not defeat her credibility. Considering her tender age and innocence, she cannot be expected to understand all the questions propounded to her by adults; nor can she be expected to narrate with precision each and every account of how she was abused. As correctly argued by the State, "[AAA's] answer should not, therefore,

to be taken as literal answers of a physicist on several acts or motions taking place at the same time. Her descriptions of the acts of appellant must be understood to mean sequentially and not simultaneously." Apropos the assault on AAA's credibility, it bears to stress that she was still a very young barrio girl when she was put in the witness box. Jurisprudence teaches that the testimony of child-victims are normally given full weight and credit, since when a girl, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. When the offended party is of tender age and immature, courts are inclined to give credit to their accounts of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed if the matter to which they testified is not true. In the instant case, AAA was only eight when she was raped and not yet 10 when she testified in open court about her ordeal at the hands of her very own grandfather. Lest it be overlooked, AAA's allegation of having been a rape victim finds corroboration in the physical findings of penetration, itself a reasonable indicium of sexual congress. There can be no shirking from the fact that AAA was indeed raped by Ernesto. It is unthinkable, if not completely preposterous, that a granddaughter would concoct a story of rape against her own grandfather, bearing in mind the cultural reverence and respect for elders that is too deeply ingrained in Filipino children, aside from undergoing medical examination and subjecting herself to the stigma and embarrassment of a public trial if her motive were other than to have the culprit punished.

3. **ID.; ID.; ID.; RESULTS OF THE MEDICAL EXAMINATION BUTTRESS THE CHARGE OF RAPE. —** The reality of AAA having experienced sexual intercourse, as an element of penile rape, may reasonably be deduced from the findings of Dr. Tiongson who conducted a physical and genital examination on May 17, 2002. As may be noted, a finger of a grown man — Dr. Tiongson's — can easily pass through AAA's vagina, notwithstanding her age. This reality, coupled with the old and healed lacerations situated at the four o'clock and eight o'clock positions in AAA's labia majora, is compelling physical proof of defloration. It has been said that when the testimony of a rape victim is consistent with medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has been established.

4. ID.; ID.; ALIBI AND DENIAL; INCREDIBLE AND DO NOT DISCOUNT RAPE. — Viewed against the convincing evidence of the prosecution, Ernesto's bare denial and alibi, while legitimate defenses in rape cases, must necessarily fail. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit acceptability. The supporting exculpatory proof is, to be sure, absent. Ernesto's allegation of trumped up charges concocted by an irate and ill-motivated BBB is incredible and unfounded. BBB belongs to a culture which would not accuse or testify against a father and in the process drag herself and the family to a lifetime of embarrassing gossip just to assuage her own hurt feelings. As we articulated in *People v. Oliva*, no mother would subject her child to the humiliation, disgrace, and trauma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement. On the witness stand, Ernesto narrated that, on May 13, 2002, he hit AAA for disturbing him while cooking lunch, and that AAA ran to BBB who verbally tussled with her father. Orly, Ernesto's 12-year-old son, corroborated his father's account of what happened that day. When the trial court, however, asked clarificatory questions, Orly admitted to not being in the house and, hence, not exactly knowing what happened on May 13, 2002, and that what he testified to was what his brother Alvin told him. Orly's testimony, therefore, was pure hearsay and the trial court was correct in disregarding his testimony. The trial and appellate courts' dismissal of Ernesto's proffered alibi stands justified too. Ernesto's line, relative to this defense, was that AAA was not in his house on December 24, 2001 and also on March 26 to 27, 2002, as she was purportedly in the nearby house of one of BBB's suitors. Even granting that this is true, still, such a fact does not discount the commission of rape on AAA. As admitted by Ernesto, AAA stayed in his residence from August 2001 to May 2002 or upon his arrest. The Informations for Criminal Case Nos. 2913 and 2920 show that the commission of the crime was "before Christmas in December 2001" and "one afternoon after Christmas in 2001 but before May 13, 2002" which covers not only December 24, 2001 and March 26 to 27, 2002. At any rate, alibi, like denial, is also a weak defense, being a self-serving negative evidence. It cannot overcome, let alone give more evidentiary weight than, the positive declaration of credible witnesses, as here.

5. **CRIMINAL LAW; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND AFFINITY, PROVED. —** Minority and relationship which, in a prosecution for rape, constitute special qualifying circumstances must be alleged in the information and proved during trial. These aggravating, nay, qualifying, circumstances have been duly alleged and proved beyond reasonable doubt. In the instant case, the twin aggravating circumstances of minority of the victim and her blood ties to the offender were properly appreciated. Ernesto's filial ascendancy was properly alleged in the informations and duly established by the presentation of the birth certificates of BBB and AAA as well as the marriage certificate of Ernesto. The birth certificate of BBB as well as the marriage contract of Ernesto and his wife Edna Caballe proved BBB to be Ernesto's daughter. And the birth certificate of AAA proved that she is the daughter of BBB and, thus, the granddaughter of Ernesto. Ernesto was duly identified by AAA as her grandfather, the latter not even impugning the relationship during trial. Likewise, alleged in the information and duly proved during trial by virtue of her birth certificate was AAA's minority.

6. **ID.; PENALTIES; *RECLUSION PERPETUA* IN LIEU OF THE DEATH PENALTY; PROPER PENALTY IN CASE AT BAR. —** The concurrence of the minority of the rape victim and her relationship to the offender is a special qualifying circumstance which ups the penalty. AAA's minority and her relationship to Ernesto having been duly established, the imposition of the death penalty upon Ernesto would have been appropriate were it not for the supervening passage of Republic Act No. (RA) 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, which took effect on June 30, 2006. Sec. 2 of RA 9346 imposes the penalty of *reclusion perpetua* in lieu of death when the law violated makes use of the nomenclature of the penalties of the RPC, as here. Moreover, Ernesto is not eligible for parole since Sec. 3 of RA 9346 clearly provides that "persons convicted of offenses punished with *reclusion perpetua*, or **whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole**."

7. **ID.; CIVIL LIABILITY; DAMAGES AWARDED BY TRIAL COURT FOUND PROPER; ADDITIONAL EXEMPLARY DAMAGES AWARDED BY THE COURT. —** As regards the damages awarded by the CA, we find such to be in line with

jurisprudence. Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award. In line with the ruling in *People v. Sambrano*, as reiterated in *People v. Audine*, we affirm the CA judgment awarding for each count civil indemnity of PhP 75,000 and moral damages of PhP 75,000. In line moreover with *People v. Catubig*, the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages. We modify the judgment with respect to exemplary damages by awarding PhP 25,000 per count.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

For automatic review is the Decision[1] of the Court of Appeals (CA) rendered on March 31, 2006 in CA-G.R. CR-H.C. No. 00064, modifying the June 23, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 96 in Baler, Aurora in Criminal Case Nos. 2913, 2919, and 2920. The RTC convicted accused-appellant Ernesto Malibiran of three counts of Qualified Rape.

The Facts

On September 18, 2002, three separate Informations for Rape under Articles 266-A and 266-B of the Revised Penal Code (RPC) were filed with the RTC against Ernesto. Save for the approximate dates and times of commission of the crime against

[1] *Rollo*, pp. 3-18. Penned by Associate Justice Mariano C. del Castillo and concurred in by Associate (now Presiding) Justice Conrado M. Vasquez, Jr. and Associate Justice Magdangal M. de Leon.

[2] CA *rollo*, pp. 22-28. Penned by Judge Corazon D. Soluren.

AAA,[3] the following information in Criminal Case No. 2913 typified the other two:[4]

The undersigned First Assistant Provincial Prosecutor hereby accuses Ernesto Malibiran of the crime of rape committed as follows:

That [before Christmas in December 2001; one morning after Christmas in 2001 but before May 13, 2002; and one afternoon after Christmas in 2001 but before May 13, 2002, respectively] in Dipasaleng, Diniog, Dilasag, Aurora, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully, and feloniously have carnal knowledge of his eight (8) year old granddaughter [AAA].

CONTRARY TO LAW.

Upon arraignment, Ernesto pleaded not guilty to the above charges. A joint trial then ensued. The prosecution presented five (5) witnesses, among them AAA, her mother, BBB, and the doctor who conducted the medical examination on AAA.[5]

As summarized by the trial court and adopted for the most part by the CA in the decision subject of this review, the People's version is as follows:

AAA was born on April 30, 1994 to BBB, AAA's mother, and CCC, AAA's father. Ernesto is BBB's father, making him the maternal grandfather of AAA. BBB, AAA, and her siblings stayed from August 2001 to May 2002 with Ernesto in Dipasaleng, Diniog, Dilasag, Aurora. In 2001, AAA was a child of seven. Ernesto raped her several times, *i.e.*, around 20 times, initially before Christmas of 2001, coinciding with what AAA referred to as before the singing of *Pasko Na Naman Muli*; and after the season, or after the singing of *Pasko Na Naman Muli*.

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[3] The real name of the victim and any information that may compromise her privacy are withheld in accordance with the ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, pp. 8, 10 and 12, all dated July 29, 2002.

[5] The others were PO3 Marciano Buencamino, Jr, the arresting police officer, and Jessamin Torre, a municipal social worker. Ernesto and Orly Malibiran testified for the defense.

According to AAA, the rape incidents occurred either at noon or in the evening when members of the family were out. Ernesto would usually pull her inside the room, strip her of her shorts, lay her down, go on top of her, and insert his penis into her sex organ, the process accompanied by the mashing and sucking of breasts. In the first of the series of rape incidents, Ernesto threatened AAA with death should she report the matter to her mother.

At about noon of May 13, 2002, BBB, while resting in their house, noticed her father suddenly pulling AAA to the kitchen. When she stood up and approached the two, Ernesto pushed AAA away. When AAA was later asked by BBB what Ernesto did to her, AAA replied that Ernesto had mashed her breast and touched her private part. It was at this juncture that AAA disclosed to her mother about the sexual abuses she had suffered in the immediate past. BBB then twice wrote to and sought the assistance of the municipal social worker, Jessamin Torre, who in turn later reported the matter to the police.

On May 17, 2002, Dr. German Tiongson examined AAA. A medical certificate he later issued indicated, among other things, that AAA's *labia majora* sustained two lacerations.

The justification Ernesto offered by way of exculpation was both denial and alibi. He testified that he could not have raped AAA "before Christmas of December 2001" as the child was, on December 24, 2001, at the nearby house of Marlon Aldave, returning home the following day. Neither could he have committed the crime one morning after Christmas of 2001 but before May 13, 2002 since, according to him, AAA spent Lent with the same neighbor, while practically the entire family was at the house on May 13, 2002. On that day of May, so Ernesto claimed, he hit AAA's arm with a piece of wood for meddling with his cooking, an event which ended in an altercation between him and BBB. He surmised that BBB's act of charging him was motivated by the anger she harbored after he mauled two of her suitors.

Also presented to testify for the defense was Ernesto's son, Orly, to back up Ernesto's account of what transpired on May 13, 2002.

The Ruling of the RTC

On June 23, 2003, the RTC rendered a Decision, finding Ernesto guilty beyond reasonable doubt of qualified rape on all three counts and sentencing him to death. The dispositive portion of the RTC's decision reads:

> WHEREFORE, premises considered, the Court finds accused Ernesto Malibiran GUILTY beyond reasonable doubt of THREE (3) counts of RAPE, defined and penalized under Articles 266-A and 266-B of the Revised Penal Code and hereby sentences him to suffer the supreme penalty of DEATH ON THREE (3) COUNTS and orders him to pay [AAA] ₱225,000.00 as indemnity *ex delicto*; ₱150,000.00 as moral damages and ₱75,000.00 as exemplary damages.
>
> The Clerk of Court is hereby ordered to prepare the *mittimus* for the transfer of the accused to the National Bilibid Prisons, Muntinlupa City, and to submit the records of the case to the Supreme Court for its automatic review.
>
> SO ORDERED.[6]

The RTC forthwith elevated the records of the case to this Court for automatic review. In accordance, however, with the ruling in *People v. Mateo*,[7] the Court, per its August 24, 2004 Resolution,[8] transferred the case to the CA for intermediate review.

The Ruling of the CA

On March 31, 2006, the CA rendered judgment affirming the RTC's decision, inclusive of the death penalty thus imposed, but only with respect to Ernesto's conviction in Criminal Case Nos. 2913 and 2920. The appellate court acquitted Ernesto of

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[6] *Supra* note 2, at 28.

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

[8] CA *rollo*, p. 50.

the crime charged in Criminal Case No. 2919 "in view of [AAA's] denial that the rape took place in the morning contrary to that stated in [the information] in Criminal Case No. 2919."[9] The CA also modified the appealed RTC decision by reducing the amount awarded as civil indemnity and damages. The *fallo* of the CA's decision reads:

> WHEREFORE, the decision appealed from is hereby AFFIRMED insofar as the court finds the accused-appellant Ernesto Malibiran guilty of QUALIFIED RAPE in Criminal Case Nos. 2913 and 2920, while the decision in Criminal Case No. 2919 is hereby REVERSED AND SET ASIDE. Correspondingly, the award of damages is MODIFIED. Appellant is ordered to pay the victim indemnity *ex delicto* of ₱150,000.00, moral damages of ₱100,000 and exemplary damages of ₱25,000.00. No pronouncement as to costs.
>
> SO ORDERED.[10]

Thus, this automatic review is before us, both the People and the defense manifesting their willingness to submit the case on the basis of their respective appeal briefs submitted before the CA.

The Issue

The sole issue, as raised before and passed upon by the appellate court, comes down to the question of whether or not the pieces of evidence adduced are sufficient to convict Ernesto beyond reasonable doubt of two counts of Qualified Rape under Articles 266-A and 266-B of the RPC. In fine, assailed in this recourse are the credibility of the prosecution's witnesses, AAA and her mother in particular, and the adequacy of its evidence.

The Court's Ruling

As a preliminary matter, it should be stressed that while it is not a trier of facts and is not wont to go over and re-assess the evidence adduced during trial, more so when the appellate court joins the trial court in its findings and conclusions, the Court, in criminal cases falling under its review jurisdiction

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[9] *Supra* note 1, at 16.

[10] *Supra* note 1, at 16-17.

pursuant to Art. VIII, Section 5 (2)(d)[11] of the 1987 Constitution, is tasked to assiduously review such cases, as here. This attitude of circumspection in the review of a decision involving rape conviction becomes all the more necessary owing to the pernicious consequences that such conviction bears on both the accused and the offended party.[12]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[13] Accordingly, we adhere to the following guiding principles in the review of similar cases, to wit:

(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove;

(2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme 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.[14]

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[11] SEC. 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

x x x x x x x x x

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

[12] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 329.

[13] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[14] *Id.*; *People v. Bidoc*, G.R. No. 169430, October 21, 2006, 506 SCRA 481, 495; *People v. Arsayo*, G.R. No. 166546, September 26, 2006, 503 SCRA 275, 284; *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 714.

After a careful deliberation on this case, taking into meticulous account the arguments raised by the parties' in their respective briefs, the Court resolves to affirm the CA decision for the interplay of the following reasons:

First, the testimony of private complainant AAA was categorical and positive as to the molestations committed by Ernesto through force and threats of physical harm;

Second, medical evidence provides confirmatory dimension to the fact of rape;

Third, the defenses of denial and alibi do not foreclose the commission of rape by Ernesto;

Fourth, the qualifying blood relationship between the minor AAA and Ernesto had adequately been proved.

Testimony of Victim Categorical and Credible

As determined by the CA, confirming the findings of the RTC, AAA's testimony was positive and credible, deserving to be accorded great weight. To recall, AAA recounted how her grandfather sexually ravaged her, at least, per her count, about 20 times. The molestations were perpetrated around noon time or in the afternoon when her mother and siblings were out of the house. Describing how AAA deported herself on the witness stand, the trial court said: "Under rigid examinations, AAA remained steadfast and never wavered in her assertion that Erning raped her several times."[15] Be this as it may, we cannot but agree with the probative value given by the courts *a quo* to AAA's testimony. We reproduce a portion of AAA's testimony which detailed how Ernesto defiled her:

FISCAL RONQUILLO (to the witness)

What happened when your grandfather pulled you inside the room?

A He removed my shorts and he laid me down, Sir.

Q On what did he make you lie down?

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[15] *Supra* note 2, at 27.

A On the floor, Sir.

Q After he made you lie down on the floor, what else happened?

A He inserted his penis into my vagina, Sir.

x x x x x x x x x

Q After your grandfather inserted his penis into your private part, what else did he do?

A He mashed my breasts, Sir.

x x x x x x x x x

Q While the penis of your grandfather was in your vagina and you [said] that you were lying on the floor, were you then facing downwards, upwards or sideward?

A Lying upwards, Sir.

Q How about your grandfather, what was his position then?

A He was facing me, Sir.

x x x x x x x x x

Q While the penis of your grandfather was inside your vagina, what was he doing aside from mashing your breast?

x x x x x x x x x

A He was "*dinedede*" sucking my nipple.

Q While doing that, what was the position of your grandfather, was he lying down, standing or sitting down?

A He was lying, Sir.

Q On what was he lying on?

A On my breast. ("*Sa dibdib ko po.*")

Q Do you mean to say that your grandfather was on top of you?

A Yes, Sir.

x x x x x x x x x

FISCAL RONQUILLO

You said that the body of your grandfather was moving, how was it moving? Was it moving sideways or was it moving up and down?

A Up and down, Sir.

Q When he was moving his body up and down, what was the movement of his penis which was inside your vagina? Does his penis move with his body?

A Yes, Sir.

x x x x x x x x x

FISCAL RONQUILLO

You said that your grandfather was lying on top of you and moving his body up and down. Was it long or was it only for a short time?

A It took a long time, Sir.

x x x x x x x x x

FISCAL RONQUILLO

Did you feel pain?

A Yes, Sir.

Q Was it very painful?

A Yes, Sir.

x x x x x x x x x

FISCAL RONQUILLO

Can you tell us how many times your grandfather did that thing to you?

A I could not remember anymore the number of times, Sir.

Q Are you now studying?

A Yes, Sir.

Q In what grade are you in?

A Grade II, Sir.

Q So, you already know how to count?

A Yes, Sir.

Q When you said it had been many times, could it be about ten times?

A More than that, Sir.

Q Could it be twenty times?

A Yes, Sir.[16]

Ernesto would have this Court believe AAA's testimony bordered on the absurd when she testified that Ernesto was on top of her with his penis on her vagina, doing an up-and-down movement, mashing her breast, and sucking her nipple at the same time.[17] It was, according to Ernesto, physically impossible for him to have performed the foregoing overt acts simultaneously.

We are not persuaded. AAA's above testimony ought to be taken in the light of her tender years and of her being innocent to the ways of the world. As the CA observed aptly:

> x x x [AAA's] testimony, although imperfect, does not defeat her credibility. Considering her tender age and innocence, she cannot be expected to understand all the questions propounded to her by adults; nor can she be expected to narrate with precision each and every account of how she was abused. As correctly argued by the State, "[AAA's] answer should not, therefore, to be taken as literal answers of a physicist on several acts or motions taking place at the same time. Her descriptions of the acts of appellant must be understood to mean sequentially and not simultaneously."[18]

Apropos the assault on AAA's credibility, it bears to stress that she was still a very young barrio girl when she was put in the witness box. Jurisprudence teaches that the testimony of child-victims are normally given full weight and credit, since when a girl, more so if she is a minor, says that she has been

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[16] TSN, February 7, 2003, pp. 5-8.

[17] CA *rollo*, p. 64. Appellant's Brief before the CA.

[18] *Supra* note 1, at 13-14.

raped, she says in effect all that is necessary to show that rape was committed.[19] When the offended party is of tender age and immature, courts are inclined to give credit to their accounts of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed if the matter to which they testified is not true.[20] In the instant case, AAA was only eight when she was raped and not yet 10 when she testified in open court about her ordeal at the hands of her very own grandfather.

Lest it be overlooked, AAA's allegation of having been a rape victim finds corroboration in the physical findings of penetration, itself a reasonable indicium of sexual congress.[21] There can be no shirking from the fact that AAA was indeed raped by Ernesto. It is unthinkable, if not completely preposterous, that a granddaughter would concoct a story of rape against her own grandfather, bearing in mind the cultural reverence and respect for elders that is too deeply ingrained in Filipino children, aside from undergoing medical examination and subjecting herself to the stigma and embarrassment of a public trial if her motive were other than to have the culprit punished.

Results of the Medical Examination Buttress the Charge of Rape

The reality of AAA having experienced sexual intercourse, as an element of penile rape, may reasonably be deduced from the findings of Dr. Tiongson who conducted a physical and genital examination on May 17, 2002. Dr. Tiongson testified:

Q You were required to bring with you the clinical record of [AAA], did you bring it with you?

A Yes, Sir. (and witness turned over the said clinical record to the prosecution)

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[19] *Corpuz*, *supra* note 13, at 448. See also *Bidoc*, *supra* note 14.

[20] *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 295-296; *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400.

[21] *Corpuz*, *supra*.

Q In the clinical record of [AAA], there is an entry for May 17, 2002, who made that entry?

A This entry was usually made by the attending nurse and the content of this entry was done by me, Sir.

Q And in the clinical record of [AAA] who is the attending physician who examined her?

A I was the one who examined her, Sir.

x x x x x x x x x

PROS. RONQUILLO To the witness.

Q Can you explain to us in a layman language your findings when you examined [AAA] on May 17, 2002?

A In my internal examination her vagina easily admit one (1) finger; her lacerations old, healed in the 4:00 o'clock and 8:00 o'clock position.

Q Where is this laceration found?

A It is found on the labia majora vagina, Sir.

x x x x x x x x x

Q You said that this laceration is in the 4:00 o'clock and 8:00 o'clock position?

A Yes, Sir the laceration was pointed to the position of the clock pointing in the 4:00 o'clock and 8:00 o'clock position.[22]

As may be noted, a finger of a grown man — Dr. Tiongson's — can easily pass through AAA's vagina, notwithstanding her age. This reality, coupled with the old and healed lacerations situated at the four o'clock and eight o'clock positions in AAA's labia majora, is compelling physical proof of defloration.[23] It has been said that when the testimony of a rape victim is consistent with medical findings, sufficient basis exists to warrant a conclusion

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[22] TSN, March 11, 2003, pp. 3-4.

[23] *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 113.

that the essential requisite of carnal knowledge has been established.[24]

Alibi and Denial Incredible and Do Not Discount Rape

Viewed against the convincing evidence of the prosecution, Ernesto's bare denial and alibi, while legitimate defenses in rape cases, must necessarily fail. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit acceptability. The supporting exculpatory proof is, to be sure, absent. Ernesto's allegation of trumped up charges concocted by an irate and ill-motivated BBB is incredible and unfounded. BBB belongs to a culture which would not accuse or testify against a father and in the process drag herself and the family to a lifetime of embarrassing gossip just to assuage her own hurt feelings. As we articulated in *People v. Oliva*, no mother would subject her child to the humiliation, disgrace, and trauma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.[25]

On the witness stand, Ernesto narrated that, on May 13, 2002, he hit AAA for disturbing him while cooking lunch, and that AAA ran to BBB who verbally tussled with her father. Orly, Ernesto's 12-year-old son, corroborated his father's account of what happened that day. When the trial court, however, asked clarificatory questions, Orly admitted to not being in the house and, hence, not exactly knowing what happened on May 13, 2002, and that what he testified to was what his brother Alvin told him. Orly's testimony, therefore, was pure hearsay and the trial court was correct in disregarding his testimony.

The trial and appellate courts' dismissal of Ernesto's proffered alibi stands justified too. Ernesto's line, relative to this defense, was that AAA was not in his house on December 24, 2001 and also on March 26 to 27, 2002, as she was purportedly in the nearby house of one of BBB's suitors. Even granting that this

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[24] *People v. Muros*, G.R. No. 142511, February 16, 2004, 423 SCRA 69, 81.

[25] G.R. No. 108505, December 5, 1997, 282 SCRA 470, 482.

is true, still, such a fact does not discount the commission of rape on AAA. As admitted by Ernesto, AAA stayed in his residence from August 2001 to May 2002 or upon his arrest. The Informations for Criminal Case Nos. 2913 and 2920 show that the commission of the crime was "before Christmas in December 2001" and "one afternoon after Christmas in 2001 but before May 13, 2002" which covers not only December 24, 2001 and March 26 to 27, 2002. At any rate, alibi, like denial, is also a weak defense, being a self-serving negative evidence. It cannot overcome, let alone give more evidentiary weight than, the positive declaration of credible witnesses,[26] as here.

Qualifying Circumstance of Minority and Affinity Proved

Minority and relationship which, in a prosecution for rape, constitute special qualifying circumstances must be alleged in the information and proved during trial.[27] These aggravating, nay, qualifying, circumstances have been duly alleged and proved beyond reasonable doubt.

In the instant case, the twin aggravating circumstances of minority of the victim and her blood ties to the offender were properly appreciated. Ernesto's filial ascendancy was properly alleged in the informations and duly established by the presentation of the birth certificates of BBB and AAA as well as the marriage certificate of Ernesto. The birth certificate of BBB as well as the marriage contract of Ernesto and his wife Edna Caballe proved BBB to be Ernesto's daughter.[28] And the birth certificate[29] of AAA proved that she is the daughter of BBB and, thus, the granddaughter of Ernesto. Ernesto was duly identified by AAA as her grandfather, the latter not even impugning the relationship during trial. Likewise, alleged in the information and duly proved during trial by virtue of her birth certificate was AAA's minority.[30]

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[26] *Candaza*, *supra* note 20, at 297.

[27] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 556.

[28] Records, Exhibits "H", "I", and "J".

[29] *Id*., Exhibit "A".

[30] *Id*.

The concurrence of the minority of the rape victim and her relationship to the offender is a special qualifying circumstance which ups the penalty.[31] AAA's minority and her relationship to Ernesto having been duly established, the imposition of the death penalty upon Ernesto would have been appropriate were it not for the supervening passage of Republic Act No. (RA) 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, which took effect on June 30, 2006.[32] Sec. 2 of RA 9346 imposes the penalty of *reclusion perpetua* in lieu of death when the law violated makes use of the nomenclature of the penalties of the RPC, as here. Moreover, Ernesto is not eligible for parole since Sec. 3 of RA 9346 clearly provides that "persons convicted of offenses punished with *reclusion perpetua*, or **whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole**."

Finally, as regards the damages awarded by the CA, we find such to be in line with jurisprudence. Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[33] In line with the ruling in *People v. Sambrano*,[34] as reiterated in *People v. Audine*,[35] we affirm the CA judgment awarding for each count civil indemnity of PhP 75,000 and moral damages of PhP 75,000.

In line moreover with *People v. Catubig*,[36] the presence of an aggravating circumstance, whether ordinary or qualifying,

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[31] *Corpuz*, *supra* note 13, at 453; citations omitted.

[32] RA 9346, Sec. 5 provides that the Act will take effect immediately after its publication in two national newspapers of general circulation. The Act was published in Malaya and Manila Times, two national papers of general circulation, on June 29, 2006. Accordingly, RA 9346 took effect on June 30, 2006; cited in *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 741.

[33] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[34] *Supra* note 23, at 117.

[35] G.R. No. 168649, December 6, 2006, 510 SCRA 531.

[36] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

entitles the offended party to an award of exemplary damages.[37] We modify the judgment with respect to exemplary damages by awarding PhP 25,000 per count.

WHEREFORE, the Decision dated March 31, 2006 of the CA in CA-G.R. CR-H.C. No. 00064 finding accused-appellant Ernesto Malibiran guilty beyond reasonable doubt of two (2) counts of qualified rape is *AFFIRMED* with the *MODIFICATION* that each penalty of death imposed on him is reduced to *reclusion perpetua* per count without eligibility for parole. The amount of civil indemnity for Civil Case Nos. 2913 and 2920 shall be PhP 75,000 each or a total of PhP 150,000; the same holds true for moral damages of PhP 75,000 for each case or a total of PhP 150,000; and the exemplary damages shall be PhP 25,000 each or a total of PhP 50,000.

As modified, the Decision dated June 23, 2000 of the RTC in Criminal Case Nos. 2913, 2919, and 2920 shall read as follows:

> WHEREFORE, premises considered, the Court finds accused Ernesto Malibiran GUILTY beyond reasonable doubt of TWO (2) counts of QUALIFIED RAPE in Criminal Case Nos. 2913 and 2920, defined and penalized under Articles 266-A and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* ON TWO (2) COUNTS without eligibility for parole and orders him to pay victim AAA PhP 75,000 for each count or a total of PhP 150,000 as indemnity *ex delicto*; PhP 75,000 for each count or a total of PhP 150,000 as moral damages; and PhP 25,000 for each count or a total of PhP 50,000 as exemplary damages. The accused is hereby ACQUITTED in Criminal Case No. 2919.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Leonardo-de Castro, and *Brion, JJ.,* concur.

Nachura, J., no part. Signed pleading as Solicitor General.

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[37] *Calongui*, *supra* note 33.

THIRD DIVISION

[G.R. Nos. 174813-15. March 17, 2009]

NILO HIPOS, SR. REPRESENTING DARRYL HIPOS, BENJAMIN CORSIÑO REPRESENTING JAYCEE CORSIÑO, and ERLINDA VILLARUEL REPRESENTING ARTHUR VILLARUEL, *petitioners, vs.* **HONORABLE RTC JUDGE TEODORO A. BAY, Presiding Judge, RTC, Hall of Justice, Quezon City, Branch 86,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; ELUCIDATED. —** *Mandamus* is an extraordinary writ commanding a tribunal, corporation, board, officer or person, immediately or at some other specified time, to do the act required to be done, when the respondent unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or when the respondent excludes another from the use and enjoyment of a right or office to which the latter is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law. As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a ministerial duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion by a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

2. **ID.; ID.; ID.; *MANDAMUS* IS NEVER AVAILABLE TO DIRECT THE EXERCISE OF JUDGMENT OR DISCRETION IN A PARTICULAR WAY OR THE RETRACTION OR REVERSAL OF AN ACTION ALREADY TAKEN IN THE EXERCISE OF EITHER. —** In the case at bar, the act which petitioners pray that we compel the trial court to do is to grant the Office of the City Prosecutor's Motion for Withdrawal of Informations against petitioners. In effect, petitioners seek to curb Judge Bay's exercise of judicial discretion. There is indeed an exception to the rule that matters involving judgment

and discretion are beyond the reach of a writ of *mandamus*, for such writ may be issued to compel action in those matters, when refused. However, ***mandamus* is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either**. In other words, while a judge refusing to act on a Motion to Withdraw Informations **can** be compelled by *mandamus* to act on the same, he **cannot** be compelled to act in a certain way, *i.e.*, to grant or deny such Motion. In the case at bar, Judge Bay did not refuse to act on the Motion to Withdraw Informations; he had already acted on it by denying the same. Accordingly, *mandamus* is not available anymore. If petitioners believed that Judge Bay committed grave abuse of discretion in the issuance of such Order denying the Motion to Withdraw Informations, the proper remedy of petitioners should have been to file a Petition for *Certiorari* against the assailed Order of Judge Bay.

3. **ID.; ID.; ID.; ONCE A CRIMINAL COMPLAINT OR INFORMATION IS FILED IN COURT, ANY DISPOSITION OR DISMISSAL OF THE CASE OR ACQUITTAL OR CONVICTION OF THE ACCUSED REST WITHIN THE JURISDICTION, COMPETENCE, AND DISCRETION OF THE TRIAL COURT. —** In the case at bar, the Petition for *Mandamus* is directed not against the prosecution, but against the trial court, seeking to compel the trial court to grant the Motion to Withdraw Informations by the City Prosecutor's Office. The prosecution has already filed a case against petitioners. Recently, in *Santos v. Orda, Jr.*, we reiterated the doctrine we established in the leading case of *Crespo v. Mogul,* that once a criminal complaint or an information is filed in court, any disposition or dismissal of the case or acquittal or conviction of the accused rests within the jurisdiction, competence, and discretion of the trial court. Thus, we held: In *Crespo v. Mogul*, the Court held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. The trial court is the best and sole judge on what to do with the case before it. A motion to dismiss the case filed by the public prosecutor should be addressed to the court who has the option to grant or deny the same. Contrary to the contention of the petitioner, the rule

applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused. The only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People or the private complainant to due process of law. When the trial court grants a motion of the public prosecutor to dismiss the case, or to quash the Information, or to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of subservience to or defiance of the directive of the Secretary of Justice but in sound exercise of its judicial prerogative.

4. **ID.; ID.; ID.; THE STATEMENT QUOTED BY PETITIONERS FROM *PEOPLE V. MONTESA, JR*. IS NOT MEANT TO ESTABLISH A DOCTRINE THAT A JUDGE SHOULD JUST FOLLOW THE DETERMINATION BY THE PROSECUTOR OF WHETHER OR NOT THERE IS A PROBABLE CAUSE. —** The statement quoted by petitioners from *Montesa, Jr.* is not meant to establish a doctrine that the judge should just follow the determination by the prosecutor of whether or not there is probable cause. On the contrary, *Montesa, Jr.* states: The rule is settled that once a criminal complaint or information is filed in court, any disposition thereof, such as its dismissal or the conviction or acquittal of the accused, rests in the sound discretion of the court. While the prosecutor retains the discretion and control of the prosecution of the case, he cannot impose his opinion on the court. The court is the best and sole judge on what to do with the case. Accordingly, a motion to dismiss the case filed by the prosecutor before or after the arraignment, or after a reinvestigation, or upon instructions of the Secretary of Justice who reviewed the records upon reinvestigation, should be addressed to the discretion of the court. The action of the court must not, however, impair the substantial rights of the accused or the right of the People to due process of law.

5. **ID.; ID.; ID.; THE STATEMENT OF PETITIONERS' COUNSEL THAT "IN THE ABSENCE OF FINDING OF GRAVE ABUSE OF DISCRETION, THE COURT'S BARE DENIAL OF MOTION TO WITHDRAW INFORMATION PURSUANT TO THE SECRETARY'S RESOLUTION IS VOID" IS UTTERLY MISLEADING; NO SUCH STATEMENT IN THE COURT'S DECISION IN *LEDESMA VS. COURT OF***

***APPEALS*. —** In a seemingly desperate attempt on the part of petitioners' counsel, he tries to convince us that a judge is allowed to deny a Motion to Withdraw Informations from the prosecution only when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal; and that, where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Informations is void. Petitioners' counsel states in the Memorandum: 6.10. Furthermore, the ORDER dated October 2, 2006 of the Respondent Judge BAY consisting of 9 pages which was attached to the URGENT PETITION did not point out any iota of grave abuse of discretion committed by Asst. City Prosecutor De Vera in issuing his Resolution in favor of the sons of the Petitioners. Hence, the ORDER issued by RJBAY is NULL and VOID in view of the recent ruling of the Hon. Supreme Court in *Ledesma vs. Court of Appeals*, G.R. No. 113216, September 5, 1997, 86 SCAD 695, 278 SCRA 657 which states that: "In the absence of a finding of grave abuse of discretion, the court's bare denial of a motion to withdraw information pursuant to the Secretary's resolution is void." 6.11. It is therefore respectfully submitted that the Hon. Supreme Court disregard the argument of the OSG because of its falsity. This statement of petitioners' counsel is utterly misleading. There is no such statement in our Decision in *Ledesma*. The excerpt from *Ledesma,* which appears to have a resemblance to the statement allegedly quoted from said case.

6. **ID.; ID.; ID.; COUNSEL'S USE OF BLOCK QUOTATION MARKS SIGNIFIES THAT HE INTENDS TO MAKE IT APPEAR THAT THE PASSAGES ARE THE EXACT WORDS OF THE COURT; COUNSEL IS PURPOSELY MISLEADING THE COURT IN VIOLATION OF RULE 10.02 OF THE CODE OF PROFESSIONAL RESPONSIBILITY. —** It very much appears that the counsel of petitioners is purposely misleading this Court, in violation of Rule 10.02 of the Code of Professional Responsibility, which provides: Rule 10.02 — A lawyer shall not knowingly misquote or misrepresent 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 repel or amendment, or assert as a fact that which has not been proved. Counsel's use of block quotation and

quotation marks signifies that he intends to make it appear that the passages are the exact words of the Court. Furthermore, putting the words "Underscoring ours" after the text implies that, except for the underscoring, the text is a faithful reproduction of the original. Accordingly, we are ordering Atty. Procopio S. Beltran, Jr. to show cause why he should not be disciplined as a member of the Bar.

7. ID.; ID.; ID.; WHAT THE COURT RULED IN LEDESMA IS THAT TRIAL JUDGE COMMITS GRAVE ABUSE OF DISCRETION IF HE DENIES A MOTION TO WITHDRAW INFORMATION WITHOUT AN INDEPENDENT AND COMPLETE ASSESSMENT OF THE ISSUES PRESENTED IN SUCH MOTION. — We never stated in *Ledesma* that a judge is allowed to deny a Motion to Withdraw Information from the prosecution *only* when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal. Neither did we rule therein that where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Information is void. What we held therein is that a trial judge commits grave abuse of discretion if he denies a Motion to Withdraw Information without an independent and complete assessment of the issues presented in such Motion. Thus, the opening paragraph of *Ledesma* states: When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, **the bounden duty of the trial court is to make an independent assessment of the merits of such motion**. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts. **A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action**.

8. ID.; ID.; ID.; A CURSORY READING OF THE ASSAILED ORDER CLEARLY SHOWS THAT THE INSERTION OF THE WORD NO IN THE DISPOSITIVE PORTION WAS A CLERICAL ERROR. — Even a cursory reading of the assailed Order, however, clearly shows that the insertion of the word

"no" in the above dispositive portion was a mere clerical error. The body of the assailed Order not only plainly stated that the court found probable cause against the petitioners, but likewise provided an adequate discussion of the reasons for such finding. Indeed, the general rule is that where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.

9. **ID.; ID.; ID.; RESORT TO *MANDAMUS* TO COMPEL THE TRIAL JUDGE TO GRANT THEIR MOTION TO WITHDRAW IS IMPROPER; *MANDAMUS* IS NEVER AVAILABLE TO DIRECT THE EXERCISE OF JUDGMENT OR DISCRETION IN A PARTICULAR WAY OF THE RETRACTION OR REVERSAL OF AN ACTION ALREADY TAKEN IN THE EXERCISE OF EITHER. —** Petitioners' resort to a Petition for *Mandamus* to compel the trial judge to grant their Motion to Withdraw Informations is improper. While *mandamus* is available to compel action on matters involving judgment and discretion when refused, it is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either. The trial court, when confronted with a Motion to Withdraw an Information on the ground of lack of probable cause, is not bound by the resolution of the prosecuting arm of the government, but is required to make an independent assessment of the merits of such motion, a requirement satisfied by the respondent judge in the case at bar.

10. **ID.; ID.; ID.; THERE IS PROBABLE CAUSE AGAINST PETITIONERS SUFFICIENT TO HOLD THEM FOR TRIAL. —** If only to appease petitioners who came to this Court seeking a review of the finding of probable cause by the trial court, we nevertheless carefully reviewed the records of the case. After going through the same, we find that we are in agreement with the trial court that there is indeed probable cause against the petitioners sufficient to hold them for trial. We decided to omit a detailed discussion of the merits of the case, as we are not unmindful of the undue influence that might

result should this Court do so, even if such discussion is only intended to focus on the finding of probable cause.

APPEARANCES OF COUNSEL

Procopio S. Beltran, Jr. for petitioners.
Claire Angeline P. Luczon for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for *Mandamus* under Rule 65 of the Rules of Court seeking a reversal of the Order dated 2 October 2006 of respondent Judge Teodoro A. Bay of Branch 86 of the Regional Trial Court (RTC) of Quezon City, which denied the Motion to Withdraw Informations of the Office of the City Prosecutor of Quezon City.

The facts of the case are as follows.

On 15 December 2003, two Informations for the crime of rape and one Information for the crime of acts of lasciviousness were filed against petitioners Darryl Hipos, Jaycee Corsiño, Arthur Villaruel and two others before Branch 86 of the Regional Trial Court of Quezon City, acting as a Family Court, presided by respondent Judge Bay. The cases were docketed as Criminal Cases No. Q-03-123284, No. Q-03-123285 and No. Q-03-123286. The Informations were signed by Assistant City Prosecutor Ronald C. Torralba.

On 23 February 2004, private complainants AAA[1] and BBB filed a Motion for Reinvestigation asking Judge Bay to order the City Prosecutor of Quezon City to study if the proper Informations had been filed against petitioners and their co-accused. Judge Bay granted the Motion and ordered a reinvestigation of the cases.

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[1] The real name of the alleged victim is withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

On 19 May 2004, petitioners filed their Joint Memorandum to Dismiss the Case[s] before the City Prosecutor. They claimed that there was no probable cause to hold them liable for the crimes charged.

On 10 August 2004, the Office of the City Prosecutor issued a Resolution on the reinvestigation affirming the Informations filed against petitioners and their co-accused in Criminal Cases No. Q-03-123284-86. The Resolution was signed by Assistant City Prosecutor Raniel S. Cruz and approved by City Prosecutor Claro A. Arellano.

On 3 March 2006, 2nd Assistant City Prosecutor Lamberto C. de Vera, treating the Joint Memorandum to Dismiss the Case as an appeal of the 10 August 2004 Resolution, reversed the Resolution dated 10 August 2004, holding that there was lack of probable cause. On the same date, the City Prosecutor filed a Motion to Withdraw Informations before Judge Bay.

On 2 October 2006, Judge Bay denied the Motion to Withdraw Informations in an Order of even date.

Without moving for a reconsideration of the above assailed Order, petitioners filed the present Petition for *Mandamus*, bringing forth this lone issue for our consideration:

CAN THE HON. SUPREME COURT COMPEL RESPONDENT JUDGE BAY TO DISMISS THE CASE THROUGH A WRIT OF *MANDAMUS* BY VIRTUE OF THE RESOLUTION OF THE OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY FINDING NO PROBABLE CAUSE AGAINST THE ACCUSED AND SUBSEQUENTLY FILING A MOTION TO WITHDRAW INFORMATION?[2]

Mandamus is an extraordinary writ commanding a tribunal, corporation, board, officer or person, immediately or at some other specified time, to do the act required to be done, when the respondent unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or when the respondent excludes another

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[2] *Rollo*, pp. 346-347.

from the use and enjoyment of a right or office to which the latter is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[3]

As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a ministerial duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion by a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[4]

In the case at bar, the act which petitioners pray that we compel the trial court to do is to grant the Office of the City Prosecutor's Motion for Withdrawal of Informations against petitioners. In effect, petitioners seek to curb Judge Bay's exercise of judicial discretion.

There is indeed an exception to the rule that matters involving judgment and discretion are beyond the reach of a writ of *mandamus*, for such writ may be issued to compel action in those matters, when refused.[5] However, ***mandamus* is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either**.[6] In other words, while a judge refusing to act on a Motion to Withdraw Informations **<u>can</u>** be compelled by *mandamus* to act on the same, he **<u>cannot</u>** be compelled to act in a certain way, *i.e.*, to grant or deny such Motion. In the case at bar, Judge Bay did not refuse to act on the Motion to Withdraw Informations; he had already acted on it by denying the same. Accordingly, *mandamus* is not available anymore. If petitioners believed that Judge Bay committed grave abuse of discretion in the issuance of such Order denying the Motion to Withdraw Informations, the proper remedy of

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[3] Section 3, Rule 65, Rules of Court.

[4] *Akbayan-Youth v. Commission on Elections*, 407 Phil. 619, 646 (2001).

[5] *Angchangco v. The Honorable Ombudsman*, 335 Phil. 766, 772 (1997).

[6] *Id.* at 771-772.

petitioners should have been to file a Petition for *Certiorari* against the assailed Order of Judge Bay.

Petitioners counter that the above conclusion, which has been argued by the Solicitor General, is contrary to a ruling of this Court, which allegedly states that the proper remedy in such cases is a Petition for *Mandamus* and not *Certiorari*. Petitioners cite the following excerpt from our ruling in *Sanchez v. Demetriou*:[7]

> The appreciation of the evidence involves the use of discretion on the part of the prosecutor, and we do not find in the case at bar a clear showing by the petitioner of a grave abuse of such discretion.
>
> The decision of the prosecutor may be reversed or modified by the Secretary of Justice or in special cases by the President of the Philippines. **But even this Court cannot order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case.** The courts try and absolve or convict the accused but as a rule have no part in the initial decision to prosecute him.
>
> **The possible exception is where there is an unmistakable showing of grave abuse of discretion that will justify a judicial intrusion into the precincts of the executive. But in such a case the proper remedy to call for such exception is a petition for *mandamus*,** not *certiorari* or *prohibition*.[8] (Emphases supplied.)

Petitioners have taken the above passage way out of its context. In the case of *Sanchez*, Calauan Mayor Antonio Sanchez brought a Petition for *Certiorari* before this Court, challenging the order of the respondent Judge therein denying his motion to quash the Information filed against him and six other persons for alleged rape and homicide. One of the arguments of Mayor Sanchez was that there was discrimination against him because of the non-inclusion of two other persons in the Information. We held that even this Court cannot order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case. However, if there was an unmistakable showing of grave abuse of discretion ***on the***

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[7] G.R. Nos. 111771-77, 9 November 1993, 227 SCRA 627.

[8] *Id.* at 643.

part of the prosecutors in that case, Mayor Sanchez should have filed a ***Petition for Mandamus to compel the filing of charges against said two other persons***.

In the case at bar, the Petition for *Mandamus* is directed not against the prosecution, but against the trial court, seeking to compel the trial court to grant the Motion to Withdraw Informations by the City Prosecutor's Office. The prosecution has already filed a case against petitioners. Recently, in *Santos v. Orda, Jr.*,[9] we reiterated the doctrine we established in the leading case of *Crespo v. Mogul,*[10] that once a criminal complaint or an information is filed in court, any disposition or dismissal of the case or acquittal or conviction of the accused rests within the jurisdiction, competence, and discretion of the trial court. Thus, we held:

> In *Crespo v. Mogul*, the Court held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. The trial court is the best and sole judge on what to do with the case before it. A motion to dismiss the case filed by the public prosecutor should be addressed to the court who has the option to grant or deny the same. Contrary to the contention of the petitioner, the rule applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused. The only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People or the private complainant to due process of law. When the trial court grants a motion of the public prosecutor to dismiss the case, or to quash the Information, or to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of subservience to or defiance of the directive of the Secretary of Justice but in sound exercise of its judicial prerogative.

Petitioners also claim that since Judge Bay granted a Motion for Reinvestigation, he should have "deferred to the Resolution

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[9] G.R. No. 158236, 1 September 2004, 437 SCRA 504, 514-515.

[10] G.R. No. 53373, 30 June 1987, 151 SCRA 462.

of Asst. City Prosecutor De Vera withdrawing the case."[11] Petitioners cite the following portion of our Decision in *People v. Montesa, Jr.*:[12]

> In the instant case, the respondent Judge granted the motion for reinvestigation and directed the Office of the Provincial Prosecutor of Bulacan to conduct the reinvestigation. The former was, therefore, deemed to have deferred to the authority of the prosecution arm of the Government to consider the so-called new relevant and material evidence and determine whether the information it had filed should stand.[13]

Like what was done to our ruling in *Sanchez*, petitioners took specific statements from our Decision, carefully cutting off the portions which would expose the real import of our pronouncements. The Petition for *Certiorari* in *Montesa, Jr.* was directed against a judge who, after granting the Petition for Reinvestigation filed by the accused, proceeded nonetheless to arraign the accused; and, shortly thereafter, the judge decided to dismiss the case on the basis of a Resolution of the Assistant Provincial Prosecutor recommending the dismissal of the case. The dismissal of the case in *Montesa, Jr.* was done despite the disapproval of the Assistant Provincial Prosecutor's Resolution by the Provincial Prosecutor (annotated in the same Resolution), and despite the fact that the reinvestigation the latter ordered was still ongoing, since the Resolution of the Assistant Provincial Prosecutor had not yet attained finality. We held that the judge should have ***waited*** for the conclusion of the Petition for Reinvestigation he ordered, before acting on whether or not the case should be dismissed for lack of probable cause, and before proceeding with the arraignment. Thus, the continuation of the above paragraph of our Decision in *Montesa, Jr.* reads:

> Having done so, it behooved the respondent Judge to wait for a final resolution of the incident. In *Marcelo vs. Court of Appeals*, this Court ruled:

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[11] *Rollo*, pp. 369-370.

[12] G.R. No. 114302, 29 September 1995, 248 SCRA 641.

[13] *Id.* at 650-651.

> Accordingly, we rule that the trial court in a criminal case which takes cognizance of an accused's motion for review of the resolution of the investigating prosecutor or for reinvestigation and defers the arraignment until resolution of the said motion must act on the resolution reversing the investigating prosecutor's finding or on a motion to dismiss based thereon only upon proof that such resolution is already final in that no appeal was taken thereon to the Department of Justice.

> The resolution of Assistant Provincial Prosecutor Rutor recommending the dismissal of the case never became final, for it was not approved by the Provincial Prosecutor. On the contrary, the latter disapproved it. As a consequence, the final resolution with respect to the reinvestigation is that of the Provincial Prosecutor, for under Section 4, Rule 112 of the Rules of Court, no complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor. Also, under Section l(d) of R.A. No. 5180, as amended by P.D. No. 77 and P.D. No. 911.[14]

As can be clearly seen, the statement quoted by petitioners from *Montesa, Jr.* is not meant to establish a doctrine that the judge should just follow the determination by the prosecutor of whether or not there is probable cause. On the contrary, *Montesa, Jr.* states:

> The rule is settled that once a criminal complaint or information is filed in court, any disposition thereof, such as its dismissal or the conviction or acquittal of the accused, rests in the sound discretion of the court. While the prosecutor retains the discretion and control of the prosecution of the case, he cannot impose his opinion on the court. The court is the best and sole judge on what to do with the case. Accordingly, a motion to dismiss the case filed by the prosecutor before or after the arraignment, or after a reinvestigation, or upon instructions of the Secretary of Justice who reviewed the records upon reinvestigation, should be addressed to the discretion of the court. The action of the court must not, however, impair the substantial rights of the accused or the right of the People to due process of law.[15]

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[14] *Id.* at 651.

[15] *Id.* at 650.

In a seemingly desperate attempt on the part of petitioners' counsel, he tries to convince us that a judge is allowed to deny a Motion to Withdraw Informations from the prosecution only when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal; and that, where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Informations is void. Petitioners' counsel states in the Memorandum:

6.10. Furthermore, the ORDER dated October 2, 2006 of the Respondent Judge BAY consisting of 9 pages which was attached to the URGENT PETITION did not point out any iota of grave abuse of discretion committed by Asst. City Prosecutor De Vera in issuing his Resolution in favor of the sons of the Petitioners. Hence, the ORDER issued by RJBAY is NULL and VOID in view of the recent ruling of the Hon. Supreme Court in *Ledesma vs. Court of Appeals*, G.R. No. 113216, September 5, 1997, 86 SCAD 695, 278 SCRA 657 which states that:

> "In the absence of a finding of grave abuse of discretion, the court's bare denial of a motion to withdraw information pursuant to the Secretary's resolution is void." (Underscoring ours).

6.11. It is therefore respectfully submitted that the Hon. Supreme Court disregard the argument of the OSG because of its falsity.[16]

This statement of petitioners' counsel is utterly misleading. There is no such statement in our Decision in *Ledesma*.[17] The excerpt from *Ledesma,* which appears to have a resemblance to the statement allegedly quoted from said case, provides:

No Grave Abuse of Discretion in the Resolution of the Secretary of Justice

In the light of recent holdings in *Marcelo* and *Martinez*; and considering that the issue of the correctness of the justice secretary's resolution has been amply threshed out in petitioner's letter, the information, the resolution of the secretary of justice, the motion

[16] *Rollo,* p. 370.

[17] *Ledesma v. Court of Appeals*, 344 Phil. 207 (1997).

to dismiss, and even the exhaustive discussion in the motion for reconsideration — all of which were submitted to the court — **the trial judge committed grave abuse of discretion when it denied the motion to withdraw the information, based solely on his bare and ambiguous reliance on Crespo. The trial court's order is inconsistent with our repetitive calls for an independent and competent assessment of the issue(s) presented in the motion to dismiss.** The trial judge was tasked to evaluate the secretary's recommendation finding the absence of probable cause to hold petitioner criminally liable for libel. He failed to do so. He merely ruled to proceed with the trial without stating his reasons for disregarding the secretary's recommendation.[18] (Emphasis supplied.)

It very much appears that the counsel of petitioners is purposely misleading this Court, in violation of Rule 10.02 of the Code of Professional Responsibility, which provides:

> Rule 10.02 — A lawyer shall not knowingly misquote or misrepresent 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 repel or amendment, or assert as a fact that which has not been proved.

Counsel's use of block quotation and quotation marks signifies that he intends to make it appear that the passages are the exact words of the Court. Furthermore, putting the words "Underscoring ours" after the text implies that, except for the underscoring, the text is a faithful reproduction of the original. Accordingly, we are ordering Atty. Procopio S. Beltran, Jr. to show cause why he should not be disciplined as a member of the Bar.

To clarify, we never stated in *Ledesma* that a judge is allowed to deny a Motion to Withdraw Information from the prosecution *only* when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal. Neither did we rule therein that where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Information is void. What we held therein is that a trial judge commits grave abuse of discretion if he denies a Motion to

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[18] *Id.* at 235-236.

Withdraw Information without an independent and complete assessment of the issues presented in such Motion. Thus, the opening paragraph of *Ledesma* states:

> When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, **the bounden duty of the trial court is to make an independent assessment of the merits of such motion**. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts. **A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action**.[19] (Emphases supplied.)

Petitioners also try to capitalize on the fact that the dispositive portion of the assailed Order apparently states that there was no probable cause against petitioners:

> WHEREFORE, finding no probable cause against the herein accused for the crimes of rapes and acts of lasciviousness, the motion to withdraw informations is DENIED.
>
> Let the case be set for arraignment and pre-trial on October 24, 2006 at 8:30 o'clock in the morning.[20] (Underscoring ours.)

Thus, petitioners claim that since even the respondent judge himself found no probable cause against them, the Motion to Withdraw Informations by the Office of the City Prosecutor should be granted.[21]

Even a cursory reading of the assailed Order, however, clearly shows that the insertion of the word "no" in the above dispositive portion was a mere clerical error. The assailed Order states in full:

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[19] *Id.* at 217.

[20] *Rollo*, p. 41.

[21] *Id.* at 13.

After a careful study of the sworn statements of the complainants and the resolution dated March 3, 2006 of 2nd Assistant City Prosecutor Lamberto C. de Vera, **the Court finds that there was probable cause against the herein accused.** The actuations of the complainants after the alleged rapes and acts of lasciviousness cannot be the basis of dismissal or withdrawal of the herein cases. Failure to shout or offer tenatious resistance did not make voluntary the complainants' submission to the criminal acts of the accused (*People v. Velasquez,* 377 SCRA 214, 2002). The complainants' affidavits indicate that the accused helped one another in committing the acts complained of. Considering that the attackers were not strangers but their trusted classmates who enticed them to go to the house where they were molested, the complainants cannot be expected to react forcefully or violently in protecting themselves from the unexpected turn of events. Considering also that both complainants were fifteen (15) years of age and considered children under our laws, the ruling of the Supreme Court in *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004 becomes very relevant. The Supreme Court ruled as follows:

> Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. The range of emotions shown by rape victim is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims (*People v. Malones*, G.R. Nos. 124388-90, March 11, 2004).

The Court finds no need to discuss in detail the alleged actuations of the complainants after the alleged rapes and acts of lasciviousness. The alleged actuations are evidentiary in nature and should be evaluated after full blown trial on the merits. This is necessary to avoid a suspicion of prejudgment against the accused.[22]

As can be seen, the body of the assailed Order not only plainly stated that the court found probable cause against the petitioners, but likewise provided an adequate discussion of the reasons for such finding. Indeed, the general rule is that where there is a conflict between the dispositive portion or the *fallo*

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[22] *Id.* at 40-41.

and the body of the decision, the *fallo* controls. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[23]

In sum, petitioners' resort to a Petition for *Mandamus* to compel the trial judge to grant their Motion to Withdraw Informations is improper. While *mandamus* is available to compel action on matters involving judgment and discretion when refused, it is never available to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.[24] The trial court, when confronted with a Motion to Withdraw an Information on the ground of lack of probable cause, is not bound by the resolution of the prosecuting arm of the government, but is required to make an independent assessment of the merits of such motion, a requirement satisfied by the respondent judge in the case at bar.[25]

Finally, if only to appease petitioners who came to this Court seeking a review of the finding of probable cause by the trial court, we nevertheless carefully reviewed the records of the case. After going through the same, we find that we are in agreement with the trial court that there is indeed probable cause against the petitioners sufficient to hold them for trial. We decided to omit a detailed discussion of the merits of the case, as we are not unmindful of the undue influence that might result should this Court do so, even if such discussion is only intended to focus on the finding of probable cause.

WHEREFORE, the instant Petition for *Mandamus* is *DISMISSED*. Let the records of this case be remanded to the Regional Trial Court of Quezon City for the resumption of the proceedings therein. The Regional Trial Court is directed to act on the case with dispatch.

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[23] *Olac v. Court of Appeals*, G.R. No. 84256, 2 September 1992, 213 SCRA 321, 328; *Aguirre v. Aguirre*, 157 Phil. 449, 455 (1974); *Magdalena Estate, Inc. v. Hon. Calauag*, 120 Phil. 338, 342-343 (1964).

[24] *Angchangco v. The Honorable Ombudsman*, *supra* note 5 at 771-772.

[25] *Ledesma v. Court of Appeals*, *supra* note 17 at 235-236.

Atty. Procopio S. Beltran, Jr. is *ORDERED* to *SHOW CAUSE* why he should not be disciplined as a member of the Bar for his disquieting conduct as herein discussed.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Nachura,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 178300. March 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINGO REYES *y* PAJE, ALVIN ARNALDO *y* AVENA and JOSELITO FLORES *y* VICTORIO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLES IN RESOLVING ISSUES PERTAINING TO CREDIBILITY OF WITNESSES. — 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 the latter 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

[*] 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.

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.; ID.; NO COGENT REASON TO OVERTURN THE TRIAL AND APPELLATE COURTS' RULINGS FINDING THE TESTIMONIES OF PROSECUTION WITNESSES CREDIBLE AND TRUSTWORTHY. —** After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of the prosecution witnesses credible. Prosecution witnesses Abagatnan, Robert, and Yao San positively identified appellants and their cohorts as their kidnappers during a police line-up and also during trial. **Abagatnan** specifically testified during the trial that after appellants and their cohorts forcibly entered the van where she and the Yao family were, appellant Flores drove the van away from the poultry farm; that appellants Reyes and Arnaldo were among the kidnappers who guarded her, Robert, Chua Ong Ping Sim and Raymond in the safe-house; and that appellants Reyes and Arnaldo accompanied her in going to the poultry farm to search for Yao San and remind him about the ransom demanded. **Robert** confirmed that appellants and their cohorts blindfolded them inside the van during the incident. He also recounted that appellants and their cohorts detained him and Chua Ong Ping Sim, Raymond and Abagatnan in a safe-house. He was later instructed by appellants to find Yao San and remind him about the ransom. **Yao San** declared that during the incident, appellant Reyes and Pataray approached him, poked their guns at him, and dragged him into the van. Appellant Flores took the driver's seat and drove the van. Appellant Flores and his male companion told him to produce ₱5 million as ransom money in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan. Abagatnan, Robert and Yao San testified in a clear and candid manner during the trial. Their respective testimonies were consistent with one another. They were steadfast in recounting their ordeal despite the grueling cross examination of the defense. Moreover, their testimonies were in harmony with the documentary evidence adduced by the prosecution. The RTC and the Court of Appeals found their testimonies credible and trustworthy. Both courts also found no ill motive for Abagatnan, Robert and Yao San to testify against appellants.

3. ID.; ID.; ID.; IDENTIFICATION OF APPELLANTS AND THEIR COHORTS, CONSIDERED CREDIBILE AND TRUTHFUL; IT IS NOT ILLOGICAL OR AGAINST HUMAN NATURE FOR APPELLANTS AND THEIR COHORTS TO COVER THEIR HEAD WITH T-SHIRTS WHILE LEAVING THEIR FACES EXPOSED AND UNCOVERED. — It appears that the crime scene was well-lighted during the incident. At that time, there was a light from a fluorescent bulb hanging above the gate of the poultry farm wherein Yao San was held at gunpoint by appellant Reyes and Pataray. The headlights of the van were also turned on, making it possible for Abagatnan and Robert to see the faces of appellant Reyes and Pataray as the two approached and poked their guns at Yao San. Further, there was a bulb inside the van, which turned on when the door's van was opened. This bulb lighted up when appellants and their cohorts forcibly boarded the van, thus, allowing Abagatnan, Robert and Yao San to glance at the faces of appellants and their cohorts. Although the Yao family was blindfolded during the incident, it was, nevertheless, shown that it took appellants and their cohorts about 10 minutes before all members of the Yao family were blindfolded. During this considerable length of time, Abagatnan, Robert and Yao San were able to take a good look at the faces of appellants and their cohorts. In addition, Abagatnan and Robert narrated that their respective blindfolds loosened several times, giving them the opportunity to have a glimpse at the faces of appellants and their cohorts. Abagatnan, Robert and Yao San testified that even though the heads of appellants and their cohorts were covered by T-shirts, their faces were, nonetheless, exposed and uncovered, allowing them to see their faces. Robert and Yao San also declared that they recognized the faces of appellants during the incident because the latter resided near the poultry farm of the Yao family, which used to hire them several times in the farm as carpenters/welders. Appellants, however, insist that the testimonies of Abagatnan, Robert and Yao San that they were able to recognize the kidnappers — because although the kidnappers' heads were covered with T-shirts, their faces were nevertheless exposed or uncovered — are incredible. Appellants argue that it is against human nature and experience that kidnappers would cover only their heads and not their faces in concealing their identities. It is not illogical or against human nature for appellants and their cohorts to cover their heads with T-shirts, while leaving

their faces exposed and uncovered when they kidnapped the Yao family. Perhaps, appellants and their cohorts thought that putting T-shirts on their heads without covering their faces was sufficient to conceal their identities. Regardless of their reason, the fact remains that Abagatnan, Robert and Yao San positively identified appellants as their kidnappers, and their said identification and testimonies were found by the RTC, the Court of Appeals and by this Court to be credible. In *People v. Barredo*, the victim testified that he was able to identify the accused as his assailants because the latter took off their masks during the assault. The accused argued that the victim's testimony was incredible because persons who wore masks would not take them off so casually in the presence of their victims, as doing so would reveal their identities. The trial court, nonetheless, ruled that the victim's testimony was credible and truthful. We sustained such ruling of the trial court.

4. **ID.; ID.; ID.; A WITNESS' RELATIONSHIP TO THE VICTIM OF A CRIME MAKES HIS TESTIMONY MORE CREDIBLE AS IT WOULD BE UNNATURAL FOR A RELATIVE INTERESTED IN VINDICATING A CRIME DONE TO THEIR FAMILY TO ACCUSE SOMEBODY OTHER THAN THE REAL CULPRIT. —** It is significant to note that Chua Ong Ping Sim and Raymond were brutally killed as a result of the kidnapping. It is difficult to believe that Robert and Yao San would point to appellants and their cohorts as their kidnappers if such were not true. A witness' relationship to the victim of a crime makes his testimony more credible as it would be unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit. Relationship with a victim of a crime would deter a witness from indiscriminately implicating anybody in the crime. His natural and usual interest would be to identify the real malefactor and secure his conviction to obtain true justice for the death of a relative.

5. **ID.; ID.; ID.; DELAY IN REPORTING A CRIME DOES NOT AFFECT CREDIBILITY IF REASON FOR THE DELAY IS SUFFICIENTLY EXPLAINED. —** Robert and Yao San cannot be blamed for not immediately reporting the incident to the authorities. Chua Ong Ping Sim and Raymond were still held by appellants and their cohorts when the ransom was demanded for their release. Appellants and their cohorts were armed and dangerous. Appellants and their cohorts also threatened to kill

Chua Ong Ping Sim and Raymond if Yao San and Robert would report the incident to the authorities. Understandably, Yao San and Robert were extremely fearful for the safety of their loved ones, and this caused them to refrain from reporting the incident. Robert and Yao San cannot also be blamed for not reporting the incident to the police even after the corpses of Chua Ong Ping Sim and Raymond had already been found, and appellants and their cohorts had cut their communication with them. Certainly, the killings of Chua Ong Ping Sim and Raymond had a chilling/paralyzing effect on Robert and Yao San. Also, appellants and their cohorts were still at large then, and the possibility that they would harm the remaining members of the Yao family was not remote, considering that appellants and their cohorts were familiar with the whereabouts of the Yao family. At any rate, we have held that failure to immediately report the kidnapping incident does not diminish the credibility of the witnesses. The lapse of a considerable length of time before a witness comes forward to reveal the identities of the perpetrators of the crime does not taint the credibility of the witness and his testimony where such delay is satisfactorily explained.

6. **ID.; ID.; DEFENSE OF ALIBI AND FRAME-UP; VIEWED WITH DISFAVOR FOR IT CAN BE EASILY CONCOCTED BUT IS DIFFICULT TO PROVE. —** Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. Alibi must be proved by the accused with clear and convincing evidence; otherwise it cannot prevail over the positive testimonies of credible witnesses who testify on affirmative matters. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. The defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove. In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.

7. **ID.; ID.; APPELLANTS FAILED TO PROVE CONVINCINGLY THAT IT WAS IMPOSSIBLE FOR THEM TO BE AT THE CRIME SCENE DURING THE INCIDENT. —** It should be observed that the family residence/house of appellant Reyes

where he claimed to have slept when the incident occurred is located within Brgy. Sto. Cristo, San Jose del Monte, Bulacan. This is the same *barangay* where the Yao family's poultry farm is situated. Appellant Reyes, in fact, admitted that the poultry farm is near his residence. There is a huge possibility that appellant Reyes slept for a while, woke up before 11:00 p.m., and thereafter proceeded to the Yao family's poultry farm to participate in the kidnapping of the family. The same is true with appellant Flores. Wilfredo, appellant Flores' nephew, testified that he and appellant went to bed and slept together in the house of appellant's sister in Antipolo City at about 8:00 p.m. of 16 July 1999. It is greatly possible that Wifredo did not notice when appellant Flores woke up later at 9:00 p.m. and immediately proceeded to the Yao family's poultry farm to participate in the kidnapping of the family, arriving therein at about 11:00 p.m. It is a fact that a person coming from Antipolo City may reach San Jose del Monte, Bulacan in two hours *via* a motor vehicle, considering that there was no more heavy traffic at that late evening. Obviously, appellants Reyes and Flores failed to prove convincingly that it was physically impossible for them to be at the crime scene during the incident. Appellant Flores submitted two pictures which, according to him, show that he worked as a construction worker from 12 July 1999 up to 30 July 1999 while staying in his sister's house at Antipolo City. These pictures, however, do not clearly and convincingly support such claim, because (1) the pictures were undated; (2) the shots were taken from a far distance; and (3) the face of the man in the pictures which appellant Flores claims as his is blurred, unrecognizable and almost hidden, as such person is wearing a cap and is in a position where only the right and back portions of his head and body are visible.

8. ID.; ID.; ALIBI AND FRAME UP CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONIES OF THE VICTIMS. — Appellant Arnaldo also failed to prove with convincing evidence his defense of frame-up. Aside from his self-serving testimony that he was a former PAOCTF agent and that he was beaten and included as accused in the kidnapping of the Yao family by the PAOCTF agents because he failed to remit to the PAOCTF officers the proceeds of his sale of *shabu*, he did not present convincing proof to support said allegations. He submitted the calling card of Colonel Mancao, which appears

to have been signed by the latter at the back portion, but there is nothing on it which indicates or verifies that appellant Arnaldo was indeed a former PAOCTF agent. He also submitted a prayer book containing his handwritten narration of torture he allegedly experienced at the hands of the PAOCTF agents, but this does not conclusively show that he was beaten by the PAOCTF agents. As we earlier found, appellant Arnaldo did not produce any medical records/certificates or file any complaint against the PAOCTF agents to bolster his claim of maltreatment. It is true that the alibis of appellants Reyes and Flores and the defense of frame-up of appellant Arnaldo were corroborated on some points by the testimonies of some of their relatives/friends. We have, however, held that alibi and the defense of frame-up become less plausible when they are corroborated only by relatives and friends because of perceived partiality. Indeed, the positive and credible testimonies of Abagatnan, Robert and Yao San prevail over the alibis and defense of frame-up of appellants.

9. **CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; THE INDIVIDUAL ACTS OF APPELLANTS AND THEIR COHORTS DEMONSTRATED THEIR UNITY OF PURPOSE AND DESIGN IN KIDNAPPING THE VICTIMS FOR THE PURPOSE OF EXTORTING RANSOM. —** Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy presupposes unity of purpose and unity in the execution of the unlawful objective among the accused. When the accused by their acts aimed at the same object, one performing one part and the other performing another part as to complete the crime, with a view to the attainment of the same object, conspiracy exists. As can be gleaned from the credible testimonies and sworn statements of Abagatnan, Robert and Yao, appellant Reyes and Pataray approached and poked their guns at Yao San, and thereafter dragged the latter into the van. Appellant Flores then took the driver's seat and drove the van, while each member of the Yao family was blindfolded by appellants Reyes and Arnaldo and their cohorts inside the van. Thereafter, appellant Flores instructed Yao San to produce the amount of ₱5 million as ransom money in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan. Appellant Reyes and appellant Arnaldo were among the

kidnappers who guarded Abagatnan, Robert, Chua Ong Ping Sim and Raymond in the safe-house. They also accompanied Abagatnan and Robert in going to the poultry farm to search for and remind Yao San about the ransom demanded. Further, appellants Arnaldo and Flores narrated in their respective extra-judicial confessions how they planned and executed the kidnapping of the Yao family. Their extra-judicial confessions also detailed the particular role/participation played by each of appellants and their cohorts in the kidnapping of the family. Clearly, the foregoing individual acts of appellants and their cohorts demonstrated their unity of purpose and design in kidnapping the Yao family for the purpose of extorting ransom.

10. **POLITICAL LAW; BILL OF RIGHTS; REQUISITES THAT MUST BE SATISFIED BEFORE AN EXTRAJUDICIAL CONFESSION MAY BE CONSIDERED ADMISSIBLE**. — An extra-judicial confession is a declaration made voluntarily and without compulsion or inducement by a person under custodial investigation, stating or acknowledging that he had committed or participated in the commission of a crime. In order that an extra-judicial confession may be admitted in evidence, Article III, Section 12 of the 1987 Constitution mandates that the following safeguards be observed. Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other forms of detention are prohibited. (3) Any confession or admission obtained in violation of this or Section 17 shall be inadmissible in evidence against him. Thus, we have held that an extra-judicial confession is admissible in evidence if the following requisites have been satisfied: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing. The mantle of protection afforded by the above-quoted constitutional provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime or

from the time he is singled out as a suspect in the commission of the offense although not yet in custody.

11. **ID.; ID.; APPELLANTS HAVE BEEN DULY APPRISED OF THEIR CONSTITUTIONAL RIGHTS TO REMAIN SILENT AND TO HAVE COMPETENT AND INDEPENDENT COUNSEL OF THEIR OWN CHOICE. —** The right of an accused to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. Such right contemplates effective communication which results in the subject understanding what is conveyed. The right to counsel is a fundamental right and is intended to preclude the slightest coercion as would lead the accused to admit something false. The right to counsel attaches upon the start of the investigation, *i.e.*, when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused. The lawyer called to be present during such investigation should be, as far as reasonably possible, the choice of the accused. If the lawyer is one furnished in behalf of accused, he should be competent and independent; that is, he must be willing to fully safeguard the constitutional rights of the accused. A competent and independent counsel is logically required to be present and able to advice and assist his client from the time the latter answers the first question asked by the investigator until the signing of the confession. Moreover, the lawyer should ascertain that the confession was made voluntarily, and that the person under investigation fully understood the nature and the consequence of his extra-judicial confession *vis-a-vis* his constitutional rights. However, the foregoing rule is not intended to deter to the accused from confessing guilt if he voluntarily and intelligently so desires, but to protect him from admitting what he is being coerced to admit although untrue. To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him; but, rather, it was adopted in our Constitution to preclude the slightest coercion on the accused to admit something false. The counsel should never prevent an accused from freely and voluntarily telling the truth. We have gone over the records and found that the PAOCTF investigators have duly apprised

appellants Arnaldo and Flores of their constitutional rights to remain silent and to have competent and independent counsel of their own choice during their respective custodial investigations.

12. **ID.; ID.; APPRAISAL OF APPELLANTS' CONSTITUTIONAL RIGHTS WAS NOT MERELY PERFUNCTORY, BECAUSE IT APPEARED CERTAIN THAT APPELLANTS HAD UNDERSTOOD AND, IN FACT, EXERCISED THEIR FUNDAMENTAL RIGHTS AFTER BEING INFORMED THEREOF. —** The *Pasubali* of appellants Arnaldo and Flores's written extra-judicial confessions clearly shows that before they made their respective confessions, the PAOCTF investigators had informed them that the interrogation about to be conducted on them referred to the kidnapping of the Yao family. Thereafter, the PAOCTF agents explained to them that they had a constitutional right to remain silent, and that anything they would say may be used against them in a court of law. They were also told that they were entitled to a counsel of their own choice, and that they would be provided with one if they had none. When asked if they had a lawyer of their own, appellant Arnaldo replied that he would be assisted by Atty. Uminga, while appellant Flores agreed to be represented by Atty. Rous. Thereafter, when asked if they understood their said rights, they replied in the affirmative. The appraisal of their constitutional rights was done in the presence of their respective lawyers and in the *Tagalog* dialect, the language spoken and understood by them. Appellants Arnaldo and Flores and their respective counsels, Atty. Uminga and Atty. Rous, also signed and thumbmarked the extra-judicial confessions. Atty. Uminga and Atty. Rous attested to the veracity of the afore-cited facts in their respective court testimonies. Indeed, the appraisal of appellants' constitutional rights was not merely perfunctory, because it appeared certain that appellants had understood and, in fact, exercised their fundamental rights after being informed thereof.

13. **ID.; ID.; A LAWYER PROVIDED BY THE INVESTIGATORS IS DEEMED ENGAGED BY THE ACCUSED WHEN HE DOES NOT RAISE ANY OBJECTION TO THE COUNSEL'S APPOINTMENT DURING THE COURSE OF THE INVESTIGATION, AND THE ACCUSED THEREAFTER SUBSCRIBES TO THE VERACITY OF THE STATEMENT**

BEFORE THE SWEARING OFFICER. — Under Section 12(1), Article III of the 1987 Constitution, an accused is entitled to have competent and independent counsel preferably of his own choice. The phrase *"preferably of his own choice"* does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense. Otherwise, the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct, the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest. While the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel — or where the preferred lawyer is not available — is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection to the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer. Appellants Arnaldo and Flores did not object to the appointment of Atty. Uminga and Atty. Rous as their lawyers, respectively, during their custodial investigation. Prior to their questioning, appellants Arnaldo and Flores conferred with Atty. Uminga and Atty. Rous. Appellant Arnaldo manifested that he would be assisted by Atty. Uminga, while appellant Flores agreed to be counseled by Atty. Rous. Atty. Uminga and Atty. Rous countersigned the written extra-judicial confessions of appellants Arnaldo and Flores, respectively. Hence, appellants Arnaldo and Flores are deemed to have engaged the services of Atty. Uminga and Atty. Rous, respectively.

14. **ID.; ID.; THE PROSECUTION HAS SUFFICIENTLY ESTABLISHED THAT THE RESPECTIVE EXTRA-JUDICIAL CONFESSIONS OF APPELLANTS WERE OBTAINED IN ACCORDANCE WITH THE CONSTITUTIONAL GUARANTEES AND ARE ADMISSIBLE. —** Since the prosecution has sufficiently established that the respective extra-judicial confessions of appellant Arnaldo and appellant Flores were obtained in accordance with the constitutional guarantees, these confessions are admissible. They are evidence of a high order because of

the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime, unless prompted by truth and conscience. Consequently, the burden of proving that undue pressure or duress was used to procure the confessions rests on appellants Arnaldo and Flores. In the case at bar, appellants Arnaldo and Flores failed to discharge their burden of proving that they were forced or coerced to make their respective confessions. Other than their self-serving statements that they were maltreated by the PAOCTF officers/agents, they did not present any plausible proof to substantiate their claims. They did not submit any medical report showing that their bodies were subjected to violence or torture. Neither did they file complaints against the persons who had allegedly beaten or forced them to execute their respective confessions despite several opportunities to do so. Appellants Arnaldo and Flores averred that they informed their family members/relatives of the alleged maltreatment, but the latter did not report such allegations to proper authorities. On the contrary, appellants Arnaldo and Flores declared in their respective confessions that they were not forced or harmed in giving their sworn statements, and that they were not promised or given any award in consideration of the same. Records also bear out that they were physically examined by doctors before they made their confessions. Their physical examination reports certify that no external signs of physical injury or any form of trauma were noted during their examination. In *People v. Pia*, we held that the following factors indicate voluntariness of an extra-judicial confession: (1) where the accused failed to present credible evidence of compulsion or duress or violence on their persons; (2) where they failed to complain to the officers who administered the oaths; (3) where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; (4) where there appeared to be no marks of violence on their bodies; and (5) where they did not have themselves examined by a reputable physician to buttress their claim.

15. **ID.; ID.; THE EXTRA-JUDICIAL CONFESSIONS OF APPELLANTS ARE REPLETE WITH DETAILS ON THE MANNER IN WHICH THE KIDNAPPING WAS COMMITTED, THEREBY RULING OUT THE POSSIBILITY THAT THE SAME WERE INVOLUNTARILY MADE. —** It should also be noted that the extra-judicial confessions of

appellants Arnaldo and Flores are replete with details on the manner in which the kidnapping was committed, thereby ruling out the possibility that these were involuntarily made. Their extra-judicial confessions clearly state how appellants and their cohorts planned the kidnapping as well as the sequence of events before, during and after its occurrence. The voluntariness of a confession may be inferred from its language if, upon its face, the confession exhibits no suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could only be supplied by the accused.

16. **ID.; ID.; ALTHOUGH AN EXTRA-JUDICIAL CONFESSION IS ADMISSIBLE ONLY AGAINST THE CONFESSANT, JURISPRUDENCE MAKES IT ADMISSIBLE AS CORROBORATIVE EVIDENCE OF OTHER FACTS THAT TEND TO ESTABLISH THE GUILT OF HIS CO-ACCUSED. —** With respect to appellant Reyes's claim that the extra-judicial confessions of appellants Arnaldo and Flores cannot be used in evidence against him, we have ruled that although an extra-judicial confession is admissible only against the confessant, jurisprudence makes it admissible as corroborative evidence of other facts that tend to establish the guilt of his co-accused. In *People v. Alvarez*, we ruled that where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator, that confession is receivable as evidence against a co-accused. In *People v. Encipido* we elucidated as follows: It is also to be noted that APPELLANTS' extrajudicial confessions were independently made without collusion, are identical with each other in their material respects and confirmatory of the other. They are, therefore, also admissible as circumstantial evidence against their co-accused implicated therein to show the probability of the latter's actual participation in the commission of the crime. They are also admissible as corroborative evidence against the others, it being clear from other facts and circumstances presented that persons other than the declarants themselves participated in the commission of the crime charged and proved. They are what is commonly known as interlocking confession and constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof. Appellants Arnaldo and Flores stated in their respective confessions that appellant Reyes participated in their kidnapping of the Yao family. These statements are, therefore, admissible

as corroborative and circumstantial evidence to prove appellant Reyes' guilt. Nevertheless, even without the extra-judicial confessions of appellants Arnaldo and Flores, evidence on record is sufficient to sustain a finding of culpability of appellant Reyes. As earlier found, Abagatnan, Robert and Yao positively identified appellant Reyes as one of their kidnappers. They specifically testified that during the incident, appellant Reyes (1) approached and pointed a gun at Yao San and dragged the latter inside the van; and (2) accompanied Abagatnan and Robert in going to the poultry farm to search for and remind Yao San about the ransom demanded. The RTC, Court of Appeals and this Court found such testimonies credible.

17. **CRIMINAL LAW; KIDNAPPING; ELEMENTS; ESTABLISHED IN CASE AT BAR. —** Under Article 267 of the Revised Penal Code, the crime of kidnapping is committed with the concurrence of the following elements: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. All of the foregoing elements were duly establish by the testimonial and documentary evidences for the prosecution in the case at bar. *First*, appellants and their cohorts are private individuals. *Second*, appellants and their cohorts kidnapped the Yao family by taking control of their van and detaining them in a secluded place. *Third*, the Yao family was taken against their will. And *fourth*, threats to kill were made and the kidnap victims include females.

18. **ID.; REPUBLIC ACT NO. 7659; ALTHOUGH THE TWO QUALIFYING CIRCUMSTANCES OF THE LAW IS PRESENT IN THE COMMISSION OF THE KIDNAPPING, THE DEATH PENALTY CANNOT BE IMPOSED IN VIEW OF THE PASSAGE OF REPUBLIC ACT 9346 PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES. —** Republic Act No. 7659 provides that the death penalty shall be imposed if any of the

two qualifying circumstances is present in the commission of the kidnapping: (1) the motive of the kidnappers is to extort ransom for the release of the kidnap victims, although none of the circumstances mentioned under paragraph four of the elements of kidnapping were present. Ransom means money, price or consideration paid or demanded for the redemption of a captured person that would release him from captivity. Whether or not the ransom is actually paid to or received by the perpetrators is of no moment. It is sufficient that the kidnapping was committed for the purpose of exacting ransom; and (2) the kidnap victims were killed or died as a consequence of the kidnapping or was raped, or subjected to torture or dehumanizing acts. Both of these qualifying circumstances are alleged in the information and proven during trial. As testified to by Abagatnan, Robert and Yao San, appellants and their cohorts demanded the amount of ₱5 million for the release of Chua Ong Pong Sim and Raymond. In fact, Yao San went to the Usan dumpsite, Litex Road, Fairview, Quezon City, to hand over the ransom money to appellants and their cohorts, but the latter did not show up. It was also apparent that Chua Ong Ping Sim and Raymond were killed or died during their captivity. Yao San declared that appellants and their cohorts called up and told him that they would kill Chua Ong Ping Sim and Raymond who were still under their custody, because they heard the radio report that the incident was already known to the police. True to their threats, the corpses of Chua Ong Ping Sim and Raymond were later found dumped in La Mesa Dam. Their respective death certificates show that they died of asphyxia by strangulation. Withal, the death penalty cannot be imposed on the appellants in view of the passage of Republic Act No. 9346 on 24 June 2006 prohibiting the imposition of death penalty in the Philippines. In accordance with Sections 2 and 3 thereof, the penalty that should be meted out to the appellants is *reclusion perpetua* without the possibility of parole. The Court of Appeals, therefore, acted accordingly in imposing the penalty of *reclusion perpetua* without the possibility of parole on each of the appellants.

19. ID.; CIVIL LIABILITY; THE APPELLATE COURT WAS ALSO CORRECT IN ORDERING APPELLANTS TO JOINTLY AND SEVERALLY PAY CIVIL INDEMNITY AND EXEMPLARY DAMAGES TO THE FAMILY OF THE VICTIMS. — The Court of Appeals was also correct in ordering

appellants to jointly and severally pay civil indemnity and exemplary damages to the Yao family. Nonetheless, their corresponding amounts should be modified. In *People v. Quiachon*, we explained that even if the death penalty was not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 was still proper, as the said award was not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As earlier stated, both the qualifying circumstances of demand for ransom and the double killing or death of two of the kidnap victims were alleged in the information and proven during trial. Thus, for the twin deaths of Chua Ong Ping Sim and Raymond, their heirs (Yao San, Robert, Lenny, Matthew and Charlene) are entitled to a total amount of ₱150,000.00 as civil indemnity. Exemplary damages are imposed by way of example or correction for the public good. In criminal offenses, exemplary damages may be recovered when the crime was committed with one or more aggravating circumstances, whether ordinary or qualifying. Since both the qualifying circumstances of demand for ransom and the killing or death of two of the kidnap victims (Chua Ong Ping Sim and Raymond) while in captivity were alleged in the information and proven during trial, and in order to deter others from committing the same despicable acts, the award of exemplary damages is proper. The total amount of ₱100,000.00 as exemplary damages should be modified. In several cases, we awarded an amount of ₱100,000.00 to each of the kidnap victims. As in this case, the amount of ₱100,000.00 as exemplary damages should be awarded each to Yao San, Robert, Lenny, Matthew, Charlene, Abagatnan and Ortea. This makes the total amount of exemplary damages add up to ₱700,000.00.

20. **ID.; ID.; AWARD OF MORAL DAMAGES IS WARRANTED IN CASE AT BAR. —** The appellate court aptly held that the award of moral damages is warranted. Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, wounded feelings, moral shock and similar injury. Article 2219 of the same Code provides that moral damages may be recovered in cases of illegal detention. There is no doubt that each member of the Yao family suffered physical and/or psychological trauma because of the

ordeal, especially because two of the family members were ruthlessly killed during their captivity. Pursuant to prevailing jurisprudence, Yao San, Robert, Lenny, Matthew, Charlene, Abagatnan and Ortea should each receive the amount of ₱100,000.00 as moral damages. Per computation, the total amount of moral damages is ₱700,000.00 and not ₱500,000.00 as fixed by the RTC and the Court of Appeals.

21. **ID.; ID.; NO CRIME OF KIDNAPPING FOR RANSOM WITH "DOUBLE" HOMICIDE; THE KILLING IS DESIGNATED AS HOMICIDE REGARDLESS OF THE NUMBER OF KILLING OR DEATH THAT OCCURRED AS A CONSEQUENCE OF THE KIDNAPPING. —** We observed that the RTC and the Court of Appeals denominated the crime committed by appellants in the present case as the special complex crime of kidnapping for ransom with **double** homicide since two of the kidnap victims were killed or died during the kidnapping. The word "double" should be deleted therein. Regardless of the number of killings or deaths that occurred as a consequence of the kidnapping, the appropriate denomination of the crime should be the special complex crime of kidnapping for ransom with homicide.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision,[1] dated 14 August 2006, and Resolution,[2] dated 18 October 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 02301 affirming with modifications

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo concurring; *rollo*, pp. 3-34.

[2] CA *rollo*, p. 445.

the Decision,[3] dated 26 February 2002, of the Regional Trial Court (RTC), Branch 12, Malolos, Bulacan, in Criminal Case No. 1611-M-99 finding herein accused-appellants Domingo Reyes *y* Paje (Reyes), Alvin Arnaldo *y* Avena (Arnaldo) and Joselito Flores *y* Victorio (Flores) guilty of the special complex crime of kidnapping for ransom with homicide and imposing upon each of them the capital punishment of death.

The facts culled from the records are as follows:

On 11 August 1999, an Information[4] was filed before the RTC charging appellants with the special complex crime of kidnapping for ransom with homicide. The accusatory portion of the information reads:

The undersigned State Prosecutor of the Department of Justice hereby accuses Domingo Reyes *y* Paje, Alvin Arnaldo *y* Avena and Joselito Flores *y* Victorio of the crime of kidnapping for ransom with homicide defined and penalized under Article 267 of the Revised Penal Code, as amended, committed as follows:

That on or about 11:00 p.m. on July 16, 1999, at Sitio Lambakin, barangay Sto. Cristo, San Jose del Monte, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and grouping themselves together with Juanito Pataray *y* Cayaban, Federico Pataray *y* Cabayan and Rommel Libarnes *y* Acejo, who are still at large, did then and there willfully, unlawfully and feloniously, by means of force and intimidation and with use of firearms, carry away and deprive Robert Yao, Yao San, Chua Ong Ping Sim, Raymond Yao, Ronald Matthew Yao, Lennie Yao, Charlene Yao, Jona Abagatnan ang (sic) Josephine Ortea against their will and consent on board their Mazda MVP van for the purpose of extorting money in the amount of Five Million Pesos (₱5,000,000.00), that during the detention of Chua Ong Ping Sim and Raymong (sic) Yao, said accused with intent to kill, willfully and unlawfully strangled Chua Ong Ping Sim and Raymond Yao to death to the damage and prejudice of their heirs in such amount as may be awarded to them by this Honorable Court.

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[3] *Id.* at 48-61.

[4] Records, pp. 42-43.

During their arraignment,[5] appellants, assisted by a *counsel de oficio*, pleaded "Not guilty" to the charge. Trial on the merits thereafter followed.

The prosecution presented as witnesses Jona Abagatnan (Abagatnan), Robert Yao (Robert), Yao San, Police Officer 3 (PO3) Alex Alberto, PO3 Roberto Jabien, Atty. Florimond Rous (Atty. Rous) and Atty. Carlo Uminga (Atty. Uminga). Their testimonies, taken together, attest to the following:

The Yao family is composed of Yao San (father), Chua Ong Ping Sim (mother), Robert and Raymond (children), Lenny (daughter-in-law, wife of Robert), Matthew and Charlene (grandchildren), and Jona Abagatnan and Josephine Ortea (housemaids). The Yao family owns and operates a poultry farm in Barangay Santo Cristo, San Jose del Monte, Bulacan.

On 16 July 1999, at about 11:00 p.m., the Yao family, on board a Mazda MVP van, arrived at their poultry farm in Barangay Sto. Cristo, San Jose del Monte, Bulacan. Yao San alighted from the van to open the gate of the farm. At this juncture, appellant Reyes and a certain Juanito Pataray (Pataray) approached, poked their guns at Yao San, and dragged him inside the van. Appellant Reyes and Pataray also boarded the van. Thereupon, appellants Arnaldo and Flores, with two male companions, all armed with guns, arrived and immediately boarded the van. Appellant Flores took the driver's seat and drove the van. Appellants Reyes and Arnaldo and their cohorts then blindfolded each member of the Yao family inside the van with packaging tape.[6]

After about 30 minutes of traveling on the road, the van stopped. Per order of appellants and their cohorts, Chua Ong Ping Sim, Robert, Raymond and Jona Abagatnan (Abagatnan) stepped out of the van with appellants Reyes and Arnaldo, Pataray and one of their male companions.[7] Appellant Flores, with the

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[5] *Id.* at 72-78 & 94-96.

[6] TSN, 26 October 1999, pp. 3-14; TSN, 11 August 2000, pp. 3-7; TSN, 21 September 2000, pp. 2-8.

[7] TSN, 26 October 1999, pp. 16-17; TSN, 11 August 2000, p. 7.

other male companion, drove the van with the remaining members of the Yao family inside the vehicle.[8]

Later, the van stopped again. Appellant Flores and his male companion told Yao San to produce the amount of five million pesos (₱5,000,000.00) as ransom in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan. Thereafter, appellant Flores and his male companion left the van and fled; while Yao San, Lenny, Matthew, Charlene and Josephine remained inside the van. Upon sensing that the kidnappers had already left, Yao San drove the van towards the poultry farm and sought the help of relatives.[9]

Meanwhile, Chua Ong Ping Sim, Robert, Raymond and Abagatnan were taken on foot by appellants Reyes and Arnaldo, Pataray and one male companion to a safe-house situated in the mountainous part of San Jose Del Monte, Bulacan where they spent the whole night.[10]

On the morning of the following day, at around 4:00 a.m., appellants and their cohorts tried to contact Yao San regarding the ransom demanded, but the latter could not be reached. Thus, appellants instructed Abagatnan to look for Yao San in the poultry farm. Appellants Reyes and Arnaldo and one male companion escorted Abagatnan in proceeding to the poultry farm. Upon arriving therein, Abagatnan searched for Yao San, but the latter could not be found. Appellants Reyes and Arnaldo told Abagatnan to remind Yao San about the ransom demanded. Thereafter, appellants Reyes and Arnaldo and their male companion left Abagatnan in the poultry farm and went back to the safe-house.[11]

In the safe-house, appellants told Robert that they would release him so he could help Abagatnan in locating Yao San. Robert and appellants left the safe-house, and after 30 minutes

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[8] Records, p. 34.

[9] *Id.*

[10] TSN, 26 October 1999, pp. 16-23; TSN, 7 December 1999, pp. 2-5; TSN, 11 August 2000, pp. 8-9.

[11] TSN, 7 December 1999, pp. 4-7.

of trekking, appellants abandoned Robert. Robert then ran towards the poultry farm. Upon arriving at the poultry farm, Robert found Yao San and informed him about the ransom demanded by the appellants. Robert also told Yao San that Chua Ong Ping Sim and Raymond were still held by appellants and their cohorts.[12]

On 18 July 1999, appellants called Yao San through a cellular phone and demanded the ransom of ₱5 million for Chua Ong Ping Sim and Raymond. Yao San acceded to appellants' demand. Appellants allowed Yao San to talk with Chua Ong Ping Sim.[13]

On the morning of 19 July 1999, appellants again called Yao San *via* a cellular phone and threatened to kill Chua Ong Ping Sim and Raymond because of newspaper and radio reports regarding the incident. Yao San clarified to appellants that he did not report the incident to the police and also pleaded with them to spare the life of Chua Ong Ping Sim and Raymond. Appellants then instructed Yao San to appear and bring with him the ransom of ₱5 million at 3:00 p.m. in the Usan dumpsite, Litex Road, Fairview, Quezon City. Yao San arrived at the designated place of the pay-off at 4:00 p.m., but none of the appellants or their cohorts showed up. Yao San waited for appellant's call, but none came. Thus, Yao San left.[14]

On 23 July 1999, the corpses of Chua Ong Ping Sim and Raymond were found at the La Mesa Dam, Novaliches, Quezon City.[15] Both died of asphyxia by strangulation.[16]

On 26 July 1999, appellant Arnaldo surrendered to the Presidential Anti-Organized Crime Task Force (PAOCTF) at Camp Crame, Quezon City. Thereupon, appellant Arnaldo, with the assistance of Atty. Uminga, executed a written extra-judicial

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[12] *Id.* at 7-8; TSN, 11 August 2000, pp. 10-12.

[13] Records, p. 35.

[14] *Id*; TSN, 11 August 2000, pp. 12-14.

[15] TSN, 7 December 1999, pp. 8-9; TSN, 11 August 2000, pp. 14-15; Records, p. 35.

[16] Records, pp. 15-17.

confession narrating his participation in the incident. Appellant Arnaldo identified appellants Reyes and Flores, Pataray and a certain Tata and Akey as his co-participants in the incident. Appellant Arnaldo also described the physical features of his cohorts and revealed their whereabouts.[17]

Subsequently, appellant Reyes was arrested in Sto. Cristo, San Jose del Monte, Bulacan. Thereafter, appellants Arnaldo and Reyes were identified in a police line-up by Yao San, Robert and Abagatnan as their kidnappers.[18]

On 10 August 1999, agents of the PAOCTF arrested appellant Flores in Balayan, Batangas. Afterwards, appellant Flores, with the assistance of Atty. Rous, executed a written extra-judicial confession detailing his participation in the incident. Appellant Flores identified appellants Reyes and Arnaldo, Pataray and a certain Tata and Akey as his co-participants in the incident. Appellant Flores was subsequently identified in a police line-up by Yao San, Robert and Abagatnan as one of their kidnappers.[19]

The prosecution adduced documentary evidence to bolster the aforesaid allegations, to wit: (1) *Sinumpaang Salaysay* of Abagatnan (Exhibit A);[20] (2) *Karagdagang Sinumpaang Salaysay* of Abagatnan, Robert and Yao San (Exhibit B);[21] (3) sketch made by Abagatnan (Exhibit C);[22] (4) death certificates of Chua Ong Ping Sim and Raymond (Exhibits D & E);[23] (5) *Sinumpaang Salaysay* of Robert (Exhibit F);[24] (6) *Sinumpaang Salaysay* of Yao San (Exhibit H);[25] (7) joint affidavit of Police Senior Inspector

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[17] *Id.* at 5, 8, 12, & 24-28.

[18] *Id.* at 13-14 & 33, 35, & 38.

[19] *Id.* at 46-48, 63-64 & 302-306.

[20] *Id.* at 220-222.

[21] *Id.* at 223.

[22] *Id.* at 224.

[23] *Id.* at 225-228.

[24] *Id.* at 229-231.

[25] *Id.* at 233-235.

Loreto P. Delelis and PO3 Roberto Jabien (Exhibit I);[26] (8) joint affidavit of PO3 Alex Alberto and PO3 Leonito Fermin (Exhibit J);[27] (9) written extra-judicial confession of appellant Flores (Exhibit K);[28] (10) written extra-judicial confession of appellant Arnaldo (Exhibit L);[29] and (11) sketch made by appellant Arnaldo (Exhibit M).[30]

For its part, the defense presented the testimonies of appellants, Marina Reyes, Irene Flores Celestino, Wilfredo Celestino, Jr., Rachel C. Ramos, and Isidro Arnaldo. Appellants denied any liability and interposed alibis and the defense of frame-up. Their testimonies, as corroborated by their witnesses, are as follows:

Appellant Arnaldo testified that he was an "asset" of the PAOCTF. He narrated that on 25 July 1999, while he was at the tricycle terminal of Brgy. Sto. Cristo, San Jose del Monte, Bulacan, a police officer named Liwanag of the PAOCTF approached and invited him to go to Camp Crame to shed light on a kidnapping case allegedly committed by a certain Brgy. Captain Ramos and by members of the Aguirre and Bautista families. He accepted the invitation. Subsequently, he proceeded to Camp Crame and met therein Colonel Cesar Mancao III (Colonel Mancao) of the PAOCTF. Colonel Mancao told him that the PAOCTF would arrest Brgy. Capt. Ramos and certain persons named Gerry Bautista and Dadie Bautista. Colonel Mancao instructed him to identify said persons as responsible for the kidnapping of the Yao family. He refused to do so because he feared Brgy. Capt. Ramos. The day after, Colonel Mancao called appellant Arnaldo to his office. Upon arriving thereat, the latter saw Yao San. Yao San promised him that if their kidnappers would be apprehended through his cooperation, he would give him ₱500,000.00. He accepted Yao San's offer

[26] *Id.* at 236-237.

[27] *Id.* at 238.

[28] *Id.* at 302-306.

[29] *Id.* at 312-316.

[30] *Id.* at 317-318.

under the condition that he would identify a different set of suspects. Later, Colonel Mancao gave him ₱30,000.00.[31]

Subsequently, he pointed to appellants Reyes and Flores as his cohorts in kidnapping the Yao family. He implicated appellants Reyes and Flores to get even with them, since the two had previously mauled him after he sold their fighting cocks and failed to give them the proceeds of the sale.[32]

He denied having met with Atty. Uminga. He was not assisted by the latter when he was forced by the PAOCTF to make a written extra-judicial confession on the kidnapping of the Yao family. Further, he claimed that while he was under the custody of PAOCTF, a certain Major Paulino utilized him as a drug pusher. Upon failing to remit the proceeds of the drug sale, he was beaten up by PAOCTF agents and thereafter included as accused with appellants Reyes and Flores for the kidnapping of the Yao family.[33]

On the other hand, appellant Reyes testified that he slept in his house with his family from 6:00 p.m. of 16 July 1999 until the morning of the next day; that on the early morning of 26 July 1999, five policemen barged into his house and arrested him; that the policemen told him that he was a suspect in the kidnapping of the Yao family; that he was mauled by the policemen outside his house; that the policemen forcibly brought him to Camp Crame, where he was subsequently tortured; that he knew the Yao family because he worked as a carpenter in the family's poultry farm at Brgy. Sto. Cristo, San Jose del Monte, Bulacan; that he had no involvement in the kidnapping of the family; and that appellant Arnaldo implicated him in the kidnapping of the family because appellant Arnaldo held a grudge against him.[34]

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[31] TSN, 7 June 2001, pp. 3-21.

[32] TSN, 10 July 2001, pp. 3-6.

[33] *Id.* at 10-16; TSN, 21 August 2001, pp. 3-14.

[34] TSN, 6 March 2001, pp. 3-10.

For his part, appellant Flores testified that he stayed in his sister's house at Antipolo City from 12 July 1999 up to 30 July 1999; that he went to her house on 12 July 1999 because it was the birthday of her child; that he worked as a construction worker during his stay in his sister's house; that he was arrested in Batangas and thereafter brought to Camp Crame, where he was beaten up by policemen for refusing to admit involvement in the kidnapping of the Yao family; that after three days of beating, he was forced to sign a document which he later found out to be a written extra-judicial confession; that he never met nor did he know Atty. Rous; that he knew the Yao family because he lived near the family's poultry farm, and he used to work therein as a welder; that he had no participation in the kidnapping of the family; and that appellant Arnaldo implicated him in the kidnapping of the family because he and appellant Reyes had mauled appellant Arnaldo several years ago.[35]

The defense proffered documentary and object evidence to buttress their foregoing claims, to wit: (1) prayer booklet of appellant Arnaldo (Exhibit 1 for appellant Arnaldo);[36] (2) calling card of Colonel Mancao (Exhibit 2 for appellant Arnaldo);[37] and (3) pictures allegedly showing appellant Flores working as a carpenter in Antipolo City (Exhibits 1 & 2 for appellant Flores).[38]

After trial, the RTC rendered a Decision dated 26 February 2002 convicting appellants of the special complex crime of kidnapping for ransom with homicide and sentencing each of them to suffer the supreme penalty of death. Appellants were also ordered to pay jointly and severally the Yao family ₱150,000.00 as civil indemnity, ₱500,000.00 as moral damages and the costs of the proceedings. The dispositive portion of the RTC Decision reads:

WHEREFORE, finding herein three (3) accused DOMINGO REYES *y* PAJE, ALVIN ARNALDO *y* AVENA, and JOSELITO FLORES *y*

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[35] TSN, 24 May 2001, pp. 2-9.

[36] Records, Volume VI, Index of Exhibits.

[37] *Id.*

[38] Records, p. 357.

VICTORIO guilty as principals beyond reasonable doubt of the crime of KIDNAPPING FOR RANSOM WITH (DOUBLE) HOMICIDE as charged, they are hereby sentenced each to suffer the supreme penalty of DEATH as mandated by law, to jointly and severally indemnify the heirs of deceased Chua Ong Ping Sim and Raymond Yao in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00), and all the private offended parties or victims, including the heirs of the deceased, in the amount of Five Hundred Thousand Pesos (₱500,000.00) as moral damages, subject to the corresponding filing fee as a first lien, and to pay the costs of the proceedings.[39]

By reason of the death penalty imposed on each of the appellants, the instant case was elevated to us for automatic review. However, pursuant to our ruling in *People v. Mateo*,[40] we remanded the instant case to the Court of Appeals for proper disposition.

On 14 August 2006, the Court of Appeals promulgated its Decision affirming with modifications the RTC Decision. The appellate court reduced the penalty imposed by the RTC on each of the appellants from death penalty to *reclusion perpetua* without the possibility of parole. It also decreased the amount of civil indemnity from ₱150,000.00 to ₱100,000.00. Further, it directed appellants to pay jointly and severally the Yao family ₱100,000.00 as exemplary damages. The *fallo* of the Court of Appeals' decision states:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 12, dated February 26, 2002, in Criminal Case No. 1611-M-99 convicting accused-appellants of the crime of Kidnapping For Ransom with (Double) Homicide, is hereby AFFIRMED with MODIFICATIONS in that:

1) accused-appellants are instead sentenced to suffer the penalty of *reclusion perpetua*;

2) the award of civil indemnity *ex delicto* is hereby reduced to ₱100,000; and

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[39] CA *rollo,* p. 61.

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

3) accused-appellants are further ordered to pay private complainants the amount of ₱100,000.00 as exemplary damages.[41]

Appellants filed a motion for reconsideration of the Court of Appeals' Decision but this was denied. Hence, appellants filed their Notice of Appeal on 25 August 2006.

In their separate briefs,[42] appellants assigned the following errors:

I.

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES;

II.

THE TRIAL COURT ERRED IN FINDING A CONSPIRACY BETWEEN APPELLANTS;

III.

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE EXTRA-JUDICIAL CONFESSIONS OF APPELLANT ARNALDO AND APPELLANT FLORES;

IV.

THE TRIAL COURT ERRED IN TOTALLY IGNORING THE CORROBORATED EVIDENCE OF THE DEFENSE;

V.

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAD PROVEN APPELLANTS' GUILT BEYOND REASONABLE DOUBT.[43]

Anent the first assigned error, appellants assail the credibility of prosecution witnesses Abagatnan, Robert and Yao San.

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles:

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[41] *Rollo,* p. 34.

[42] CA *rollo*, pp. 85-132, 148-164 & 198-219.

[43] *Id.* at 94-95, 150-151 & 200-201.

(1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that the latter 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.[44]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of the prosecution witnesses credible. Prosecution witnesses Abagatnan, Robert, and Yao San positively identified appellants and their cohorts as their kidnappers during a police line-up and also during trial. **Abagatnan** specifically testified during the trial that after appellants and their cohorts forcibly entered the van where she and the Yao family were, appellant Flores drove the van away from the poultry farm; that appellants Reyes and Arnaldo were among the kidnappers who guarded her, Robert, Chua Ong Ping Sim and Raymond in the safe-house; and that appellants Reyes and Arnaldo accompanied her in going to the poultry farm to search for Yao San and remind him about the ransom demanded.[45] **Robert** confirmed that appellants and their cohorts blindfolded them inside the van during the incident. He also recounted that appellants and their cohorts detained him and Chua Ong Ping Sim, Raymond and Abagatnan in a safe-house. He was later instructed by appellants to find Yao San and remind him about the ransom.[46] **Yao San** declared that during the incident, appellant Reyes and Pataray approached him, poked their guns at him, and dragged him into the van. Appellant Flores took the driver's seat and drove the van. Appellant Flores and his male companion told him to produce ₱5 million

[44] *People v. Guevarra*, G.R. No. 182192, 29 October 2008.

[45] TSN, 26 October 1999, pp. 14 & 22.

[46] TSN, 11 August 2001, pp. 6, 9, 10, 18 & 19.

as ransom money in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan.[47]

Abagatnan, Robert and Yao San testified in a clear and candid manner during the trial. Their respective testimonies were consistent with one another. They were steadfast in recounting their ordeal despite the grueling cross examination of the defense. Moreover, their testimonies were in harmony with the documentary evidence adduced by the prosecution. The RTC and the Court of Appeals found their testimonies credible and trustworthy. Both courts also found no ill motive for Abagatnan, Robert and Yao San to testify against appellants.

Appellants, nonetheless, maintain that Abagatnan, Robert and Yao San could not have identified their kidnappers, because (1) the incident occurred in the darkness of the night; (2) they were blindfolded then; and (3) the heads of the kidnappers were covered by T-shirts.

It appears that the crime scene was well-lighted during the incident. At that time, there was a light from a fluorescent bulb hanging above the gate of the poultry farm wherein Yao San was held at gunpoint by appellant Reyes and Pataray.[48] The headlights of the van were also turned on, making it possible for Abagatnan and Robert to see the faces of appellant Reyes and Pataray as the two approached and poked their guns at Yao San.[49] Further, there was a bulb inside the van, which turned on when the door's van was opened. This bulb lighted up when appellants and their cohorts forcibly boarded the van, thus, allowing Abagatnan, Robert and Yao San to glance at the faces of appellants and their cohorts.[50]

Although the Yao family was blindfolded during the incident, it was, nevertheless, shown that it took appellants and their

[47] TSN, 21 September 2000, pp. 6, 7, 8, 10, 14, 15, 19.

[48] TSN, 7 December 1999, p. 51; TSN, 8 February 2000, p. 11; TSN, 19 September 2000, p. 3.

[49] TSN, 19 September 2000, p. 3.

[50] TSN, 8 February 2000, p. 8; TSN, 21 September 2000, p. 14.

cohorts about 10 minutes before all members of the Yao family were blindfolded.[51] During this considerable length of time, Abagatnan, Robert and Yao San were able to take a good look at the faces of appellants and their cohorts. In addition, Abagatnan and Robert narrated that their respective blindfolds loosened several times, giving them the opportunity to have a glimpse at the faces of appellants and their cohorts.[52]

Abagatnan, Robert and Yao San testified that even though the heads of appellants and their cohorts were covered by T-shirts, their faces were, nonetheless, exposed and uncovered, allowing them to see their faces.[53] Robert and Yao San also declared that they recognized the faces of appellants during the incident because the latter resided near the poultry farm of the Yao family, which used to hire them several times in the farm as carpenters/welders.[54]

Appellants, however, insist that the testimonies of Abagatnan, Robert and Yao San that they were able to recognize the kidnappers — because although the kidnappers' heads were covered with T-shirts, their faces were nevertheless exposed or uncovered — are incredible. Appellants argue that it is against human nature and experience that kidnappers would cover only their heads and not their faces in concealing their identities.

It is not illogical or against human nature for appellants and their cohorts to cover their heads with T-shirts, while leaving their faces exposed and uncovered when they kidnapped the Yao family. Perhaps, appellants and their cohorts thought that putting T-shirts on their heads without covering their faces was sufficient to conceal their identities. Regardless of their reason, the fact remains that Abagatnan, Robert and Yao San positively identified appellants as their kidnappers, and their said

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[51] TSN, 14 January 2000, p. 38.

[52] TSN, 7 December 1999, p. 26; TSN, 14 January 2000, p. 32; TSN, 19 September 2000, p. 19.

[53] TSN, 26 October 1999, p. 14; TSN, 19 September 2000, p. 5; TSN 21 September 2000, p. 10.

[54] TSN, 19 September 2000, p. 14; TSN 21 September 2000, p. 7.

identification and testimonies were found by the RTC, the Court of Appeals and by this Court to be credible. In *People v. Barredo*,[55] the victim testified that he was able to identify the accused as his assailants because the latter took off their masks during the assault. The accused argued that the victim's testimony was incredible because persons who wore masks would not take them off so casually in the presence of their victims, as doing so would reveal their identities. The trial court, nonetheless, ruled that the victim's testimony was credible and truthful. We sustained such ruling of the trial court and ratiocinated:

> Appellants dispute the plausibility of Enrico Cebuhano's claim that he was able to identify the assailants because they took off their masks. Persons who wear masks would not take them off so casually in the presence of their victims, as doing so would thereby reveal their identities. x x x.
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> The above arguments are untenable. In his testimony, Enrico Cebuhano clearly stated that the men who entered his home removed their masks when he was brought downstairs. Why they did so was known only to them. It is possible that they thought that there was no one in the vicinity who could identify them, or that they wanted Enrico to see who they were so as to intimidate him. It is also possible that they felt secure because there were 14 of them who were all armed. In any event, what is important is that the trial court found Enrico Cebuhano's testimony to be both credible and believable, and that he was able to positively identify appellants herein, because the men who entered his home removed their masks, x x x.

It is significant to note that Chua Ong Ping Sim and Raymond were brutally killed as a result of the kidnapping. It is difficult to believe that Robert and Yao San would point to appellants and their cohorts as their kidnappers if such were not true. A witness' relationship to the victim of a crime makes his testimony more credible as it would be unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit.[56] Relationship with a victim of a

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[55] 357 Phil. 924, 933-934 (1998).

[56] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 658.

crime would deter a witness from indiscriminately implicating anybody in the crime. His natural and usual interest would be to identify the real malefactor and secure his conviction to obtain true justice for the death of a relative.[57]

Appellants put in issue the failure of Robert and Yao San to immediately report the incident and identify appellants to authorities despite their common claim that they recognized appellants, as the latter used to work in the poultry farm.

Robert and Yao San cannot be blamed for not immediately reporting the incident to the authorities. Chua Ong Ping Sim and Raymond were still held by appellants and their cohorts when the ransom was demanded for their release. Appellants and their cohorts were armed and dangerous. Appellants and their cohorts also threatened to kill Chua Ong Ping Sim and Raymond if Yao San and Robert would report the incident to the authorities.[58] Understandably, Yao San and Robert were extremely fearful for the safety of their loved ones, and this caused them to refrain from reporting the incident. Robert and Yao San cannot also be blamed for not reporting the incident to the police even after the corpses of Chua Ong Ping Sim and Raymond had already been found, and appellants and their cohorts had cut their communication with them. Certainly, the killings of Chua Ong Ping Sim and Raymond had a chilling/paralyzing effect on Robert and Yao San. Also, appellants and their cohorts were still at large then, and the possibility that they would harm the remaining members of the Yao family was not remote, considering that appellants and their cohorts were familiar with the whereabouts of the Yao family. At any rate, we have held that failure to immediately report the kidnapping incident does not diminish the credibility of the witnesses.[59] The lapse of a considerable length of time before a witness comes forward to reveal the identities of the perpetrators of the crime does not

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[57] *People v. Ubaldo*, 396 Phil. 509, 520 (2000).

[58] TSN, 26 September 2000, p. 14.

[59] *People v. Fajardo, Jr.*, G.R. No. 173022, 23 January 2007, 512 SCRA 360, 373.

taint the credibility of the witness and his testimony where such delay is satisfactorily explained.[60]

Apropos the second assigned error, appellants contend that the prosecution failed to prove that they conspired in kidnapping the Yao family.

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy presupposes unity of purpose and unity in the execution of the unlawful objective among the accused.[61] When the accused by their acts aimed at the same object, one performing one part and the other performing another part as to complete the crime, with a view to the attainment of the same object, conspiracy exists.[62]

As can be gleaned from the credible testimonies and sworn statements of Abagatnan, Robert and Yao, appellant Reyes and Pataray[63] approached and poked their guns at Yao San, and thereafter dragged the latter into the van. Appellant Flores then took the driver's seat and drove the van, while each member of the Yao family was blindfolded by appellants Reyes and Arnaldo and their cohorts inside the van. Thereafter, appellant Flores instructed Yao San to produce the amount of ₱5 million as ransom money in exchange for the release of Chua Ong Ping Sim, Robert, Raymond and Abagatnan. Appellant Reyes and appellant Arnaldo were among the kidnappers who guarded Abagatnan, Robert, Chua Ong Ping Sim and Raymond in the safe-house. They also accompanied Abagatnan and Robert in going to the poultry farm to search for and remind Yao San about the ransom demanded. Further, appellants Arnaldo and Flores narrated in their respective extra-judicial confessions[64] how they planned and executed the kidnapping of the Yao family.

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[60] *People v. Dadles*, 343 Phil. 916, 924 (1997).

[61] *People v. Dorico*, 153 Phil. 458, 475 (1973).

[62] *People v. Geronimo*, 153 Phil. 1, 10 (1973).

[63] At large.

[64] Records, pp. 312-318.

Their extra-judicial confessions also detailed the particular role/participation played by each of appellants and their cohorts in the kidnapping of the family. Clearly, the foregoing individual acts of appellants and their cohorts demonstrated their unity of purpose and design in kidnapping the Yao family for the purpose of extorting ransom.

Appellants, however, challenge the legality and admissibility of the written extra-judicial confessions.

Appellant Reyes claims that his alleged participation in the kidnapping of the Yao family was based solely on the written extra-judicial confessions of appellants Arnaldo and Flores. He maintains, however, that said extra-judicial confessions are inadmissible in evidence, because they were obtained in violation of his co-appellants' constitutional right to have an independent counsel of their own choice during custodial investigation. Appellant Reyes alleges that the agents of the PAOCTF did not ask his co-appellants during the custodial investigation whether they had a lawyer of their own choice, and whether they could afford to hire a lawyer; that the agents of the PAOCTF suggested the availability of Atty. Uminga and Atty. Rous to his co-appellants; and that Atty. Uminga and Atty. Rous were associates of the PAOCTF. Appellant Reyes also asseverates that the extra-judicial confessions of appellants Arnaldo and Flores cannot be utilized against him.

Appellant Flores argues that his written extra-judicial confession is inadmissible in evidence, because it was obtained in violation of his constitutional right to have an independent counsel of his own choice during custodial investigation. He insists that his written extra-judicial confession was elicited through force, torture and without the assistance of a lawyer. He avers that he was not assisted by any lawyer from the time he was arrested until he was coerced to sign the purported confession; that he was forced to sign it because he could not anymore endure the beatings he suffered at the hands of the PAOCTF agents; and that he never met or knew Atty. Rous who, according to the PAOCTF, had assisted him during the custodial investigation.

Appellant Arnaldo contends that his written extra-judicial confession should be excluded as evidence, as it was procured in violation of his constitutional right to have an independent counsel of his own choice during custodial investigation. He claims that he was not given freedom to choose his counsel; that the agents of the PAOCTF did not ask him during the custodial investigation whether he had a lawyer of his own choice, and whether he could afford to hire a lawyer; and that the agents of the PAOCTF suggested the availability of Atty. Uminga to him.

An extra-judicial confession is a declaration made voluntarily and without compulsion or inducement by a person under custodial investigation, stating or acknowledging that he had committed or participated in the commission of a crime.[65] In order that an extra-judicial confession may be admitted in evidence, Article III, Section 12 of the 1987 Constitution mandates that the following safeguards be observed:[66]

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 shall be inadmissible in evidence against him.

Thus, we have held that an extra-judicial confession is admissible in evidence if the following requisites have been satisfied: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.[67]

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[65] *People v. Fabro*, 342 Phil. 708, 721 (1997).

[66] *Id.*

[67] *People v. Base*, 385 Phil. 803, 815 (2000).

The mantle of protection afforded by the above-quoted constitutional provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of the offense although not yet in custody.[68]

The right of an accused to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.[69] Such right contemplates effective communication which results in the subject understanding what is conveyed.[70]

The right to counsel is a fundamental right and is intended to preclude the slightest coercion as would lead the accused to admit something false.[71] The right to counsel attaches upon the start of the investigation, *i.e.*, when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused.[72] The lawyer called to be present during such investigation should be, as far as reasonably possible, the choice of the accused. If the lawyer is one furnished in behalf of accused, he should be competent and independent; that is, he must be willing to fully safeguard the constitutional rights of the accused.[73] A competent and independent counsel is logically required to be present and able to advice and assist his client from the time the latter answers the first question asked by the investigator until the signing of the confession. Moreover, the lawyer should ascertain that the confession was made voluntarily, and that the person under investigation fully

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[68] *Id.*

[69] *People v. Sayaboc*, 464 Phil. 824, 839 (2004).

[70] *People v. Agustin*, 310 Phil. 594, 612 (1995).

[71] *People v. Olermo*, 454 Phil. 147, 165 (2003).

[72] *Gamboa v. Cruz*, G.R. No. 56291, 27 June 1988, 162 SCRA 642, 653.

[73] *People v. Deniega*, G.R. No. 103499, 29 December 1995, 251 SCRA 626, 637.

understood the nature and the consequence of his extra-judicial confession *vis-a-vis* his constitutional rights.[74]

However, the foregoing rule is not intended to deter to the accused from confessing guilt if he voluntarily and intelligently so desires, but to protect him from admitting what he is being coerced to admit although untrue. To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him; but, rather, it was adopted in our Constitution to preclude the slightest coercion on the accused to admit something false. The counsel should never prevent an accused from freely and voluntarily telling the truth.[75]

We have gone over the records and found that the PAOCTF investigators have duly apprised appellants Arnaldo and Flores of their constitutional rights to remain silent and to have competent and independent counsel of their own choice during their respective custodial investigations.

The *Pasubali*[76] of appellants Arnaldo and Flores's written extra-judicial confessions clearly shows that before they made their respective confessions, the PAOCTF investigators had informed them that the interrogation about to be conducted on them referred to the kidnapping of the Yao family. Thereafter, the PAOCTF agents explained to them that they had a constitutional right to remain silent, and that anything they would say may be used against them in a court of law. They were also told that they were entitled to a counsel of their own choice, and that they would be provided with one if they had none. When asked if they had a lawyer of their own, appellant Arnaldo replied that he would be assisted by Atty. Uminga, while appellant Flores agreed to be represented by Atty. Rous. Thereafter, when asked if they understood their said rights, they replied in the affirmative. The appraisal of their constitutional rights was done

[74] *People v. Velarde*, 434 Phil. 102, 119 (2002).

[75] *People v. Base*, *supra* note 67.

[76] Records, pp. 312-318.

in the presence of their respective lawyers and in the *Tagalog* dialect, the language spoken and understood by them. Appellants Arnaldo and Flores and their respective counsels, Atty. Uminga and Atty. Rous, also signed and thumbmarked the extra-judicial confessions. Atty. Uminga and Atty. Rous attested to the veracity of the afore-cited facts in their respective court testimonies.[77] Indeed, the appraisal of appellants' constitutional rights was not merely perfunctory, because it appeared certain that appellants had understood and, in fact, exercised their fundamental rights after being informed thereof.

Records reflect that appellants Arnaldo and Reyes were likewise accorded their right to competent and independent counsel during their respective custodial investigations.

As regards appellant Arnaldo, Atty. Uminga testified that prior to the questioning of appellant Arnaldo about the incident, Atty. Uminga told the PAOCTF investigators and agents to give him and appellant Arnaldo space and privacy, so that they could freely converse. After the PAOCTF investigators and agents left them, he and appellant Arnaldo went to a cubicle where only the two of them were present. He interviewed appellant Arnaldo in the Tagalog language regarding the latter's personal circumstances and asked him why he was in the PAOCTF office and why he wanted a lawyer. Appellant Arnaldo replied that he wanted to make a confession about his participation in the kidnapping of the Yao family. Thereupon, he asked appellant Arnaldo if the latter would accept his assistance as his lawyer for purposes of his confession. Appellant Arnaldo agreed. He warned appellant Arnaldo that he might be sentenced to death if he confessed involvement in the incident. Appellant Arnaldo answered that he would face the consequences because he was bothered by his conscience. He inquired from appellant Arnaldo if he was harmed or intimidated into giving self-incriminating statements to the PAOCTF investigators. Appellant Arnaldo answered in the negative. He requested appellant Arnaldo to remove his shirt for him to check if there were torture marks on his body, but he found none. He also observed that appellant

[77] TSN, 25 September 2001 and 27 September 2001.

Arnaldo's appearance and movements were normal. His conference with appellant Arnaldo lasted for 15 minutes or more. Thereafter, he allowed the PAOCTF investigators to question appellant Arnaldo.[78]

Further, Atty. Uminga sat beside appellant Arnaldo during the inquiry and listened to the latter's entire confession. After the taking of appellant Arnaldo's confession, Atty. Uminga requested the PAOCTF investigators to give him a copy of appellant Arnaldo's confession. Upon obtaining such copy, he read it entirely and thereafter gave it to appellant Arnaldo. He instructed appellant Arnaldo to read and comprehend the same carefully. He told appellant Arnaldo to ask him for clarification and comment if he did not agree or understand any part of his written confession. Appellant Arnaldo read his entire written confession and handed it to him. Atty. Uminga asked him if he had objections to it. Appellant Arnaldo replied in the negative. He then reminded appellant Arnaldo that the latter could still change his mind, and that he was not being forced to sign. Appellant Arnaldo manifested that he would sign his written confession. Later, he and appellant Arnaldo affixed their signatures to the written confession.[79]

With respect to appellant Flores, Atty. Rous declared that before the PAOCTF investigators began questioning appellant, Atty. Rous interviewed him in Tagalog inside a room, where only the two of them were present. He asked appellant Flores about his personal circumstances. Appellant Flores replied that he was a suspect in the kidnapping of the Yao family, and he wanted to give a confession regarding his involvement in the said incident. He asked appellant Flores whether he would accept his assistance as his lawyer. Appellant Flores affirmed that he would. He asked appellant Flores why he wanted to give such confession. Appellant Flores answered that he was bothered by his conscience. Atty. Rous warned appellant Flores that his confession would be used against him in a court of law, and

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[78] TSN, 27 September 2001, pp. 5-9.

[79] *Id.* at 9-15.

that the death penalty might be imposed on him. Appellant Flores told him that he wanted to tell the truth and unload the burden on his mind. He requested appellant Flores to lift his shirt for the former to verify if there were torture marks or bruises on his body, but found none. Again, he cautioned appellant Flores about the serious consequences of his confession, but the latter maintained that he wanted to tell the truth. Thereafter, he permitted the PAOCTF investigators to question appellant Flores.[80]

Additionally, Atty. Rous stayed with appellant Flores while the latter was giving statements to the PAOCTF investigators. After the taking of appellant Flores' statements, he instructed appellant Flores to read and check his written confession. Appellant Flores read the same and made some minor corrections. He also read appellant Flores' written confession. Afterwards, he and appellant Flores signed the latter's written confession.[81]

It is true that it was the PAOCTF which contacted and suggested the availability of Atty. Uminga and Atty. Rous to appellants Arnaldo and Flores, respectively. Nonetheless, this does not automatically imply that their right to counsel was violated. What the Constitution requires is the presence of competent and independent counsel, one who will effectively undertake his client's defense without any intervening conflict of interest.[82] There was no conflict of interest with regard to the legal assistance rendered by Atty. Uminga and Atty. Rous. Both counsels had no interest adverse to appellants Arnaldo and Flores. Although Atty. Uminga testified that he was a former National Bureau of Investigation (NBI) agent, he, nevertheless, clarified that he had been separated therefrom since 1994[83] when he went into private practice. Atty. Uminga declared under oath that he was a private practitioner when he

[80] TSN, 25 September 2001, pp. 2-14.

[81] *Id.* at 14-19.

[82] *People v. Velarde*, *supra* note 74.

[83] TSN, 27 September 2001, p. 5.

assisted appellant Arnaldo during the custodial investigation.[84] It appears that Atty. Uminga was called by the PAOCTF to assist appellant Arnaldo, because Atty. Uminga's telephone number was listed on the directory of his former NBI officemates detailed at the PAOCTF. Atty. Rous, on the other hand, was a member of the Free Legal Aid Committee of the Integrated Bar of the Philippines, Quezon City at the time he rendered legal assistance to appellant Flores.[85] Part of Atty. Rous' duty as member of the said group was to render legal assistance to the indigents including suspects under custodial investigation. There was no evidence showing that Atty. Rous had organizational or personal links to the PAOCTF. In fact, he proceeded to the PAOCTF office to assist appellant Flores, because he happened to be the lawyer manning the office when the PAOCTF called.[86] In *People v. Fabro*,[87] we stated:

> The Constitution further requires that the counsel be independent; thus, he cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to that of the accused. Atty. Jungco does not fall under any of said enumeration. Nor is there any evidence that he had any interest adverse to that of the accused. The indelible fact is that he was president of the Zambales Chapter of the Integrated Bar of the Philippines, and not a lackey of the lawmen.

Further, as earlier stated, under Section 12(1), Article III of the 1987 Constitution, an accused is entitled to have competent and independent counsel preferably of his own choice. The phrase "*preferably of his own choice*" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense. Otherwise, the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct, the progress of the interrogation by simply selecting a lawyer who, for one reason or another,

[84] *Id.*

[85] TSN, 25 September 2001, pp. 4-5.

[86] *Id.* at 6.

[87] *Supra* note 65 at 726.

is not available to protect his interest.[88] While the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel — or where the preferred lawyer is not available — is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection to the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.[89] Appellants Arnaldo and Flores did not object to the appointment of Atty. Uminga and Atty. Rous as their lawyers, respectively, during their custodial investigation. Prior to their questioning, appellants Arnaldo and Flores conferred with Atty. Uminga and Atty. Rous. Appellant Arnaldo manifested that he would be assisted by Atty. Uminga, while appellant Flores agreed to be counseled by Atty. Rous. Atty. Uminga and Atty. Rous countersigned the written extra-judicial confessions of appellants Arnaldo and Flores, respectively. Hence, appellants Arnaldo and Flores are deemed to have engaged the services of Atty. Uminga and Atty. Rous, respectively.

Since the prosecution has sufficiently established that the respective extra-judicial confessions of appellant Arnaldo and appellant Flores were obtained in accordance with the constitutional guarantees, these confessions are admissible. They are evidence of a high order because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime, unless prompted by truth and conscience.[90] Consequently, the burden of proving that undue pressure or duress was used to procure the confessions rests on appellants Arnaldo and Flores.[91]

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[88] *People v. Mojello*, 468 Phil. 944, 954 (2004).

[89] *People v. Base, supra* note 67.

[90] *People v. Bagnate*, G.R. Nos. 133685-86, 20 May 2004, 428 SCRA 633, 651.

[91] *People v. Fabro, supra* note 65.

In the case at bar, appellants Arnaldo and Flores failed to discharge their burden of proving that they were forced or coerced to make their respective confessions. Other than their self-serving statements that they were maltreated by the PAOCTF officers/ agents, they did not present any plausible proof to substantiate their claims. They did not submit any medical report showing that their bodies were subjected to violence or torture. Neither did they file complaints against the persons who had allegedly beaten or forced them to execute their respective confessions despite several opportunities to do so. Appellants Arnaldo and Flores averred that they informed their family members/relatives of the alleged maltreatment, but the latter did not report such allegations to proper authorities. On the contrary, appellants Arnaldo and Flores declared in their respective confessions that they were not forced or harmed in giving their sworn statements, and that they were not promised or given any award in consideration of the same. Records also bear out that they were physically examined by doctors before they made their confessions.[92] Their physical examination reports certify that no external signs of physical injury or any form of trauma were noted during their examination.[93] In *People v. Pia*,[94] we held that the following factors indicate voluntariness of an extra-judicial confession: (1) where the accused failed to present credible evidence of compulsion or duress or violence on their persons; (2) where they failed to complain to the officers who administered the oaths; (3) where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; (4) where there appeared to be no marks of violence on their bodies; and (5) where they did not have themselves examined by a reputable physician to buttress their claim.

It should also be noted that the extra-judicial confessions of appellants Arnaldo and Flores are replete with details on the manner in which the kidnapping was committed, thereby ruling out the possibility that these were involuntarily made. Their

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[92] Records, p. 18.

[93] *Id.* at 19.

[94] 229 Phil. 577, 582 (1986).

extra-judicial confessions clearly state how appellants and their cohorts planned the kidnapping as well as the sequence of events before, during and after its occurrence. The voluntariness of a confession may be inferred from its language if, upon its face, the confession exhibits no suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could only be supplied by the accused.[95]

With respect to appellant Reyes's claim that the extra-judicial confessions of appellants Arnaldo and Flores cannot be used in evidence against him, we have ruled that although an extra-judicial confession is admissible only against the confessant, jurisprudence makes it admissible as corroborative evidence of other facts that tend to establish the guilt of his co-accused.[96] In *People v. Alvarez*,[97] we ruled that where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator, that confession is receivable as evidence against a co-accused. In *People v. Encipido*[98] we elucidated as follows:

> It is also to be noted that APPELLANTS' extrajudicial confessions were independently made without collusion, are identical with each other in their material respects and confirmatory of the other. They are, therefore, also admissible as circumstantial evidence against their co-accused implicated therein to show the probability of the latter's actual participation in the commission of the crime. They are also admissible as corroborative evidence against the others, it being clear from other facts and circumstances presented that persons other than the declarants themselves participated in the commission of the crime charged and proved. They are what is commonly known as interlocking confession and constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof.

Appellants Arnaldo and Flores stated in their respective confessions that appellant Reyes participated in their kidnapping

[95] *People v. Bagnate, supra* note 90.

[96] *Santos v. Sandiganbayan*, 400 Phil. 1175, 1206 (2000).

[97] G.R. No. 88451, 5 September 1991, 201 SCRA 364, 377.

[98] 230 Phil. 560, 574 (1986).

of the Yao family. These statements are, therefore, admissible as corroborative and circumstantial evidence to prove appellant Reyes' guilt.

Nevertheless, even without the extra-judicial confessions of appellants Arnaldo and Flores, evidence on record is sufficient to sustain a finding of culpability of appellant Reyes. As earlier found, Abagatnan, Robert and Yao positively identified appellant Reyes as one of their kidnappers. They specifically testified that during the incident, appellant Reyes (1) approached and pointed a gun at Yao San and dragged the latter inside the van; and (2) accompanied Abagatnan and Robert in going to the poultry farm to search for and remind Yao San about the ransom demanded. The RTC, Court of Appeals and this Court found such testimonies credible.

Appellants argue that their alibis cast reasonable doubt on their alleged guilt. Appellant Reyes avers that he could not have been one of those who kidnapped the Yao family on the night of 16 July 1999 at around 11:00 p.m., because he was sleeping with his family in their residence during such time and date. Likewise, appellant Flores asseverates that he could not have been present at the crime scene on such date and time, as he was already sleeping in his sister's house at Antipolo City. For his part, appellant Arnaldo asserts that he is a victim of a police frame-up. He alleges that he was an asset of the PAOCTF, but was later utilized as a drug pusher by the said agency. Upon failing to remit the proceeds of a *shabu* sale to the PAOCTF officers, he was beaten up and included as accused in the kidnapping of the Yao family.

Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. Alibi must be proved by the accused with clear and convincing evidence; otherwise it cannot prevail over the positive testimonies of credible witnesses who testify on affirmative matters. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it

was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[99]

The defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove. In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.[100]

It should be observed that the family residence/house of appellant Reyes where he claimed to have slept when the incident occurred is located within Brgy. Sto. Cristo, San Jose del Monte, Bulacan.[101] This is the same *barangay* where the Yao family's poultry farm is situated. Appellant Reyes, in fact, admitted that the poultry farm is near his residence.[102] There is a huge possibility that appellant Reyes slept for a while, woke up before 11:00 p.m., and thereafter proceeded to the Yao family's poultry farm to participate in the kidnapping of the family. The same is true with appellant Flores. Wilfredo, appellant Flores' nephew, testified that he and appellant went to bed and slept together in the house of appellant's sister in Antipolo City at about 8:00 p.m. of 16 July 1999.[103] It is greatly possible that Wifredo did not notice when appellant Flores woke up later at 9:00 p.m. and immediately proceeded to the Yao family's poultry farm to participate in the kidnapping of the family, arriving therein at about 11:00 p.m. It is a fact that a person coming from Antipolo City may reach San Jose del Monte, Bulacan in two hours *via* a motor vehicle, considering that there was no more heavy traffic at that late evening. Obviously, appellants Reyes and Flores failed to prove convincingly that it was physically impossible for them to be at the crime scene during the incident.

Appellant Flores submitted two pictures which, according to him, show that he worked as a construction worker from 12

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[99] *People v. Guevarra*, *supra* note 44.

[100] *People v. Montesa*, G.R. No. 181899, 27 November 2008.

[101] TSN, 6 March 2001, p. 3.

[102] *Id.* at 11-12.

[103] TSN, 22 May 2001, p. 6.

July 1999 up to 30 July 1999 while staying in his sister's house at Antipolo City. These pictures, however, do not clearly and convincingly support such claim, because (1) the pictures were undated; (2) the shots were taken from a far distance; and (3) the face of the man in the pictures which appellant Flores claims as his is blurred, unrecognizable and almost hidden, as such person is wearing a cap and is in a position where only the right and back portions of his head and body are visible.

Appellant Arnaldo also failed to prove with convincing evidence his defense of frame-up. Aside from his self-serving testimony that he was a former PAOCTF agent and that he was beaten and included as accused in the kidnapping of the Yao family by the PAOCTF agents because he failed to remit to the PAOCTF officers the proceeds of his sale of *shabu*, he did not present convincing proof to support said allegations. He submitted the calling card of Colonel Mancao, which appears to have been signed by the latter at the back portion, but there is nothing on it which indicates or verifies that appellant Arnaldo was indeed a former PAOCTF agent. He also submitted a prayer book containing his handwritten narration of torture he allegedly experienced at the hands of the PAOCTF agents, but this does not conclusively show that he was beaten by the PAOCTF agents. As we earlier found, appellant Arnaldo did not produce any medical records/certificates or file any complaint against the PAOCTF agents to bolster his claim of maltreatment.

It is true that the alibis of appellants Reyes and Flores and the defense of frame-up of appellant Arnaldo were corroborated on some points by the testimonies of some of their relatives/ friends. We have, however, held that alibi and the defense of frame-up become less plausible when they are corroborated only by relatives and friends because of perceived partiality.[104]

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[104] *People v. Guevarra, supra* note 44; *People v. Larranaga*, G.R. Nos. 138874-75, 21 July 2005, 463 SCRA 652, 662; *People v. Calumpang*, G.R. No. 158203, 31 March 2005, 454 SCRA 719, 736; *People v. Datingginoo*, G.R. No. 95539, 14 June 1993, 223 SCRA 331, 335.

Indeed, the positive and credible testimonies of Abagatnan, Robert and Yao San prevail over the alibis and defense of frame-up of appellants.[105]

We shall now determine the propriety of appellants' conviction for the special complex crime of kidnapping for ransom with homicide and the corresponding penalties imposed.

Under Article 267 of the Revised Penal Code, the crime of kidnapping is committed with the concurrence of the following elements: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.[106] All of the foregoing elements were duly establish by the testimonial and documentary evidences for the prosecution in the case at bar. *First*, appellants and their cohorts are private individuals. S*econd*, appellants and their cohorts kidnapped the Yao family by taking control of their van and detaining them in a secluded place. *Third*, the Yao family was taken against their will. And *fourth*, threats to kill were made and the kidnap victims include females.

Republic Act No. 7659 provides that the death penalty shall be imposed if any of the two qualifying circumstances is present in the commission of the kidnapping: (1) the motive of the kidnappers is to extort ransom for the release of the kidnap victims, although none of the circumstances mentioned under paragraph four of the elements of kidnapping were present. Ransom means money, price or consideration paid or demanded for the redemption of a captured person that would release him

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[105] *People v. Fajardo, Jr.*, *supra* note 59.

[106] *People v. Jatulan*, G.R. No. 171653, 24 April 2007, 522 SCRA 174, 183.

from captivity.[107] Whether or not the ransom is actually paid to or received by the perpetrators is of no moment.[108] It is sufficient that the kidnapping was committed for the purpose of exacting ransom;[109] and (2) the kidnap victims were killed or died as a consequence of the kidnapping or was raped, or subjected to torture or dehumanizing acts. Both of these qualifying circumstances are alleged in the information and proven during trial.

As testified to by Abagatnan, Robert and Yao San, appellants and their cohorts demanded the amount of ₱5 million for the release of Chua Ong Pong Sim and Raymond. In fact, Yao San went to the Usan dumpsite, Litex Road, Fairview, Quezon City, to hand over the ransom money to appellants and their cohorts, but the latter did not show up. It was also apparent that Chua Ong Ping Sim and Raymond were killed or died during their captivity. Yao San declared that appellants and their cohorts called up and told him that they would kill Chua Ong Ping Sim and Raymond who were still under their custody, because they heard the radio report that the incident was already known to the police. True to their threats, the corpses of Chua Ong Ping Sim and Raymond were later found dumped in La Mesa Dam. Their respective death certificates show that they died of asphyxia by strangulation.

Withal, the death penalty cannot be imposed on the appellants in view of the passage of Republic Act No. 9346 on 24 June 2006 prohibiting the imposition of death penalty in the Philippines. In accordance with Sections 2 and 3 thereof, the penalty that should be meted out to the appellants is *reclusion perpetua* without the possibility of parole. The Court of Appeals, therefore, acted accordingly in imposing the penalty of *reclusion perpetua* without the possibility of parole on each of the appellants.

The Court of Appeals was also correct in ordering appellants to jointly and severally pay civil indemnity and exemplary damages

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[107] *Id.* at 187.

[108] *Id.*

[109] *Id.*

to the Yao family. Nonetheless, their corresponding amounts should be modified. In *People v. Quiachon*,[110] we explained that even if the death penalty was not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 was still proper, as the said award was not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As earlier stated, both the qualifying circumstances of demand for ransom and the double killing or death of two of the kidnap victims were alleged in the information and proven during trial. Thus, for the twin deaths of Chua Ong Ping Sim and Raymond, their heirs (Yao San, Robert, Lenny, Matthew and Charlene) are entitled to a total amount of ₱150,000.00 as civil indemnity. Exemplary damages are imposed by way of example or correction for the public good.[111] In criminal offenses, exemplary damages may be recovered when the crime was committed with one or more aggravating circumstances, whether ordinary or qualifying.[112] Since both the qualifying circumstances of demand for ransom and the killing or death of two of the kidnap victims (Chua Ong Ping Sim and Raymond) while in captivity were alleged in the information and proven during trial, and in order to deter others from committing the same despicable acts, the award of exemplary damages is proper. The total amount of ₱100,000.00 as exemplary damages should be modified. In several cases,[113] we awarded an amount of ₱100,000.00 to each of the kidnap victims. As in this case, the amount of ₱100,000.00 as exemplary damages should be awarded each to Yao San, Robert, Lenny, Matthew, Charlene, Abagatnan and Ortea. This makes the total amount of exemplary damages add up to ₱700,000.00.

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[110] G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.

[111] New Civil Code, Article 2229.

[112] New Civil Code, Article 2223.

[113] *People v. Garalde,* G.R. No. 173055, 13 April 2007, 521 SCRA 327, 355; *People v. Martinez*, 469 Phil. 558, 578 (2004); *People v. Bisda*, 454 Phil. 194, 239 (2003).

The appellate court aptly held that the award of moral damages is warranted. Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, wounded feelings, moral shock and similar injury. Article 2219 of the same Code provides that moral damages may be recovered in cases of illegal detention. There is no doubt that each member of the Yao family suffered physical and/or psychological trauma because of the ordeal, especially because two of the family members were ruthlessly killed during their captivity. Pursuant to prevailing jurisprudence,[114] Yao San, Robert, Lenny, Matthew, Charlene, Abagatnan and Ortea should each receive the amount of ₱100,000.00 as moral damages. Per computation, the total amount of moral damages is ₱700,000.00 and not ₱500,000.00 as fixed by the RTC and the Court of Appeals.

Finally, we observed that the RTC and the Court of Appeals denominated the crime committed by appellants in the present case as the special complex crime of kidnapping for ransom with **double** homicide since two of the kidnap victims were killed or died during the kidnapping. The word "double" should be deleted therein. Regardless of the number of killings or deaths that occurred as a consequence of the kidnapping, the appropriate denomination of the crime should be the special complex crime of kidnapping for ransom with homicide.

WHEREFORE, the Decision, dated 14 August 2006, and Resolution, dated 18 October 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 02301 is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the total amount of civil indemnity is ₱150,000.00; (2) the total amount of exemplary damages is ₱700,000.00; (3) the total amount of moral damages is ₱700,000.00; and (4) the appropriate denomination of the crime committed by appellants is the special complex crime of kidnapping for ransom with homicide.

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[114] *People v. Garalde*, *id.*; *People v. Borromeo*, 380 Phil. 523, 531 (2000); *People v. Reyes,* 329 Phil. 1043, 1049 (1996).

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Corona,*[**] and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 179516. March 17, 2009]

HON. EXECUTIVE SECRETARY, COMMISSIONER OF CUSTOMS, and the DISTRICT COLLECTOR OF CUSTOMS OF THE PORT OF SUBIC, *petitioners, vs.* **NORTHEAST FREIGHT FORWARDERS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; EXPOUNDED. — Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the

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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.

[**] Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 24 September 2007.

legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."

2. **ID.; ID.; ID.; THE ALLOWANCE OR DISALLOWANCE OF A MOTION TO INTERVENE IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT; REQUIREMENTS THAT MUST CONCUR BEFORE INTERVENTION IS ALLOWED. —** To allow intervention, (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second. The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. The permissive term of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing intervention.

3. **ID.; ID.; ID.; THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN GRANTING THE MOTION FOR LEAVE TO INTERVENE AND ADMIT THE PETITION IN INTERVENTION OF RESPONDENT. —** Guided by the foregoing rules and jurisprudence, this Court agrees in the finding of the Court of Appeals that the RTC did not commit grave abuse of discretion in granting the Motion for Leave to Intervene and Admit the Petition in Intervention of respondent. According to Certificate of Registration No. 2002-0030 dated 12 December 2002 issued by Subic Bay Metropolitan Authority, respondent was authorized to engage in the following business:

ARTICLE 1. The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of international freight and cargo forwarding, break bulk agents, customs brokerage, warehousing, storing, import/export, packaging, crating of merchandise, goods, wares and commodities in SBF; **transshipment, assembling, trading, distributing, marketing at wholesale insofar as maybe permitted by law,** goods and general merchandise of every kind and description including but not limited to, food products or commodities, **all types of motor vehicles (excluding used motor vehicle in accordance [with] E.O. 156)** including but not limited to trucks, buses, light/heavy industrial/agricultural/construction machineries and equipment, parts and accessories, branch new motorcycles, accessories and parts, generators, and the like, bicycles and parts, watercrafts and equipment, electronics/computer/ telecommunications products, parts and accessories, textiles and other liberalized products as related thereto from Building No. 8474, Argonaut Highway, Subic Gate, Subic Bay Freeport Zone. Petitioners base their argument on the fact that respondent has no legal interest to intervene in Civil Case No. 179-0-05, as the latter's Certificate of Registration states that respondent is allowed to transship, assemble, trade, distribute, and market by wholesale "all types of motor vehicles (excluding used motor vehicles in accordance with Executive Order No. 156)." By virtue of this phrase, petitioners assert that respondent is prohibited from importing and trading used motor vehicles. And since Executive Order No. 418, being challenged in Civil Case No. 179-0-05, imposes additional specific duty on imported used motor vehicles, which respondent is not permitted to import or trade, then respondent had no legal interest to intervene in said case. The interpretation by petitioners of the Certificate of Registration of respondent is myopic. Petitioners completely ignore the fact that the phrase "excluding used motor vehicles" is qualified by the words "in accordance with Executive Order No. 156." Hence, the extent of the prohibition on trading used motor vehicles imposed upon respondent could only be determined in relation to Executive Order No. 156.

4. **ID.; ID.; ID.; BEING ENGAGED IN THE IMPORTATION AND TRADING OF USED MOTOR VEHICLES, RESPONDENT HAS LEGAL INTEREST, ACTUAL AND**

MATERIAL, IN THE SUBJECT MATTER OF CIVIL CASE NO. 179-0-05 WHICH IS THE LEGALITY AND CONSTITUTIONALITY OF EXECUTIVE ORDER NO. 418, WHICH IMPOSES AN ADDITIONAL SPECIFIC DUTY OF ₱500,000.00 ON THE IMPORTATION OF USED MOTOR VEHICLES. — When the constitutionality of Executive Order No. 156 was challenged by importers and traders of used cars in the Subic Bay Freeport Zone, the Court ruled in *Executive Secretary v. Southwing Heavy Industries, Inc.* Based on *Southwing,* Executive Order No. 156 can only prohibit importation of used motor vehicles into the customs territory or the Philippine territory outside the secured and fenced-in Subic Bay Freeport Zone. The prohibition, however, does not cover the importation of used motor vehicles into the Subic Bay Freeport Zone, for as long as they are stored, used, and traded within the Zone or exported to other countries. In other words, used motor vehicles may be imported into the Subic Bay Freeport Zone on the condition that they shall not be brought out of the Zone into the customs territory. The prohibition on trading used motor vehicles imposed upon respondent in its Certificate of Registration should be interpreted in the light of the foregoing. In accordance with Executive Order No. 156, respondent may import into and trade used motor vehicles within the Subic Bay Freeport Zone, but it cannot bring the same into customs territory. Being engaged in the importation and trading of used motor vehicles, even in this limited sense, respondent has legal interest, actual and material, in the subject matter of Civil Case No. 179-0-05: the legality and constitutionality of Executive Order No. 418, which imposes the additional specific duty of ₱500,000.00 on the importation of used motor vehicles.

5. **ID.; ID.; ID.; RESPONDENTS SHOULD BE ALLOWED TO INTERVENE IN CIVIL CASE NO. 179-0-05 SO IT COULD BE AFFORDED EQUAL FAVOR AS THE SUBIC ENTERPRISES BEFORE THE LAW AND, IF THE CONTRARY SO WARRANTS, SUFFER THE BRUNT OF THE SAME LAW. —** Significantly, the Certificate of Registration of respondent is similar to the Certificates of Registration of some of the Subic enterprises that originally filed the Petition in Civil Case No. 179-0-05. Evidently, respondent is similarly situated as the Subic enterprises that instituted Civil Case No. 179-0-05, and would be prejudiced in much the same way as the said Subic enterprises with the

implementation of Executive Order No. 418. Respondent should be allowed to intervene in Civil Case No. 179-0-05 so it could be accorded equal favor as the Subic enterprises before the law and, if the contrary so warrants, suffer equally the brunt of the same law. Since petitioners focus on the argument that respondent may not intervene in Civil Case No. 179-0-05 on the ground that it has no legal interest therein, petitioners do not allege or present any evidence that the adjudication of the rights of the original parties to Civil Case No. 179-0-05 shall be delayed or prejudiced with the intervention of respondent, or that the rights of respondent may be protected in a separate proceeding. Hence, the Court finds no basis for saying that the rights of the original parties to Civil Case No. 179-0-05 shall be delayed or prejudiced by the intervention of respondent. The intervention of respondent in Civil Case No. 179-0-05 even appears to this Court to be more beneficial and convenient for petitioners, because they would only have to defend the constitutionality of Executive Order No. 418 in one case and forum. Finally, given the closely related, if not exactly similar, causes of action of respondent and the Subic enterprises against petitioners, the admission of the Petition for Intervention of respondent in Civil Case No. 179-0-05 would avoid multiplicity of suits and clogging of the dockets of the courts. Therefore, like the Court of Appeals, this Court finds no improvident exercise of discretion by the RTC when it allowed the intervention of the respondent in Civil Case No. 179-0-05.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Vicky C. Fernandez for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] dated 6 February

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe, concurring; *rollo,* pp. 34-38.

2007 and Resolution[2] dated 4 September 2007 of the Court of Appeals in CA-G.R. SP No. 94646. The Court of Appeals, in its assailed Decision, affirmed the Order dated 22 March 2006[3] of the Regional Trial Court (RTC), Branch 74, Olongapo City, allowing the intervention of respondent Northeast Freight Forwarders, Inc. in Civil Case No. 179-0-05; and in its assailed Resolution, denied the Motion for Reconsideration of petitioners Executive Secretary, Commissioner of Customs, and District Collector of Customs of the Port of Subic.

The antecedent facts of the case are as follows:

On 4 April 2005, President Gloria Macapagal-Arroyo issued Executive Order No. 418, entitled, "Modifying the Tariff Nomenclature and Rates of Import Duty on Used Motor Vehicles under Section 104[4] of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464, as amended)." Executive Order No. 418 imposed additional specific duty in the amount of ₱500,000.00 for used motor vehicles imported into the country.

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[2] *Rollo,* p. 39.

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

[4] SEC. 104. Rates of Import Duty.

All Tariff Sections, Chapters, headings and subheadings and the rates of import duty under Section 104 of Presidential Decree No. 34 and all subsequent amendment issues under Executive Orders and Presidential Decrees are hereby adopted and form part of this Code.

There shall be levied, collected, and paid upon all imported articles the rates of duty indicated in the Section under this section except as otherwise specifically provided for in this Code: Provided, that, the maximum rate shall not exceed one hundred *per cent ad valorem.*

The rates of duty herein provided or subsequently fixed pursuant to Section four hundred one of this Code shall be subject to periodic investigation by the Tariff Commission and may be revised by the President upon recommendation of the National Economic and Development Authority.

The rates of duty herein provided shall apply to all products whether imported directly or indirectly of all foreign countries, which do not discriminate against Philippine export products. An additional 100% across-the-board duty shall be levied on the products of any foreign country which discriminates against Philippine export products.

Relevant provisions of Executive Order No. 418 are hereunder reproduced:

SECTION 1. The articles specifically listed in Annex "A" hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be subject to the rates of import duty indicated opposite each articles except for trucks, buses and special purpose vehicles.

SEC. 2. In addition to the regular rates of import duty, the articles specifically listed in Annex "A" hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be subject to additional specific duty of ₱500,000.00.

Following the effectivity of Executive Order No. 418, seven enterprises at the Subic Bay Freeport Zone (formerly Subic Naval Base area), namely: Unitrans Subic Ventures Corp., Akram Subic Bay Trading Corp., Chifil Subic International Trading, Lucky Dale Subic International, Inc., Phil-Pan Subic Ventures, Inc., Sunlift Subic International Corporation, and JJB Century International Ventures Corp. (collectively referred to as the Subic enterprises), filed before the RTC of Olongapo City a Petition for declaratory relief [5] challenging the constitutionality and legality of Executive Order No. 418 on the ground that it violates their property rights and impairs the obligation of contracts. The Petition, docketed as Civil Case No. 179-0-05, was raffled to Branch 74 of the RTC, Olongapo City.

On 12 August 2005, RTC Judge Ramon S. Caguioa issued an Order granting the application of the Subic enterprises for the issuance of a writ of preliminary injunction enjoining the implementation of Executive Order No. 418.[6]

To avail itself of the effects and benefits of the writ of preliminary injunction issued pursuant to the RTC Order dated 12 August 2005, respondent filed its Motion for Leave to Intervene and Admit Petition in Intervention in Civil Case No. 179-0-05.[7]

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[5] Records, Vol. I, pp. 1-3.

[6] *Rollo*, p. 51.

[7] *Id.* at 55.

Respondent claimed in its Motion that it would also be adversely affected by the implementation of Executive Order No. 418 since it is engaged in the importation or trade of all types of motor vehicles inside the Subic Bay Freeport Zone.

In its Opposition[8] to the Motion for Leave to Intervene, petitioners argued that respondent does not have any interest to assail Executive Order No. 418 because the latter's Certificate of Registration and Tax Exemption would disclose that it was prohibited from importing or trading used motor vehicles.

In an Order dated 22 March 2006, the RTC allowed the intervention of respondent in Civil Case No. 179-0-05 and admitted its Petition in Intervention, based on the following reasoning:

> Section 1, Rule 19 of the 1997 Rules of Civil Procedure outlines the qualifications of persons who may intervene. The would-be intervenor must show that it has a legal interest on the matter in litigation or in the success of either of the parties or an interest against both as it would be adversely affected by a distribution or disposition of the property in custody of the court or an officer thereof.
>
> After a careful evaluation of the allegations in the petition in intervention and the various documentary evidence presented, marked and offered (Exhibits "A to G", inclusive of all sub-markings) in support of its motion with attached petition in intervention, the Court finds and so holds that the [herein respondent] was able to show to the satisfaction of the Court that it has sufficient legal interest on the matter in litigation because it is in the business of importing motor vehicles inside the Subic Bay Freeport Zone as evidenced by its Certificate of Registration (Exhibit "A") and the accreditations issued by the Land Transportation Office as importer (Exhibit "B") and dealer (Exhibit "C"). As such, [respondent] stands to be substantially and adversely affected by the implementation of Executive Order No. 418 considering that the principal activity of the company was the importation of used motor vehicles that comprised 98% of its income (Exhibits "G, G-1 and G-2"). Furthermore, the intervention of the [respondent] will not unduly delay or prejudice the rights of the original parties and although its

[8] *Id.* at 75.

rights may be protected in a separate proceedings, it is better and more prudent to just include the [respondent] in the instant action if only to avoid multiplicity of suits. Finally, the Court takes judicial notice of the decision of the Supreme Court as reported in the different newspapers of February 23, 2006 where the High Court ruled that the ban under Executive Order 156 applies only to the customs territory outside the presently secured fenced-in former Subic Naval Base area known as Subic Bay Freeport Zone. Hence, the exclusion found in Article 1 of the Certificate of Registration of the would-be-intervenor that states "excluding used motor vehicles in EO 156," finds no more application for having been rendered moot and academic.

The RTC thus decreed:

WHEREFORE, foregoing considered, the subject motion is hereby GRANTED and the attached Petition in Intervention is admitted. The [herein respondent] Northeast Freight Forwarders Inc. is now considered a party-petitioner and [herein petitioners] are given fifteen (15) days from receipt hereof to file their Answer to the Petition in Intervention.[9]

Petitioners filed with the Court of Appeals a Petition for *Certiorari*, docketed as CA-G.R. SP No. 94646, averring that the RTC committed grave abuse of discretion in issuing its 22 March 2006 Order. In its Decision dated 6 February 2007, the Court of Appeals held:

The established rule is that the constitutionality of law can be challenged by one who will sustain a direct injury as a result of its enforcement. We find that said rule is established in so far as [herein respondent] is concerned. Executive Order No. 418 as noted above expressly imposes additional specific duty in the amount of ₱500,000.00 for each used motor vehicle imported into the country. A careful perusal of the certificate of registration and tax exemption, specifically Article 1 thereof, of [respondent], Northeast Freight Forwarders, Inc., would show that [respondent], Northeast Freight Forwarders, Inc., is authorized to import or export all types of motor vehicles, excluding used motor vehicle in accordance with E.O. No. 156. Thus, we find that herein private respondent is authorized

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

to import or trade used motor vehicle, but not those used motor vehicle in accordance with E.O. No. 156. What E.O. No. 156 prohibits is the importation of used motor vehicles into the Philippine territory outside the secured fenced-in former Subic Naval Base area. Used motor vehicles that come into the Philippine territory via the secured fenced-in former Subic Naval Base area may be stored, used or traded therein, or exported out of the Philippine territory. Thus, used motor vehicles imported and/or traded by [respondent] *via* the secured fenced-in former Subic Naval Base area would therefore be subjected to the additional specific duty in the amount of ₱500,000.00 imposed by E.O. No. 418. Undoubtedly, [respondent] has the legal interest to assail the validity of E.O. No. 418 because [respondent] would definitely suffer a direct injury from the implementation of E.O. No. 418. The intervention, therefore, of [respondent] in Civil Case No. 179-0-05 is proper.

Based on the foregoing consideration, therefore, the Court finds no grave abuse of discretion attending the RTC's ruling, the same being supported by the attendant circumstances and applicable law.

The *fallo* of the Decision of the appellate court reads:

WHEREFORE, premises considered, the instant petition for *certiorari* is hereby DISMISSED for lack of merit.[10]

The Motion for Reconsideration[11] of petitioners was denied[12] by the Court of Appeals in its Resolution dated 4 September 2007.

Hence, the instant Petition assigning the following lone error:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ORDER OF THE LOWER COURT BECAUSE RESPONDENT HAS NO LEGAL INTEREST IN THE MATTER IN LITIGATION.[13]

Section 1, Rule 19 of the 1997 Rules of Civil Procedure, as amended, provides for the parameters in which a person, not originally a party to the case, may intervene:

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[10] *Id.* at 38.

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

[12] *Id.* at 132.

[13] *Rollo*, p. 162.

SECTION 1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."[14]

To allow intervention, (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate

[14] *Gibson v. Revilla*, 180 Phil. 645, 657 (1979).

proceeding or not. Both requirements must concur, as the first is not more important than the second.[15]

The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. The permissive term of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing intervention.[16]

Guided by the foregoing rules and jurisprudence, this Court agrees in the finding of the Court of Appeals that the RTC did not commit grave abuse of discretion in granting the Motion for Leave to Intervene and Admit the Petition in Intervention of respondent.[17]

According to Certificate of Registration No. 2002-0030 dated 12 December 2002[18] issued by Subic Bay Metropolitan Authority, respondent was authorized to engage in the following business:

ARTICLE 1. The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of international freight and cargo forwarding, break bulk agents, customs brokerage, warehousing, storing, import/export, packaging, crating of merchandise, goods, wares and commodities in SBF; **transshipment, assembling, trading, distributing, marketing at wholesale insofar as maybe permitted by law**, goods and general merchandise of every kind and description including but not limited to, food products or commodities, **all types of motor vehicles (excluding used motor vehicle in accordance [with] E.O. 156)** including but not limited to trucks, buses, light/heavy industrial/ agricultural/construction machineries and equipment, parts and accessories, branch new motorcycles, accessories and parts, generators, and the like, bicycles and parts, watercrafts and equipment,

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[15] *Saw v. Court of Appeals*, G.R. No. 90580, 8 April 1991, 195 SCRA 740, 745.

[16] *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No.146540, 14 July 2004, 434 SCRA 456, 463.

[17] *Nieto, Jr. v. Court of Appeals,* G.R. No. 166984, 7 August 2007, 529 SCRA 285, 305.

[18] *Rollo*, p. 71.

electronics/computer/telecommunications products, parts and accessories, textiles and other liberalized products as related thereto from Building No. 8474, Argonaut Highway, Subic Gate, Subic Bay Freeport Zone. (Emphases supplied.)

Petitioners base their argument on the fact that respondent has no legal interest to intervene in Civil Case No. 179-0-05, as the latter's Certificate of Registration states that respondent is allowed to transship, assemble, trade, distribute, and market by wholesale "all types of motor vehicles (excluding used motor vehicles in accordance with Executive Order No. 156)." By virtue of this phrase, petitioners assert that respondent is prohibited from importing and trading used motor vehicles. And since Executive Order No. 418, being challenged in Civil Case No. 179-0-05, imposes additional specific duty on imported used motor vehicles, which respondent is not permitted to import or trade, then respondent had no legal interest to intervene in said case.

The interpretation by petitioners of the Certificate of Registration of respondent is myopic. Petitioners completely ignore the fact that the phrase "excluding used motor vehicles" is qualified by the words "in accordance with Executive Order No. 156." Hence, the extent of the prohibition on trading used motor vehicles imposed upon respondent could only be determined in relation to Executive Order No. 156.

Executive Order No. 156, entitled, "Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and Its Implementing Guidelines," was issued by President Gloria Macapagal-Arroyo on 12 December 2002. Under Article 2 thereof can be found the following controversial provisions:

3.1 The importation into the country, **inclusive of the Freeport**, of all types of used motor vehicles is prohibited, except for the following:

3.1.1 A vehicle that is owned and for the personal use of a returning resident or immigrant and covered by an authority to import issued under the No-dollar Importation Program. Such vehicles cannot be resold for at least three (3) years;

3.1.2 A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs.

3.1.3 Trucks excluding pick-up trucks;

1. with GVW of 2.5-6.0 tons covered by an authority to import issued by the DTI.
2. with GVW above 6.0 tons.

3.1.4 Buses:

1. with GVW of 6-12 tons covered by an authority to import issued by DTI;
2. with GVW above 12 tons.

3.1.5 Special purpose vehicles:

1. fire trucks
2. ambulances
3. funeral hearses/coaches
4. crane lorries
5. tractor heads or truck tractors
6. boom trucks
7. tanker trucks
8. tank lorries with high pressure spray gun
9. reefers or refrigerated trucks
10. mobile drilling derricks
11. transit/concrete mixers
12. mobile radiological units
13. wreckers or tow trucks
14. concrete pump trucks
15. aerial/bucket flat-form trucks
16. street sweepers
17. vacuum trucks
18. garbage compactors
19. self loader trucks
20. man lift trucks
21. lighting trucks
22. trucks mounted with special purpose equipment
23. all other types of vehicles designed for a specific use. (Emphasis ours.)

When the constitutionality of Executive Order No. 156 was challenged by importers and traders of used cars in the Subic

Bay Freeport Zone, the Court ruled in *Executive Secretary v. Southwing Heavy Industries, Inc.*[19] in this wise:

> In sum, the Court finds that **Article 2, Section 3.1 of Executive Order No. 156 is void insofar as it is made applicable to the presently secured fenced-in former Subic Naval Base area** as stated in Section 1.1 of Executive Order No. 97-A. Pursuant to the separability clause of Executive Order No. 156, Section 3.1 is declared valid insofar as it applies to the customs territory or the Philippine territory outside the presently secured fenced-in former Subic Naval Base area as stated in Section 1.1 of Executive Order No. 97-A. **Hence, used motor vehicles that come into the Philippine territory via the secured fenced-in former Subic Naval Base area may be stored, used or traded therein, or exported out of the Philippine territory, but they cannot be imported into the Philippine territory outside of the secured fenced-in former Subic Naval Base area.** (Emphases supplied.)

Based on *Southwing,* Executive Order No. 156 can only prohibit importation of used motor vehicles into the customs territory or the Philippine territory outside the secured and fenced-in Subic Bay Freeport Zone. The prohibition, however, does not cover the importation of used motor vehicles into the Subic Bay Freeport Zone, for as long as they are stored, used, and traded within the Zone or exported to other countries. In other words, used motor vehicles may be imported into the Subic Bay Freeport Zone on the condition that they shall not be brought out of the Zone into the customs territory.[20]

The prohibition on trading used motor vehicles imposed upon respondent in its Certificate of Registration should be interpreted in the light of the foregoing. In accordance with Executive Order No. 156, respondent may import into and trade used motor vehicles within the Subic Bay Freeport Zone, but it cannot bring the same into customs territory. Being engaged in the importation

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[19] G.R. No.164171, 20 February 2006, 482 SCRA 673, 703.

[20] Republic Act No. 7227 or the Bases Conversion and Development Act defines Customs Territory as "that portion of the Philippines outside the Subic Bay Freeport where the Tariff and Customs Code of the Philippines and other national tariff and customs law are in force and effect."

and trading of used motor vehicles, even in this limited sense, respondent has legal interest, actual and material, in the subject matter of Civil Case No. 179-0-05: the legality and constitutionality of Executive Order No. 418, which imposes the additional specific duty of ₱500,000.00 on the importation of used motor vehicles.

Significantly, the Certificate of Registration of respondent is similar to the Certificates of Registration of some of the Subic enterprises that originally filed the Petition in Civil Case No. 179-0-05.

The Certificate of Registration of Unitrans Subic Ventures Corp. dated 18 June 2003 reads:

ARTICLE I The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of import/export, marketing, selling, warehousing, transshipment and trading of general merchandise including industrial, heavy equipment, agricultural machinery, all terrain vehicles (ATV), light/heavy trucks, automotive spare parts, brand new motorcycles and other liberalized items, **excluding used cars unless those for use within the Freeport and those for transshipment, subject to all applicable laws, executive orders, and such** rules and regulations as may be imposed by the Authority from Vacant Lot (beside Enron), Causeway Extension, Subic Bay Freeport Zone.[21] (Emphasis ours.)

The Certificate of Registration dated 22 October 2004 of JJB Century International Ventures Corporation also provides:

ARTICLE I The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of trading of trucks, construction/heavy equipment and all types of motor vehicles **except second hand motor vehicles in accordance with E.O. 156**; importation/exportation and warehousing of general merchandise including but not limited to food products or commodities, garment and textiles, electronic and computer products, plastic products, metal/steel products and scraps, motor vehicle parts and accessories, agricultural products and agricultural inputs, fisheries

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[21] CA *rollo,* p. 71.

products and its inputs, industrial machineries and its inputs, marine equipments and its inputs and petroleum products and its inputs, shipper consolidation door to door operation and forwarding from Building No. 54-A, Innovative Street, SBIP Phase I, Subic Bay Freeport Zone.[22] (Emphasis ours.)

Evidently, respondent is similarly situated as the Subic enterprises that instituted Civil Case No. 179-0-05, and would be prejudiced in much the same way as the said Subic enterprises with the implementation of Executive Order No. 418. Respondent should be allowed to intervene in Civil Case No. 179-0-05 so it could be accorded equal favor as the Subic enterprises before the law and, if the contrary so warrants, suffer equally the brunt of the same law.

Since petitioners focus on the argument that respondent may not intervene in Civil Case No. 179-0-05 on the ground that it has no legal interest therein, petitioners do not allege or present any evidence that the adjudication of the rights of the original parties to Civil Case No. 179-0-05 shall be delayed or prejudiced with the intervention of respondent, or that the rights of respondent may be protected in a separate proceeding. Hence, the Court finds no basis for saying that the rights of the original parties to Civil Case No. 179-0-05 shall be delayed or prejudiced by the intervention of respondent. The intervention of respondent in Civil Case No. 179-0-05 even appears to this Court to be more beneficial and convenient for petitioners, because they would only have to defend the constitutionality of Executive Order No. 418 in one case and forum. Finally, given the closely related, if not exactly similar, causes of action of respondent and the Subic enterprises against petitioners, the admission of the Petition for Intervention of respondent in Civil Case No. 179-0-05 would avoid multiplicity of suits and clogging of the dockets of the courts.[23]

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[22] *Id.* at 77.

[23] *Spouses De Vera v. Hon. Agloro*, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 218.

Therefore, like the Court of Appeals, this Court finds no improvident exercise of discretion by the RTC when it allowed the intervention of the respondent in Civil Case No. 179-0-05.

WHEREFORE, premises considered, the Petition is *DENIED* for lack of merit, and the Decision dated 6 February 2007 and Resolution dated 4 September 2007 of the Court of Appeals in CA-G.R. SP No. 94646 are *AFFIRMED*. No costs.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Carpio,*[**] and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 179999. March 17, 2009]

ANSON TRADE CENTER, INC., ANSON EMPORIUM CORPORATION and TEDDY KENG SE CHEN, *petitioners, vs.* **PACIFIC BANKING CORPORATION, Represented by Its Liquidator, the President of the Philippine Deposit Insurance Corporation,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRE-TRIAL; NON-APPEARANCE OF A PARTY MAY BE EXCUSED

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[*] Associate Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura, per raffle dated 19 November 2007.

[**] 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.

IF A VALID CAUSE IS SHOWN THEREFOR; CASE AT BAR. — Pre-trial, by definition, is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. It is an answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it thus paves the way for a less cluttered trial and resolution of the case. Pertinent provisions of Rule 18 of the Revised Rules of Court on Pre-Trial read: SEC. 4. *Appearance of parties*. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. SEC. 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. Pursuant to the afore-quoted provisions, non-appearance by the plaintiff in the pre-trial shall be cause for dismissal of the action. However, every rule is not without an exception. In fact, Section 4, Rule 18 of the Revised Rules of Court explicitly provides that the non-appearance of a party may be excused if a valid cause is shown therefor. We find such a valid cause extant in the case at bar. There is no question that herein respondent received notice of the pre-trial conference scheduled on 10 October 2005, but it failed to attend the same. Such non-appearance notwithstanding, the Court Of Appeals annulled the 10 October 2005 Order of the RTC dismissing Civil Case No. 01-102198 after finding that respondent did not intentionally snub the pre-trial conference. There is no reason for us to disturb such finding.

2. **ID.; ID.; ID.; RESPONDENT WAS NOT REMISS IN ITS DUTIES TO PROSECUTE ITS CASE AND ITS ACTUATIONS REVEAL ITS INTEREST IN PROSECUTING THE CASE, INSTEAD OF ANY INTENTION TO DELAY THE**

PROCEEDINGS. — The Monetary Board ordered the closure of respondent by reason of insolvency on 5 July 1985, and it has since been represented by its liquidator PDIC in all its undertakings. Still in the course of the liquidation of respondent, its liquidator PDIC was reorganized in the late 2004 to early 2005. The four departments in the PDIC handling litigation were reduced to one, with the new Litigation Department having only four in-house counsels who assumed thousands of cases arising from the closure by the Monetary Board of more than 400 banks. It is understandable how the notice for the pre-trial conference in Civil Case No. 01-102198 scheduled on 10 October 2005 could be lost or overlooked, as the PDIC was still coping and adjusting with the changes resulting from its reorganization. It is important to note that the respondent was not remiss in its duties to prosecute its case. Except for the lone instance of the pre-trial conference on 10 October 2005, respondent promptly and religiously attended the hearings set by the RTC. In fact, it appears on the records that a pre-trial conference in Civil Case No. 01-102198 was first held on 4 April 2005, during which respondent was present. When the RTC did not immediately act on the Motions to Dismiss of petitioners, it was respondent which filed two Motions to Resolve. The actuations of respondent reveal its interest in prosecuting the case, instead of any intention to delay the proceedings.

3. ID.; ID.; ID.; IF CIVIL CASE NO. 01-102198 IS ALLOWED TO PROCEED TO TRIAL, IT WILL NOT CLOG THE DOCKETS OF THE TRIAL COURT OR RUN COUNTER TO THE PURPOSES FOR HOLDING A PRE-TRIAL; IN THE ABSENCE OF CLEAR LACK OF MERIT OR INTENTION TO DELAY, JUSTICE IS BETTER SERVED BY A BRIEF CONTINUANCE, TRIAL ON THE MERITS, AND FINAL DISPOSITION OF CASES BEFORE THE COURT. — In *Bank of the Philippine Islands v. Court of Appeals*, we ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, courts should decide to dispense rather than wield their authority to dismiss. If Civil Case No. 01-102198 is allowed to proceed to trial, it will not clog the dockets of the RTC or run counter to the purposes for holding a pre- trial. Inconsiderate dismissals, even without prejudice, do not constitute a panacea or a solution to the

congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of cases before the court. Moreover, respondent is already insolvent and undergoing liquidation. It instituted Civil Case No. 01-102198 precisely to recover from petitioners the unpaid loans. Even if the dismissal of Civil Case No. 01-102198 by the RTC was without prejudice, the re-filing of the case would be injurious to respondent. Respondent already paid ₱344,878.23 as docket fees for Civil Case No. 01-102198 and with the dismissal of said case, the amount would be forfeited. Respondent would have to pay docket fees once more when it re-files its Complaint, a substantial amount considering that respondent is already financially shaped. As the Court of Appeals noted, for respondent to again pay docket fees for the re-filing of its Complaint against petitioners would truly be detrimental to the creditors of respondent.

4. **ID.; ID.; ID.; RULES OF PROCEDURE MAY NOT BE MISUSED AND ABUSED AS INSTRUMENTS FOR DENIAL OF SUBSTANTIAL JUSTICE. —** The Court of Appeals did not err in pronouncing that the RTC committed grave abuse of discretion when it dismissed Civil Case No. 01-102198 for the failure of respondent to attend the pre-trial conference on 10 October 2005. As the appellate court so astutely stated: In refusing to resuscitate Civil Case No. 01-102 198 despite a showing that there was an excusable ground for the [herein respondent]'s absence during the pre-trial, the respondent judge manifested a dire fixation towards procedural perfection. Indeed, the extraordinary writ of *certiorari* would lie when a trier's obsession with the stringent tenets of technicality would occasion an injustice against a party litigant. Litigation is not a game of technicality, in which one more deeply schooled and skilled in the subtle art of movement and position entraps and destroys the other. It is rather a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfection of forms and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it

deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. As we have stressed emphatically on previous occasions, the rules of procedure may not be misused and abused as instruments for the denial of substantial justice. Here is another demonstrative instance of how some members of the bar, availing themselves of their proficiency in invoking the letter of the rules without regard to their real spirit and intent, succeed in inducing courts to act contrary to the dictates of justice and equity, and, in some instances, to wittingly or unwittingly abet unfair advantage by ironically camouflaging their actuations as earnest efforts to satisfy the public clamor for speedy disposition of litigations, forgetting all the while that the plain injunction of Section 2 of Rule 1 is that the "rules shall be liberally construed in order to promote their object and to assist the parties in obtaining" not only "speedy" but more imperatively, "just . . . and inexpensive determination of every action and proceeding."

APPEARANCES OF COUNSEL

E.G. Ferry Law Offices for petitioners.
Office of the General Counsel (PDIC) for respondent.

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 Revised Rules of Court filed by petitioners Anson Trade Center, Inc., (ATCI), Anson Emporium Corporation (AEC), and Teddy Keng Se Chen (Chen), seeking the reversal and the setting aside of the Decision[2] dated 31 May 2007 and Resolution[3] dated 16 October 2007 of the Court of Appeals in CA-G.R. SP

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[1] *Rollo*, pp. 25-33.

[2] Penned by Associate Justice Bienvenido L. Reyes with Associates Justices Aurora Santiago-Lagman and Apolinario D. Bruselas, Jr., concurring; *rollo,* pp. 25-32.

[3] *Rollo*, pp. 34-36.

No. 93734. In its assailed Decision, the Court of Appeals annulled the Order[4] dated 10 October 2005 of the Regional Trial Court (RTC) of Manila, Branch 52, dismissing Civil Case No. 01-102198 for failure of respondent Pacific Banking Corporation (PBC)[5] to appear during the pre-trial. In its assailed Resolution, the Court of Appeals refused to reconsider its earlier Decision.

The following are the undisputed facts:

Petitioners ATCI and AEC are corporations engaged in retail and/or wholesale general merchandising.[6] Petitioner Chen is the Vice Head of said commercial entities. Respondent is a closed banking institution undergoing liquidation by the Philippine Deposit Insurance Corporation (PDIC).

On different dates, petitioner ATCI obtained several loans[7] from respondent, amounting to ₱4,350,000.00. On 26 October 1984, petitioner AEC also received the amount of ₱1,000,000.00 as a loan from respondent. As security for the said loan obligations, petitioner Chen, with the late Keng Giok,[8] executed, on behalf of petitioners ATCI and AEC, two Continuing Suretyship Agreements on 16 September 1981 and 1 March 1982. The Continuing Suretyship Agreements provided that, as security for any and all the indebtedness or obligation of petitioners ATCI and AEC, the respondent had the right to retain a lien upon any and all moneys or other properties and/or the proceeds thereof in the name or for the account or credit of petitioners ATCI and AEC deposited or left with respondent. Subsequently,

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[4] Penned by Hon. Antonio Rosales, CA *rollo,* p. 19-A.

[5] Represented by its Liquidator, President of the PDIC.

[6] The pleadings did not allege the relationship between the two corporations. What was alleged was the fact that the two corporations had the same President and Vice Head.

[7] These loans were obtained by petitioner ATCI on 30 August 1982, 5 July 1983, 2 November 1983, and 26 October 1984, in the amounts of ₱2,000,000.00, ₱1,000,000.00, ₱350,000.00, and ₱1,000,000.00, respectively, exclusive of interest and charges.

[8] Keng Giok was the President of ATCI and AEC.

petitioners defaulted in the payment of their loans. Respondent made several demands for payment upon petitioners, to no avail.

This prompted respondent to file before the RTC a collection case against petitioners, docketed as Civil Case No. 01-102198.

On 14 January 2002, petitioner Chen, instead of filing an Answer to the Complaint of respondent in Civil Case No. 01-102198, filed a Motion to Dismiss. Petitioners ATCI and AEC, together with the Estate of Keng Giok, also jointly filed a Motion to Dismiss. Respondent filed its Comment/Opposition to the Motions to Dismiss Civil Case No. 01-102198, to which petitioners Chen, ATCI, and AEC, with the Estate of Keng Giok, filed their Replies. Due to the inaction of the RTC on the Motions to Dismiss, respondent filed Motions to Resolve on 14 January 2003 and on 29 October 2003. In an Order dated 4 November 2004, the RTC denied the Motions to Dismiss but granted the prayer to drop Keng Giok as defendant since he was long dead prior to the institution of Civil Case No. 01-102198.

After petitioners filed their joint Answer to the Complaint, a pre-trial conference was set by the RTC on 4 April 2005. All the parties were present at the scheduled pre-trial where the RTC first explored the possibility of an amicable settlement among the parties by referring the case to the Philippine Mediation Center for arbitration. The arbitration proceedings were, however, unsuccessful. Thus, the case was referred back to the RTC for a full-blown trial.

In order to simplify the issues to be threshed out in the trial, another pre-trial conference was scheduled by the RTC on 10 October 2005, which respondent failed to attend.

Petitioners moved for the dismissal of Civil Case No. 01-102198 on the ground of the non-appearance of respondent at the pre-trial of 10 October 2005, which was granted, without prejudice, by the RTC in an Order issued on even date. Respondent filed with the RTC a Motion for Reconsideration of the court's order of dismissal, in which respondent prayed for the relaxation of the rule on non-appearance in the pre-trial, citing excusable negligence on its part and in the interest of justice and equity.

The RTC denied the Motion for Reconsideration of respondent in another Order dated 17 January 2006.

The above precipitated respondent to file with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, which was docketed as CA-G.R. SP No. 93734. Respondent prayed for the reversal of the RTC Orders dated 10 October 2005 and 17 January 2006, arguing that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed Civil Case No. 01-102198 due to the non-appearance of respondent at the pre-trial held on 10 October 2005. Respondent asserted that its absence was not deliberate or intentional. Its liquidator, PDIC, was undergoing a reorganization resulting in, among other things, the trimming down of the departments handling litigation work from four to one; and the lack of manpower to handle more than 400 banks ordered closed by the Monetary Board. Respondent pleaded for the relaxation of the rules to avert irreparable damage to it.

The Court of Appeals rendered a Decision on 31 May 2007, granting the Petition of respondent and reversing the assailed RTC Orders which dismissed Civil Case No. 01-102198. According to the appellate court, the RTC lost sight of the fact that even the Rules of Court mandate a liberal construction of the rules and the pleadings in order to effect substantial justice; and that overriding all the foregoing technical considerations is the trend in the rulings of the court to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, freed from the constraints of technicalities.[9]

In a Resolution dated 16 October 2007, the Court of Appeals refused to reconsider its earlier Decision.

Petitioners now come before us *via* this instant Petition for Review on *Certiorari* raising the following issues:

I

WHETHER OR NOT THE REVERSAL OF THE TRIAL COURT'S ORDER DATED OCTOBER 10, 2005 DISMISSING [herein

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[9] *Rollo*, pp. 29-30.

respondent]'s COMPLAINT FOR ITS FAILURE TO APPEAR AT THE PRE-TRIAL WAS IN ACCORDANCE WITH THE 1997 RULES ON CIVIL PROCEDURE AND APPLICABLE JURISPRUDENCE.

II

WHETHER OR NOT THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING RESPONDENT'S COMPLAINT BECAUSE OF ITS NON-APPEARANCE AT PRE-TRIAL.[10]

At the core of this controversy is a question of procedure.

The petitioners, on one hand, argue that the appearance of the parties during pre-trial is mandatory, and the absence of respondent therefrom constitutes a serious procedural blunder that merits the dismissal of its case.

On the other hand, respondent claims that the Rules must be relaxed if it will cause irreparable damage to a party-litigant and to promote the ends of justice. Respondent urges us to brush aside technicalities and to excuse its non-appearance during the pre-trial conference.

We find the Petition unmeritorious.

Pre-trial, by definition, is a procedural device intended to clarify and limit the basic issues raised by the parties[11] and to take the trial of cases out of the realm of surprise and maneuvering.[12] It is an answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century,[13] it thus paves the way for a less cluttered trial and resolution of the case.[14]

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[10] *Id.* at 12.

[11] *Interlining Corporation v. Philippine Trust Company*, 428 Phil. 584, 588 (2002).

[12] *Permanent Concrete Products, Inc. v. Teodoro*, 135 Phil. 364, 367 (1968).

[13] *Tiu v. Middleton*, 369 Phil. 829, 835 (1999).

[14] *Id.*

Pertinent provisions of Rule 18 of the Revised Rules of Court on Pre-Trial read:

> SEC. 4. *Appearance of parties*. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.
>
> SEC. 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

Pursuant to the afore-quoted provisions, non-appearance by the plaintiff in the pre-trial shall be cause for dismissal of the action. However, every rule is not without an exception. In fact, Section 4, Rule 18 of the Revised Rules of Court explicitly provides that the non-appearance of a party may be excused if a valid cause is shown therefor. We find such a valid cause extant in the case at bar.

There is no question that herein respondent received notice of the pre-trial conference scheduled on 10 October 2005, but it failed to attend the same. Such non-appearance notwithstanding, the Court Of Appeals annulled the 10 October 2005 Order of the RTC dismissing Civil Case No. 01-102198 after finding that respondent did not intentionally snub the pre-trial conference. There is no reason for us to disturb such finding.

The Monetary Board ordered the closure of respondent by reason of insolvency on 5 July 1985, and it has since been represented by its liquidator PDIC in all its undertakings. Still in the course of the liquidation of respondent, its liquidator PDIC was reorganized in the late 2004 to early 2005. The four departments in the PDIC handling litigation were reduced to one, with the new Litigation Department having only four in-

house counsels who assumed thousands of cases arising from the closure by the Monetary Board of more than 400 banks. It is understandable how the notice for the pre-trial conference in Civil Case No. 01-102198 scheduled on 10 October 2005 could be lost or overlooked, as the PDIC was still coping and adjusting with the changes resulting from its reorganization.

It is important to note that the respondent was not remiss in its duties to prosecute its case. Except for the lone instance of the pre-trial conference on 10 October 2005, respondent promptly and religiously attended the hearings set by the RTC. In fact, it appears on the records that a pre-trial conference in Civil Case No. 01-102198 was first held on 4 April 2005, during which respondent was present. When the RTC did not immediately act on the Motions to Dismiss of petitioners, it was respondent which filed two Motions to Resolve. The actuations of respondent reveal its interest in prosecuting the case, instead of any intention to delay the proceedings.

In *Bank of the Philippine Islands v. Court of Appeals*,[15] we ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, courts should decide to dispense rather than wield their authority to dismiss.

If Civil Case No. 01-102198 is allowed to proceed to trial, it will not clog the dockets of the RTC or run counter to the purposes for holding a pre- trial. Inconsiderate dismissals, even without prejudice, do not constitute a panacea or a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of cases before the court.[16]

Moreover, respondent is already insolvent and undergoing liquidation. It instituted Civil Case No. 01-102198 precisely to

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[15] 362 Phil. 362, 369 (1999).

[16] *Macasa v. Herrera*, 101 Phil. 44, (1957).

recover from petitioners the unpaid loans. Even if the dismissal of Civil Case No. 01-102198 by the RTC was without prejudice, the re-filing of the case would be injurious to respondent. Respondent already paid ₱344,878.23 as docket fees for Civil Case No. 01-102198 and with the dismissal of said case, the amount would be forfeited. Respondent would have to pay docket fees once more when it re-files its Complaint, a substantial amount considering that respondent is already financially shaped. As the Court of Appeals noted, for respondent to again pay docket fees for the re-filing of its Complaint against petitioners would truly be detrimental to the creditors of respondent.

Given the foregoing, the Court of Appeals did not err in pronouncing that the RTC committed grave abuse of discretion when it dismissed Civil Case No. 01-102198 for the failure of respondent to attend the pre-trial conference on 10 October 2005. As the appellate court so astutely stated:

> In refusing to resuscitate Civil Case No. 01-102 198 despite a showing that there was an excusable ground for the [herein respondent]'s absence during the pre-trial, the respondent judge manifested a dire fixation towards procedural perfection. Indeed, the extraordinary writ of *certiorari* would lie when a trier's obsession with the stringent tenets of technicality would occasion an injustice against a party litigant.

Litigation is not a game of technicality, in which one more deeply schooled and skilled in the subtle art of movement and position entraps and destroys the other. It is rather a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfection of forms and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts.[17]

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[17] *Alonso v. Villamor,* 16 Phil. 315, 322 (1910).

As we have stressed emphatically on previous occasions, the rules of procedure may not be misused and abused as instruments for the denial of substantial justice. Here is another demonstrative instance of how some members of the bar, availing themselves of their proficiency in invoking the letter of the rules without regard to their real spirit and intent, succeed in inducing courts to act contrary to the dictates of justice and equity, and, in some instances, to wittingly or unwittingly abet unfair advantage by ironically camouflaging their actuations as earnest efforts to satisfy the public clamor for speedy disposition of litigations, forgetting all the while that the plain injunction of Section 2 of Rule 1 is that the "rules shall be liberally construed in order to promote their object and to assist the parties in obtaining" not only "speedy" but more imperatively, "just . . . and inexpensive determination of every action and proceeding."[18]

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby *DENIED*. The Decision dated 31 May 2007 and Resolution dated 16 October 2007 of the Court of Appeals are *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Nachura,* and *Peralta, JJ.,* concur.

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[18] *Tanhu v. Ramolete*, 160 Phil. 1101, 1113-1114 (1975).

[*] 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.

SECOND DIVISION

[G.R. No. 181494. March 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MONALYN CERVANTES *y* SOLAR,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IF THE INCULPATORY TESTIMONY IS CAPABLE OF TWO OR MORE EXPLANATIONS, ONE CONSISTENT WITH THE INNOCENCE OF THE ACCUSED PERSONS AND THE OTHER CONSISTENT WITH THEIR GUILT, THEN EVIDENCE DOES NOT FULFILL THE TEST OF MORAL CERTAINTY AND IS NOT SUFFICIENT TO SUPPORT A CONVICTION. —** Before us then is a situation where two persons — **accused-appellant,** a laundry woman; and **Del Monte,** a car park boy, in the company of the ostensible pusher, Arguson, during the actual buy bust — are being indicted, on the basis alone of the testimony of a witness, with confederating with each and several others to sell *shabu*. The overt acts performed by accused-appellant, as indicia of conspiracy, consisted of allegedly verifying whether the poseur-buyer still had the purchase money, disappering from the scene and then coming back with the principal player. On the other hand, Del Monte came accompanying Arguson carrying the drug-containing plastic bag no less. As between the two acts performed, carrying the bag would relatively have the more serious implication being in itself a punishable act of possession of regulated drugs. Both offered the defenses of denial and instigation, each testifying that they just happened to be near or passing by Mc Donald's at about 4:30 in the afternoon of April 4, 2000 when they were apprehended. But the trial court, in its observation that "it could have been possible that [Del Monte] was merely asked by x x x Arguson to carry the bag," extended to Del Monte the "benefit of the doubt," a benevolence denied to accused-appellant without so much of an acceptable explanation. Any reasonable mind might ask: Why the contrasting treatment? Why consider PO3 Ramos as a highly credible eyewitness as against accused-appellant, but an unreliable one as against Del Monte, when both accused are complete strangers

to the policeman? To paraphrase an unyielding rule, if the inculpatory testimony is capable of two or more explanations, one consistent with the innocence of the accused persons and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972, AS AMENDED (RA 6425); SALE OR DISTRIBUTION OF REGULATED DRUG; IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUG BE ESTABLISHED WITH MORAL CERTAINTY. —** But even if we were to cast aside the foregoing equipoise rule, a reversal of the appealed decision is indicated on another but more compelling ground. We refer to the postulate that the prosecution, having failed to positively and convincingly prove the identity of the seized regulated substance, is deemed to have also failed to prove beyond reasonable doubt accused-appellant's guilt. We shall explain. In every prosecution for illegal sale of dangerous drug, what is crucial is the identity of the buyer and seller, the object and its consideration, the delivery of the thing sold, and the payment for it. Implicit in these cases is first and foremost the identity and existence, coupled with the presentation to the court of the traded prohibited substance, this object evidence being an integral part of the *corpus delicti* of the crime of possession or selling of regulated/ prohibited drug. There can be no such crime when nagging doubts persist on whether the specimen submitted for examination and presented in court was what was recovered from, or sold by, the accused. Essential, therefore, in appropriate cases is that the identity of the prohibited drug be established with moral certainty. This means that on top of the key elements of possession or sale, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. And as we stressed in *Malillin v. People*, the "chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed." So it is that in a slew of cases the Court has considered the prosecution's failure to adequately prove that the specimen submitted for laboratory examination was the

same one supposedly seized from the offending seller or possessor as ground for acquittal.

3. ID.; ID.; DANGEROUS DRUGS BOARD REGULATION NO. 1, SERIES OF 2002, OR THE "GUIDELINES ON THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS, CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS, AND LABORATORY EQUIPMENT"; "CHAIN OF CUSTODY"; DEFINED. — Sec. 1(b) of the Dangerous Drug Board Regulation No. 1, Series of 2002, or the "Guidelines on the Custody and Disposition of Seized Dangerous Drug, Controlled Precursors and Essential Chemicals, and Laboratory Equipment," defines "chain of custody," thusly: "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals x x x 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 [was] made in the course of safekeeping and use in court as evidence, and the final disposition.

4. ID.; ID.; AS A MODE 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. — As a mode 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. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone who touched the exhibit would described how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. The need for the punctilious observance of the chain-of-custody process in drug-related cases is explained in *Malillin* in the following wise: 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 really identifiable,** or when its condition at the time 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. x x x A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchange with another or been contaminated or tampered with.

5. ID.; ID.; THE POLICE OPERATIVES TRIFLED WITH THE PROCEDURES IN THE CUSTODY OF THE SEIZED PROHIBITED DRUGS; NO ASSURANCE THAT NO TAMPERING OR SUBSTITUTION OCCURRED BETWEEN THE TIME THE POLICE SEIZED THE BLACK BAG UNTIL ITS CONTENTS WERE TESTED IN THE LABORATORY. — As the Court distinctly notes in this case, of the individuals who came into direct contact with or had physical custody of the seized regulated items, only PO3 Ramos testified for the specific purpose of identifying the evidence. In the witness box, however, he did not indicate how he and his companions, right after the bust, handled the seized plastic bag and its contents. He did not name the duty desk officer at Camp Vicente Lim to whom he specifically turned over the confiscated bag and sachets at least for recording. What is on

record is Exhibit "C", which, as earlier described, is a memorandum PO3 Ramos prepared dated April 5, 2000 from the RSOG-IV Director to the Chief, PNP R-IV Crime Laboratory Service, submitting for qualitative analysis the white crystalline substance confiscated by the buy-bust group. Needless to stress, the unnamed person who delivered the suspected *shabu* and the recipient of it at the laboratory were no-show in court to testify on the circumstances under which they handled the specimen or whether other persons had access to the specimen before actual testing. And C/I Geronimo, the analyzing forensic chemist, was not also presented. Then, too, no one testified on how the specimen was cared after following the chemical analysis. As the Court observed aptly in *People v. Ong,* "[T]hese questions should be answered satisfactorily to determine whether the integrity of the evidence was compromised in any way. Otherwise, the prosecution cannot maintain that it was able to prove the guilt of appellants beyond reasonable doubt." It cannot be overemphasized that Inspector Tria was really not part of the custodial chain. And she did not as she could not, even if she wanted to, testify on whether or not the specimen turned over for analysis and eventually offered in court as exhibit was the same substance received from Arguson. Given the foregoing perspective, it is fairly evident that the police operative trifled with the procedures in the custody of seized prohibited drugs in a buy-bust operation, as embodied in Sec. 21(1), Art. II of RA 9165, *i.e*., the apprehending officer/team having initial custody and control of the drug **shall**: immediately after seizure and confiscation, physically inventory and photograph the [drug] 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. In this case, no physical inventory was made and no photograph taken nor markings made on the seized articles at the crime scene. Just as clear is the fact that the exacting chain of custody rule was not observed. Withal, there is no reasonable assurance that no tampering or substitution occurred between the time the police seized the black bag in P. Ocampo St. in Manila until its contents were tested in the laboratory of the PNP R-IV headquarters in Canlubang, Laguna. In net effect, a heavy cloud of doubt hangs

over the integrity and necessarily the evidentiary value of the seized items. The prosecution cannot, thus, rightfully assert that the six sachets seized from Arguson were the very same objects tested by C/I Geronimo and offered in court in proving the *corpus delicti.*

6. **ID.; ID.; NON-PRESENTATION OF THE FORENSIC CHEMIST IN CASE AT BAR PRODUCED A SERIOUS DOUBT AS TO ACCUSED-APPELLANT'S GUILT. —** The Court, notably in *People v. Bandang*, has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. In it, the accused persons were convicted of illegal sale of *shabu* even if the forensic chemist who prepared the corresponding laboratory report was not presented. It should be pointed out, however, that the *Bandang* ruling was cast against a different backdrop where: (1) the seized crystalline substance was the same item examined and tested positive for *shabu* and presented in court, implying that the identity and integrity of prohibited drug was safeguarded throughout, a circumstance not obtaining in this case; (2) there was a compelling reason for not presenting the examining forensic chemist, *i.e*., the parties stipulated that the confiscated seven plastic bags have been identified and examined and that the chemist stated in his report that substance is positive for *shabu*. In this case, C/I Geronimo's resignation from the service is not, standing alone, a justifying factor for the prosecution to dispense with her testimony; and (3) accused Bandang, *et al*. did not raise any objection to the chemical report during trial, unlike here where accused-appellant objected to Inspector Tria's competency to testify on the Geronimo chemical report. At any rate, Inspector Tria's testimony on, and the presentation of, the chemistry report in question only established, at best, the existence, due execution, and authenticity of the results of the chemistry analysis. It does not prove compliance with the requisite chain of custody over the confiscated substance from the time of seizure of the evidence. In this regard, the Court in effect stated in *Malillin* that unless the state can show by records or testimony that the integrity of the evidence has not been compromised by accounting for the continuous whereabouts of the object evidence at least between the time it came into the possession of the police officers until it was tested in the laboratory, then the prosecution cannot maintain that it was able to prove the guilt of the accused beyond

reasonable doubt. So it was that in *People v. Kimura* the Court said that in establishing the *corpus delicti,* proof beyond reasonable doubt demands that "unwavering exactitude" be observed, a demand which may be addressed by hewing to the chain-of-custody rule. Evidently, the prosecution has not proved that the substance seized in front of the McDonald's was the same substance adduced in evidence as an indispensable element of *corpus delicti* of the crime, which failure produces a serious doubt as to accused-appellant's guilt.

7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY ALWAYS YIELDS TO THE PRESUMPTION OF INNOCENCE AND DOES NOT CONSTITUTE PROOF BEYOND REASONABLE DOUBT. — Both the trial and appellate courts made much of the presumption of regularity in the performance of official functions both with respect to the acts of PO3 Ramos and other PNP personnel at Camp Vicente Lim. To a point, the reliance on the presumptive regularity is tenable. This presumption is, however, disputable and may be overturned by affirmative evidence of irregularity or failure to perform a duty; any taint of irreguralityvitiates the performance and negates the presumption. And as earlier discussed, the buy bust team committed serious lapses in the handling of the prohibited item from the very start of its operation, the error of which the PNP R-IV command later compounded. The Court need not belabor this matter anew. Lest it be overlooked, the presumption of regularity in the performance of official duty always yields to the presumption of innocence and does not constitute proof beyond reasonable doubt. We held in one case: The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, "[f]irst, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, x x x [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt."

8. ID.; ID.; REMINDER TO POLICE AND DRUG ENFORCEMENT AGENCIES TO COMPLY WITH THE LEGAL

PRESCRIPTIONS OF THE DANGEROUS DRUGS ACT, AS AMENDED. — The Court is cognizant of the campaign of the police and other drug enforcement agencies against the growing drug menace in the country. Unfortunately, their best efforts, particularly successful honest-to-goodness buy-bust operations, sometimes still end up in the acquittal of illegal drug manufacturers, distributors, pushers and/or lesser players, even when nabbed *in flagrante,* simply because drug enforcement operative tend to compromise the integrity and evidentiary worth of the seized illegal items. This aberration is oftentimes in turn attributable to the unfamiliarity of police operative of extant rules and procedures governing the custody, control, and handling of seized drug. This is, thus, an opportune time to remind all concerned about these rules and procedures and the guiding jurisprudence. And to put things in the proper perspective, non-compliance with the legal prescriptions of the Dangerous Drugs Act, as amended, is, as we made abundantly clear in *People v. Sanchez*, not necessarily fatal to the prosecution of drug-related cases; that police procedures may still have some lapses. These lapses, however, must be recognized, addressed, and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved by the apprehending officer or team.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision dated July 19, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00476 which affirmed the April 23, 2004 Decision in Criminal Case No. 00-181929 of the Regional Trial Court (RTC), Branch 53 in Manila. The RTC found accused-appellant Monalyn Cervantes guilty beyond reasonable doubt of violation of Section 15,

Article III of Republic Act No. (RA) 6425 or the *Dangerous Drugs Act of 1972*, as amended.

The records show the following facts:

In an Information dated April 7, 2000, accused-appellant and three others were charged with violation of Sec. 15, Art. III of RA 6425 (selling or distributing a regulated drug), allegedly committed as follows:

> That, on or about April 5, 2000, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused ISIDRO ARGUSON *y* ARENDELA, @ Tisoy, MONALYN [CERVANTES] *y* SOLAR @ Mona, WILSON DEL MONTE @ Wilson and RICHARD REQUIZ @ Richard, conspiring, confederating and mutually helping one another, acting in common accord, did then and there, willfully, unlawfully and feloniously, for the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS, Philippine Currency, sell, deliver and give away to a poseur-buyer, FOUR HUNDRED SEVENTY-THREE POINT SEVENTY-SIX (473.76) GRAMS OF METHAMPHETAMINE [HYDROCHLORIDE], commonly known as *shabu*, a regulated drug, without authority of law or the corresponding license therefor.
>
> CONTRARY TO LAW.[1]

Accused-appellant and her co-accused pleaded not guilty to the charge. In the ensuing trial, the prosecution presented in evidence the oral testimonies of William Todavia, PO3 Reynaldo Ramos of the Philippine National Police Regional Office IV (PNP R-IV), and P/Sr. Inspector Lorna Tria, a forensic chemical officer of the same regional office.

The People's version of the incident, as summarized by the CA in the decision now on appeal, is as follows:

On April 5, 2000, the Regional Special Operations Group IV (RSOG-IV), based at Camp Vicente Lim in Calamba, Laguna, received a tip from a deep penetration agent (DPA) about a group of drug traffickers led by Isidro Arguson operating in Cavite. Acting on this bit of information, a team led by SPO2

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[1] *Rollo*, pp. 6-7.

Geronimo Pastrana, PO3 Ramos, and PO2 Emerson Balosbalos arranged a buy-bust operation to be conducted at Arguson's rest house in Barangay Lambingan, Tanza, Cavite.[2] Upon arriving at the rest house, PO3 Ramos and PO2 Balosbalos, acting as poseur-buyers, were introduced by the DPA to Arguson as the buyers of PhP 500,000 worth of *shabu*, simultaneously showing him a bundle of money. Since Arguson did not have enough supply of *shabu* in the premises, he instructed the would-be-buyers to follow him to Pasay City. For the purpose, he hired a vehicle owned by Todavia.

At about three o'clock in the afternoon of that day, in front of the McDonald's branch in P. Ocampo St., Pasay City,[3] Arguson instructed the would-be-buyers to wait for someone who will come out from the nearby Estrella St. Very much later, accused-appellant emerged from Estrella St. and approached PO3 Ramos to check if he still had the money. After being shown the money bundle, accused-appellant left, only to return a few minutes later this time with Arguson, Wilson Del Monte, who was holding a black plastic bag, and Richard Requiz. Arguson then took from Del Monte the bag, later found to contain 473.76 grams of *shabu* packed in six small self-sealing transparent bags, and handed it to PO2 Balosbalos, who in turn gave him the bundle of boodle money. Finally, PO3 Ramos gave the pre-arranged signal to indicate the consummation of the drug deal and introduced himself as policeman. Accused-appellant and her scampering companions were later arrested and brought to and booked at Camp Vicente Lim.

The black plastic bag containing the six small self-sealing bags of white crystalline substance was likewise taken to Camp Vicente Lim where PO3 Ramos prepared the booking sheets and arrest reports and the request for a qualitative analysis of the seized items. Regional Crime Laboratory Office IV Chief Inspector (C/I) Mary Jean Geronimo then conducted the standard

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[2] *Id.* at 5.

[3] The McDonald's branch in P. Ocampo St. was later determined to be in Manila.

physical and chemical examinations on the specimen referred to her.

On April 6, 2000, C/I Geronimo prepared and completed Chemistry Report No. D-115800 on the crystalline substance. Per her report, the substance tested positive for methamphetamine hydrochloride or *shabu.*

Apart from the witnesses' affidavits and other documents, the prosecution, in the hearing of March 4, 2002, offered in evidence the following exhibits,[4] inclusive of its sub markings, which, as may be expected, were objected to by the defense: (a) **Exhibit "B"** — Chemistry Report No. D-115800 prepared by C/I Geronimo; (b) **Exhibit "C"** — Memorandum of RSOG-IV dated April 5, 2000 to the Chief, Laboratory Service, requesting for qualitative analysis of the contents of the six transparent plastic bags; (c) **Exhibits "D" and "D-1" to "D-6"** — Black plastic bag with markings; and six (6) self-sealing transparent bags allegedly containing the confiscated *shabu*; and (d) **Exhibit "F"** — Receipt of property seized signed by PO2 Balosbalos and by Todavia and PO3 Ramos as witnesses.

The CA decision likewise summarized the defense's account of what purportedly transpired, to wit:

> Accused-appellant testified that after she did laundry works at her house in Estrella Street near F.B. Harrison on April 4, 2000, her youngest child asked her to go to [McDonald's], Vito Cruz branch, to buy ice cream. When they arrived thereat at about 4:30 in the afternoon, there was a commotion going on in front of the restaurant. She then saw a woman who alighted from a nearby van and pointed her out to her companions, one of whom [was] an old man boarded her inside the van causing her to lose hold of her child. Thereafter, two (2) younger male persons, whom she later came to know as DEL MONTE and REQUIZ, were also boarded into the same van. They were taken to a cemetery where another vehicle came and took them to Camp Vicente Lim, where she allegedly met ARGUSON for the first time.
>
> On the other hand, accused DEL MONTE testified that he was a parking boy around Vito Cruz and that on the day in question, while

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[4] Records, pp. 185-187.

he was watching a vehicle near [McDonald's], Vito Cruz branch, a commotion happened near his post. As he moved backward from where he stood, he was suddenly approached by a policeman who arrested him and boarded him inside a vehicle together with CERVANTES and REQUIZ, whom he did not know prior to that incident.

For his part, accused REQUIZ testified that on the date and time in question, he was riding a borrowed bicycle on his way to the Cultural Center, passing by F.B. Harrison St., when he bumped a parked van, wherefrom a man alighted and cursed him, saying "*pulis ako wag kang aalis dyan[!]*" The man left and when he returned, accused CERVANTES was with him. Thereafter, he was boarded into the van together with the other accused.[5]

While not stated in the CA decision, Del Monte testified, like accused-appellant, that he was taken to a cemetery somewhere in Cavite where the arresting officers lingered for an hour before bringing him to Camp Vicente Lim.[6] These testimonies remained uncontroverted.

Arguson died during the course of the trial resulting in the dismissal of the case against him.[7]

On April 23, 2004, the RTC rendered judgment acquitting Del Monte and Requiz but finding accused-appellant guilty as charged and meting upon her the penalty of *reclusion perpetua*. The *fallo* of the RTC Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Finding accused MONALYN CERVANTES *Y* SOLAR GUILTY beyond reasonable doubt of violation of Sec. 15, Article III, of Republic Act No. 6425 as amended, and is sentenced to *Reclusion Perpetua* and to pay a fine in the amount of Php500,000.00; and

2. Finding the prosecution's evidence insufficient to prove the guilt of accused WILSON DEL MONTE and RICHARD

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[5] *Rollo*, pp. 7-8.

[6] TSN, January 20, 2003, pp. 10-11.

[7] *Rollo*, p. 8.

REQUIZ beyond reasonable doubt, and who are hereby ACQUITTED.

SO ORDERED.[8]

On May 18, 2004, accused-appellant filed a Notice of Appeal, pursuant to which the RTC forwarded the records of the case to this Court.

Conformably with *People v. Mateo*,[9] the Court directed the transfer of the case to the CA where it was docketed as CA-G.R. CR-H.C. No. 00476. Before the appellate court, accused-appellant urged her acquittal on the ground of "insufficiency of evidence," particularly stating that the "forensic chemist who actually conducted the laboratory examination on the specimens allegedly recovered from the accused was not presented in court x x x [and] hence, there was no clear identification of the contents of the confiscated sachets."[10]

By its Decision[11] dated July 19, 2007, the CA, finding the elements necessary for the prosecution of illegal sale of drugs[12] to have sufficiently been satisfied and the identification of accused-appellant having been established, affirmed her conviction.

The CA rejected accused-appellant's lament about one Inspector Tria testifying on the chemistry report she did not prepare. As the appellate court stressed, C/I Geronimo's forensic report "carries the presumption of regularity in the performance of official functions [and] the entries thereon x x x are *prima facie* evidence of the facts therein stated." The CA added the observation that absent any evidence overturning the presumption of regularity in the performance of official functions, the probative

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[8] CA *rollo*, p. 30. Penned by Judge Reynaldo A. Alhambra.

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

[10] CA *rollo*, pp. 81-82.

[11] *Rollo*, pp. 4-10. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Vicente Q. Roxas and Lucas P. Bersamin.

[12] (a) identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and payment therefor.

value and admissibility of the forensic report prepared by C/I Geronimo, who had resigned from the service, must be upheld even if she did not personally testify in court.

On August 17, 2007, accused-appellant filed a Notice of Appeal of the CA affirmatory decision.

On March 24, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted, thus veritably reiterating their principal arguments raised in the CA, which on the part of accused-appellant would be:

THE [CA] GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSE CHARGED DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

For its part, the People, thru the Office of the Solicitor General, counters that the prosecution has established that the buy-bust transaction took place, has identified accused-appellant and her complicity in Arguson's illegal trade, and has presented the *corpus delicti*, as evidence.

The Court's Ruling

After a circumspect study, the Court resolves to acquit accused-appellant, considering certain circumstances engendering reasonable doubt as to her guilt.

We start off with the most basic, the testimony of the prosecution's principal witness, PO3 Ramos, who identified accused-appellant and described her role in the conspiracy to sell *shabu*. In the witness box, PO3 testified that, after being told by Arguson to wait for someone who will come out from the street whence Arguson would enter, accused-appellant emerged from said street, checked on the purchase money, asked the operatives to wait, and later re-appeared. What happened next is captured by the following answers of PO3 Ramos to the prosecutor's questions:

Q: What did you see when Cervantes already returned? **A**: When Monalyn return the one holding the plastic bag was Wilson, sir.

Q: Wilson? **A**: Yes, sir, together with Richard, Wilson, Arguson, they were four (4).

Atty. Cruz: Your honor, may we move to strike that out x x x.

Fiscal Formoso: That's part of the answer x x x now, when all these accused here return with Monalyn Cervantes, what happen[ed]?

A: Arguson took the plastic bag from Wilson, sir and handed it to Balosbalos, Balosbalos gave Arguson the boodle money while I flash the signal x x x then we apprehended them.[13]

As may be noted, PO3 Ramos categorically stated that Del Monte was among the four who emerged with Arguson from a street. Without hesitation, PO3 Ramos pointed to Del Monte as the one holding the plastic bag allegedly containing the prohibited substance until Arguson took it from him and handed it over to PO2 Balosbalos. There is no suggestion that accused-appellant, while at the crime scene, ever handled the merchandise or its container. Yet, the trial court acquitted Requiz and Del Monte, but convicted accused-appellant, stating: "Clearly, accused Monalyn Cervantes' complicity with accused Isidro Arguson in the sale of *shabu* has been established by the testimony of PO3 Ramos."[14] But two paragraphs later, the RTC went on to write:

> x x x While PO3 Ramos testified that the bag was initially held by accused Del Monte and then taken from him by accused Arguson, there is no other evidence which can support the charge of conspiracy with Arguson and Cervantes x x x. The court does not find the evidence sufficient to pass the test of moral certainty to find accused Del Monte liable as charged. Even if PO3 Ramos saw him to have held the bag for Arguson, it could have been possible that he was merely asked by Cervantes or Arguson to carry the bag.[15]

Before us then is a situation where two persons — **accused-appellant**, a laundry woman; and **Del Monte**, a car park boy,

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[13] TSN, October 23, 2001, pp. 12-16.

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

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

in the company of the ostensible pusher, Arguson, during the actual buy bust — are being indicted, on the basis alone of the testimony of a witness, with confederating with each and several others to sell *shabu*. The overt acts performed by accused-appellant, as indicia of conspiracy, consisted of allegedly verifying whether the poseur-buyer still had the purchase money, disappearing from the scene and then coming back with the principal player. On the other hand, Del Monte came accompanying Arguson carrying the drug-containing plastic bag no less. As between the two acts performed, carrying the bag would relatively have the more serious implication being in itself a punishable act of possession of regulated drugs. Both offered the defenses of denial and instigation, each testifying that they just happened to be near or passing by McDonald's at about 4:30 in the afternoon of April 4, 2000 when they were apprehended. But the trial court, in its observation that "it could have been possible that [Del Monte] was merely asked by x x x Arguson to carry the bag," extended to Del Monte the "benefit of the doubt," a benevolence denied to accused-appellant without so much of an acceptable explanation. Any reasonable mind might ask: Why the contrasting treatment? Why consider PO3 Ramos as a highly credible eyewitness as against accused-appellant, but an unreliable one as against Del Monte, when both accused are complete strangers to the policeman?

To paraphrase an unyielding rule, if the inculpatory testimony is capable of two or more explanations, one consistent with the innocence of the accused persons and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[16]

But even if we were to cast aside the foregoing equipoise rule, a reversal of the appealed decision is indicated on another but more compelling ground. We refer to the postulate that the prosecution, having failed to positively and convincingly prove the identity of the seized regulated substance, is deemed to

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[16] *People v. Navarro*, G.R. No. 173790, October 11, 2007, 535 SCRA 644, 653.

have also failed to prove beyond reasonable doubt accused-appellant's guilt. We shall explain.

In every prosecution for illegal sale of dangerous drug, what is crucial is the identity of the buyer and seller, the object and its consideration, the delivery of the thing sold, and the payment for it. Implicit in these cases is first and foremost the identity and existence, coupled with the presentation to the court of the traded prohibited substance, this object evidence being an integral part of the *corpus*[17] *delicti*[18] of the crime of possession or selling of regulated/prohibited drug.[19] There can be no such crime when nagging doubts persist on whether the specimen submitted for examination and presented in court was what was recovered from, or sold by, the accused.[20] Essential, therefore, in appropriate cases is that the identity of the prohibited drug be established with moral certainty. This means that on top of the key elements of possession or sale, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. And as we stressed in *Malillin v. People*, the "chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed."[21] So it is that in a slew of cases the Court has considered the prosecution's failure to adequately prove that the specimen

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[17] A Latin word which signifies "body."

[18] Literally body of the crime; in the legal sense, *corpus delicti* as referring to the fact of the commission of the crime charged or to the substance of the crime; it does not refer to the actual physical evidence, such as ransom money in the crime of kidnapping for ransom, the cadaver of the person murdered, or the confiscated cases of blue seal cigarettes in the crime of smuggling. See *Rimorin, Sr. v. People*, G.R. No. 146481, April 30, 2003, 402 SCRA 393, 400.

[19] *People v. Sanchez*, G.R. No. 175832, October 10, 2008; citing *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611.

[20] *Valdez*, *supra* note 19, at 628-629; citing *People v. Ong*, G.R. No. 137348, June 21, 2004, 432 SCRA 470.

[21] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632; citing American jurisprudence.

submitted for laboratory examination was the same one supposedly seized from the offending seller or possessor as ground for acquittal.[22]

Sec. 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, or the "Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment," defines "chain of custody," thusly:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals x x x 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 [was] made in the course of safekeeping and use in court as evidence, and the final disposition.[23]

As a mode 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. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain.[24] The need for the punctilious observance of the chain-of-custody process in drug-related cases is explained in *Malillin* in the following wise:

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[22] *Valdez*, *supra*; *Ong*, *supra* note 20.

[23] In accordance with Sec. 21, Art. II of the Implementing Rules and Regulations (IRR) of RA 9165 or the *Comprehensive Dangerous Drugs Act of 2002* in relation to Sec. 81(b), Art. IX of RA 9165.

[24] *Malillin*, *supra* note 21.

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 really 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.

x x x x x x x x x

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[25] (Emphasis added.)

As the Court distinctly notes in this case, of the individuals who came into direct contact with or had physical custody of the seized regulated items, only PO3 Ramos testified for the specific purpose of identifying the evidence. In the witness box, however, he did not indicate how he and his companions, right after the buy bust, handled the seized plastic bag and its contents. He did not name the duty desk officer at Camp Vicente Lim to whom he specifically turned over the confiscated bag and sachets at least for recording. What is on record is Exhibit "C", which,

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[25] *Id.* at 633-634.

as earlier described, is a memorandum[26] PO3 Ramos prepared[27] dated April 5, 2000 from the RSOG-IV Director to the Chief, PNP R-IV Crime Laboratory Service, submitting for qualitative analysis the white crystalline substance confiscated by the buy-bust group. Needless to stress, the unnamed person who delivered the suspected *shabu* and the recipient of it at the laboratory were no-show in court to testify on the circumstances under which they handled the specimen or whether other persons had access to the specimen before actual testing. And C/I Geronimo, the analyzing forensic chemist, was not also presented. Then, too, no one testified on how the specimen was cared after following the chemical analysis. As the Court observed aptly in *People v. Ong*, "[T]hese questions should be answered satisfactorily to determine whether the integrity of the evidence was compromised in any way. Otherwise, the prosecution cannot maintain that it was able to prove the guilt of appellants beyond reasonable doubt."[28]

It cannot be overemphasized that Inspector Tria was really not part of the custodial chain. And she did not as she could not, even if she wanted to, testify on whether or not the specimen turned over for analysis and eventually offered in court as exhibit was the same substance received from Arguson.

Given the foregoing perspective, it is fairly evident that the police operatives trifled with the procedures in the custody of seized prohibited drugs in a buy-bust operation, as embodied in Sec. 21(1), Art. II of RA 9165, *i.e.*, the apprehending officer/team having initial custody and control of the drug **shall**:

> immediately after seizure and confiscation, physically inventory and photograph the [drug] 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

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[26] Records, p. 33.

[27] TSN, October 23, 2001, p. 20.

[28] *Supra* note 20, at 490.

shall be required to sign the copies of the inventory and be given a copy thereof.[29]

In this case, no physical inventory was made and no photograph taken nor markings made on the seized articles at the crime scene. PO3 Ramos admitted as much, thus:

Q. Now, you were able to arrest all the accused here, after their arrest, what did you do? **A.** After informing their rights and the reason why we arrest them we brought them immediately to our office in Canlubang.

x x x x x x x x x

Q. Now, what about this *Shabu*, who was in possession of this *Shabu* x x x when you left the place and proceeded to Canlubang? **A**. PO2 Balosbalos, sir.

x x x x x x x x x

Q. Now, when you reach your office, what did you do there? **A**. I made the booking sheet and I requested for their medical/physical examination x x x.[30]

Just as clear is the fact that the exacting chain of custody rule was not observed. Withal, there is no reasonable assurance that no tampering or substitution occurred between the time the police seized the black bag in P. Ocampo St. in Manila until its contents were tested in the laboratory of the PNP R-IV headquarters in Canlubang, Laguna. In net effect, a heavy cloud of doubt hangs over the integrity and necessarily the evidentiary value of the seized items. The prosecution cannot, thus, rightfully assert that the six sachets seized from Arguson were the very same objects tested by C/I Geronimo and offered in court in proving the *corpus delicti*.

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[29] The IRR of RA 9165 provides further, "**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**."

[30] TSN, October 23, 2001, pp. 18-19.

Adding a negative dimension to the prosecution's case is the non-presentation of C/I Geronimo and the presentation in her stead of Inspector Tria to testify on the chemical report C/I Geronimo prepared. While Inspector Tria can plausibly testify on the fact that C/I Geronimo prepared the chemical report in the regular course of her duties, she, Inspector Tria, was incompetent to state that the specimen her former colleague analyzed was in fact *shabu* and was the same specimen delivered to the laboratory for chemical analysis.

To be sure, the Court, notably in *People v. Bandang*, has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. In it, the accused persons were convicted of illegal sale of *shabu* even if the forensic chemist who prepared the corresponding laboratory report was not presented. Thus, we wrote:

> x x x In *People vs. Uy*, we ruled that a forensic chemist is a public officer and as such, his report carries the presumption of regularity in the performance of his function and duties. Corollarily, under Section 44 of Rule 130, x x x entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. Omero's reports that the seven sachets of white crystalline substance were "positive for *methylamphetamine hydrochloride*" or *shabu* are, therefore, conclusive in the absence of evidence proving the contrary, as in this case.
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> Second, it must be stressed that Atty. Enriquez **raises his objection** to the Initial Laboratory Report and Chemistry Report No. D-1585-00 **only now**. He should have objected to their admissibility at the time they were being offered. Otherwise, the objection shall be considered waived and such evidence will form part of the records of the case as competent and admissible evidence. The familiar rule in this jurisdiction is that the admissibility of certain documents x x x cannot be raised for the first time on appeal.[31] (Emphasis added.)

It should be pointed out, however, that the *Bandang* ruling was cast against a different backdrop where: (1) the seized crystalline substance was the same item examined and tested positive for *shabu* and presented in court, implying that the

[31] G.R. No. 151314, June 3, 2004, 430 SCRA 570, 586-587.

identity and integrity of prohibited drug was safeguarded throughout, a circumstance not obtaining in this case; (2) there was a compelling reason for not presenting the examining forensic chemist, *i.e.*, the parties stipulated that the confiscated seven plastic bags have been identified and examined and that the chemist stated in his report that the substance is positive for *shabu*. In this case, C/I Geronimo's resignation from the service is not, standing alone, a justifying factor for the prosecution to dispense with her testimony; and (3) accused Bandang, *et al.* did not raise any objection to the chemical report during trial, unlike here where accused-appellant objected to Inspector Tria's competency to testify on the Geronimo chemical report.

At any rate, Inspector Tria's testimony on, and the presentation of, the chemistry report in question only established, at best, the existence, due execution, and authenticity of the results of the chemistry analysis.[32] It does not prove compliance with the requisite chain of custody over the confiscated substance from the time of seizure of the evidence. In this regard, the Court in effect stated in *Malillin* that unless the state can show by records or testimony that the integrity of the evidence has not been compromised by accounting for the continuous whereabouts of the object evidence at least between the time it came into the possession of the police officers until it was tested in the laboratory,[33] then the prosecution cannot maintain that it was able to prove the guilt of the accused beyond reasonable doubt. So it was that in *People v. Kimura* the Court said that in establishing the *corpus delicti*, proof beyond reasonable doubt demands that "unwavering exactitude"[34] be observed, a demand which may be addressed by hewing to the chain-of-custody rule. Evidently, the prosecution has not proved that the substance seized in front of the McDonald's was the same substance adduced in evidence as an indispensable element of *corpus delicti* of the crime, which failure produces a serious doubt as to accused-appellant's guilt.[35]

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[32] *Sanchez*, *supra* note 19.

[33] *Supra* note 21, at 634.

[34] G.R. No. 130805, April 27, 2004, 428 SCRA 51, 70.

[35] *Id.*

Both the trial and appellate courts made much of the presumption of regularity in the performance of official functions both with respect to the acts of PO3 Ramos and other PNP personnel at Camp Vicente Lim. To a point, the reliance on the presumptive regularity is tenable. This presumption is, however, disputable and may be overturned by affirmative evidence of irregularity or failure to perform a duty;[36] any taint of irregularity vitiates the performance and negates the presumption. And as earlier discussed, the buy bust team committed serious lapses in the handling of the prohibited item from the very start of its operation, the error of which the PNP R-IV command later compounded. The Court need not belabor this matter anew.

Lest it be overlooked, the presumption of regularity in the performance of official duty always yields to the presumption of innocence and does not constitute proof beyond reasonable doubt.[37] We held in one case:

> The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, "[f]irst, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, x x x [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt."[38]

For failure then of the prosecution to establish the guilt of accused-appellant beyond reasonable doubt, she must perforce be exonerated from criminal liability. The facts and the law of the case call for this kind of disposition.

But a final consideration. The Court is cognizant of the campaign of the police and other drug enforcement agencies against the growing drug menace in the country. Unfortunately, their best efforts, particularly successful honest-to-goodness buy-bust

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[36] *Sevilla v. Cardenas*, G.R. No. 167684, July 31, 2006, 497 SCRA 428, 443; citing *Mabsucang v. Judge Balgos*, 446 Phil. 217, 224 (2003).

[37] *People v. Cañete*, G.R. No. 138400, July 11, 2002, 384 SCRA 411, 424.

[38] *People v. Tan*, G.R. No. 129376, May 29, 2002, 382 SCRA 419, 444.

operations, sometimes still end up in the acquittal of illegal drug manufacturers, distributors, pushers and/or lesser players, even when nabbed *in flagrante*, simply because drug enforcement operatives tend to compromise the integrity and evidentiary worth of the seized illegal items. This aberration is oftentimes in turn attributable to the unfamiliarity of police operatives of extant rules and procedures governing the custody, control, and handling of seized drugs. This is, thus, an opportune time to remind all concerned about these rules and procedures and the guiding jurisprudence. And to put things in the proper perspective, non-compliance with the legal prescriptions of the Dangerous Drugs Act, as amended, is, as we made abundantly clear in *People v. Sanchez*, not necessarily fatal to the prosecution of drug-related cases; that police procedures may still have some lapses. These lapses, however, must be recognized, addressed, and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved by the apprehending officer or team.

To be forewarned is to be forearmed.

WHEREFORE, the CA Decision dated July 19, 2007 in CA-G.R. CR-H.C. No. 00476, affirming that of the RTC, Branch 53 in Manila which found her guilty of violating Sec. 15, Art. III of RA 6425 and imposed upon her the penalty of *reclusion perpetua* and a fine of PhP 500,000, is hereby *REVERSED* and *SET ASIDE*. Accused-appellant Monalyn Cervantes *y* Solar is *ACQUITTED* on the ground of reasonable doubt and is accordingly immediately *RELEASED* from custody unless she is being lawfully held for some lawful cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt of this Decision.

SO ORDERED.

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

EN BANC

[G.R. No. 184082. March 17, 2009]

NICASIO BOLOS, JR., *petitioner, vs.* **THE COMMISSION ON ELECTIONS and REY ANGELES CINCONIEGUE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THREE-TERM LIMIT OF ELECTIVE LOCAL OFFICIALS UNDER SECTION 8, ARTICLE X OF THE CONSTITUTION; THE SECOND PART OF THE RULE ON THE THREE-TERM LIMIT SHOWS THE CLEAR INTENT OF THE FRAMERS OF THE CONSTITUTION TO BAR ANY ATTEMPT TO CIRCUMVENT THE LAW BY A VOLUNTARY RENUNCIATION OF OFFICE AND AT THE SAME TIME RESPECT THE PEOPLE'S CHOICE AND GRANT THEIR ELECTED OFFICIAL FULL SERVICE OF A TERM. — The three-term limit for elective local officials is contained in Section 8, Article X of the Constitution, which provides: Sec. 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years, and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. *David v. Commission on Elections* elucidates that the Constitution did not expressly prohibit Congress from fixing any term of office for *barangay* officials, thereby leaving to the lawmakers full discretion to fix such term in accordance with the exigencies of public service. The discussions in the Constitutional Commission showed that the term of office of *barangay* officials would be "[a]s may be determined by law," and more precisely, "[a]s provided for in the Local Government Code." Section 43(b) of the Local Government Code provides that *barangay* officials are covered by the three-term limit, while Section 43(c) thereof states that the term of office of *barangay* officials shall be five (5) years. The cited provisions read, thus: Sec. 43. *Term of Office*. —

x x x (b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected. (c) The term of *barangay* officials and members of the sangguniang kabataan shall be for five (5) years, which shall begin after the regular election of *barangay* officials on the second Monday of May 1997: *Provided*, That the sangguniang kabataan members who were elected in the May 1996 elections shall serve until the next regular election of *barangay* officials. *Socrates v. Commission on Elections* held that the rule on the three-term limit, embodied in the Constitution and the Local Government Code, has two parts: x x x **The first part provides that an elective local official cannot serve for more than three consecutive terms.** The clear intent is that only consecutive terms count in determining the three-term limit rule. **The second part states that voluntary renunciation of office for any length of time does not interrupt the continuity of service.** The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together to form a continuous service or consecutive terms. After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. In *Lonzanida v. Commission on Elections,* the Court stated that the second part of the rule on the three-term limit shows the clear intent of the framers of the Constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term. The Court held that two conditions for the application of the disqualification must concur: (1) that the official concerned has been elected for three consecutive terms in the same government post; and (2) that he has fully served three consecutive terms.

2. ID.; ID.; ID.; PETITIONER VOLUNTARILY RENOUNCED HIS POSITION AS *PUNONG BARANGAY* DURING HIS THIRD TERM WHEN HE RAN FOR AND WON AS *SANGGUNIANG BAYAN* MEMBER AND ASSUMED SAID

OFFICE. — The Court agrees with the COMELEC that there was voluntary renunciation by petitioner of his position as *Punong Barangay*. The COMELEC correctly held: It is our finding that Nicasio Bolos, Jr.'s relinquishment of the office of Punong Barangay of Biking, Dauis, Bohol, as a consequence of his assumption to office as Sangguniang Bayan member of Dauis, Bohol, on July 1, 2004, is a voluntary renunciation. As conceded even by him, respondent (petitioner herein) had already completed two consecutive terms of office when he ran for a third term in the Barangay Elections of 2002. When he filed his certificate of candidacy for the Office of Sangguniang Bayan of Dauis, Bohol, in the May 10, 2004 [elections], he was not deemed resigned. Nonetheless, all the acts attending his pursuit of his election as municipal councilor point out to an intent and readiness to give up his post as *Punong Barangay* once elected to the higher elective office, for it was very unlikely that respondent had filed his Certificate of Candidacy for the Sangguniang Bayan post, campaigned and exhorted the municipal electorate to vote for him as such and then after being elected and proclaimed, return to his former position. He knew that his election as municipal councilor would entail abandonment of the position he held, and he intended to forego of it. Abandonment, like resignation, is voluntary. Indeed, petitioner was serving his third term as *Punong Barangay* when he ran for *Sangguniang Bayan* member and, upon winning, assumed the position of *Sangguniang Bayan* member, thus, voluntarily relinquishing his office as *Punong Barangay* which the Court deems as a voluntary renunciation of said office.

3. ID.; ID.; ID.; PETITIONER DID NOT FILL IN OR SUCCEED TO A VACANCY BY OPERATION OF LAW BUT RELINQUISHED HIS OFFICE AS *PUNONG BARANGAY* WHEN HE WON AND ASSUMED OFFICE AS *SANGGUNIANG BAYAN* MEMBER OF DAUIS, BOHOL WHICH IS DEEMED A VOLUNTARY RENUNCIATION OF THE OFFICE OF *PUNONG BARANGAY*. — Petitioner erroneously argues that when he assumed the position of *Sangguniang Bayan* member, he left his post as *Punong Barangay* by operation of law; hence, he did not fully serve his third term as *Punong Barangay*. The term "operation of law" is defined by the Philippine Legal Encyclopedia as "a term describing the fact that rights may be acquired or lost by the effect of a legal rule without any act of the person affected."

Black's *Law Dictionary* also defines it as a term that "expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular transaction of the established rules of law, without the act or cooperation of the party himself." In this case, petitioner did not fill in or succeed to a vacancy by operation of law. He instead relinquished his office as *Punong Barangay* during his third term when he won and assumed office as *Sangguniang Bayan* member of Dauis, Bohol, which is deemed a voluntary renunciation of the Office of *Punong Barangay*. In fine, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated March 4, 2008 and August 7, 2008, disqualifying petitioner from being a candidate for *Punong Barangay* in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

APPEARANCES OF COUNSEL

Amon Layno & Associates Law Office for petitioner.
The Solicitor General for public respondent.
Nerio D. Zamora II for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari,* under Rule 65 of the Rules of Court, alleging that the Commission on Elections (COMELEC) committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions promulgated on March 4, 2008 and August 7, 2008 holding that petitioner Nicasio Bolos, Jr. is disqualified as a candidate for the position of *Punong Barangay* of Barangay Biking, Dauis, Bohol in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections on the ground that he has served the three-term limit provided in the Constitution and Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991.

The facts are as follows:

For three consecutive terms, petitioner was elected to the position of *Punong Barangay* of Barangay Biking, Dauis, Bohol in the Barangay Elections held in 1994, 1997 and 2002.

In May 2004, while sitting as the incumbent *Punong Barangay* of Barangay Biking, petitioner ran for Municipal Councilor of Dauis, Bohol and won. He assumed office as Municipal Councilor on July 1, 2004, leaving his post as *Punong Barangay*. He served the full term of the *Sangguniang Bayan* position, which was until June 30, 2007.

Thereafter, petitioner filed his Certificate of Candidacy for *Punong Barangay* of Barangay Biking, Dauis, Bohol in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

Respondent Rey Angeles Cinconiegue, the incumbent *Punong Barangay* and candidate for the same office, filed before the COMELEC a petition for the disqualification of petitioner as candidate on the ground that he had already served the three-term limit. Hence, petitioner is no longer allowed to run for the same position in accordance with Section 8, Article X of the Constitution and Section 43 (b) of R.A. No. 7160.

Cinconiegue contended that petitioner's relinquishment of the position of *Punong Barangay* in July 2004 was voluntary on his part, as it could be presumed that it was his personal decision to run as municipal councilor in the May 14, 2004 National and Local Elections. He added that petitioner knew that if he won and assumed the position, there would be a voluntary renunciation of his post as *Punong Barangay*.

In his Answer, petitioner admitted that he was elected as *Punong Barangay* of Barangay Biking, Dauis, Bohol in the last three consecutive elections of 1994, 1997 and 2002. However, he countered that in the May 14, 2004 National and Local Elections, he ran and won as Municipal Councilor of Dauis, Bohol. By reason of his assumption of office as *Sangguniang Bayan* member, his remaining term of office as *Punong Barangay*, which would have ended in 2007, was left unserved. He argued that his election and assumption of office as *Sangguniang Bayan*

member was by operation of law; hence, it must be considered as an involuntary interruption in the continuity of his last term of service.

Pursuant to Section 10 of COMELEC Resolution No. 8297 dated September 6, 2007, the petition was heard by the Provincial Election Supervisor of Bohol. Upon completion of the proceedings, the evidence, records of the case, and the Hearing Officer's action on the matter were endorsed to and received by the Commission on November 21, 2007.

The issue before the COMELEC was whether or not petitioner's election, assumption and discharge of the functions of the Office of *Sangguniang Bayan* member can be considered as voluntary renunciation of his office as *Punong Barangay* of Barangay Biking, Dauis, Bohol which will render unbroken the continuity of his service as *Punong Barangay* for the full term of office, that is, from 2004 to 2007. If it is considered a voluntary renunciation, petitioner will be deemed to have served three consecutive terms and shall be disqualified to run for the same position in the October 29, 2007 elections. But if it is considered as an involuntary renunciation, petitioner's service is deemed to have been interrupted; hence, he is not barred from running for another term.

In a Resolution[1] dated March 4, 2008, the First Division of the COMELEC ruled that petitioner's relinquishment of the office of *Punong Barangay* of Biking, Dauis, Bohol, as a consequence of his assumption of office as *Sangguniang Bayan* member of Dauis, Bohol, on July 1, 2004, was a voluntary renunciation of the Office of *Punong Barangay*. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing, the Commission (First Division) **GRANTS** the petition. Respondent **NICASIO BOLOS, JR.**, having already served as *Punong Barangay* of Barangay Biking, Dauis, Bohol for three consecutive terms is hereby **DISQUALIFIED** from being a candidate for the same office in the October 29, 2007 *Barangay* and SK Elections. Considering that respondent had already

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[1] *Rollo*, pp. 15-23.

been proclaimed, said proclamation is hereby **ANNULLED**. Succession to said office shall be governed by the provisions of Section 44 of the Local Government Code.[2]

Petitioner's motion for reconsideration was denied by the COMELEC *en banc* in a Resolution[3] dated August 7, 2008.

Hence, this petition for *certiorari* raising this lone issue:

WHETHER OR NOT THE HONORABLE COMMISSION ON ELECTIONS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN DISQUALIFYING [PETITIONER] AS A CANDIDATE FOR *PUNONG BARANGAY* IN THE OCTOBER 29, 2007 *BARANGAY* AND *SANGGUNIANG KABATAAN* ELECTIONS AND, SUBSEQUENTLY, ANNULLING HIS PROCLAMATION.[4]

The main issue is whether or not there was voluntary renunciation of the Office of *Punong Barangay* by petitioner when he assumed office as Municipal Councilor so that he is deemed to have fully served his third term as *Punong Barangay*, warranting his disqualification from running for the same position in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

Petitioner contends that he is qualified to run for the position of *Punong Barangay* in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections since he did not serve continuously three consecutive terms. He admits that in the 1994, 1997 and 2002 *Barangay* elections, he was elected as *Punong Barangay* for three consecutive terms. Nonetheless, while serving his third term as *Punong Barangay*, he ran as Municipal Councilor of Dauis, Bohol, and won. On July 1, 2004, he assumed office and, consequently, left his post as *Punong Barangay* by operation of law. He averred that he served the full term as member of the *Sangguniang Bayan* until June 30,

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[2] *Id.* at 22.

[3] *Id.* at 24-27.

[4] *Id.* at 8.

2007. On October 29, 2007, he filed his Certificate of Candidacy for *Punong Barangay* and won. Hence, the COMELEC gravely abused its discretion in disqualifying him as a candidate for *Punong Barangay* since he did not complete his third term by operation of law.

The argument does not persuade.

The three-term limit for elective local officials is contained in Section 8, Article X of the Constitution, which provides:

> Sec. 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years, and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

David v. Commission on Elections[5] elucidates that the Constitution did not expressly prohibit Congress from fixing any term of office for *barangay* officials, thereby leaving to the lawmakers full discretion to fix such term in accordance with the exigencies of public service. The discussions in the Constitutional Commission showed that the term of office of *barangay* officials would be "[a]s may be determined by law," and more precisely, "[a]s provided for in the Local Government Code."[6]

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[5] G.R. No. 127116, April 8, 1997, 271 SCRA 90, 104.

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

MR. NOLLEDO. One clarificatory question, Madam President. What will be the term of the office of *barangay* officials as provided for?

MR. DAVIDE. As may be determined by law.

MR. NOLLEDO. **As provided for in the Local Government Code?**

MR. DAVIDE. **Yes.**

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THE PRESIDENT. Is there any other comment? Is there any objection to this proposed new section as submitted by Commissioner Davide and accepted by the Committee?

MR. RODRIGO. Madam President, does this prohibition to serve for more than three consecutive terms apply to *barangay* officials?

Section 43(b) of the Local Government Code provides that *barangay* officials are covered by the three-term limit, while Section 43(c)[7] thereof states that the term of office of *barangay* officials shall be five (5) years. The cited provisions read, thus:

Sec. 43. *Term of Office*. — x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

(c) The term of barangay officials and members of the sangguniang kabataan shall be for five (5) years, which shall begin after the regular election of *barangay* officials on the second Monday of May 1997: *Provided*, That the *sangguniang kabataan* members who were elected in the May 1996 elections shall serve until the next regular election of *barangay* officials.

Socrates v. Commission on Elections[8] held that the rule on the three-term limit, embodied in the Constitution and the Local Government Code, has two parts:

x x x **The first part provides that an elective local official cannot serve for more than three consecutive terms**. The clear intent is that only consecutive terms count in determining the three-term limit rule. **The second part states that voluntary renunciation**

MR. DAVIDE. Madam President, the voting that we had on the terms of office did not include the *barangay* officials because it was then the stand of the Chairman of the Committee on Local Governments that the term of *barangay* officials must be determined by law. So it is now for the law to determine whether the restriction on the number of reelections will be included in the Local Government Code.

MR. RODRIGO. So that is up to Congress to decide.

MR. DAVIDE. Yes.

MR. RODRIGO. I just wanted that clear in the record.

[7] As amended by R.A. No. 8524, which took effect on March 11, 1998.

[8] G.R. No. 154512, November 12, 2002, 391 SCRA 457.

of office for any length of time does not interrupt the continuity of service. The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together to form a continuous service or consecutive terms.

After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term.[9]

In *Lonzanida v. Commission on Elections,*[10] the Court stated that the second part of the rule on the three-term limit shows the clear intent of the framers of the Constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term. The Court held that two conditions for the application of the disqualification must concur: (1) that the official concerned has been elected for three consecutive terms in the same government post; and (2) that he has fully served three consecutive terms.[11]

In this case, it is undisputed that petitioner was elected as *Punong Barangay* for three consecutive terms, satisfying the first condition for disqualification.

What is to be determined is whether petitioner is deemed to have voluntarily renounced his position as *Punong Barangay* during his third term when he ran for and won as *Sangguniang Bayan* member and assumed said office.

The Court agrees with the COMELEC that there was voluntary renunciation by petitioner of his position as *Punong Barangay*.

The COMELEC correctly held:

It is our finding that Nicasio Bolos, Jr.'s relinquishment of the office of *Punong Barangay* of Biking, Dauis, Bohol, as a

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[9] *Id.* at 467.

[10] G.R. No. 135150, July 28, 1999, 311 SCRA 602, 613.

[11] *Id.* at 611.

consequence of his assumption to office as *Sangguniang Bayan* member of Dauis, Bohol, on July 1, 2004, is a voluntary renunciation.

As conceded even by him, respondent (petitioner herein) had already completed two consecutive terms of office when he ran for a third term in the *Barangay* Elections of 2002. When he filed his certificate of candidacy for the Office of *Sangguniang Bayan* of Dauis, Bohol, in the May 10, 2004 [elections], he was not deemed resigned. Nonetheless, all the acts attending his pursuit of his election as municipal councilor point out to an intent and readiness to give up his post as *Punong Barangay* once elected to the higher elective office, for it was very unlikely that respondent had filed his Certificate of Candidacy for the *Sangguniang Bayan* post, campaigned and exhorted the municipal electorate to vote for him as such and then after being elected and proclaimed, return to his former position. He knew that his election as municipal councilor would entail abandonment of the position he held, and he intended to forego of it. Abandonment, like resignation, is voluntary.[12]

Indeed, petitioner was serving his third term as *Punong Barangay* when he ran for *Sangguniang Bayan* member and, upon winning, assumed the position of *Sangguniang Bayan* member, thus, voluntarily relinquishing his office as *Punong Barangay* which the Court deems as a voluntary renunciation of said office.

Petitioner erroneously argues that when he assumed the position of *Sangguniang Bayan* member, he left his post as *Punong Barangay* by operation of law; hence, he did not fully serve his third term as *Punong Barangay*.

The term "operation of law" is defined by the Philippine Legal Encyclopedia[13] as "a term describing the fact that rights may be acquired or lost by the effect of a legal rule without any act of the person affected." Black's Law Dictionary also defines it as a term that "expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular transaction of the established rules of law, without the act or cooperation of the party himself."[14]

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[12] *Rollo*, pp. 18-19.

[13] Jose Agaton R. Sibal, copyright 1986.

[14] Sixth Edition, copyright 1990.

An interruption in the service of a term of office, by operation of law, is exemplified in *Montebon v. Commission on Elections.*[15] The respondent therein, Sesinando F. Potencioso, Jr., was elected and served three consecutive terms as Municipal Councilor of Tuburan, Cebu in 1998-2001, 2001-2004, and 2004-2007. However, during his second term, he succeeded as Vice-Mayor of Tuburan due to the retirement of the Vice-Mayor pursuant to Section 44 of R.A. No. 7160.[16] Potencioso's assumption of office as Vice-Mayor was considered an involuntary severance from his office as Municipal Councilor, resulting in an interruption in his second term of service.[17] The Court held that it could not be deemed to have been by reason of voluntary renunciation because it was by operation of law.[18] Hence, Potencioso was qualified to run as candidate for municipal councilor of the Municipality of Tuburan, Cebu in the May 14, 2007 Synchronized National and Local Elections.

Further, in *Borja, Jr. v. Commission on Elections,*[19] respondent therein, Jose T. Capco, Jr., was elected as Vice-Mayor of Pateros on January 18, 1988 for a term ending on June 30, 1992. On September 2, 1989, Capco became Mayor, by operation of law, upon the death of the incumbent, Cesar Borja. Thereafter, Capco was elected and served as Mayor for two more terms, from 1992 to 1998. On March 27, 1998, Capco filed a Certificate

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[15] G.R. No. 180444, April 9, 2008, 551 SCRA 50.

[16] SEC. 44. *Permanent Vacancies in the Offices of the Governor, Mayor, and Vice Mayor*. — (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor or vice-mayor, the highest ranking sanggunian member or in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. x x x

[17] *Supra* note 15.

[18] *Id.*

[19] G.R. No. 133495, September 3, 1998, 295 SCRA 157.

of Candidacy for Mayor of Pateros in the May 11, 1998 election. Capco's disqualification was sought on the ground that he would have already served as Mayor for three consecutive terms by June 30, 1998; hence, he would be ineligible to serve for another term. The Court declared that the term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve the same elective position.[20] The Court held that Capco was qualified to run again as mayor in the next election because he was not elected to the office of mayor in the first term but simply found himself thrust into it by operation of law.[21] Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor.[22] The vice-mayor's assumption of the mayorship in the event of the vacancy is more a matter of chance than of design.[23] Hence, his service in that office should not be counted in the application of any term limit.[24]

In this case, petitioner did not fill in or succeed to a vacancy by operation of law. He instead relinquished his office as *Punong Barangay* during his third term when he won and assumed office as *Sangguniang Bayan* member of Dauis, Bohol, which is deemed a voluntary renunciation of the Office of *Punong Barangay*.

In fine, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated March 4, 2008 and August 7, 2008, disqualifying petitioner from being a candidate for *Punong Barangay* in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

WHEREFORE, the petition is *DISMISSED*. The COMELEC Resolutions dated March 4, 2008 and August 7, 2008 are hereby *AFFIRMED*. No pronouncement as to costs.

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[20] *Id.* at 169.

[21] *Id.* at 170.

[22] *Id.*

[23] *Id.* at 168.

[24] *Id.*

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Velasco, Jr., Nachura, and *Leonardo-de Castro, JJ.,* concur.

Chico-Nazario and *Brion, JJ.,* on leave.

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— May be dismissed where the party fails to indicate therein all the material dates. (Batugan *vs*. Judge Balindong, G.R. No. 181384, March 13, 2009) p. 518

— Not proper when an appeal or any other remedy at law is available. (Quesada *vs*. CA, G.R. No. 177516, March 13, 2009) p. 407

— Only questions of lack of jurisdiction or grave abuse of discretion can be raised therein. (Vergara *vs*. Ombudsman, G.R. No. 174567, March 12, 2009) p. 26

— Proper remedy to assail the judgment or final order of the COMELEC. (Valino *vs*. Vergara, G.R. No. 180492, March 13, 2009) p. 498

— The office thereof is not the correction of simple errors of judgment but capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power of passion or hostility. (Valino *vs*. Vergara, G.R. No. 180492, March 13, 2009) p. 498

— The party who seeks to avail thereof must strictly observe the rules laid down by law. (Batugan *vs*. Judge Balindong, G.R. No. 181384, March 13, 2009) p. 518

— Will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it; exceptions. (JP Latex Technology, Inc. *vs*. Ballons Granger Balloons, Inc., G.R. No. 177121, March 16, 2009) p. 600

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— They must preserve the judiciary's good name and standing as a true temple of justice. *(Id.)*

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— Non-presentation of the forensic chemist may produce a serious doubt as to the accused's guilt. *(Id.)*

Violation of — Application of a more stringent standard is required when the narcotic specimen is not readily identifiable. (Carino *vs*. People, G.R. No. 178757, March 13, 2009) p. 433

— Failure to take photographs and make inventory of the drugs seized is not fatal. (People *vs*. Llamado, G.R. No. 185278, March 17, 2009) p. 591

— The courts must strictly scrutinize the manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-bust money and the delivery of the illegal drug. *(Id.)*

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— Imposable penalty. *(Id.)*

— There is no crime of kidnapping for ransom with double homicide; the killing is designated as homicide regardless of the number of killings or deaths that occurred as a consequence of the kidnapping. *(Id.)*

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— Not subject to collateral attack; answer with counterclaim is considered a direct attack. *(Id.)*

— Registered owner's title to the property is presumed legal and cannot be collaterally attacked. (Salandanan *vs*. Sps. Mendez, G.R. No. 160280, March 13, 2009) p. 229

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— The need for a hearing before any punitive measure may be undertaken by an administrative agency in the exercise of its quasi-judicial functions is sustained. *(Id.)*

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— Prevails in the absence of evidence to the contrary. (Law Firm of Chavez Miranda Aseoche *vs*. Justice Dicdican, A.M. No. CA-09-48-J, March 13, 2009) p. 65

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— Each bidder must be able to bid on the same thing. *(Id.)*

— Post qualification procedure does not give occasion for the procuring entity to arbitrarily exercise its discretion

and brush aside the very requirement it specifies as vital components of the goods it bids out. *(Id.)*

— Technical specification of the particular contract specified in the invitation to bid is not required to determine the prospective bidder's eligibility to bid. *(Id.)*

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Treachery — Its essence is the deliberate and sudden attack that renders the victim unable and unprepared to defend himself. (People *vs*. Tagudar, G.R. No. 184173, March 13, 2009) p. 565

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Attempted rape — Committed absent any showing that accused succeeded in having carnal knowledge of the victim. (People *vs*. Brioso, G.R. No. 182517, March 13, 2009) p. 530

— Imposable penalty. *(Id.)*

Commission of — Accused cannot be convicted based solely on the pain experienced by the victim as a result of efforts to insert the penis into the vagina. (People *vs*. Brioso, G.R. No. 182517, March 13, 2009) p. 530

— Buttressed by the result of the medical examination. (People *vs*. Malibiran, G.R. No. 173471, March 17, 2009) p. 700

— Elements. (People *vs*. Brioso, G.R. No. 182517, March 13, 2009) p. 530

(People *vs*. Guerrero, G.R. No. 170360, March 12, 2009) p. 8

— Force and intimidation need not be irresistible. *(Id.)*

— Full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary. *(Id.)*

— Imposable penalty. *(Id.)*

Prosecution of rape cases — Accused may be found guilty of rape based solely on the victim's testimony if the same meets the test of credibility. (People *vs*. Brioso, G.R. No. 182517, March 13, 2009) p. 530

— Victim's testimony ought to be taken in the light of her tender age and her being innocent to the ways of the world. (People *vs*. Malibiran, G.R. No. 173471, March 17, 2009) p. 700

Qualified rape — The age of the victim and her relationship with the offender must be both alleged in the information and proven during the trial; effect of failure to allege and prove. (People *vs*. Malibiran, G.R. No. 173471, March 17, 2009) p. 700

— Victim is entitled to civil indemnity, moral and exemplary damages. *(Id.)*

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Principle — Requisites. (National Investment and Dev't. Corp. *vs*. Sps. Bautista, G.R. No. 150388, March 13, 2009) p. 137

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— May not be misused and abused as instruments for denial of substantial justice. (Anson Trade Center, Inc. *vs*. Pacific Banking Corp., G.R. No. 179999, March 17, 2009) p. 806

— Rules are not to be disdained as mere technicalities. (Valino *vs*. Vergara, G.R. No. 180492, March 13, 2009) p. 498

— Should not be a panacea for all procedural maladies. (Batugan *vs*. Judge Balindong, G.R. No. 181384, March 13, 2009) p. 518

— The bare invocation of the phrase "the interest of justice" is not a magic spell that will automatically allow the court to suspend procedural rules despite the jurisdictional bar. (Ilusorio *vs*. Ilusorio-Yap, G.R. No. 171656, March 17, 2009) p. 688

SANDIGANBAYAN

Jurisdiction — Determined by the position that the accused holds, not his salary grade. (Lazarte, Jr. *vs*. Sandiganbayan, G.R. No. 180122, March 13, 2009) p. 475

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URBAN DEVELOPMENT AND HOUSING ACT OF 1992 (R.A. NO. 7279)

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URBAN LAND REFORM LAW (P.D. NO. 1517)

Application — The prospective mantle of the law extends only to qualified landless urban families. (Estreller *vs*. Ysmael, G.R. No. 170264, March 13, 2009) p. 292

WITNESSES

Credibility — Assessment by the investigating judge in administrative cases is generally accorded great respect

and even finality. (People *vs*. Tagudar, G.R. No. 184173, March 13, 2009) p. 565

— Blood relatives of a party who cannot be said to be entirely disinterested in the outcome of the case cannot be credible and impartial witnesses. (Heirs of Teofilo Gabatan *vs*. CA, G.R. No. 150206, March 13, 2009) p. 112

— Findings by trial court, accorded with great respect. (People *vs*. Reyes, G.R. No. 178300, March 17, 2009) p. 738

— If the inculpatory testimony is capable of two or more explanations, one consistent with the innocence of the accused and the other with his guilt, then evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. (People *vs*. Cervantes, G.R. No. 181494, March 17, 2009) p. 819

— Non-presentation of corroborative witnesses does not constitute suppression of evidence and is not fatal to the prosecution's case. (People *vs*. Soriano, G.R. No. 171085, March 17, 2009) p. 668

— Not affected by delay in reporting a crime, if reason for the delay is sufficiently explained. (People *vs*. Reyes, G.R. No. 178300, March 17, 2009) p. 738

(People *vs*. Tagudar, G.R. No. 184173, March 13, 2009) p. 565

— Presence of personal motives on the part of the witness to testify in favor of the victim and against the accused should be supported by satisfactory proof before his testimony may be considered biased. (People vs. Soriano, G.R. No. 171085, March 17, 2009) p. 668

— Testimonies of rape victims who are young and immature deserve full credence. (People vs. Guerrero, G.R. No. 170360, March 12, 2009) p. 8

— The natural reaction of victims of criminal violence is to strive to see the appearance of their assailant and observe the manner in which the crime was committed. (People *vs*. Tagudar, G.R. No. 184173, March 13, 2009) p. 565

— Witness' relationship to the victim of a crime makes his testimony more credible as it would be unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit. (People *vs*. Reyes, G.R. No. 178300, March 17, 2009) p. 738

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REFERENCES

I. LOCAL AUTHORITIES

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D. BOOKS
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Agpalo, Comments on the Omnibus Election Code,
Rev. Ed., 2004, p.121 431
Antonio H. Noblejas and Edilberto H. Noblejas, Registration
of Land Titles and Deeds (2007 Revised Ed.), p. 2 329
Jose Agaton R. Sibal, Philippine Legal Encyclopedia,
copyright 1986 854

II. FOREIGN AUTHORITIES
A. BOOKS

29A Am. Jur. 2d Evidence § 946 446-447
46 Am. Jur. 2d Judgments, § 520 150
Allen, Ronald J., et al., An Analytical Approach to Evidence,
Little Brown & Co., USA (1989), p. 174 445
Black's Law Dictionary, Sixth Edition, copyright 1990 854
Jones on Evidence, p. 94 452
Park C. Roger, et al., Evidence Law (1998), p. 507 445