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OF THE

PHILIPPINES

FROM

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 183565. April 8, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO ABOGANDA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DATE OF THE COMMISSION OF THE OFFENSE; RATIONALE.— Accused-appellant employs *US v. Dichao* as basis for arguing that the date and time of the commission of the offenses as alleged in the informations are too indefinite to give him an opportunity to prepare his defense. This opportunity to prepare one's defense is the rationale behind Section 10, Rule 110 of the Revised Rules of Criminal Procedure which reads: Sec. 10. *Date of the Commission of the Offense*.– –It is not necessary to state in the complaint or information the precise date the offense was committed except when it is material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

2. CRIMINAL LAW; RAPE; ELEMENTS; DATE OR TIME THE RAPE WAS COMMITTED IS NOT AN ESSENTIAL INGREDIENT AS IT IS THE CARNAL KNOWLEDGE THROUGH FORCE AND INTIMIDATION THAT IS THE GRAVAMEN OF THE OFFENSE; RELEVANT RULINGS, CITED.— Accused-appellant's argument, however, does not apply to the crime of rape. The only elements of rape that are

relevant to the instant case are (1) carnal knowledge of a woman and (2) this was committed by using force, threat, or intimidation. A slew of cases has discussed the elements of such a crime, and the time and date of its commission are not one of these elements. In *People v. Ceredon*, we held that in rape cases, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The date or time the rape was committed is not an essential ingredient as it is the carnal knowledge through force and intimidation that is the gravamen of the offense. It is, thus, sufficient that the date of commission alleged is as near as possible to the actual date. In *People v. Bunagan*, we reiterated that the exact date of the sexual assault is not an essential element of the crime of rape; what should control is the fact of the commission of the rape or that there is proof of the penetration of the female organ. Thus, while the informations allege that the rapes were committed on or about the months of February and March 2000, the lack of particularity in time or date does not affect the outcome of the instant case. The allegations as to the dates of commission substantially apprised accused-appellant of the rape charges against him as the elements of rape were in the informations. He, therefore, cannot insist that he was deprived of the right to be informed of the nature of the charges against him. As the appellate court pertinently noted, the conviction of accused-appellant does not depend on the time the rapes were committed but on the credibility of AAA, whom the trial court found to have testified in a clear, straightforward, and consistent manner. Her testimony outweighs accused-appellant's weak defense of alibi. He may be convicted on the sole testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things, a factor which exists in the present case.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; BILL OF PARTICULARS; PROPER REMEDY TO QUESTION THE ALLEGED DEFECT IN THE INFORMATION BEFORE ARRAIGNMENT.— [A]ccused-appellant belatedly raised his argument on appeal. In the similar case of *People v. Mauro*, the accused gave a "not guilty" plea upon arraignment instead of questioning the so-called defect in the information against him. We observed in *Mauro* that if the accused really believed in the allegedly defective information and the prejudice

to his rights, he should have filed a motion for bill of particulars before his arraignment. We, thus, also rule in the instant case that it is too late for accused-appellant to protest the imprecise dates found in the informations against him.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the January 25, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00027 entitled *People of the Philippines v. Eduardo Aboganda* which affirmed the March 10, 2003 Decision of the Regional Trial Court (RTC), Branch 13 in Carigara, Leyte in Criminal Case Nos. 3029 and 3030 for Rape.

The Facts

On June 8, 2000, accused-appellant Eduardo Aboganda was indicted under the following Informations:

Criminal Case No. 3029

That on or about the month of February, 2000, in the municipality of [XXX], Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation, then armed with a sharp bladed weapon (pisao), did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA], his daughter, against her will, to her damage and prejudice.

CONTRARY TO LAW.[1]

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[1] CA *rollo*, p. 17. The real names of the victim and her siblings have been withheld pursuant to Republic Act No. (RA) 7610 or *The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act* and RA 9262 or *The Anti-Violence Against Women and Their Children Act of 2004*.

Criminal Case No. 3030

That on or about the month of March 2000, in the municipality of [XXX], Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA], his own daughter, against her will, to her damage and prejudice.

CONTRARY TO LAW.[2]

On July 17, 2000, accused-appellant pleaded not guilty to both counts of rape.

During trial, the prosecution presented the following witnesses: the victim, AAA, Alicia Advincula, Dr. Eduardo Toledo, and Dr. Edna Lagunay. The defense had accused-appellant as its lone witness.

AAA testified that she was 13 years old. She told the court that she was alone in the house in the evening of February 17, 2000. Her father, accused-appellant, arrived at around 8:00 p.m. He asked her where her grandmother was and she replied that she did not know. He then brought her with him to look for her grandmother. Once they were on the roadside, he held her wrist and led her to her grandmother's house. She asked him what they were going to do there since her grandmother was not inside. Once in the yard, accused-appellant immediately closed the bamboo gate and told AAA that they will stay there for a while. She then went inside and sat there. Accused-appellant started to undress himself and told her to do the same or else he would stab her with the small bolo (*pisaw*) he was holding. She became afraid but accused-appellant then told her not to be scared as he would not harm her. He, however, grabbed AAA, undressed her, and pinned her to the ground. She pleaded with him saying, "Please do not do that to me, because I do not like that." He ignored her appeal and instead told her not to complain or her neck will be slashed. He placed himself on top of her and held the *pisaw* to her throat. He then

[2] *Id.* at 18.

inserted his penis into her vagina in a push-and-pull movement. He was laughing while he was satisfying his lust. After a while she saw a sticky substance come out of his penis. He then told her to dress up and go back to their own house. Once home, her brother, BBB, asked AAA why she was crying and she replied it was nothing as she was afraid of her father, who was sitting near them.[3]

AAA testified that on March 26 2000, she was sleeping at her grandmother's house when her father arrived to tell her to cook rice at their own house. She followed his order and went to their house. Accused-appellant was the only one home as her brothers were taking a bath in the river. As she was about to prepare the rice, he held her wrist and dragged her to the room. He took off his shirt and started undressing her. She begged him not to, but he answered, "Don't you know that this thing I am doing is the reason for the death of Echegaray?" He then pinned her down and told her, "We will do it again."[4] He inserted his penis into her vagina and made a pumping motion while holding both her hands. He only stopped when three persons arrived and he had to meet them downstairs.

Sometime in April, AAA reported the matter to her uncle, the *barangay* captain. She decided to reveal the rape incidents after her father insisted that she leave her grandmother's house and stay with him at their house.[5]

Social worker Advincula testified that she conducted psycho-social sessions with AAA. AAA was referred to her by the Municipal Social Welfare Office in XXX, Leyte. She stated that AAA confided about her family situation that her late mother was a battered wife while she and her siblings were maltreated by their father.

Another prosecution witness, Dr. Toledo, told the court that he prepared a joint medico-legal report with Dr. Lagunay. He

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[3] *Id.* at 20.

[4] *Id.*

[5] *Id.* at 21.

examined AAA's external physical injuries and found no signs of such injuries.

The other medico-legal doctor, Dr. Lagunay, testified that her findings show that "the positive hyperemic at lower half of [AAA's] labia minora is the reddening of the lower labia caused by friction secondary to scratching, a possibility of insertion of the penis."[6]

Accused-appellant's testimony was summarized by the RTC, as follows:

> That he is 38 years old, married, blacksmith and a resident of Brgy. [XXX, XXX], Leyte; that he is the accused in these criminal cases; that he knows the private complainant [AAA] being her daughter; that on February 17, 2000, at about 6:00 o'clock after taking their supper, he was in his house in [Sitio XXX, Brgy. XXX, XXX], Leyte resting with his children [BBB] and [CCC], because his wife, [DDD] was in Manila; that after taking their supper at 8:00 o'clock in the evening, he went to sleep and woke up at 5:00 o'clock the following day; that he did not leave the house the whole day, because he prepared their meal; that after taking breakfast with his children, he started cleaning his blacksmith shop situated on the front side of their house and worked there until 11:00 o'clock without going somewhere else; that he did not leave because after working at 11:00 o'clock he had to prepare again for their lunch; that when he finished preparing for their lunch, he rested for a while and ate at 1:00 o'clock; that after eating he went back to his work; that he denies the allegation of [his] daughter [AAA] that on February 17, 2000 at about 8:00 o'clock in the evening while she was at her grandmother's house, he arrived thereat, under the influence of liquor asking for the whereabouts of her grandmother and when [AAA] told him that she does not know where she was, they left to look for her and when they failed to find her, they went back to the house of her grandmother and threatened [AAA], immediately undressed her, let her lie down and took off her dress and sexually molested her; that this accusation is only a drama of his wife and her auntie, [EEE] so that he will be forced to leave Brgy. [XXX] and go home to Samar and be killed by the rebels; that the reason for this is because, [EEE] is his mortal enemy because he is the only Filipino in-law and resents the fact that he is always drunk; that the whole day on March 26, 2000, he

[6] *Id.* at 25.

was also at home in Sitio [XXX, Brgy. XXX, XXX], Leyte with his two children, [BBB] and [CCC]; that in the morning of that day when he woke up at 5:00 o'clock he did the housekeeping first, then he prepared their breakfast and after eating, he started working at his blacksmith shop at 8:00 o'clock in the morning until 11:00 o'clock when he started preparing for their lunch; that they ate their lunch 1:00 o'clock in the afternoon; that he did not leave the house that day; that he did not meet his daughter [AAA] at any time of that day; that he did not go to the house of [EEE], [AAA's] grandmother that same day; that he denies the allegation of [AAA] that at 7:00 clock in the morning of March 26, 2000, he fetched her from the house of [EEE] to go to their own house and cook rice and while thereat and while the other children were in the river, he molested her and raped her inside his house and after he molested her daughter, he even uttered the statement, "Don't you know that what I am doing now is the reason [for] the death of Echegaray?"; that the accused while testifying stated that, "If any doctor here in the world could provide evidence that [I even kissed] my daughter, I will accept the penalty of death!"; that all these charges against him are just orchestrated by his mother-in-law, [EEE] who is his mortal enemy, because he was the one who fought for the right of his wife's inherited land at Brgy. [XXX, XXX], Leyte; that on February 17, 2000 and March 26, 2000, [AAA] was with her grandmother, [EEE], because [EEE] had no companion so his wife suggested that AAA [live] with her;

On cross examination, accused stated that his wife is [DDD]; that they have five children and [AAA] is the second from [FFF]; that his kids call him "Tatay"; that [AAA] respects him as a father; that he has been supporting [AAA's schooling] and she respects him out of his support for her; that [EEE] also stays in Barangay [XXX, XXX], Leyte about 50 meters away from their house; that it will not take 15 minutes in going to the house of [EEE] from their house; that [AAA] would usually go and visit them in their house; that he did not meet [AAA] on February 17, 2000 and also on March 26, 2000 although they were just living in the same sitio and *barangay*; that the reason why his daughter would accuse him of raping her is because this was orchestrated by her grandmother; that he knows that this case was filed at the initiative of both *barangay* captain Mely and [EEE]; that he vehemently denied the accusation of raping his daughter, despite the testimonies of the doctors; that [EEE] was the first cause of the enmity between him and his daughter.[7]

[7] *Id.* at 27-28.

After trial, the RTC held in favor of the prosecution. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, applying Article 266 A and 266 B of the Revised Penal Code as amended, and the amendatory provision of R.A. No. 8353, (The Anti-Rape Law), in relation to Section 11 of R.A. 7659, (The Death Penalty Law), the Court [finds] accused, EDUARDO ABOGANDA, GUILTY, beyond reasonable doubt for the crime of Incestuous RAPE charged under Criminal [Case] Nos. 3029 and 3030 and sentenced to suffer the maximum penalty of DEATH and to pay Civil Indemnity to the victim, [AAA], the sum of Seventy Five Thousand (₱75,000.00) Pesos, for each count of Rape and pay moral damages in the amount of Fifty Thousand pesos (₱50,000.00) for each count and;
>
> Pay the Cost.
>
> SO ORDERED.[8]

On appeal, accused-appellant questioned the vagueness of the date and time alleged in the informations against him as well as his erroneous conviction for incestuous rape. The CA, however, affirmed the RTC Decision. Citing *People v. Sernadilla*,[9] the CA reasoned that an information is valid so long as it distinctly states the statutory designation of the offense and the acts or omissions constituting it. The appellate court likewise ruled that the information suffices if there is an approximation of the date the offense was committed, more so in the case of rape when the time it was committed is not an essential element of the crime.

The CA agreed with accused-appellant in ruling that he cannot be convicted of incestuous rape in view of the failure of the informations to allege AAA's minority. The conviction for qualified rape was, however, still affirmed since accused-appellant was shown to have used a deadly weapon when he committed the offenses. It disposed of the case as follows:

> WHEREFORE, the foregoing premises considered, the appeal is DENIED. The Decision of the Regional Trial Court, 8th Judicial

[8] *Id.* at 35-36. Penned by Presiding Judge Crisostomo L. Garrido.

[9] G.R. No. 137696, January 24, 2001, 350 SCRA 243.

region, Branch 13, Carigara, Leyte, dated March 10, 2003 is hereby AFFIRMED with the MODIFICATION that the penalty of death imposed upon the appellant is reduced to *Reclusion Perpetua* pursuant to Republic Act 9346 which abolished the death penalty and, in addition to the award of ₱75,000.00 as civil indemnity for each count of rape and ₱50,000.00 as moral damages for each count, [appellant is hereby ordered] to pay ₱20,000.00 as exemplary damages for each count.

SO ORDERED.[10]

On September 1, 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.

The Issue

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE TWO (2) INFORMATIONS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR FAILURE OF THE PROSECUTION TO STATE THE PRECISE DATES OF THE COMMISSION OF THE ALLEGED RAPES, IT BEING AN ESSENTIAL ELEMENT OF THE CRIME CHARGED.

The Court's Ruling

The appeal has no merit.

Accused-appellant employs *US v. Dichao*[11] as basis for arguing that the date and time of the commission of the offenses as alleged in the informations are too indefinite to give him an opportunity to prepare his defense.[12] This opportunity to prepare one's defense is the rationale behind Section 10, Rule 110 of the Revised Rules of Criminal Procedure which reads:

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[10] *Rollo*, pp. 15-16. Penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[11] 27 Phil. 421 (1914).

[12] CA *rollo*, pp. 52-53. Accused-Appellant's Brief.

Sec. 10. *Date of the Commission of the Offense*.—It is not necessary to state in the complaint or information the precise date the offense was committed except when it is material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

Accused-appellant's argument, however, does not apply to the crime of rape. The only elements of rape that are relevant to the instant case are (1) carnal knowledge of a woman and (2) this was committed by using force, threat, or intimidation.[13] A slew of cases has discussed the elements of such a crime, and the time and date of its commission are not one of these elements.

In *People v. Ceredon*, we held that in rape cases, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The date or time the rape was committed is not an essential ingredient as it is the carnal knowledge through force and intimidation that is the gravamen of the offense. It is, thus, sufficient that the date of commission alleged is as near as possible to the actual date.[14]

In *People v. Bunagan*, we reiterated that the exact date of the sexual assault is not an essential element of the crime of rape; what should control is the fact of the commission of the rape or that there is proof of the penetration of the female organ.[15]

Thus, while the informations allege that the rapes were committed on or about the months of February and March 2000, the lack of particularity in time or date does not affect the outcome of the instant case. The allegations as to the dates of commission substantially apprised accused-appellant of the rape charges against him as the elements of rape were in the informations. He, therefore, cannot insist that he was deprived of the right to be informed of the nature of the charges against

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[13] REVISED PENAL CODE, Article 266-A(1)(a).

[14] G.R. No. 167179, January 28, 2008, 542 SCRA 550, 571.

[15] G.R. No. 177161, June 30, 2008, 556 SCRA 808, 813.

him.[16] As the appellate court pertinently noted, the conviction of accused-appellant does not depend on the time the rapes were committed but on the credibility of AAA, whom the trial court found to have testified in a clear, straightforward, and consistent manner. Her testimony outweighs accused-appellant's weak defense of alibi. He may be convicted on the sole testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things,[17] a factor which exists in the present case.

Moreover, accused-appellant belatedly raised his argument on appeal. In the similar case of *People v. Mauro*,[18] the accused gave a "not guilty" plea upon arraignment instead of questioning the so-called defect in the information against him. We observed in *Mauro* that if the accused really believed in the allegedly defective information and the prejudice to his rights, he should have filed a motion for bill of particulars before his arraignment.[19] We, thus, also rule in the instant case that it is too late for accused-appellant to protest the imprecise dates found in the informations against him.

As to accused-appellant's pecuniary liabilities, we affirm the award of Php75,000 in civil indemnity in accordance with current jurisprudence.[20] The award of Php50,000 in moral damages for both counts of rape is increased to Php75,000 consistent with *People v. Dela Paz*.[21] The award of exemplary damages is raised to Php25,000, also in line with prevailing jurisprudence.[22]

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[16] *People v. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 192, 202.

[17] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 701.

[18] G.R. Nos. 140786-88, March 14, 2003, 399 SCRA 126.

[19] *Id.* at 136.

[20] *People v. Perez*, 357 Phil. 17, 35 (1998); *People v. Bernaldez*, 355 Phil. 740, 758 (1998); *People v. Victor*, 354 Phil. 195, 209-210 (1998).

[21] G.R. No. 177294, February 19, 2008, 546 SCRA 363.

[22] *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733.

One final note. Accused-appellant explicitly recognizes that the rape he was about to commit was, at the time, punishable by death. Yet he still carried on with his bestial acts upon his own child. His conviction is another case in a disturbing trend of grown men abusing the innocent. Something must be done to stem this immoral wave of incestuous rapes.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00027 finding accused-appellant Eduardo Aboganda guilty of two counts of qualified rape is *AFFIRMED* with *MODIFICATION* as to moral and exemplary damages. He is ordered to pay, for each count of rape, civil indemnity of Php75,000, *moral damages of Php75,000, and exemplary damages of Php25,000.*

SO ORDERED.

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

EN BANC

[A.M. No. P-07-2344. April 15, 2009]

DOMINGO U. SABADO, JR., *complainant, vs.* **LANIEL P. JORNADA, Sheriff IV, Regional Trial Court-Office of the Clerk of Court (RTC-OCC), Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; SUPREME COURT, ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; SIMPLE MISCONDUCT AND GRAVE MISCONDUCT, DISTINGUISHED; USING ONE'S POSITION AS A SHERIFF FOR PECUNIARY GAIN CONSTITUTES GRAVE MISCONDUCT.— In *Salazar, et al. v. Sheriff Barriga,* the difference between simple

misconduct and grave misconduct was discussed: Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others. There is no doubt that respondent is guilty of grave misconduct. He used his position as sheriff for pecuniary gain when, in fact, he had no business getting involved in the processing of bail. He flagrantly disregarded established rules of procedure and law when he misrepresented that he could expedite complainant's application for bail.

2. ID.; ID.; DISHONESTY, DEFINED; RESPONDENT'S ACT OF POCKETING MONEY INTENDED FOR THE BAIL OF AN ACCUSED WAS A CLEAR EVIDENCE OF HIS LACK OF INTEGRITY.— Respondent's failure to return the ₱12,500 aggravated his situation. Pocketing money intended for the bail of an accused was reprehensible and unbecoming a public servant like respondent. It was clear evidence of his lack of integrity and moral fitness. We thus also find respondent guilty of dishonesty. As defined in *Geronca v. Magalona*: [D]ishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

3. ID.; ID.; ID.; ID.; CONDUCT OF COURT PERSONNEL MUST BE FREE FROM ANY WHIFF OF IMPROPRIETY, BOTH WITH RESPECT TO THEIR DUTIES IN THE JUDICIARY AND THEIR BEHAVIOR OUTSIDE THE COURT.— All court personnel are involved in the dispensation of justice. Any impropriety on their part immeasurably affects the honor and dignity of the judiciary and the people's confidence in it. Thus, the conduct of court personnel must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and their behavior outside the court.

As a sheriff, respondent was expected to conduct himself with propriety and decorum, and be above suspicion. The Court will not tolerate any conduct, act or omission by any court employee violating the norm of public accountability and diminishing or tending to diminish the faith of the people in the judiciary.

R E S O L U T I O N

***PER CURIAM*:**

Complainant Domingo U. Sabado, Jr. charged respondent sheriff Laniel P. Jornada with conduct unbecoming a public official. Complainant alleged that respondent agreed to facilitate his (complainant's) bailbond.[1] Between May 3 and 8, 2003, complainant gave respondent ₱56,500 as payment for the expeditious processing of his bail. To complainant's consternation, however, no bail was posted for him, resulting in his arrest and detention. Complainant eventually got out of detention because his sister posted bail for him. After being confronted by complainant, respondent returned ₱44,000, leaving a balance of ₱12,500.

In his comment, respondent averred that the bail for complainant was actually ₱50,000. Respondent admitted receiving money for complainant's bail but clarified that the amount given to him was only ₱44,000. In order to complete the ₱50,000 bail, he allegedly shouldered the balance of ₱6,000 "for the sake of their friendship." However, before he could secure complainant's bail, complainant was arrested and detained. He vehemently denied that he still owed complainant ₱12,500.

Complainant, in his reply, refuted respondent's defenses. He presented an acknowledgment receipt, issued after *barangay* conciliation proceedings,[2] explicitly stating that respondent agreed

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[1] *Rollo*, p. 18. Complainant was charged with acts of lasciviousness in the Regional Trial Court (RTC) of Caloocan City, Branch 131 in April 19, 2006.

[2] *Rollo*, p. 6.

to repay ₱56,500 in full after a partial payment of ₱44,000. Respondent promised to pay the balance of ₱12,500 on June 13, 2006. He failed to do so.[3]

The case was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. The OCA found respondent liable for simple misconduct. The OCA also found that respondent failed to return the ₱12,500 he promised during the *barangay* conciliation proceedings. The OCA recommended that respondent be fined ₱11,000, with a stern warning that the commission of the same or similar acts in the future will be dealt with more severely.

We hold respondent administratively liable but modify the penalty recommended by the OCA.

Respondent was unauthorized to receive money intended for complainant's bailbond. Whether or not respondent was able to file the bailbond for complainant was immaterial. The mere fact that *respondent received money and agreed to facilitate the posting of bail* created the wrong impression that he had the power and authority to secure a court process. Respondent opened himself to suspicion that he was going to benefit from the transaction.

The OCA found respondent liable for simple misconduct only. We disagree and hold respondent liable for grave misconduct and dishonesty, both of which are grave offenses punishable by dismissal even for the first offense.[4]

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[3] Complainant further adds that on May 3, 2006, respondent requested from him ₱2,500 so respondent could work on his bailbond right away and promised to post it after two days. On May 5, 2006, respondent asked complainant for ₱54,000. Complainant was able to give respondent only ₱20,000 that day. On May 8, 2006, they went to Land Bank, Quezon City to withdraw the remaining ₱34,000. Complainant avers that if respondent was sincere and his claim was true that the latter was bent on shouldering ₱6,000, he wondered why respondent was not able to secure and post complainant's bailbond within seven days after the money was given to him. Complainant added that sometime in November 2005, respondent borrowed ₱1,700 from him. *Rollo*, p. 2.

[4] Rule IV, Section 52 (A) of the Uniform Rules on Administrative Cases in the Civil Service.

In *Salazar, et al. v. Sheriff Barriga,*[5] the difference between simple misconduct and grave misconduct was discussed:

> Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer.
>
> In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.

There is no doubt that respondent is guilty of grave misconduct. He used his position as sheriff for pecuniary gain when, in fact, he had no business getting involved in the processing of bail. He flagrantly disregarded established rules of procedure and law when he misrepresented that he could expedite complainant's application for bail.

Respondent's failure to return the ₱12,500 aggravated his situation. Pocketing money intended for the bail of an accused was reprehensible and unbecoming a public servant like respondent. It was clear evidence of his lack of integrity and moral fitness. We thus also find respondent guilty of dishonesty. As defined in *Geronca v. Magalona*:[6]

> [D]ishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

All court personnel are involved in the dispensation of justice. Any impropriety on their part immeasurably affects the honor and dignity of the judiciary and the people's confidence in it.[7]

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[5] A.M. No. P-05-2016, 19 April 2007, 521 SCRA 449, 453-454.

[6] A.M. No. P-07-2398, 13 February 2008, 545 SCRA 1, 7.

[7] *Macinas v. Sheriff Arimado,* A.M. No. P-04-1869, 30 September 2005, 471 SCRA 162, 166.

Thus, the conduct of court personnel must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and their behavior outside the court.[8]

As a sheriff, respondent was expected to conduct himself with propriety and decorum, and be above suspicion.[9] The Court will not tolerate any conduct, act or omission by any court employee violating the norm of public accountability and diminishing or tending to diminish the faith of the people in the judiciary.[10]

We note that respondent failed to return the balance of ₱12,500 to complainant. We are not convinced that he received only ₱44,000 from complainant. Other than his barefaced denial of receipt of ₱56,500 from complainant, respondent offered no other evidence of his innocence. The acknowledgment receipt was convincing proof that he received ₱56,500 from complainant. Otherwise, he would not have returned ₱44,000 to complainant and his sister, with the promise to pay the balance of ₱12,500 on June 13, 2006. His failure to return the amount in full upon demand was a *prima facie* indication of misappropriation, and his act of denying receipt of the ₱12,500 amounted to swindling.

Respondent's argument that he was motivated only by good intentions and that he was just trying to be helpful to complainant is self-serving. As a court employee, he should have been more circumspect in his behavior and should have steered clear of any situation casting the slightest doubt on his conduct.[11]

WHEREFORE, respondent Laniel P. Jornada is hereby found *GUILTY* of grave misconduct and dishonesty for which he is ordered *DISMISSED* from the service with forfeiture of all his benefits, except accrued leave credits, and disqualified from reemployment in any government agency, including

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[8] *Id*.

[9] *Imperial v. Santiago, Jr.*, 446 Phil. 104, 119 (2003).

[10] *Id*.

[11] *Supra* note 7 at 167.

government-owned or controlled corporations. He is further ordered to return the amount of ₱12,500 to complainant within 10 days from receipt of this resolution.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 135703. April 15, 2009]

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, represented by ORLANDO L. SALVADOR, *petitioner, vs.* **OMBUDSMAN ANIANO A. DESIERTO, PANFILO O. DOMINGO, CONRADO S. REYES, ZOSIMO C. MALABANAN, JOSE R. TENGCO, JR., PLACIDO L. MAPA, JR., VERDEN C. DANGILAN, ARMANDO T. ROMUALDEZ, VILMA S. ROMUALDEZ, JUAN L. SYQUIAN and ALFREDO T. ROMUALDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE RESOLUTION OF THE OMBUDSMAN WHO WAS IMPUTED WITH GRAVE ABUSE OF DISCRETION.— [T]he remedy from an adverse resolution of the Ombudsman is a petition for *certiorari* under Rule 65, but what was filed with the Court is a petition for review on *certiorari* under Rule 45. Nevertheless, the Court will treat

this petition as one filed under Rule 65 since a reading of its contents shows that the Committee imputes grave abuse of discretion to the Ombudsman for dismissing the complaint.

2. ID.; ID.; ID.; AS A RULE, THE FILING OF A MOTION FOR RECONSIDERATION OF THE ASSAILED ORDER, WHICH MOTION IS DENIED IS A CONDITION PRECEDENT; EXCEPTIONS; CASE AT BAR.— Respecting the Committee's failure to file a motion for reconsideration with the Ombudsman, the general rule is that before filing a petition for *certiorari* under Rule 65, the petitioner is mandated to comply with a condition precedent: the filing of a motion for reconsideration of the assailed order, which motion is denied. The rule, however, is subject to the following recognized exceptions: (a) where the order is a patent **nullity**, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or **public interest is involved**. [T]he challenged Resolution of the Ombudsman dismissing the complaint on the grounds of prescription and insufficiency of evidence was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and thus a nullity. At all events, the case involves public interest warranting a relaxation of the rule.

3. CRIMINAL LAW; TOTAL EXTINCTION OF CRIMINAL LIABILITY; PRESCRIPTION OF OFFENSES; THE PRESCRIPTIVE PERIOD FOR OFFENSES INVOLVING THE ACQUISITION OF BEHEST LOANS SHOULD BE COMPUTED FROM THE DISCOVERY OF THE COMMISSION THEREOF; EXPLAINED.— In the matter of prescription, the

computation of the prescriptive period for offenses involving the acquisition of behest loans has been laid to rest in *Presidential Ad Hoc Committee on Behest Loans v. Hon. Desierto*: [I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that **the prescriptive period for the offenses** with which the respondents in OMB-0-96-0968 were charged **should be computed from the discovery of the commission** thereof and not from the day of such commission. The ruling was reiterated and explained in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto*: In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the **date of discovery** of the offense **in 1992 after** an exhaustive **investigation** by the Presidential Ad Hoc Committee on Behest Loans. Applying the foregoing settled rule, the counting of the prescriptive period commenced from the discovery of the offenses in 1992 after an exhaustive investigation by the Committee. When the complaint was filed in 1997 or after about five years, prescription had not set in.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PRELIMINARY INVESTIGATION; AS A RULE, THE COURT WILL NOT INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE; EXCEPTION.— x x x Ordinarily, the Court will not interfere with the Ombudsman's determination as to the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion.

5. CRIMINAL LAW; SECTIONS 3 (E) AND (G), REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS; ELUCIDATED.— The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public

officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. On the other hand, the elements of the offense in Section 3(g), are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government. Applying the earlier stated elements, it is apparent that in theory there can be liability for violating Section 3(e) and (g) of R.A. No. 3019 with respect to the *pre*-takeover transactions, but there can be liability for violating only Section 3(g) with respect to *post*-takeover transactions. A Section 3(e) violation requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers. This element no longer exists after the takeover since the stockholders in their private capacity had already been effectively excluded from the management of the corporation they previously controlled. In contrast, Section 3(g) does not require the giving of unwarranted benefits, advantages or preferences to private parties, the core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the Government.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PRELIMINARY INVESTIGATION; PURPOSE.— Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.

7. ID.; EVIDENCE; CREDIBILITY; FINDINGS OF THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, ABSENT A SUBSTANTIAL SHOWING THAT THEIR FINDINGS WERE MADE FROM AN ERRONEOUS ESTIMATION OF THE

EVIDENCE PRESENTED, ARE CONCLUSIVE AND SHOULD NOT BE DISTURBED.— It behooves the Ombudsman, while he asks the Court to respect his findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans. Considering the membership of the Committee – representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even DBP itself – its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Durian Alday and Cruz-Matters for J.R. Tengco, Jr.
Enrico Q. Fernando for Alfredo Romualdez.
Alfredo Avila for Sps. Armando & Vilma Romualdez.
Trio & Regalado Law Offices for Placido Mapa, Jr.
Bausa Ampil Suarez Paredes and *Bausa* for P.O. Domingo.

D E C I S I O N

CARPIO MORALES,[*] *J.*:

On challenge by the Presidential Ad Hoc Fact Finding Committee on Behest Loans, represented by Orlando L. Salvador (petitioner), is the Resolution of then Ombudsman Aniano A. Desierto (Ombudsman) dated August 19, 1998 in OMB-0-97-1911 dismissing its complaint against Panfilo O. Domingo,

[*] Acting Chairperson, in lieu of Justice Leonardo A. Quisumbing who took no part.

Conrado S. Reyes, Zosimo C. Malabanan, Jose R. Tengco, Jr., Placido L. Mapa, Jr., Verden C. Dangilan, Armando T. Romualdez, Vilma S. Romualdez, Juan L. Syquian, and Alfredo T. Romualdez, for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee) which was tasked to conduct an inventory of all behest loans, determine the parties involved, and recommend the appropriate action to be pursued. The Committee was composed of the Chairman of the Presidential Commission on Good Government (PCGG) as Chairman, the Solicitor General, representatives from the Office of the Executive Secretary, the Department of Finance, the Department of Justice, the Development Bank of the Philippines (DBP), the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation, and the Government Corporate Counsel, as members.[1]

The Committee's functions were later expanded by President Ramos *via* Memorandum Order No. 61 dated November 9, 1992 to include the inventory and review of all non-performing loans, whether behest or non-behest. For this purpose, the following criteria were established as a frame of reference in determining a behest loan:

a. It is undercollateralized;

b. The borrower corporation is under-capitalized;

c. Direct or indirect endorsement by high government officials like presence of marginal notes;

d. Stockholders, officers or agents of the borrower corporation are identified as cronies;

e. Deviation of use of loan proceeds from the purpose intended;

f. Use of corporate layering;

[1] CA *rollo,* pp. 10-11.

g. Non-feasibility of the project for which financing is being sought; [and]

h. Extra-ordinary speed in which the loan release was made.[2]

Among the accounts referred to the Committee for investigation were those of Golden Country Farms, Inc. (GCFI), which involved loans from the National Investment Development Corporation (NIDC) and DBP.

After its investigation, the Committee concluded that GCFI's loan transactions with NIDC and DBP bore badges of a behest loan, particularly the following: (1) the loans were undercollateralized; (2) the GCFI was undercapitalized; (3) stockholders, officers, or agents of GCFI were identified as cronies; (4) direct or indirect endorsement by high government officials like the presence of marginal notes; and (5) extraordinary speed in which the proceeds of the loan were released.

Atty. Orlando L. Salvador (Atty. Salvador), PCGG consultant of the Committee, thereupon filed a sworn complaint[3] with the Ombudsman alleging that GCFI's loan transactions were behest loans that violated R.A. No. 3019, specifically Section 3(e) and (g) thereof:

Sec. 3. Corrupt Practice of Public Officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.

x x x x x x x x x

e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, 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.

x x x x x x x x x

[2] *Ibid.*

[3] *Id.* at 46-51.

g. Entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Atty. Salvador identified ten individuals who could be held liable. Six of them – Panfilo O. Domingo, Conrado S. Reyes, Zosimo C. Malabanan, Jose R. Tengco, Jr., Placido L. Mapa, Jr., and Verden C. Dangilan – were officers and members of the board of directors of NIDC and DBP. The remaining four – Armando T. Romualdez, Vilma S. Romualdez, Juan L. Syquian, and Alfredo T. Romualdez – were stockholders and officers of GCFI.

In his accompanying sworn statement,[4] Atty. Salvador detailed the Committee's findings as follows:

GCFI applied for a credit facility of $5.7 million (₱43 million at the then prevailing exchange rate) and a letter of guarantee in the amount of $7.6 million (₱57 million), or a total of $13.3 million (₱100 million). Panfilo O. Domingo endorsed the loan on October 17, 1975 to the NIDC board of directors and the latter approved a credit facility of $5.7 million (₱43 million) in favor of GCFI on October 22, 1975. The documents pertinent to GCFI's application for a letter of guarantee for $7.6 million (₱57 million) were thereafter forwarded to DBP and approved on May 5, 1976.

At the time the NIDC loan of ₱43 million was approved, GCFI had a paid-up capital of only ₱3.5 million; whereas at the time the DBP loan of ₱57 million was approved, it had a paid-up capital of only ₱10 million. The loans were also undercollateralized, the appraised value of GCFI's collateral having amounted to only ₱50,540,301 as of April 29, 1977, while the loan releases then had already totaled ₱72 million.

GCFI loan proponents Armando T. Romualdez, Vilma S. Romualdez, and Alfredo T. Romualdez are related to then First Lady Imelda R. Marcos. On five occasions, then President Ferdinand E. Marcos gave instructions to DBP regarding the management of GCFI's loan and disposition of its assets, *viz*:

[4] *Id* at 47-49.

1. On December 7, 1978, President Marcos instructed Chairman Placido Mapa to grant the request for the restructuring of the maturity period of the loans and condonation of interest. (Annex 9, Evidence 21)

2. On June 26, 1980, President Marcos gave instructions to Chairman Rafael Sison to release the balance of ₱18.9 million and restructure the entire loan. (Annex 10, Evidence 22)

3. On July 15, 1980, President Marcos approved the takeover by DBP and NIDC of GCFI for its rehabilitation. (Annex 11, Evidence 23)

4. On March 4, 1981, President Marcos instructed Chairman Rafael Sison to approve the request for tax exemption. (Annex 12, Evidence 24)

5 On January 11, 1983, President Marcos gave clearance to Chairman Cesar Zalamea on the proposed disposition of the assets of GCFI. (Annex 13, Evidence 25)[5]

GCFI had an outstanding balance of ₱211,950,520.76 owing to NIDC as of June 30, 1986, and of ₱302,685,193.31 to DBP as of December 31, 1986.

Only Armando T. Romualdez and Vilma S. Romualdez (spouses Romualdez) complied with the Ombudsman's order to file a counter-affidavit.

In their Joint Counter-Affidavit dated August 17, 1998, spouses Romualdez alleged, among other things, that the offenses charged had prescribed and not all the elements of a behest loan were present; and that GCFI had infused an additional capital of ₱100 million, as well as caused the installation of NIDC and DBP comptrollers at GCFI as signatories to all its disbursements.[6]

By Resolution of August 19, 1998,[7] the Ombudsman dismissed the complaint, finding that there was insufficient evidence to warrant the indictment of the persons charged, and that the alleged offenses had prescribed. The Ombudsman explained:

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[5] *Id.* at 49.

[6] *Id.* at 38-39.

[7] *Id.* at 35-44.

To hold herein respondents for violation of Sec. 3(e) of R.A. 3019, it is but significant to establish the injury suffered by the offended party or the unwarranted benefit afforded to any party and the means employed to accomplish the object of the questioned act or deed. For such purpose, concrete and convincing evidence pointing to such facts are necessary.

A cursory look at the records at hand discloses that there was **absence of a clear proof showing that the government has suffered damage** by reason of the questioned financial transaction. On record is the fact that even prior to the issuance of the Sequestration Order, dated July 27, 1987, by the herein complainant, former President Marcos or per the allegation of the complainant had already approved the take-over by DBP and NIDC of the GCFI's management and operation. This was likewise the response of the GCFI's Corporate Secretary in a letter, dated September 2, 1997, to the Sequestration Order issued by the complainant. The said letter tacitly disclosed that GCFI's management and operation had been taken over by DBP, PNB and NFA, its major creditors, since August of 1980.

x x x Absent such indispensable element of the act complained of, the respondents cannot be held liable herefore.

Moreover, **prescription has already intervened** in the prosecution of the offenses charged.

x x x x x x x x x

x x x [T]he reckoning period for purposes of prescription shall begin to run from the time the public instruments came into existence.

In the case at bar, the subject financial accommodations were entered into by virtue of public documents during the period of 1975 to 1976 and for purposes of computing the prescriptive period, the aforementioned principles in the Dinsay, Villalon and Sandiganbayan cases will apply. Records show that the complaint was referred and filed with this Office on October 1, 1997 or after the lapse of more than twenty (20) years from the violation of the law. Deducibly therefore, the offenses charged have already prescribed or forever barred by the Statute of Limitations.

It must be pointed out that the acts complained of were committed before the issuance of BP 195 on March 2, 1982. Hence, the prescriptive period in the instant case is ten (10) years as provided in Section 11

of R.A. 3019, as originally enacted.[8] (Emphasis and underscoring supplied)

Hence, this petition for review on *certiorari*.[9]

The Court initially referred the case to the Court of Appeals for appropriate action by Resolution dated November 25, 1998.[10] On the Ombudsman's motion for reconsideration, however, the Court recalled the November 25, 1998 Resolution and required respondents to comment on the petition within ten days from notice.[11]

The Committee argued that the Ombudsman erred in holding that the Government did not suffer any damage as its takeover of GCFI's management and operation was actually prompted by the losses it had incurred;[12] that the right of the State to recover behest loans as ill-gotten wealth is imprescriptible under Section 15, Article XI of the 1987 Constitution;[13] and that assuming that the period to file criminal charges herefore is subject to prescription, the prescriptive period should be counted from the time of discovery of the behest loans or sometime in 1992 when the Committee was constituted.[14]

The Ombudsman, in his Comment,[15] countered that his finding of insufficiency of evidence to warrant an indictment must be accorded full faith and credit; that the offenses charged had prescribed, more than ten years having elapsed from the time of their commission; and that absent any showing of jurisdictional error, his dismissal of the complaint must be upheld.

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[8] *Id.* at 41-42.

[9] *Id.* at 8-34.

[10] *Rollo,* p. 10.

[11] *Id.* at 20.

[12] CA *rollo,* pp. 15-16.

[13] Sec. 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

[14] CA *rollo,* pp. 16-28.

[15] *Rollo,* pp. 81-93.

Alfredo T. Romualdez, for his part, contended that the proper remedy to challenge the Ombudsman's findings is a petition for *certiorari* under Rule 65 of the Rules of Court, and not a petition for review on *certiorari* under Rule 45 thereof; that the Committee's failure to move for reconsideration with the Ombudsman warrants the outright dismissal of its petition; that the courts should not interfere with the Ombudsman's exercise of his constitutional power to determine the sufficiency of a complaint to merit an indictment; and that the State had lost its right to prosecute the alleged offenses by prescription.[16]

In their Comment,[17] spouses Romualdez averred that the Ombudsman has ample discretion to determine whether to prosecute or dismiss a complaint, and that the Committee has no legal right to question his findings. They also posited that Section 15, Article XI of the 1987 Constitution applies only to civil cases and not to criminal cases involving supposedly ill-gotten wealth, hence, the Committee's action has prescribed, the complaint having been filed only in 1997 or more than ten years from the approval of the loans in 1975 and 1976. They added that the same is true even if the prescriptive period of ten years is counted from the time the Marcoses left the country and the Aquino administration took over in 1986.

Jose R. Tengco, Jr., on the other hand, filed a Comment[18] and a Manifestation in further support thereof,[19] wherein he maintained that the Ombudsman's findings are supported by the records and should not be disturbed; that the Court has articulated a policy of non-interference with the Ombudsman's exercise of discretion in the discharge of his investigatory power; and that the Court had previously upheld the Ombudsman's dismissal of the Committee's complaints in other behest loans cases.

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[16] *Vide* Comment filed by Alfredo T. Romualdez dated August 18, 1999; *rollo,* pp. 58-76.

[17] *Rollo,* pp. 27-45.

[18] *Id.* at 168-177.

[19] *Id.* at 277-284.

Verden C. Dangilan stated in his Comment[20] that no evidence had been presented to substantiate the alleged violations of R.A. No. 3019; and that the subject loans are not behest loans since no short-cuts were taken in the approval thereof.

Panfilo O. Domingo asseverated that the sworn statement of Atty. Salvador and its attachments failed to establish probable cause; that the Government had not quantified its actual injury; and that the action had prescribed.[21]

Placido L. Mapa, Jr. pleaded transactional immunity from all PCGG-initiated civil cases and criminal proceedings or investigations, pursuant to an Agreement with the Government affirmed by this Court in *Mapa, Jr. v. Sandiganbayan.*[22] And he argued that the offenses charged had prescribed since the discovery thereof should be reckoned, at the latest, from the time GCFI was sequestered by the PCGG on July 27, 1987, which was more than ten years before the filing of the complaint with the Ombudsman (the date of filing, as determined by the Ombudsman, is October 1, 1997); and that at any rate, the DBP loan actually released was only ₱29 million and the same was secured by collateral worth ₱116,754,760 more or less.[23]

With respect to the other respondents, the Court, by Resolution of February 20, 2002,[24] considered Zosimo C. Malabanan and Juan L. Syquian to have waived the filing of a Comment, they having failed to do so. The same should also apply to Conrado S. Reyes who similarly failed to heed the Court's directive to file a Comment.

The Court shall first deal with procedural issues.

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[20] *Id.* at 182-192.

[21] *Vide* Comment filed by Panfilo O. Domingo dated March 20, 2001; *Rollo,* pp. 205-216.

[22] G.R. No. 100295, April 26, 1994, 231 SCRA 783; *Rollo,* pp. 243-245.

[23] *Rollo,* pp. 245-250.

[24] *Id.* at 304-305.

Indeed, the remedy from an adverse resolution of the Ombudsman is a petition for *certiorari* under Rule 65,[25] but what was filed with the Court is a petition for review on *certiorari* under Rule 45. Nevertheless, the Court will treat this petition as one filed under Rule 65 since a reading of its contents shows that the Committee imputes grave abuse of discretion to the Ombudsman for dismissing the complaint.[26]

Respecting the Committee's failure to file a motion for reconsideration with the Ombudsman, the general rule is that before filing a petition for *certiorari* under Rule 65, the petitioner is mandated to comply with a condition precedent: the filing of a motion for reconsideration of the assailed order, which motion is denied. The rule, however, is subject to the following recognized exceptions:

(a) where the order is a patent **nullity**, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or **public interest is involved**.[27] (Emphasis and underscoring supplied.)

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[25] *Cabrera v. Lapid,* G.R. No. 129098, December 6, 2006, 510 SCRA 55, 64.

[26] *Vide Salvador v. Mapa, Jr., et al.,* G.R. No. 135080, November 28, 2007, 539 SCRA 34, 44.

[27] *Vide Nisce v. Equitable PCI Bank, Inc.,* G.R. No. 167434, February 19, 2007, 516 SCRA 231, 251.

As will be shown later, the challenged Resolution of the Ombudsman dismissing the complaint on the grounds of prescription and insufficiency of evidence was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and thus a nullity. At all events, the case involves public interest warranting a relaxation of the rule.

In the matter of prescription, the computation of the prescriptive period for offenses involving the acquisition of behest loans has been laid to rest in *Presidential Ad Hoc Committee on Behest Loans v. Hon. Desierto*:[28]

> [I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that **the prescriptive period for the offenses** with which the respondents in OMB-0-96-0968 were charged **should be computed from the discovery of the commission** thereof and not from the day of such commission.[29] (Emphasis and underscoring supplied)

The ruling was reiterated and explained in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto*:[30]

> In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the **date of discovery** of the offense **in 1992 after** an exhaustive **investigation** by the Presidential Ad Hoc Committee on Behest Loans.[31] (Emphasis and underscoring supplied.)

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[28] 375 Phil. 697 (1999).

[29] *Id.* at 724.

[30] 415 Phil. 723 (2001).

[31] *Id.* at 729-730.

Applying the foregoing settled rule, the counting of the prescriptive period commenced from the discovery of the offenses in 1992 after an exhaustive investigation by the Committee. When the complaint was filed in 1997 or after about five years, prescription had not set in.[32]

On the merits. Ordinarily, the Court will not interfere with the Ombudsman's determination as to the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion.[33]

After a considered review of the records and the respective positions of the parties, the Court finds that the case calls for the exercise of its power of supervision over the Ombudsman.

Private respondents are charged with violation of Section 3(e) and (g) of R.A. No. 3019.

The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits,

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[32] This is true whether the prescriptive period is ten or fifteen years. In *People v. Pacificador,* G.R. No. 139405, March 13, 2001, 354 SCRA 310, 318, the Court explained:

Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.

[33] *Tetangco v. Ombudsman,* G.R. No. 156427, January 20, 2006, 479 SCRA 249, 253.

advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

On the other hand, the elements of the offense in Section 3(g), are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government.

There are two phases that demarcate the questioned acts, the demarcation line pertaining to the legal relationship that evolved between GCFI on the one hand, and NIDC and DBP on the other. The *first* phase encompasses GCFI's application for a loan and its approval by NIDC and DBP. This phase covers the period *prior* to the takeover of GCFI by NIDC and DBP, when GCFI's identity and interests were clearly distinct from those of NIDC and DBP. The *second* phase commenced when NIDC and DBP assumed ownership over GCFI, thereby incorporating the latter's assets and obligations into theirs. At that point, the interest of NIDC and DBP in GCFI was no longer confined to ensuring that the latter pay its loan obligations, but rather, expanded to making it a profitable venture.

Applying the earlier stated elements, it is apparent that in theory there can be liability for violating Section 3(e) and (g) of R.A. No. 3019 with respect to the *pre*-takeover transactions, but there can be liability for violating only Section 3(g) with respect to *post*-takeover transactions.[34]

A Section 3(e) violation requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers. This element no longer exists after the takeover since the stockholders in their private capacity had already been effectively excluded from the management of the corporation they previously controlled. In contrast, Section 3(g) does not require the giving of unwarranted benefits, advantages or preferences to private

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[34] *Vide Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, et al.*, G.R. No. 147723, August 22, 2008, 563 SCRA 1.

parties, the core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the Government.

These distinctions were totally lost in the Ombudsman's challenged Resolution, which seemingly regarded the takeover as a magic formula that had cured lock, stock and barrel all alleged violations of R.A. No. 3019.

The Ombudsman in fact failed to properly resolve the issues raised by the parties, he having predicated his finding of insufficiency of evidence solely on the alleged lack of injury suffered by the Government in view of, again, the takeover. The Court finds that, on the contrary, that the loan had remained unpaid at the time of the takeover should have been enough basis for a finding of injury to the Government.

AT ALL EVENTS, as reflected earlier, injury to the Government is only required to support a charge under Section 3(e), but not under Section 3(g), of R.A. No. 3019; and there can still be a violation of Section 3(g) insofar as the *post*-takeover transactions are concerned.

The duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file an information in court against the accused. Considering the quantum of evidence needed to support a finding of probable cause, the Court holds that the Ombudsman gravely abused his discretion when he found such to be lacking here.

Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.[35]

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[35] *Drilon v. Court of Appeals,* G.R. No. 115825, July 5, 1996, 258 SCRA 280, 286.

In the proceedings before the Ombudsman, the Committee and spouses Romualdez presented conflicting accounts on whether GCFI was undercapitalized and the subject loans undercollateralized. While the Committee found that GCFI's capital was way below the amounts of the loan at the time of their approval, spouses Romualdez countered that GCFI had infused an additional capital of ₱100 million. Moreover, while the Committee averred that the appraised value of GCFI's collateral fell inadequate as of April 29, 1977, spouses Romualdez contended that GCFI furnished additional security by causing NIDC and DBP comptrollers to be installed at GCFI as signatories to all disbursements made by the latter. Clearly, these conflicting claims of the parties should be resolved in a full-blown trial.[36]

It behooves the Ombudsman, while he asks the Court to respect his findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans. Considering the membership of the Committee –representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even DBP itself – its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan.[37] Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.[38]

It bears stressing that a finding of probable cause needs only to rest on evidence showing that more likely than not, a

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[36] *Vide Presidential Ad-Hoc Fact-Finding Committee On Behest Loans v. Desierto, et al.,* G.R. No. 136225, April 23, 2008, 552 SCRA 513, 526.

[37] *Id.* at 527.

[38] *Vide Juan v. Commission on Elections,* G.R. No. 166639, April 24, 2007, 522 SCRA 119, 129.

crime was committed and was committed by the suspects.[39] By this standard, the Court finds probable cause to bind over private respondents to stand trial for the offenses charged, except for Placido L. Mapa, Jr. whom the Government had committed to exclude as party defendant or respondent in all PCGG-initiated civil cases and criminal proceedings or investigations in exchange for his having provided information relating to the prosecution of the Racketeer Influenced and Corrupt Organization Act cases against the Marcoses in New York.[40]

WHEREFORE, the petition is *GRANTED*. The Ombudsman's Resolution dated August 19, 1998 in OMB-0-97-1911 is *REVERSED* and *SET ASIDE*. The Ombudsman is *ORDERED* to file in the proper court the necessary information against Conrado S. Reyes, Zosimo C. Malabanan, Jose R. Tengco, Jr., Verden C. Dangilan, Armando T. Romualdez, Vilma S. Romualdez, Juan L. Syquian, and Alfredo T. Romualdez.[41]

SO ORDERED.

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

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[39] *Webb v. De Leon,* G.R. No. 121234, August 23, 1995, 247 SCRA 652, 675.

[40] *Vide Mapa, Jr. v. Sandiganbayan, supra* note 22 at 803.

[41] The Court takes judicial notice of the death of Panfilo O. Domingo and resolves to drop his name as party-accused in view of the resultant extinction of his criminal liability ex delicto under Article 89 of the Revised Penal Code.

[**] Additional member in lieu of Justice Quisumbing.

[***] Additional member in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

EN BANC

[G.R. No. 163583. April 15, 2009]

BRITISH AMERICAN TOBACCO, *petitioner, vs.* **JOSE ISIDRO N. CAMACHO, in his capacity as Secretary of the Department of Finance and GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue,** *respondents.*

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., FORTUNE TOBACCO CORP., MIGHTY CORPORATION, and JT INTERNATIONAL, S.A., *respondents-in-intervention.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; LAW-MAKING POWER; A LEGISLATIVE CLASSIFICATION THAT IS REASONABLE DOES NOT OFFEND THE CONSTITUTIONAL GUARANTY OF EQUAL PROTECTION OF THE LAWS; REQUISITES.— x x x As held in the assailed Decision, the instant case neither involves a suspect classification nor impinges on a fundamental right. Consequently, the rational basis test was properly applied to gauge the constitutionality of the assailed law in the face of an equal protection challenge. It has been held that "in the areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest. As the Court ruled in the assailed Decision, *viz*: A legislative classification that is reasonable does not offend the constitutional guaranty of the equal protection of the laws. The classification is considered valid and reasonable provided that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and (4) it applies equally

to all those belonging to the same class. The first, third and fourth requisites are satisfied. The *classification freeze provision* was inserted in the law for reasons of practicality and expediency. That is, since a new brand was not yet in existence at the time of the passage of RA 8240, then Congress needed a uniform mechanism to fix the tax bracket of a new brand. The current net retail price, similar to what was used to classify the brands under Annex "D" as of October 1, 1996, was thus the logical and practical choice. Further, with the amendments introduced by RA 9334, the freezing of the tax classifications now expressly applies not just to Annex "D" brands but to newer brands introduced after the effectivity of RA 8240 on January 1, 1997 and any new brand that will be introduced in the future. x x x All in all, the *classification freeze provision* addressed Congress's administrative concerns in the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues. *Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied.*

2. TAXATION; REPUBLIC ACT NO. 8240; CLASSIFICATION FREEZE PROVISION THEREOF IS NOT VIOLATIVE OF THE UNIFORMITY OF TAXATION RULE; EXPLAINED.— x x x [P]etitioner's contention that the assailed provisions violate the uniformity of taxation clause is similarly unavailing. In *Churchill v. Concepcion*, we explained that a tax "is uniform when it operates with the same force and effect in every place where the subject of it is found." It does not signify an intrinsic but simply a geographical uniformity. A levy of tax is not unconstitutional because it is not intrinsically equal and uniform in its operation. The uniformity rule does not prohibit classification for purposes of taxation. As ruled in *Tan v. Del Rosario, Jr.*: Uniformity of taxation, like the kindred concept of equal protection, merely requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities (citations omitted). Uniformity does not forfend classification as long as: (1) the standards that are used therefor are substantial and not arbitrary, (2) the categorization is germane to achieve the legislative purpose, (3) the law applies, all things being equal, to both present and

future conditions, and (4) the classification applies equally well to all those belonging to the same class (citations omitted). In the instant case, there is no question that the *classification freeze provision* meets the geographical uniformity requirement because the assailed law applies to all cigarette brands in the Philippines. And, for reasons already adverted to in our August 20, 2008 Decision, the above four-fold test has been met in the present case.

3. POLITICAL LAW; CONSTITUTIONAL LAW; PRINCIPLE OF SEPARATION OF POWERS; COURTS CANNOT INQUIRE INTO THE WISDOM AND EXPEDIENCY OF A LAW.— x x x [P]etitioner's real disagreement lies with the legitimate State interests. Although it concedes that the Court utilized the rationality test and that the *classification freeze provision* was necessitated by several legitimate State interests, however, it refuses to accept the justifications given by Congress for the *classification freeze provision*. As we elucidated in our August 20, 2008 Decision, this line of argumentation revolves around the wisdom and expediency of the assailed law which we cannot inquire into, much less overrule. Equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. We reiterate, therefore, that petitioner's remedy is with Congress and not this Court.

4. TAXATION; REPUBLIC ACT NO. 8240; ASSAILED PROVISIONS THEREOF DO NOT VIOLATE THE CONSTITUTIONAL PROHIBITION ON UNFAIR COMPETITION.— x x x While previously arguing that the rational basis test was not satisfied, petitioner now asserts that this test does not apply in this case and that the proper matrix to evaluate the constitutionality of the assailed law is the prohibition on unfair competition under Section 19, Article XII of the Constitution. It should be noted that during the trial below, petitioner did not invoke said constitutional provision as it relied solely on the alleged violation of the equal protection and uniformity of taxation clauses. Well-settled is the rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court as they cannot be raised for the first time on appeal. At any rate, even if we were to relax this rule, as previously stated, the evidence presented before the trial court is insufficient to establish the alleged violation of the constitutional proscription

against unfair competition. x x x [I]n *Tatad* we ruled that a law which imposes substantial barriers to the entry and exit of new players in our downstream oil industry may be struck down for being violative of Section 19, Article XII of the Constitution. However, we went on to say in that case that "if they are insignificant impediments, they need not be stricken down." As we stated in our August 20, 2008 Decision, petitioner failed to convincingly prove that there is a substantial barrier to the entry of new brands in the cigarette market due to the *classification freeze provision*. We further observed that several new brands were introduced in the market after the assailed law went into effect thus negating petitioner's sweeping claim that the *classification freeze provision* is an insurmountable barrier to the entry of new brands. We also noted that price is not the only factor affecting competition in the market for there are other factors such as taste, brand loyalty, *etc*.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PETITIONER FAILED TO CARRY THE BURDEN OF PROOF IN CASE AT BAR; ASSAILED LAW ENJOYS A STRONG PRESUMPTION OF CONSTITUTIONALITY.— x x x [P]etitioner did not lay down the factual foundations, as supported by verifiable documentary proof, which would establish, among others, the cigarette brands in competition with each other; the current net retail prices of Annex "D" brands, as determined through a market survey, to provide a sufficient point of comparison with those covered by the BIR's market survey of new brands; and the causal connection with as well as the extent of the impact on the competition in the cigarette market of the *classification freeze provision*. Other than petitioner's self-serving allegations and testimonial evidence, no adequate documentary evidence was presented to substantiate its claims. Absent ample documentary proof, we cannot accept petitioner's claim that the *classification freeze provision* is an insurmountable barrier to the entry of new players. [T]he totality of the evidence presented by petitioner before the trial court failed to convincingly establish the alleged violation of the constitutional prohibition on unfair competition. It is a basic postulate that the one who challenges the constitutionality of a law carries the heavy burden of proof for laws enjoy a strong presumption of constitutionality as it is an act of a co-equal branch of government. Petitioner failed to carry this burden.

6. TAXATION; REPUBLIC ACT NO. 8240; NOT A TRANSGRESSION OF THE CONSTITUTIONAL PROVISIONS ON REGRESSIVE AND INEQUITABLE TAXATION; EXPLAINED.— We note that the points raised by petitioner with respect to alleged inequitable taxation perpetuated by the *classification freeze provision* are a mere reformulation of its equal protection challenge. As stated earlier, the assailed provisions do not infringe the equal protection clause because the four-fold test is satisfied. In particular, the *classification freeze provision* has been found to rationally further legitimate State interests consistent with rationality review. Petitioner's repackaged argument has, therefore, no merit. Anent the issue of regressivity, it may be conceded that the assailed law imposes an excise tax on cigarettes which is a form of indirect tax, and thus, regressive in character. While there was an attempt to make the imposition of the excise tax more equitable by creating a four-tiered taxation system where higher priced cigarettes are taxed at a higher rate, still, every consumer, whether rich or poor, of a cigarette brand within a specific tax bracket pays the same tax rate. To this extent, the tax does not take into account the person's ability to pay. Nevertheless, this does not mean that the assailed law may be declared unconstitutional for being regressive in character because the Constitution does not prohibit the imposition of indirect taxes but merely provides that Congress shall evolve a progressive system of taxation. As we explained in *Tolentino v. Secretary of Finance*: [R]egressivity is not a negative standard for courts to enforce. What Congress is required by the Constitution to do is to "evolve a progressive system of taxation." This is a directive to Congress, just like the directive to it to give priority to the enactment of laws for the enhancement of human dignity and the reduction of social, economic and political inequalities [Art. XIII, Section 1] or for the promotion of the right to "quality education" [Art. XIV, Section 1]. These provisions are put in the Constitution as moral incentives to legislation, not as judicially enforceable rights.

7. POLITICAL LAW; CONSTITUTIONAL LAW; STATE; CANNOT BE ESTOPPED BY THE MISTAKES OF ITS AGENTS; CASE AT BAR.— x x x [T]he failure of the BIR to conduct the market survey within the three-month period under the revenue regulations then in force can in no way make the initial tax classification of Lucky Strike based on its suggested gross retail

price permanent. Otherwise, this would contravene the clear mandate of the law which provides that the basis for the tax classification of a new brand shall be the current net retail price and not the suggested gross retail price. It is a basic principle of law that the State cannot be estopped by the mistakes of its agents.

8. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THEORIES NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE LOWER COURT WILL NOT ORDINARILY BE CONSIDERED ON APPEAL.— x x x [T]he issue of timeliness of the market survey was never raised before the trial court because petitioner's theory of the case was wholly anchored on the alleged unconstitutionality of the *classification freeze provision*. As a consequence, no documentary evidence as to the actual net retail price of Lucky Strike in 2001, based on a market survey at least comparable to the one mandated by law, was presented before the trial court. Evidently, it cannot be assumed that had the BIR conducted the market survey within three months from its product launch sometime in 2001, Lucky Strike would have been found to fall under the high-priced tax bracket and not the premium-priced tax bracket. To so hold would run roughshod over the State's right to due process. Verily, petitioner prosecuted its case before the trial court solely on the theory that the assailed law is unconstitutional instead of merely challenging the timeliness of the market survey. The rule is that a party is bound by the theory he adopts and by the cause of action he stands on. He cannot be permitted after having lost thereon to repudiate his theory and cause of action, and thereafter, adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. Having pursued one theory and lost thereon, petitioner may no longer pursue another inconsistent theory without thereby trifling with court processes and burdening the courts with endless litigation.

APPEARANCES OF COUNSEL

Baniqued & Baniqued for petitioner.

Romulo Mabanta Buenaventura Sayoc and Delos Angeles Law Office for movant PMPMI.

Sycip Salazar Hernandez & Gatmaitan for Intervenor JT International, Inc.

Hector L. Hofilena & Miguelito V. Ocampo for movant Mighty Corporation.

Estelito Mendoza and *Luoie Ogsimer* for Fortune Tobacco Corp.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

On August 20, 2008, the Court rendered a Decision partially granting the petition in this case, *viz*:

> WHEREFORE, the petition is **PARTIALLY GRANTED** and the decision of the Regional Trial Court of Makati, Branch 61, in Civil Case No. 03-1032, is **AFFIRMED** with **MODIFICATION**. As modified, this Court declares that:
>
> (1) Section 145 of the NIRC, as amended by Republic Act No. 9334, is **CONSTITUTIONAL**; and that
>
> (2) Section 4(B)(e)(c), 2nd paragraph of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Sections II(1)(b), II(4)(b), II(6), II(7), III (*Large Tax Payers Assistance Division II)* II(b) of Revenue Memorandum Order No. 6-2003, insofar as pertinent to cigarettes packed by machine, are **INVALID** insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier.
>
> SO ORDERED.

In its Motion for Reconsideration, petitioner insists that the assailed provisions (1) violate the equal protection and uniformity of taxation clauses of the Constitution, (2) contravene Section 19,[1] Article XII of the Constitution on unfair competition, and (3) infringe the constitutional provisions on regressive and inequitable taxation. Petitioner further argues that assuming the assailed provisions are constitutional, petitioner is entitled to a downward reclassification of Lucky Strike from the premium-priced to the high-priced tax bracket.

[1] The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

The Court is not persuaded.

The assailed law does not violate the equal protection and uniformity of taxation clauses.

Petitioner argues that the *classification freeze provision* violates the equal protection and uniformity of taxation clauses because Annex "D" brands are taxed based on their 1996 net retail prices while new brands are taxed based on their present day net retail prices. Citing *Ormoc Sugar Co. v. Treasurer of Ormoc City*,[2] petitioner asserts that the assailed provisions accord a special or privileged status to Annex "D" brands while at the same time discriminate against other brands.

These contentions are without merit and a rehash of petitioner's previous arguments before this Court. As held in the assailed Decision, the instant case neither involves a suspect classification nor impinges on a fundamental right. Consequently, the rational basis test was properly applied to gauge the constitutionality of the assailed law in the face of an equal protection challenge. It has been held that "in the areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."[3] Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest. As the Court ruled in the assailed Decision, *viz*:

> A legislative classification that is reasonable does not offend the constitutional guaranty of the equal protection of the laws. The classification is considered valid and reasonable provided that: (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it applies, all things being equal, to both present and future conditions; and (4) it applies equally to all those belonging to the same class.

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[2] G.R. No. L-23794, February 17, 1968, 22 SCRA 603.

[3] *Federal Communications Commission v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993).

The first, third and fourth requisites are satisfied. The *classification freeze provision* was inserted in the law for reasons of practicality and expediency. That is, since a new brand was not yet in existence at the time of the passage of RA 8240, then Congress needed a uniform mechanism to fix the tax bracket of a new brand. The current net retail price, similar to what was used to classify the brands under Annex "D" as of October 1, 1996, was thus the logical and practical choice. Further, with the amendments introduced by RA 9334, the freezing of the tax classifications now expressly applies not just to Annex "D" brands but to newer brands introduced after the effectivity of RA 8240 on January 1, 1997 and any new brand that will be introduced in the future. (However, as will be discussed later, the intent to apply the freezing mechanism to newer brands was already in place even prior to the amendments introduced by RA 9334 to RA 8240.) This does not explain, however, why the classification is "frozen" after its determination based on current net retail price and how this is germane to the purpose of the assailed law. An examination of the legislative history of RA 8240 provides interesting answers to this question.

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From the foregoing, it is quite evident that the *classification freeze provision* could hardly be considered arbitrary, or motivated by a hostile or oppressive attitude to unduly favor older brands over newer brands. Congress was unequivocal in its unwillingness to delegate the power to periodically adjust the excise tax rate and tax brackets as well as to periodically resurvey and reclassify the cigarette brands based on the increase in the consumer price index to the DOF and the BIR. Congress doubted the constitutionality of such delegation of power, and likewise, considered the ethical implications thereof. Curiously, the *classification freeze provision* was put in place of the periodic adjustment and reclassification provision because of the belief that the latter would foster an anti-competitive atmosphere in the market. Yet, as it is, this same criticism is being foisted by petitioner upon the *classification freeze provision*.

To our mind, the *classification freeze provision* was in the main the result of Congress's earnest efforts to improve the efficiency and effectivity of the tax administration over sin products while trying to balance the same with other State interests. In particular, the questioned provision addressed Congress's administrative concerns regarding delegating too much authority to the DOF and BIR as this

will open the tax system to potential areas for abuse and corruption. Congress may have reasonably conceived that a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.

To elaborate a little, Congress could have reasonably foreseen that, under the DOF proposal and the Senate Version, the periodic reclassification of brands would tempt the cigarette manufacturers to manipulate their price levels or bribe the tax implementers in order to allow their brands to be classified at a lower tax bracket even if their net retail prices have already migrated to a higher tax bracket after the adjustment of the tax brackets to the increase in the consumer price index. Presumably, this could be done when a resurvey and reclassification is forthcoming. As briefly touched upon in the Congressional deliberations, the difference of the excise tax rate between the medium-priced and the high-priced tax brackets under RA 8240, prior to its amendment, was ₱3.36. For a moderately popular brand which sells around 100 million packs per year, this easily translates to ₱336,000,000. The incentive for tax avoidance, if not outright tax evasion, would clearly be present. Then again, the tax implementers may use the power to periodically adjust the tax rate and reclassify the brands as a tool to unduly oppress the taxpayer in order for the government to achieve its revenue targets for a given year.

Thus, Congress sought to, among others, simplify the whole tax system for sin products to remove these potential areas of abuse and corruption from both the side of the taxpayer and the government. Without doubt, the *classification freeze provision* was an integral part of this overall plan. This is in line with one of the avowed objectives of the assailed law "to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion." RA 9334 did not alter this *classification freeze provision* of RA 8240. On the contrary, Congress affirmed this freezing mechanism by clarifying the wording of the law. We can thus reasonably conclude, as the deliberations on RA 9334 readily show, that the administrative concerns in tax administration, which moved Congress to enact the *classification freeze provision* in RA 8240, were merely continued by RA 9334. Indeed, administrative concerns may provide a legitimate, rational basis for legislative classification. In the case at bar, these administrative concerns in

the measurement and collection of excise taxes on sin products are readily apparent as afore-discussed.

Aside from the major concern regarding the elimination of potential areas for abuse and corruption from the tax administration of sin products, the legislative deliberations also show that the *classification freeze provision* was intended to generate buoyant and stable revenues for government. With the frozen tax classifications, the revenue inflow would remain stable and the government would be able to predict with a greater degree of certainty the amount of taxes that a cigarette manufacturer would pay given the trend in its sales volume over time. The reason for this is that the previously classified cigarette brands would be prevented from moving either upward or downward their tax brackets despite the changes in their net retail prices in the future and, as a result, the amount of taxes due from them would remain predictable. The *classification freeze provision* would, thus, aid in the revenue planning of the government.

All in all, the *classification freeze provision* addressed Congress's administrative concerns in the simplification of tax administration of sin products, elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues. *Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied.*

Moreover, petitioner's contention that the assailed provisions violate the uniformity of taxation clause is similarly unavailing. In *Churchill v. Concepcion*,[4] we explained that a tax "is uniform when it operates with the same force and effect in every place where the subject of it is found."[5] It does not signify an intrinsic but simply a geographical uniformity.[6] A levy of tax is not unconstitutional because it is not intrinsically equal and uniform in its operation.[7] The uniformity rule does not prohibit classification for purposes of taxation.[8] As ruled in *Tan v. Del Rosario, Jr.*:[9]

[4] 34 Phil. 969, 976-977 (1916).

[5] *Id.* at 976.

[6] *Id.*

[7] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003), p. 777.

[8] *Id.*

[9] G.R. No. 109289, October 3, 1994, 237 SCRA 324.

Uniformity of taxation, like the kindred concept of equal protection, merely requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities (citations omitted). Uniformity does not forfend classification as long as: (1) the standards that are used therefor are substantial and not arbitrary, (2) the categorization is germane to achieve the legislative purpose, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class (citations omitted).[10]

In the instant case, there is no question that the *classification freeze provision* meets the geographical uniformity requirement because the assailed law applies to all cigarette brands in the Philippines. And, for reasons already adverted to in our August 20, 2008 Decision, the above four-fold test has been met in the present case.

Petitioner's reliance on *Ormoc Sugar Co.* is misplaced. In said case, the controverted municipal ordinance specifically named and taxed only the Ormoc Sugar Company, and excluded any subsequently established sugar central from its coverage. Thus, the ordinance was found unconstitutional on equal protection grounds because its terms do not apply to future conditions as well. This is not the case here. The *classification freeze provision* uniformly applies to all cigarette brands whether existing or to be introduced in the market at some future time. It does not purport to exempt any brand from its operation nor single out a brand for the purpose of imposition of excise taxes.

At any rate, petitioner's real disagreement lies with the legitimate State interests. Although it concedes that the Court utilized the rationality test and that the *classification freeze provision* was necessitated by several legitimate State interests, however, it refuses to accept the justifications given by Congress for the *classification freeze provision*. As we elucidated in our August 20, 2008 Decision, this line of argumentation revolves around the wisdom and expediency of the assailed law which we cannot inquire into, much less overrule. Equal protection is not a license for courts to judge the wisdom, fairness, or

[10] *Id.* at 331.

logic of legislative choices.[11] We reiterate, therefore, that petitioner's remedy is with Congress and not this Court.

The assailed provisions do not violate the constitutional prohibition on unfair competition.

Petitioner asserts that the Court erroneously applied the rational basis test allegedly because this test does not apply in a constitutional challenge based on a violation of Section 19, Article XII of the Constitution on unfair competition. Citing *Tatad v. Secretary of the Department of Energy*,[12] it argues that the *classification freeze provision* gives the brands under Annex "D" a decisive edge because it constitutes a substantial barrier to the entry of prospective players; that the Annex "D" provision is no different from the 4% tariff differential which we invalidated in *Tatad*; that some of the new brands, like Astro, Memphis, Capri, L&M, Bowling Green, Forbes, and Canon, which were introduced into the market after the effectivity of the assailed law on January 1, 1997, were "killed" by Annex "D" brands because the former brands were reclassified by the BIR to higher tax brackets; that the finding that price is not the only factor in the market as there are other factors like consumer preference, active ingredients, *etc*. is contrary to the evidence presented and the deliberations in Congress; that the *classification freeze provision* will encourage predatory pricing in contravention of the constitutional prohibition on unfair competition; and that the cumulative effect of the operation of the *classification freeze provision* is to perpetuate the oligopoly of intervenors Philip Morris and Fortune Tobacco in contravention of the constitutional edict for the State to regulate or prohibit monopolies, and to disallow combinations in restraint of trade and unfair competition.

The argument lacks merit. While previously arguing that the rational basis test was not satisfied, petitioner now asserts that this test does not apply in this case and that the proper

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[11] *Supra* note 3.

[12] 346 Phil. 321 (1997).

matrix to evaluate the constitutionality of the assailed law is the prohibition on unfair competition under Section 19, Article XII of the Constitution. It should be noted that during the trial below, petitioner did not invoke said constitutional provision as it relied solely on the alleged violation of the equal protection and uniformity of taxation clauses. Well-settled is the rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court as they cannot be raised for the first time on appeal.[13] At any rate, even if we were to relax this rule, as previously stated, the evidence presented before the trial court is insufficient to establish the alleged violation of the constitutional proscription against unfair competition.

Indeed, in *Tatad* we ruled that a law which imposes substantial barriers to the entry and exit of new players in our downstream oil industry may be struck down for being violative of Section 19, Article XII of the Constitution.[14] However, we went on to say in that case that "if they are insignificant impediments, they need not be stricken down."[15] As we stated in our August 20, 2008 Decision, petitioner failed to convincingly prove that there is a substantial barrier to the entry of new brands in the cigarette market due to the *classification freeze provision*. We further observed that several new brands were introduced in the market after the assailed law went into effect thus negating petitioner's sweeping claim that the *classification freeze provision* is an insurmountable barrier to the entry of new brands. We also noted that price is not the only factor affecting competition in the market for there are other factors such as taste, brand loyalty, *etc*.

We see no reason to depart from these findings for the following reasons:

First, petitioner did not lay down the factual foundations, as supported by verifiable documentary proof, which would establish,

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[13] *Natalia v. Court of Appeals*, G.R. No. 116216, June 20, 1997, 274 SCRA 527, 538-539.

[14] *Supra* note 12 at 368.

[15] *Id.*

among others, the cigarette brands in competition with each other; the current net retail prices of Annex "D" brands, as determined through a market survey, to provide a sufficient point of comparison with those covered by the BIR's market survey of new brands; and the causal connection with as well as the extent of the impact on the competition in the cigarette market of the *classification freeze provision*. Other than petitioner's self-serving allegations and testimonial evidence, no adequate documentary evidence was presented to substantiate its claims. Absent ample documentary proof, we cannot accept petitioner's claim that the *classification freeze provision* is an insurmountable barrier to the entry of new players.

Second, we cannot lend credence to petitioner's claim that it cannot produce cigarettes that can compete with Marlboro and Philip Morris in the high-priced tax bracket. Except for its self-serving testimonial evidence, no sufficient documentary evidence was presented to substantiate this claim. The current net retail price, which is the basis for determining the tax bracket of a cigarette brand, more or less consists of the costs of raw materials, labor, advertising and profit margin. To a large extent, these factors are controllable by the manufacturer, as such, the decision to enter which tax bracket will depend on the pricing strategy adopted by the individual manufacturer. The same holds true for its claims that other new brands, like Astro, Memphis, Capri, L&M, Bowling Green, Forbes, and Canon, were "killed" by Annex "D" brands due to the effects of the operation of the *classification freeze provision* over time. The evidence that petitioner presented before the trial court failed to substantiate the basis for these claims.

Essentially, petitioner would want us to accept its conclusions of law without first laying down the factual foundations of its arguments. This Court, which is not a trier of facts, cannot take judicial notice of the factual premises of these arguments as petitioner now seems to suggest. The evidence should have been presented before the trial court to allow it to examine and determine for itself whether such factual premises, as supported by sufficient documentary evidence, provide reasonable basis for petitioner's conclusion that there arose an unconstitutional

unfair competition due to the operation of the *classification freeze provision.* Petitioner should be reminded that it appealed this case from the adverse ruling of the trial court directly to this Court on pure questions of law instead of resorting to the Court of Appeals.

Third, *Tatad* is not applicable to the instant case. In *Tatad*, we found that the 4% tariff differential between imported crude oil and imported refined petroleum products erects a high barrier to the entry of new players because (1) it imposes an undue burden on new players to spend billions of pesos to build refineries in order to compete with the old players, and (2) new players, who opt not to build refineries, suffer from the huge disadvantage of increasing their product cost by 4%.[16] The tariff was imposed on the raw materials uniformly used by the players in the oil industry. Thus, the adverse effect on competition arising from this discriminatory treatment was readily apparent. In contrast, the excise tax under the assailed law is imposed based on the current net retail price of a cigarette brand. As previously explained, the current net retail price is determined by the pricing strategy of the manufacturer. This Court cannot simply speculate that the reason why a new brand cannot enter a specific tax bracket and compete with the brands therein was because of the *classification freeze provision*, rather than the manufacturer's own pricing decision or some other factor solely attributable to the manufacturer. Again, the burden of proof in this regard is on petitioner which it failed to muster.

Fourth, the finding in our August 20, 2008 Decision that price is not the only factor which affects consumer behavior in the cigarette market is based on petitioner's own evidence. On cross-examination, petitioner's witness admitted that notwithstanding the change in price, a cigarette smoker may prefer the old brand because of its addictive formulation.[17] As

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[16] *Id.* at 369.

[17] Q- In other words, Mr. Witness, you are also suggesting in your expert opinion that there is also a possibility that notwithstanding the change in the price of the particular cigarette product considering that cigarette smoking is habit forming, and considering also that that cigarette product

a result, even if we were to assume that the *classification freeze provision* distorts the pricing scheme of the market players, it is not clear whether a substantial barrier to the entry of new players would thereby be created because of these other factors affecting consumer behavior.

Last, the claim that the assailed provisions encourage predatory pricing was never raised nor substantiated before the trial court. It is merely an afterthought and cannot be given weight.

In sum, the totality of the evidence presented by petitioner before the trial court failed to convincingly establish the alleged violation of the constitutional prohibition on unfair competition. It is a basic postulate that the one who challenges the constitutionality of a law carries the heavy burden of proof for laws enjoy a strong presumption of constitutionality as it is an act of a co-equal branch of government. Petitioner failed to carry this burden.

The assailed law does not transgress the constitutional provisions on regressive and inequitable taxation.

Petitioner argues that the *classification freeze provision* is a form of regressive and inequitable tax system which is proscribed under Article VI, Section 28(1)[18] of the Constitution. It claims that people in equal positions should be treated alike. The use of different tax bases for brands under Annex "D" *vis-à-vis* new brands is discriminatory, and thus, iniquitous. Petitioner further posits that the *classification freeze provision* is regressive in character. It asserts that the harmonization of revenue flow projections and ease of tax administration cannot override this constitutional command.

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won or satisfied the taste of the market, there is a tendency that notwithstanding the price, a particular consumer would still stick on the particular product?

A- Yes, by your own word, you say that it is habit forming. So, it is loyalty to the brand. (Testimony of Dennis Belgira, TSN February 20, 2004, records, vol. II, pp. 679-680.)

[18] Section 28(1). The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

We note that the points raised by petitioner with respect to alleged inequitable taxation perpetuated by the *classification freeze provision* are a mere reformulation of its equal protection challenge. As stated earlier, the assailed provisions do not infringe the equal protection clause because the four-fold test is satisfied. In particular, the *classification freeze provision* has been found to rationally further legitimate State interests consistent with rationality review. Petitioner's repackaged argument has, therefore, no merit.

Anent the issue of regressivity, it may be conceded that the assailed law imposes an excise tax on cigarettes which is a form of indirect tax, and thus, regressive in character. While there was an attempt to make the imposition of the excise tax more equitable by creating a four-tiered taxation system where higher priced cigarettes are taxed at a higher rate, still, every consumer, whether rich or poor, of a cigarette brand within a specific tax bracket pays the same tax rate. To this extent, the tax does not take into account the person's ability to pay. Nevertheless, this does not mean that the assailed law may be declared unconstitutional for being regressive in character because the Constitution does not prohibit the imposition of indirect taxes but merely provides that Congress shall evolve a progressive system of taxation. As we explained in *Tolentino v. Secretary of Finance*:[19]

> [R]egressivity is not a negative standard for courts to enforce. What Congress is required by the Constitution to do is to "evolve a progressive system of taxation." This is a directive to Congress, just like the directive to it to give priority to the enactment of laws for the enhancement of human dignity and the reduction of social, economic and political inequalities [Art. XIII, Section 1] or for the promotion of the right to "quality education" [Art. XIV, Section 1]. These provisions are put in the Constitution as moral incentives to legislation, not as judicially enforceable rights.[20]

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[19] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

[20] *Id.* at 684-685.

Petitioner is not entitled to a downward reclassification of Lucky Strike.

Petitioner alleges that assuming the assailed law is constitutional, its Lucky Strike brand should be reclassified from the premium-priced to the high-priced tax bracket. Relying on BIR Ruling No. 018-2001 dated May 10, 2001, it claims that it timely sought redress from the BIR to have the market survey conducted within three months from product launch, as provided for under Section 4(B)[21] of Revenue Regulations No. 1-97, in order to determine the actual current net retail price of Lucky Strike, and thus, fix its tax classification. Further, the upward reclassification of Lucky Strike amounts to deprivation of property right without due process of law. The conduct of the market survey after two years from product launch constitutes gross

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[21] Section 4. *Classification and Manner of Taxation of Existing Brands, New Brands and Variant of Existing Brands.*

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B. *New Brand*

New brands shall be classified according to their current net retail price. In the meantime that the current net retail price has not yet been established, the suggested net retail price shall be used to determine the specific tax classification. Thereafter, a survey shall be conducted in 20 major supermarkets or retail outlets in Metro Manila (for brands of cigarette marketed nationally) or in five (5) major supermarkets or retail outlets in the region (for brands which are marketed only outside Metro Manila) at which the cigarette is sold on retail in reams/carton, three (3) months after the initial removal of the new brand to determine the actual net retail price excluding the excise tax and value added tax which shall then be the basis in determining the specific tax classification. In case the current net retail price is higher than the suggested net retail price, the former shall prevail. Otherwise, the suggested net retail price shall prevail. Any difference in the specific tax due shall be assessed and collected inclusive of increments as provided for by the National Internal Revenue Code, as amended.

The survey contemplated herein to establish the current net retail price on locally manufactured and imported cigarettes shall be conducted by the duly authorized representatives of the Commissioner of Internal Revenue together with a representative of the Regional Director from each Regional Office having jurisdiction over the retail outlet within the Region being surveyed, and who shall submit, without delay, their consolidated written report to the Commissioner of Internal Revenue.

neglect on the part of the BIR. Consequently, for failure of the BIR to conduct a timely market survey, Lucky Strike's classification based on its suggested gross retail price should be deemed its official tax classification. Finally, petitioner asserts that had the market survey been timely conducted sometime in 2001, the current net retail price of Lucky Strike would have been found to be under the high-priced tax bracket.

These contentions are untenable and misleading.

First, BIR Ruling No. 018-2001 was requested by petitioner for the purpose of fixing Lucky Strike's initial tax classification based on its suggested gross retail price relative to its planned introduction of Lucky Strike in the market sometime in 2001 and not for the conduct of the market survey within three months from product launch. In fact, the said Ruling contained an express reservation that the tax classification of Lucky Strike set therein "is without prejudice, however, to the subsequent conduct of a survey x x x in order to determine if the actual gross retail price thereof is consistent with [petitioner's] suggested gross retail price."[22] In short, petitioner acknowledged that the initial tax classification of Lucky Strike may be modified depending on the outcome of the survey which will determine the actual current net retail price of Lucky Strike in the market.

Second, there was no upward reclassification of Lucky Strike because it was taxed based on its suggested gross retail price from the time of its introduction in the market in 2001 until the BIR market survey in 2003. We reiterate that Lucky Strikes' *actual* current net retail price was surveyed for the first time in 2003 and was found to be from ₱10.34 to ₱11.53 per pack, which is within the premium-priced tax bracket. There was, thus, no prohibited upward reclassification of Lucky Strike by the BIR based on its current net retail price.

Third, the failure of the BIR to conduct the market survey within the three-month period under the revenue regulations then in force can in no way make the initial tax classification of Lucky Strike based on its suggested gross retail price

[22] Records, Vol. 1, p. 66.

permanent. Otherwise, this would contravene the clear mandate of the law which provides that the basis for the tax classification of a new brand shall be the current net retail price and not the suggested gross retail price. It is a basic principle of law that the State cannot be estopped by the mistakes of its agents.

Last, the issue of timeliness of the market survey was never raised before the trial court because petitioner's theory of the case was wholly anchored on the alleged unconstitutionality of the *classification freeze provision*. As a consequence, no documentary evidence as to the actual net retail price of Lucky Strike in 2001, based on a market survey at least comparable to the one mandated by law, was presented before the trial court. Evidently, it cannot be assumed that had the BIR conducted the market survey within three months from its product launch sometime in 2001, Lucky Strike would have been found to fall under the high-priced tax bracket and not the premium-priced tax bracket. To so hold would run roughshod over the State's right to due process. Verily, petitioner prosecuted its case before the trial court solely on the theory that the assailed law is unconstitutional instead of merely challenging the timeliness of the market survey. The rule is that a party is bound by the theory he adopts and by the cause of action he stands on. He cannot be permitted after having lost thereon to repudiate his theory and cause of action, and thereafter, adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[23] Having pursued one theory and lost thereon, petitioner may no longer pursue another inconsistent theory without thereby trifling with court processes and burdening the courts with endless litigation.

WHEREFORE, the motion for reconsideration is *DENIED*.

SO ORDERED.

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

Nachura, J., no part.

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[23] *Bashier v. Commission on Elections*, G.R. No. L-33692, February 24, 1972, 43 SCRA 238, 266.

SECOND DIVISION

[A.C. No. 5195. April 16, 2009]

NELIA PASUMBAL DE CHAVEZ-BLANCO, represented by her attorney-in-fact, ATTY. EUGENIA J. MUÑOZ, *complainant, vs.* **ATTY. JAIME B. LUMASAG, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION OF ATTORNEYS; APPROPRIATE PENALTY FOR AN ERRANT LAWYER DEPENDS ON THE EXERCISE OF SOUND JUDICIAL DISCRETION BASED ON THE SURROUNDING FACTS; REDUCTION OF RECOMMENDED PENALTY IS PROPER IN CASE AT BAR.— The Court agrees with the findings and conclusion of the IBP, but a reduction of the recommended penalty is called for, following the dictum that the appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER MAY BE DISCIPLINED FOR ANY CONDUCT IN HIS PROFESSIONAL OR PRIVATE CAPACITY; CASE AT BAR.— A lawyer may be disciplined for any conduct, in his professional or private capacity, that renders him unfit to continue to be an officer of the court. Canon 1 of the Code of Professional Responsibility commands all lawyers to uphold at all times the dignity and integrity of the legal profession. Specifically, Rule 1.01 thereof provides: Rule 1.01—A lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct. There is no need to stretch one's imagination to arrive at an inevitable conclusion that respondent committed dishonesty and abused the confidence reposed in him by the complainant and her spouse.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN ADMINISTRATIVE PROCEEDINGS, THE BURDEN OF PROOF THAT THE RESPONDENT COMMITTED THE ACTS COMPLAINED OF RESTS ON THE COMPLAINANT; MERE

ALLEGATION IS NOT EVIDENCE AND IS NOT EQUIVALENT TO PROOF.— As to the charge of falsification, the Court agrees with the IBP that the same appears to be unsubstantiated. Settled is the rule 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. Mere allegation is not evidence and is not equivalent to proof.

4. LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION OF ATTORNEYS BY SUPREME COURT; GROSS MISCONDUCT; PENALTY.— Respondent's actions erode the public perception of the legal profession. They constitute gross misconduct for which he may be suspended, following Section 27, Rule 138 of the Rules of Court, which provides: Sec. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.*— A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party to a case without authority to so do. Complainant asks that respondent be disbarred. The Court finds, however, that suspension from the practice of law is sufficient to discipline respondent. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. While the Court will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, the Court will also not disbar him where a lesser penalty will suffice to accomplish the desired end. In this case, the Court finds the recommended penalty of suspension of two (2) years for respondent to be too severe, considering his advanced age. The Court believes that a suspension of six (6) months is sufficient. Suspension, by the way, is not primarily intended as punishment, but as a means to protect the public and the legal profession.

APPEARANCES OF COUNSEL

Octavio A. Del Callar for complainant.

R E S O L U T I O N

TINGA, *J.*:

This is an administrative complaint for disbarment filed by complainant Nelia P. de Chavez-Blanco against respondent Atty. Jaime Lumasag, Jr., for deceit, dishonesty and gross misconduct.

In a Report and Recommendation dated 11 December 2001,[1] the Integrated Bar of the Philippines (IBP) Commissioner Milagros San Juan found respondent guilty of the charges and recommended the penalty of disbarment. Subsequently, the IBP Board of Governors reduced the penalty to a five (5)-year suspension in its Resolution XV-2002-229 dated 29 June 2001. In a Resolution dated 9 December 2002, the Court, however, remanded the case to the IBP in view of its findings that no formal hearing/investigation was conducted.

Upon remand to the IBP, the case was re-assigned to IBP Commissioner Dennis A.B. Funa and hearings were accordingly held thereafter.

Through her attorney-in-fact, Atty. Eugenia J. Muñoz, complainant alleged in her Complaint[2] that she was a resident of the United States of America together with her husband, Mario Blanco. She also stated that she owned two (2) adjacent parcels of land in Quezon City, each with an area of 400 square meters, covered by Transfer Certificates of Title (TCT) Nos. 22162 and 22163 registered in her name. In a document dated 20 November 1989, she authorized respondent, who were her husband's first cousin, to sell said lots.[3]

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[1] *Rollo,* pp. 740-750.

[2] Dated 20 December 1999; *id*. at 1-7.

[3] *Id*. at 1.

In a letter dated 20 March 1990, respondent reported that he had sold only one lot for the price of ₱320,000.00 and therefrom he deducted ₱38,130.00 for taxes and commissions. And, allegedly, per complainant's instructions, he remitted the remaining balance of ₱281,900.00 to a certain Belen Johnnes.[4]

In 1995, complainant was informed by respondent that the other lot remained unsold due to the presence of squatters on the property.

In December 1998, Mario Blanco discovered that in truth, the two (2) lots had been sold on 11 March 1990 to the spouses Celso and Consolacion Martinez for the price of ₱1,120,000.00, and that new titles had been issued to the transferees. Mario Blanco confronted respondent with these facts in a letter, but the latter disregarded the same. Thus, in May 1999, complainant, through Atty. Muñoz sent a demand letter to respondent directing him to remit and turn over to her the entire proceeds of the sale of the properties.

Soon thereafter, respondent admitted the sale of the properties and his receipt of its proceeds, but he never tendered or offered to tender the same to complainant. Despite repeated and continued demands, respondent has since not remitted the amount equivalent to ₱838,100.00 (₱278,000.00 for the first parcel of land and ₱560,000.00 for the second).[5]

Complainant also averred that the Special Power of Attorney dated 16 January 1989, which respondent had used to sell the lots is a forgery and a falsified document, as the signature therein were not the real signatures of complainant and her spouse. In addition, they could not have acknowledged the document before a notary, as they were not in the Philippines at the time.[6]

For his part, respondent vehemently denied all the accusations of deceit, dishonesty and gross misconduct.[7]

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[4] *Id*. at 1-2.

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

[6] *Id*. at 5-7.

[7] In his Comment with Motion to Dismiss dated 19 April 2000; *id.* at 41-46.

Respondent countered that Mario Blanco was the true owner of the properties, which had to be titled in complainant's name, as Mario Blanco was a U.S. citizen. Mario Blanco had requested him to look for a buyer of the properties and, in the course of selling them, respondent claimed that he had only transacted with the former and never with complainant. Respondent averred that he had been authorized in November 1989 to sell the property, through a Special Power of Attorney, for a price of not less than ₱250,000.00 net for the owner.[8]

Respondent also alleged that the deed of absolute sale if the two (2) lots had been executed on 19 March 1990 but, only one lot was initially paid in the amount of ₱281,980.00, which he immediately remitted to Mario Blanco. The payment for the other lot was withheld, pending the relocation of the squatters who had been occupying the premises. And when respondent had finally collected the proceeds of the second lot more than three (3) years after, he asked Mario Blanco if the former could use the amount for a real estate venture whose profit, if successful, he would share with the latter. Mario Blanco allegedly did not think twice and consented to the proposal. The venture, however, did not push through.[9]

Respondent strongly maintained that the two (2) lots had been sold for only ₱563,960.00.[10]

Finally, respondent denied the charge of falsification. He claimed that complainant and her spouse, Mario Blanco, had in fact signed the Special Power of Attorney, but it was only notarized later.[11]

In his Report and Recommendation dated 4 December 2006, Atty. Dennis A.B. Funa arrived at the following findings:

It appears from the records that the two lots were sold by Respondent for **₱560,000.00**, not ₱1,120,000.00 as alleged by

[8] *Id*. at 42.

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

[10] *Id*. at 45.

[11] *Id*.

Complainant. The basis is the Deed of Absolute Sale dated March 11, 1990 **which shows** that the two lots composing 800 sq. meters being sold for ₱560,000.00. There appears to be no documentary basis for the claimed amount of ₱1,120,000.00 of Complainant. However, Respondent in his Comment stated **that the two lots** were sold by him for ₱563,960.00. In any case, we shall uphold and apply the amount stated in the Deed of Absolute Sale.

In Respondent's letter dated March 20, 1990, he acknowledged that he already received ₱320,000.00 as the "total value **of one lot**". Moreover, the computation shows that the ₱320,000.00 was only for 400 sq.m. as the computation stated: "400 sq.m. x 800p/sqm=₱320,000.00." Therefore, if the first lot was sold for ₱320,000.00, then the second lot must have been sold for ₱240,000 x x x

x x x **there was clear deception on the part of Respondent** when he wrote the letter dated March 20, 1990 "informing" the Blanco spouses that he had sold **only one** of the two parcels of land for ₱320,000.00. This is belied by the fact that on March 11, 1990, or 9 days before he wrote the letter, a Deed of Absolute Sale was executed by him selling the two lots for ₱560,000.00. This Deed of Absolute Sale was notarized on March 19, 1990. During the hearing, Respondent admitted that the Deed of Sale **covered two lots**. Clearly, Respondent was not forthcoming towards the Blanco spouses.

x x x x x x x x x

x x x Instead of representing that two lots had been sold for ₱560,000.00. Respondent only represented that he sold only one lot for ₱320,000.00 and **pocketing** the balance of ₱240,000.00.

x x x x x x x x x

During the course of hearing, Respondent claims that the Deed of Sale referred to above is a fake, and that there is a Deed of Sale showing a selling price of ₱320,000.00 which is the real Deed of Sale. However, no such Deed of Sale has been presented by Respondent and no such Deed of Sale appears in the records. Later in the hearing, Respondent retracted his statement claiming he was merely confused.

As for the alleged falsification of a Special Power of Attorney dated January 16, 1989, wherein the signatures of the Blanco spouses appear in the SPA when they were not in the Philippines on January 16, 1989 but were allegedly in the United States, their **absence** in the country has not been satisfactorily established since mere xerox copies

of their passports, although noted by a notary public, cannot duly establish their absence in the country on that date. Other acceptable documents such as a certification from the Bureau of Immigration would have been appropriate but which, however, had not been presented. In any case, Respondent denies the charge of falsification.[12] (Citations omitted) [Emphasis supplied]

Accordingly, the IBP Commissioner recommended that, in view of the fact that respondent was already 72 years old, he be meted out the penalty of suspension of one (1)-year suspension, not disbarment as had been prayed for and not 5 year-suspension as had been earlier resolved by the IBP Board of Governors. Moreover, the IBP Commissioner recommended that respondent be ordered to deliver to Complainant the amount of ₱240,000.00 plus the legal interest rate of 6% per annum computed from March 1990.

On 31 May 2007, the IBP Board of Governors passed Resolution No. XVII-2007-222 adopting and approving the Report and Recommendation of the IBP Commissioner.[13]

The Court agrees with the findings and conclusion of the IBP, but a reduction of the recommended penalty is called for, following the dictum that the appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[14]

A lawyer may be disciplined for any conduct, in his professional or private capacity, that renders him unfit to continue to be an officer of the court. Canon 1 of the Code of Professional Responsibility commands all lawyers to uphold at all times the dignity and integrity of the legal profession. Specifically, Rule 1.01 thereof provides:

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

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[12] Report and Recommendation; *id*. at 745-749.

[13] *Id*. at 739.

[14] *Endaya v. OCA*, 457 Phil. 314 (2003); see also *Uytengsu III v. Baduel*, A.C. No. 5134, December 14, 2005, 477 SCRA 621, 630, citing *Marcelo v. Javier*, A.C. No. 3248, 18 September 1992, 214 SCRA 1, 14-15.

There is no need to stretch one's imagination to arrive at an inevitable conclusion that respondent committed dishonesty and abused the confidence reposed in him by the complainant and her spouse.

Records show that two lots had been sold by respondent as evidenced by the Deed of Absolute Sale of 11 March 1990. Respondent, however, taking advantage of the absence of complainant and her spouse from the Philippines and their complete trust in him, deceitfully informed them in a letter dated 20 March 1990 that he had sold only one. It can be reasonably deduced from the exchanges between the parties that the proceeds of the first lot had been transmitted to complainant and her spouse. Respondent's contention, though, that he had been authorized to retain the proceeds of the second is specious, as complainant and her spouse could not have given the same, having been left in the dark as regards its sale. And despite repeated demands, to date, there is no showing that the outstanding amount has been paid. Thus, respondent's deceitful conduct warrants disciplinary sanction and a directive for the remittance of the remaining proceeds is in order.

As to the charge of falsification, the Court agrees with the IBP that the same appears to be unsubstantiated. Settled is the rule 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.[15] Mere allegation is not evidence and is not equivalent to proof.[16]

Respondent's actions erode the public perception of the legal profession. They constitute gross misconduct for which he may

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[15] *Tam v. Judge Regencia*, A.M. No. MTJ-05-1604, 27 June 2006, 493 SCRA 26, 37-38.

[16] *Nedia. v. Laviña*, A.M. No. RTJ-05-1957, 26 September 2005, 471 SCRA 10, 20.

be suspended, following Section 27, Rule 138 of the Rules of Court, which provides:

> Sec. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.*— A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party to a case without authority to do so.

Complainant asks that respondent be disbarred. The Court finds, however, that suspension from the practice of law is sufficient to discipline respondent. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. While the Court will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, the Court will also not disbar him where a lesser penalty will suffice to accomplish the desired end. In this case, the Court finds the recommended penalty of suspension of two (2) years for respondent to be too severe, considering his advanced age. The Court believes that a suspension of six (6) months is sufficient. Suspension, by the way, is not primarily intended as punishment, but as a means to protect the public and the legal profession.[17]

WHEREFORE, in view of the foregoing, respondent Atty. Jaime Lumasag, Jr. is *SUSPENDED* from the practice of law for a period of *SIX* (6) *MONTHS*, effective immediately, with a warning that a repetition of the same or a similar act will be dealt with more severely. Further, respondent is ordered to deliver to complainant the amount of ₱240,000.00 plus legal interest rate of 6% per annum computed from March 1990.

Let notice of this Resolution be spread in respondent's record as an attorney in this Court, and notice thereof be served on

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[17] *Garcia v. Atty. Manuel,* 443 Phil. 478, 489 (2003).

the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. MTJ-08-1706. April 16, 2009]
(Formerly OCA IPI No. 08-1984-MTJ)

MUTYA B. VICTORIO, *complainant, vs.* **JUDGE MAXWELL S. ROSETE, PRESIDING JUDGE, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, SANTIAGO CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION UPON JUDGMENTS OR FINAL ORDERS; ISSUANCE OF A WRIT OF EXECUTION IS A MINISTERIAL DUTY OF THE COURT.— There is no dispute that judgment in said cases, appealed to this Court in *Chua v. Victorio*, has already become final and executory, an entry of judgment having been made in *Chua v. Victorio* on 6 August 2004. With a final and executory decision, rendered by no less than this Court, execution should issue as a matter of right on motion by Victorio, in accordance with Section 1, Rule 39 of the 1997 Rules of Procedure, which provides: Section 1. *Execution upon judgments or final orders*. - Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and

the issuance of a Writ of Execution becomes a ministerial duty of the court. A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous. The writ of execution must therefore conform to the judgment to be executed and adhere strictly to the very essential particulars.

2. ID.; ID.; JUDGMENTS; IMMUTABILITY OF JUDGMENT; A FINAL JUDGMENT OF THE SUPREME COURT CANNOT BE ALTERED OR MODIFIED, EXCEPT FOR CLERICAL ERRORS, MISPRISIONS OR OMISSIONS.— A final judgment of the Supreme Court cannot be altered or modified, except for clerical errors, misprisions or omissions. No "inferior" court has authority to revoke a resolution of a superior court, much less a final and executory resolution of the Supreme Court, the latter itself having no power to revoke the same after it has become final. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.

3. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; REQUIRES HIGH STANDARDS OF COMPETENCE, INTEGRITY AND INDEPENDENCE; DISREGARD OF THE RULES AND SETTLED JURISPRUDENCE SHOWS GROSS IGNORANCE OF THE LAW, AMOUNTING TO BAD FAITH; CASE AT BAR.— In disregarding the rules and settled jurisprudence, Judge Rosete showed gross ignorance of the law, amounting to bad faith. Judges, being the visible representations of law and justice are expected to be circumspect in the performance of their tasks, for it is their duty to administer justice in a way that inspires confidence in the integrity of the justice system. For this reason, the Code of Judicial Conduct requires high standards of competence, integrity and independence. It mandates judges to be faithful to the law and to maintain professional competence. Indeed, it has been held that the failure to consider and apply a basic and elementary rule, law or principle is not only inexcusable, but also renders magistrates susceptible to administrative sanctions for incompetence and gross ignorance of the law.

4. ID.; ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; ELUCIDATED.— As can be seen, the law involved is simple and elementary; lack of conversance therewith constitutes gross

ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. A judge owes it to himself and to his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. Ignorance of the law by a judge can easily be the mainspring of injustice. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws. When the law is so elementary, not to know it constitutes gross ignorance of the law. Ignorance of the law, which everyone is bound to know, excuses no one – most especially judges. *Ignorantia juris quod quisque scire tenetur non excusat.* As the Court held in *Spouses Monterola v. Judge Caoibes, Jr.*: Observance of the law, which respondent ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that is either deliberate disregard thereof or gross ignorance of the law. It is a continuing pressing responsibility of judges to keep abreast with the law and changes therein. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges — from compliance therewith. x x x. Canon 4 of the Canons of Judicial Ethics requires that the judge should be studious in the principles of law. Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law. Indeed, it has been said that when the inefficiency springs from a failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

5. ID.; ID.; DISCIPLINE OF JUDGES; GROSS IGNORANCE OF THE LAW OR PROCEDURE IS CLASSIFIED AS A SERIOUS CHARGE; PENALTIES.— Gross ignorance of the law or procedure is classified as a serious charge under Rule 140, Section 8 of the Rules of Court, as amended by A.M. No. 01-8-10 SC; and penalized under Section 11 of the same Rule as

follows: SEC. 11. *Sanctions*. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided, however*, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

The instant administrative complaint[1] was filed before this Court by Mutya B. Victorio (Victorio) charging Judge Maxwell S. Rosete (Judge Rosete) of the Municipal Trial Court in Cities (MTCC), Branch 2, Santiago City, with Conduct Unbecoming a Judge, in relation to Civil Cases No. 11-551 and No. 556-557, entitled, *Mutya Victorio v. Leonardo Chua, et al*.

The antecedent facts giving rise to the instant administrative case, as judicially determined in *Chua v. Victorio*,[2] are recounted below:

Sometime in September of 1994, [Victorio] (through her attorney-in-fact) made a rental survey of other commercial establishments along Panganiban Street. On the basis of the survey, a 25% rental increase was demanded from [Leonardo Chua and Heirs of Yong Tian].

[Leonardo Chua and Heirs of Yong Tian] refused to pay the increased rentals which compelled [Victorio] to file unlawful detainer cases against both lessees, docketed as Civil Cases Nos. II-370 and II-371. However, both complaints were dismissed by the Municipal Trial Court in Cities (MTCC), Branch II, Santiago City. The dismissal was affirmed by the Regional Trial Court (RTC), but reversed by the Court of Appeals, which ordered [Leonardo Chua and Heirs of Yong Tian] to vacate the leased premises.

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[1] *Rollo*, pp. 5-7.

[2] G.R. No. 157568, 18 May 2004, 428 SCRA 447.

The decision of the Court of Appeals became final and executory, and, upon motion filed by [Victorio], the MTCC issued writs of execution ordering the ejectment of [Leonardo Chua and Heirs of Yong Tian] from respondent's property.

[Leonardo Chua and Heirs of Yong Tian] filed motions to quash the writs of execution, contending that there were supervening events which rendered the execution unjust or impossible. Specifically, [Leonardo Chua and Heirs of Yong Tian] claimed that they had acceded to the request for an increase in rentals, and had paid [Victorio] the amount demanded.

The MTCC found that [Leonardo Chua and Heirs of Yong Tian] had indeed paid to [Victorio] the increased monthly rental even before the Court of Appeals decision attained finality. In fact, [Leonardo Chua and Heirs of Yong Tian] offered to pay the increased rentals as early as January 1996, while the cases were still pending with the RTC. The increased monthly rentals were accepted by [Victorio] without reservation, and monthly payment of the rentals at the increased rate continued throughout the pendency of the suits. Accordingly, the MTCC quashed the writs of execution that it earlier issued.

[Victorio] assailed the quashal of the writ of execution directly to the Supreme Court via a petition for review on *certiorari*. This petition was dismissed by the Supreme Court on procedural grounds. [Leonardo Chua and Heirs of Yong Tian] thus remained in possession of [Victorio's] properties.

Subsequently, on October 10, 1998, [Victorio] wrote a letter to [Leonardo Chua and Heirs of Yong Tian] informing them of her intention to increase the monthly rentals effective November 1, 1998, from ₱6,551.25 per unit to a sum more than double that, namely, ₱15,000.00 per unit. [Leonardo Chua and Heirs of Yong Tian] refused to pay this amount, contending that it was beyond the allowable rental increase embodied in the compromise agreement.

[Victorio] thus instituted Civil Cases Nos. [II-556 and 557] seeking the ejectment of [Leonardo Chua and Heirs of Yong Tian]. In a joint decision dated May 10, 1999, the MTCC, Branch II, Santiago City dismissed these complaints for lack of merit. On appeal [in Civil Cases Nos. 21-2761 and 21-2762], the RTC initially reversed the MTCC, but later reversed its earlier decision. On March 9, 2000, the RTC issued an order affirming the MTCC's dismissal of the complaints.

[Victorio] filed a petition for review with the Court of Appeals, which was docketed as CA-G.R. SP No. [59482]. On May 31, 2001, the Court of Appeals reversed the March 9, 2000 Order of the RTC affirming the MTCC's dismissal of the complaints. The Court of Appeals ruled that the compromise agreement, which set a definite period of four years for the lease contract, had been abrogated by [Leonardo Chua and Heirs of Yong Tian's] refusal to pay the increased rentals in 1994. Accordingly, in 1994, the juridical relation between the parties severed. When [Victorio] accepted payment of the increased monthly amount, an entirely new contract of lease was entered into between the parties. Since payment of rent was made on a monthly basis, and pursuant to Article 1687 of the Civil Code, the period of this lease contract was monthly. Upon expiration of every month, the lessor could increase the rents and demand that the lessee vacate the premises upon noncompliance with increased terms. In exercise of equity, however, the Court of Appeals granted [Leonardo Chua and Heirs of Yong Tian] an extension of one year from finality of the decision within which to vacate the premises. A motion for reconsideration [was filed but the same was denied] on 11 March 2003.[3]

Aggrieved by the decision of the Court of Appeals in CA-G.R. SP No. 59482, Leonardo Chua and Heirs of Yong Tian filed a Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 157568, bearing the complete title *Leonardo Chua and Heirs of Yong Tian v. Mutya B. Victorio.*

The Court rendered a Decision[4] in *Chua v. Victorio* on 18 May 2004, with the following *fallo*:

Wherefore, in view of the foregoing, the instant petition for review is DENIED. The decision of the Court of Appeals dated May 31, 2001 in CA-G.R. SP No. 59482, is AFFIRMED with the MODIFICATION that [Leonardo Chua and Heirs of Yong Tian] are ordered to vacate the leased premises one month after the finality of this decision. Petitioner Leonardo Chua is also ORDERED to pay [Victorio] the sum of ₱15,000.00 a month as reasonable compensation for the use of the premises from November 1, 1998 until he finally vacates the premises. Petitioners, Heirs of Yong Tian, are ORDERED to pay

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[3] *Rollo*, pp. 13-16.

[4] *Id.* at 12-24.

[Victorio] the monthly sum of ₱15,000.00 per unit, or ₱30,000.00 per month from November 1, 1998 until they finally vacate the premises.

Costs against [Leonardo Chua and Heirs of Yong Tian].[5]

The aforementioned Decision in *Chua v. Victorio* became final and executory on 6 August 2004, per Entry of Judgment[6] issued by this Court.

A Motion for Execution was filed on 28 December 2004 by Victorio before the MTCC in Civil Cases No. 11-551 and No. 556-557, but Judge Rosete denied the same.

On 25 January 2005, Victorio filed another Motion[7] for the Issuance of a Writ of Execution before the MTCC, but her Motion was again denied by Judge Rosete in a Resolution[8] dated 28 March 2006, which decreed:

PREMISES CONSIDERED, the court resolves and so holds that [Victorio] may no longer be entitled to a writ of execution. Accordingly, the motion for issuance of a writ of execution should be as it is hereby DENIED.[9]

Victorio appealed the 28 March 2006 Resolution of the MTCC, but the appeal was withdrawn[10] upon verbal instruction of Victorio's Attorney-in-Fact. Thereafter, Judge Rosete issued an Order on 3 August 2006, which declared that the case was considered "Finally Closed and Terminated."[11]

On 13 November 2006, Victorio file a third Motion[12] for Execution to have Leonardo Chua and Heirs of Yong Tian vacate the leased premises. However, in a Resolution dated

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[5] *Id.* at 22.

[6] *Id.* at 30.

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

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

[9] *Id.* at 39.

[10] *Id.* at 43.

[11] *Id.* at 44.

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

6 December 2006, Judge Rosete only granted the issuance of a partial Writ of Execution for the enforcement of the rental obligations of Leonardo Chua and Heirs of Yong Tian. The dispositive portion of said Resolution reads:

> WHEREFORE, in the light pf (sic) the foregoing, and finding [Victorio's] motion dated November 13, 2006 partially meritorious, let a writ of execution issue but only for the payment of rental arrearages by the [Leonardo Chua and Heirs of Yong Tian].[13]

Consequently, Victorio filed on 28 March 2007 the present administrative complaint[14] against Judge Rosete for Conduct Unbecoming a Judge. Victorio pointed out that Judge Rosete, in his Resolutions dated 28 March 2006 and 6 December 2006, in Civil Cases No. 11-551 and No. 556-557, refused to execute the judgment ordering Leonardo Chua and Heirs of Yong Tian to vacate the leased premises. Victorio argued that Judge Rosete erred in ruling that Victorio's continuous acceptance of rental payment from Leonardo Chua and Heirs of Yong Tian gave birth to new contracts of lease, since:

a. All the receipts issued by [Victorio] to [Leonardo Chua and Heirs of Yong Tian] contained a reservation which reads "It is understood that the deposit and endorsement of the above check(s) will not prejudice the cases now in court, Municipal Trial Court Branch II," among others.

b. It is clearly stated on page 7 of the Supreme Court Decision the dispositive portion of which read "No amount of subsequent payment by the lessees could automatically restore the parties to what they once were "and" the lessor's acceptance of the increased rentals did not have the effect of reviving the earlier contract of lease.

Victorio also informed the Court that on 14 December 2006, Leonardo Chua and Heirs of Yong Tian filed with the Regional Trial Court, Branch 35, Santiago City, a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction, against Victorio and Judge

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[13] *Id.* at 50.

[14] *Id.* at 5-7.

Rosete challenging the issuance of the partial Writ of Execution in Civil Cases No. 11-551 and No. 556-557. The RTC issued a TRO and the Petition therein is now submitted for resolution.

In his Comment[15] on Victorio's administrative complaint against him, Judge Rosete explained that he considered the collection and acceptance by Victorio's representative from Leonardo Chua and Heirs of Yong Tian of advance monthly rentals as having created a new lease contract between said parties. For this reason, Victorio may no longer press for the ejectment of Leonardo Chua and Heirs of Yong Tian from the leased premises. Leonardo Chua and Heirs of Yong Tian, however, remained bound and obligated to pay Victorio whatever balance they may have had on the monthly rentals as decreed by this Court in its Decision of 18 May 2004 in *Chua v. Victorio*. So Judge Rosete averred that it was not true that he denied the execution of the judgment in *Chua v. Victorio,* for he issued a Writ of Execution on 8 December 2006 for the same, particularly with regard to the payment by Leonardo Chua and Heirs of Yong Tian of their rental obligations.

On 3 March 2008, the Office of the Court Administrator (OCA) submitted its Report,[16] recommending that –

We respectfully submit for the consideration of the Honorable Court our recommendation:

1. That the instant administrative complaint be RE-DOCKETED as a regular administrative matter;

2. That respondent Judge Maxwell S. Rosete be found GUILTY of Gross Ignorance of the Law and accordingly be meted with a penalty of FINE in the amount of ₱40,000.00 to be deducted from his accrued leave credits;

3. That the Fiscal Management Office be DIRECTED to compute the monetary value of Judge Rosete's leave credits to be applied in satisfaction of the penalty to be imposed.[17]

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[15] *Id.* at 59-60.

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

[17] The OCA reported that Judge Rosete filed a Certificate of Candidacy for Mayor of Cordon, Isabela, on 29 March 2007; and pursuant to Section

On 2 June 2008, the Court required[18] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Both parties failed to file any manifestation despite notice sent to and received by them. Resultantly, the Court deemed the parties to have waived their right to submit such manifestations and considered the case submitted for decision based on the pleadings filed.

The Court agrees in the recommendation of the OCA except for the penalty imposed.

As the OCA found, Judge Rosete is indeed guilty of gross ignorance of the law for issuing the Resolutions dated 28 March 2006 and 8 December 2006, denying Victorio's motions for the issuance of a writ of execution in Civil Cases No. 11-551 and No. 556-557. There is no dispute that judgment in said cases, appealed to this Court in *Chua v. Victorio*, has already become final and executory, an entry of judgment having been made in *Chua v. Victorio* on 6 August 2004. With a final and executory decision, rendered by no less than this Court, execution should issue as a matter of right on motion by Victorio, in accordance with Section 1, Rule 39 of the 1997 Rules of Procedure, which provides:

> Section 1. *Execution upon judgments or final orders*. - Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

Judge Rosete's excuses for his refusal to enforce the Decision dated 18 May 2004 of this Court in *Chua v. Victorio*, which categorically ordered Leonardo Chua and Heirs of Yong Tian to vacate the leased premises, are unsatisfactory for the following reasons:

First, the 18 May 2004 Decision of this Court in *Chua v. Victorio* was already final and executory, having been recorded

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66 of the Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881), Judge Rosete was considered *ipso facto* resigned from his office. As per records of the Leave Division of the OCA, Judge Rosete had 115 days vacation leave and 126 days sick leave.

[18] *Id.* at 75.

in the Book of Entries of Judgment on 6 August 2004. Hence, Judge Rosete's insistence to the contrary constituted a contumacious disregard of a final and executory judgment of this Court.

Second, Judge Rosete's exposition – that he deemed the collection and acceptance of advance monthly rentals by Victorio's representative from Leonardo Chua and Heirs of Yong Tian as acts that had created new lease contracts between said parties and prevented the ejectment of the lessees from the leased premises – unacceptable.

The Court, in *Chua v. Victorio*, clearly ordered (1) Leonardo Chua and Heirs of Yong Tian to vacate the leased premises one month after the finality of the said Deicsion; (2) Leonardo Chua to pay Victorio ₱15,000.00 a month as reasonable compensation for the use of the leased premises from 1 November 1998 until he finally vacates the same; (2) Heirs of Yong Tian to pay Victorio ₱15,000.00 per month per unit, or a total of ₱30,000.00 per month, as reasonable compensation for the leased premises from 1 November 1998 until they finally vacate the same; and (4) Leonardo Chua and Heirs of Yong Tian to pay the costs of the suit.

By refusing to issue the necessary writ for the ejectment of Leonardo Chua and Heirs of Yong Tian from the leased premises, and considering the establishment of alleged new lease contracts arising from Victorio's acceptance of advance rental payments from Leonardo Chua and Heirs of Yong Tian, Judge Rosete effectively altered or modified the final and executory Decision dated 18 May 2004 of this Court in *Chua v. Victorio*, which ordered Leonardo Chua and Heirs of Yong Tian to already vacate the leased premises.

Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a Writ of Execution becomes a ministerial duty of the court.[19] A decision that has attained finality becomes the law of the

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[19] *Rubio v. MTCC, Branch 4, Cagayan de Oro City*, 322 Phil. 193-194 (1996); *Soco v. Court of Appeals*, 331 Phil. 753, 760 (1996).

case regardless of any claim that it is erroneous. The writ of execution must therefore conform to the judgment to be executed and adhere strictly to the very essential particulars.[20]

A final judgment of the Supreme Court cannot be altered or modified, except for clerical errors, misprisions or omissions. No "inferior" court has authority to revoke a resolution of a superior court, much less a final and executory resolution of the Supreme Court, the latter itself having no power to revoke the same after it has become final. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.[21]

In disregarding the rules and settled jurisprudence, Judge Rosete showed gross ignorance of the law, amounting to bad faith.

Judges, being the visible representations of law and justice[22] are expected to be circumspect in the performance of their tasks,[23] for it is their duty to administer justice in a way that inspires confidence in the integrity of the justice system.

For this reason, the Code of Judicial Conduct requires high standards of competence, integrity and independence.[24] It mandates judges to be faithful to the law and to maintain professional competence.[25] Indeed, it has been held that the failure to consider and apply a basic and elementary rule, law

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[20] *Buaya v. Stronghold Insurance Co., Inc.*, 396 Phil. 738, 748 (2000); *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 387 Phil. 885, 895 (2000).

[21] *Torres v. Hon. Sison*, 416 Phil. 394, 401 (2001).

[22] *Spouses Dizon v. Hon. Calimag*, 417 Phil. 778, 785 (2001).

[23] *Re: Release by Judge Manuel T. Muro, RTC, Branch 54, Manila, of an Accused in a Non-Bailable Offense*, 419 Phil. 567, 591 (2001).

[24] Code of Judicial Conduct, Canon 1, Rule 1.01.

[25] Code of Judicial Conduct, Canon 3, Rule 3.01 and Canon 1, Rule 1.01.

or principle is not only inexcusable, but also renders magistrates susceptible to administrative sanctions for incompetence and gross ignorance of the law.[26]

In this case, it is very clear that Judge Rosete disregarded a basic, unequivocal rule that execution shall issue as a matter of right when the order becomes final and executory.[27] It is moreover hornbook doctrine that when this point is reached, the trial court has the ministerial duty to issue a writ of execution to enforce the order.[28] The rule admits of exceptions,[29] but none obtains in this case. Hence, it is mandatory for Judge Rosete to issue the writ prayed for.

As can be seen, the law involved is simple and elementary; lack of conversance therewith constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must

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[26] *Spouses Monterola v. Judge Caoibes, Jr.*, 429 Phil. 59, 67 (2002); citing *De Guzman, Jr. v. Sison*, 407 Phil. 351, 368-369 (2001).

[27] §1, Rule 39 of the Rules of Court.

[28] *Mayuga v. Court of Appeals*, 329 Phil. 1078, 1088 (1996); *Bachrach Corporation v. Court of Appeals*, 357 Phil. 483, 493 (1998).

[29] Execution of a final judgment or order may be stayed or precluded under any of the following conditions:

1) Equitable grounds render its execution impossible or unjust due to facts and events transpiring after the judgment has become executory (*Soco v. Court of Appeals*, *supra* note 19).

2) There has been a change in the situation of the parties, which makes execution inequitable (*Philippine Sinter Corporation v. Cagayan Electric Power and Light Co., Inc.*, 431 Phil. 324, 333-334 [2002], citing *Bachrach Corporation v. Court of Appeals*, *supra* note 28).

3) The judgment has been novated by the parties (*Dormitorio v. Fernandez*, 164 Phil. 381, 386 [1976]).

4) Injunctive relief is prayed for and granted (Rule 38, Sec. 5).

5) The five-year period to enforce the judgment has expired (*Cunanan v. Court of Appeals*, 134 Phil. 338 [1968]).

6) The judgment is incomplete or is conditional (*Ignacio v. Hilario*, 76 Phil. 605 [1946]; *Cu Unjieng v. Mabalacat Sugar Co.*, 70 Phil. 380 [1940]).

know the laws and apply them properly in all good faith. Judicial competence requires no less.[30]

A judge owes it to himself and to his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. Ignorance of the law by a judge can easily be the mainspring of injustice. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws. When the law is so elementary, not to know it constitutes gross ignorance of the law. Ignorance of the law, which everyone is bound to know, excuses no one – most especially judges. *Ignorantia juris quod quisque scire tenetur non excusat.*[31] As the Court held in *Spouses Monterola v. Judge Caoibes, Jr.*:[32]

> Observance of the law, which respondent ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that is either deliberate disregard thereof or gross ignorance of the law. It is a continuing pressing responsibility of judges to keep abreast with the law and changes therein. Ignorance of the law, which everyone is bound to know, excuses no one — not even judges — from compliance therewith. x x x. Canon 4 of the Canons of Judicial Ethics requires that the judge should be studious in the principles of law. Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law. Indeed, it has been said that when the inefficiency springs from a failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.[33]

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[30] *Rubio v. MTCC, Branch 4, Cagayan de Oro City*, *supra* note 19; *Soco v. Court of Appeals*, *supra* note 19; *Villanueva v. Almazan*, 384 Phil. 776, 786 (2000).

[31] *Español v. Mupas*, 485 Phil. 636, 664 (2004); *Lu v. Siapno*, 390 Phil. 489, 496-497 (2000).

[32] *Supra* note 26.

[33] *Spouses Monterola v. Judge Caoibes, Jr., supra* note 26 at 66-67.

Competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts.[34] It is highly imperative that judges be conversant with the law and basic legal principles.[35] Basic legal procedures must be at the palm of a judge's hands.[36]

Gross ignorance of the law or procedure is classified as a serious charge under Rule 140, Section 8 of the Rules of Court, as amended by A.M. No. 01-8-10 SC; and penalized under Section 11 of the same Rule as follows:

SEC. 11. *Sanctions*. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided, however*, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Guided by the previous rulings of this Court in *Gamas v. Oco*[37] and *Sule v. Biteng,*[38] a fine of ₱20,000.00 is justified in the case at bar.

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[34] *Fr. Guillen v. Judge Cañon*, 424 Phil. 81, 88 (2002).

[35] *Borja-Manzano v. Sanchez*, 406 Phil. 434, 439-440 (2001).

[36] *Pesayco v. Layague*, A.M. No. RTJ-04-1889, 22 December 2004, 447 SCRA 450, 459.

[37] 469 Phil. 633 (2004). In this case, respondent Judge was found guilty of gross ignorance of the law for failure to comply with the requirements of Section 1(a) of Rule 116 of the Revised Rules of Criminal Procedure, by failing to furnish complainants therein a copy of the information with the list of the witnesses and was meted a fine of ₱20,000.00.

[38] 313 Phil. 398 (1995). In this case, respondent Judge was found guilty of gross ignorance of the law when he granted bail solely on account of the voluntary surrender of the accused and was meted a fine of ₱20,000.00.

However, the Court notes that Judge Rosete filed a Certificate of Candidacy as mayor of Cordon, Isabela, on 29 March 2007. Pursuant to Section 66 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code of the Philippines, Judge Rosete is considered ***ipso facto* resigned** from his office. Moreover, on 15 April 2008, this Court *en banc*, in A.M. MTJ-08-1702,[39] **dismissed** Judge Rosete from service with **forfeiture of all benefits, except accrued leave credits**, with prejudice to reinstatement or appointment to any public office, for Dishonesty and Gross Misconduct. Thus, the ₱20,000.00 fine imposed against Judge Rosete shall be deducted from his accrued leave credits, if sufficient.

WHEREFORE, Judge Maxwell Rosette is found *LIABLE* for Gross Ignorance of the Law in issuing the Resolutions dated 28 March 2006 and 8 December 2006, denying complainant Mutya B. Victorio's motions for issuance of a writ of execution, and is hereby ordered to pay a FINE of Twenty Thousand (₱20,000.00) PESOS, to be deducted from his retirement benefits. But since he was already dismissed from office with forfeiture of all benefits, the fine shall be deducted from his accrued leave credits, if sufficient; if not, then he should pay the said amount directly to this Court. The Fiscal Management and Budget Office is *DIRECTED* to compute the monetary value of Judge Rosete's leave credits to be applied in satisfaction of the fine imposed.

SO ORDERED.

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

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[39] *Lacanilao v. Judge Rosete*, A.M. No. MTJ-08-1702, 8 April 2008, 550 SCRA 542.

SECOND DIVISION

[A.M. No. P-07-2366. April 16, 2009]
(Formerly OCA-I.P.I. No. 07-2519-P)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MARIA CELIA A. FLORES, Court Legal Researcher II,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE OFFENSES; DISHONESTY; EXPLAINED.— Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.

2. ID.; ID.; ID.; ID.; MAKING OF AN UNTRUTHFUL STATEMENT IN THE PERSONAL DATA SHEET AMOUNTS TO DISHONESTY AND FALSIFICATION OF AN OFFICIAL DOCUMENT THAT WARRANT DISMISSAL FROM THE SERVICE EVEN ON THE FIRST OFFENSE.— The accomplishment of the PDS is required under Civil Service Rules and Regulations for employment in the government. The making of an untruthful statement therein amounts to dishonesty and falsification of an official document that warrant dismissal from the service even on the first offense. As emphasized in *Advincula v. Dicen*, the PDS is an official document required of a government employee and official by the Civil Service Commission. It is the repository of all information about any

government employee and official regarding his personal background, qualification, and eligibility. Since truthful completion of the PDS is a requirement for employment in the judiciary, the importance of answering the same with candor need not be gainsaid. Concealment of any information in the PDS, therefore, warrants disciplinary action against the erring employee.

3. ID.; ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; MANDATES A HIGH STANDARD OF ETHICS AND UTMOST RESPONSIBILITY IN THE PUBLIC SERVICE.— The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary. Persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness and diligence in the public service. As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethical standards, persons aspiring for public office must observe honesty, candor and faithful compliance with the law.

4. ID.; ID.; ID.; GRAVE OFFENSES; DISHONESTY; PENALTY OF DISMISSAL; MAY BE LOWERED TO SUSPENSION ON ACCOUNT OF THE PRESENCE OF MITIGATING CIRCUMSTANCES; CASE AT BAR.— While dishonesty is considered a grave offense punishable by dismissal even at the first instance, jurisprudence is replete with cases where the Court lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances such as length of service in the government and being a first time offender. Since respondent has been in the service for fourteen (14) years and since this is her first offense during employment in the judiciary, the Court deems it proper to impose the penalty of suspension for six (6) months without pay.

R E S O L U T I O N

TINGA, *J.*:

The instant administrative complaint was filed by the Office of the Court Administrator (OCA) charging respondent Maria Celia A. Flores with dishonesty for failure to disclose in her Personal Data Sheet (PDS) her suspension and dismissal from previous employment.

An abstract of pertinent facts follows.

Respondent applied for and was appointed as Court Legal Researcher II in the Regional Trial Court, Branch 217, Quezon City. She assumed her position on 12 April 1994.

In 2006, the OCA came across a labor case decision docketed as G.R. No. 109362 and promulgated on 15 May 1996, involving respondent as petitioner therein and the Philippine Public School Teachers Association (PPSTA) as private respondent. As reported in said case, respondent was employed as clerk of the PPSTA from August 1973 until her termination in August 1990. She was dismissed for engaging a fellow employee in a brawl. It was also found that she was disciplinarily charged six (6) times.[1] Respondent filed a complaint for illegal dismissal before the Labor Arbiter who ruled in her favor. On appeal, the National Labor Relations Commission declared the dismissal valid. Respondent elevated the case to this Court through a petition for *certiorari*. Pending resolution of said petition, respondent was appointed as Court Legal Researcher II. Eventually, the validity of her dismissal was sustained by this Court on 15 May 1996.

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[1] On 29 March 1977, respondent was suspended for fifteen (15) days without pay on charges involving misconduct, violation of rules and regulations, and tardiness and absenteeism. In February 1978, she was subject of an administrative investigation for misconduct for slapping another employee while under the influence of alcohol. On 16 December 1986, she was dismissed due to misconduct, loss of confidence, and crime against the employer or his authorized representative and causes analogous to the foregoing. She was temporarily reinstated pending further investigation pursuant to a compromise agreement to settle the strike staged by some PPSTA employees.

Upon learning of said case, the OCA looked into the 201 File of respondent but did not find her PDS. As requested, the Civil Service Commission furnished the OCA with a copy of the PDS. The significant portions of the PDS are quoted below, thus:

> 24. Have you ever been convicted for violating any law, decree, ordinance or regulations by any court or tribunal? [ ] Yes [ ] No. Have you ever been convicted for any breach or infraction by a military tribunal or authority, or found guilty of an administrative offense? [ ] Yes [√] No. If your answer is "Yes" to any of the questions, give particulars.
>
> 25. Do you have any pending administrative/criminal case? If you have any, give particulars. **None**
>
> 26. Have you ever been retired, dismissed, forced to resign from any employment for reasons, other than lack of funds or dropped from the rolls? [√] Yes [ ] No. If "Yes", give particulars. **Petition for *Certiorari*, pending with the Supreme Court under G.R. No. L-109362**. (Emphasis supplied)[2]

Following the sketchy lead by respondent's responses in the PDS, the OCA wrote a letter to PPSTA requesting a copy of the records of the administrative case before it.[3] As the PPSTA failed to furnish the requested documents, the OCA was constrained to rely on the decision dated 15 May 1996 in G.R. No. L-109362 as basis of this complaint.[4]

In a 1st Indorsement dated 3 January 2007, the OCA directed respondent to explain why she failed to disclose her previous suspension, dismissal from the service, and the administrative charges against her before the PPSTA.[5]

In her Comment, respondent maintained that she fully disclosed the fact of her dismissal from PPSTA in the PDS when she cited the pendency of a petition for *certiorari* in the Supreme

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[2] *Rollo*, p. 2.

[3] *Id.* at 1.

[4] *Id.* at 17.

[5] *Id.* at 21.

Court. In invoking good faith, she reasoned that her failure to indicate the suspension in 1977 was due to an honest mistake considering that the suspension happened more than seventeen (17) years before she accomplished the PDS on 11 February 1994.[6]

In a letter dated 12 April 2007, respondent asked for the inhibition of then Court Administrator Christopher Lock from further conducting the investigation in light of his alleged partiality against her for the following reasons, namely: (1) the Indorsement was issued *motu proprio* by the Court Administrator despite absence of any complaint by any party; (2) the Court Administrator disregarded the standard procedure by causing the personal service of notices and orders upon respondent; (3) there was no basis for the Indorsement, as no PDS was on file with the Office of Administrative Services, and the OCA had to obtain a copy from the Civil Service Commission; and (4) the Court Administrator virtually made himself a complainant, prosecutor and judge.[7]

In his Comment on the letter dated 12 April 2007, the former Court Administrator explained that the charge against respondent for dishonesty was not brought about by any desire to harass her but by his sense of duty. He reiterated that it was within his power to initiate investigations against erring employees and under the circumstances in which the infraction of respondent was discovered, a private party need not file a complaint. Denying having taken an unusual interest in the complaint by personally serving the notices and orders upon respondent, the former Court Administrator maintained that there was nothing irregular in the OCA obtaining a copy of the PDS from the Civil Service Commission, as it is a normal procedure in administrative investigations to obtain records from other offices.

On 4 May 2007, the OCA found respondent guilty of dishonesty and recommended her dismissal from the service.

In a Resolution dated 10 September 2007, the Court resolved to re-docket the case as a regular administrative matter and

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[6] *Id.* at 29.

[7] *Id.* at 55-56.

required the parties to manifest whether they were willing to submit this matter for resolution on the basis of the pleadings filed.[8]

In compliance with our Resolution, both parties filed their affirmative manifestations on 18 October 2007[9] and 6 November 2007,[10] respectively.

We adopt the findings of OCA.

Dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[11]

In the instant case, respondent admitted that she failed to disclose her previous suspension but attributed such failure to "human frailty" and "honest mistake." It is indeed implausible that respondent could have easily forgotten her suspension considering that it was one of the grounds cited by PPSTA for her eventual termination. As aptly observed by OCA:

> The defenses of good faith, human frailty and honest mistake deserve scant consideration. It is inconceivable that Ms. Flores could have forgotten her suspension in 1977 when she was accomplishing her Personal Data Sheet in 1994. A suspension is not something that occurs in one's career regularly that it can easily be forgotten.

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[8] Temporary *rollo*, p. 2.

[9] *Id.* at 5.

[10] *Id.* at 7-8.

[11] *Civil Service Commission v. Perocho, Jr.*, A.M. No. P-05-1985, 26 July 2007, 528 SCRA 171, 179 citing *Wooden v. Civil Service Commission*, G.R. No. 152884, 30 September 2005, 471 SCRA 512, 526.

It is a blemish in [one's] career and definitely leaves a deep and lasting impression in one's mind which the lapse of seventeen (17) years can not easily erase. Besides it is not as if the issue of her suspension was laid to rest after Ms. Flores served it in 1977. The decision in G.R. No. 109362 shows that her suspension and other administrative infractions were raised by the Philippine Public School Teachers Association in order to justify her dismissal. It appears from the decision that the Association dismissed Ms. Flores in September 1990 and in dismissing her, the Association sent her a Memorandum dated August 31, 1990 recounting her previous administrative offenses, including her suspension. The issue of the legality of her dismissal became the subject of a labor case. On December 29, 1992, the National Labor Relations Commission rendered a decision declaring the dismissal of Ms. Flores as valid. She then filed a petition before this Court. On February 11, 1994, she accomplished her Personal Data Sheet. Verily, the proceedings in her labor case, which occurred just a few years before she accomplished her Personal Data Sheet, could not have failed to remind Ms. Flores of her employment history when she was still a clerk in the Philippine Public School Teachers Association. Besides, the fact that Ms. Flores did not inform this Office of the decision in G.R. No. 109362 for ten (10) years belies any claim of good faith on her part.[12]

Anent respondent's claim that she fully disclosed the fact of her dismissal in the PDS by citing the pendency of a petition for *certiorari* before the Supreme Court, such assertion deserves scant attention. Two questions relating to administrative charges were asked in the PDS to which respondent explicitly answered in the negative. While respondent may have mentioned a pending petition for *certiorari*, said answer only begged further details, which respondent herself failed to provide. On its face, an ongoing petition for *certiorari* does not say much. But having answered in this manner and having failed to give the requisite particulars only demonstrated evasiveness on the part of respondent and lent suspicion that she intended to conceal the pendency of the administrative case against her. On this point, we quote with approval the observation of the OCA, to wit:

There is no doubt that Ms. Flores is guilty of dishonesty. Ms. Flores, while she was still a clerk of the Philippine Public School

[12] *Rollo,* pp. 48-49.

Teachers Association was charged with refusing to accept the responsibilities and duties assigned to her; she was charged administratively six (6) times in 1977 for misconduct, violation of rules and regulations, absenteeism and tardiness and as a consequence she was suspended for fifteen (15) days starting on March 29, 1977. She did not reveal any of these facts and infractions in her Personal Data Sheet. The questions in the Personal Data Sheet, specifically numbers 24, 25, and 26 are quite clear and straightforward. Question number 24 asked her if she has been found guilty of an administrative offense. Her answer is "No" which should have been "Yes" precisely because she was previously suspended fifteen (15) days in 1977. Question number 25 asked her if she has any pending administrative case. Her answer was "None" which should have been "Yes" because at the time she was accomplishing her Personal Data Sheet on February 11, 1994 her petition for *certiorari* questioning her dismissal by the Philippine Public School Teachers Association was pending before this Court. In Wuestion (sic) number 26, she was asked if she has been retired, dismissed or forced to resign from any employment for reason other than lack of funds or dropped from the rolls. This time her answer was "Yes" and she added "Petition for *Certiorari* pending with the Supreme Court under G.R. No. L-109362." Although Ms. Flores revealed the docket number of her petition and its status, this does not comply with what was asked for because Ms. Flores was also required to give details if her answer was "Yes." The docket number and status of the case are not sufficient to allow the Selection and Promotion Board for Lower Courts to intelligently assess the fitness of Ms. Flores to join the Judiciary. Her answer was intended to avoid giving the essential details of her administrative case, such as the numerous administrative charges against her and her previous suspension for obvious reasons. If the Selection and Promotion Board for the Lower Courts knew about these details then for sure Ms. Flores would not have been recommended to the position of Court Legal Researcher II.

Interestingly, in a Personal Data Sheet which Ms. Flores accomplished on February 6, 2007 for the purpose of applying for a lateral transfer to Branch 72, Regional Trial Court, Olongapo City, she disclosed her previous administrative infractions. She admitted that she was formally charged by PPSTA with tardiness and/or violation of office rules. She admitted that she was suspended in March 1977. Finally, she stated that she was dismissed from her employment by the PPSTA as per this Court's decision in G.R. No. 109362. Nothing can better illustrate the dishonesty of Ms. Flores

than a comparison of the Personal Data Sheet dated February 6, 2007, wherein she openly admitted that she was previously suspended, charged administratively and dismissed from service, with the Personal Data Sheet she accomplished on February 11, 1994 wherein these facts were completely hidden by Ms. Flores from this Court.[13]

The accomplishment of the PDS is required under Civil Service Rules and Regulations for employment in the government. The making of an untruthful statement therein amounts to dishonesty and falsification of an official document that warrant dismissal from the service even on the first offense.[14]

As emphasized in *Advincula v. Dicen*,[15] the PDS is an official document required of a government employee and official by the Civil Service Commission. It is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility. Since truthful completion of the PDS is a requirement for employment in the judiciary, the importance of answering the same with candor need not be gainsaid. Concealment of any information in the PDS, therefore, warrants disciplinary action against the erring employee.[16]

This Court has in the past punished similar infractions pertaining to making untruthful statements in the PDS with the severe penalty of dismissal such as failing to state previous employment and the fact of separation for cause therefrom,[17] falsely declaring passing the career service professional examination when in fact one did not,[18] and neglecting to declare the pendency of a criminal case.[19]

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[13] *Id.* at 47-48.

[14] *Administrative Case for Dishonesty and Falsification against Noel Luna*, 463 Phil. 878, 890 (2003; *De Guzman v. Delos Santos*, A.M. No. 2002-8-SC, 442 Phil. 428 (2002).

[15] G.R. No. 162403, 16 May 2005, 458 SCRA 696.

[16] *Id.* at 708.

[17] *Acting Judge Bellosillo v. Rivera*, 395 Phil. 180 (2000).

[18] *Re: Spurious Certificate of Eligibility of Tessie G. Quires*, RTC, Office of the Clerk of Court, Quezon City, A.M. No. 05-5-268-RTC, 4 May 2006, 489 SCRA 349.

[19] *Judge Sañez v. Rabina*, 458 Phil. 68 (2003).

The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary.[20] Persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness and diligence in the public service. As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethical standards, persons aspiring for public office must observe honesty, candor and faithful compliance with the law.[21]

While dishonesty is considered a grave offense punishable by dismissal even at the first instance[22], jurisprudence is replete with cases where the Court lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances such as length of service in the government and being a first time offender.[23]

Since respondent has been in the service for fourteen (14) years and since this is her first offense during employment in the judiciary, the Court deems it proper to impose the penalty of suspension for six (6) months without pay. [24]

WHEREFORE, respondent Maria Celia A. Flores, Court Legal Researcher II, Regional Trial Court, Branch 217, Quezon City is found *GUILTY* of dishonesty and *SUSPENDED* for a period of six (6) months, with a stern warning that the

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[20] *Supra* note 13.

[21] *Judge Aglugub v. Perlez*, A.M. No. P-99-1348, 15 October 2007.

[22] Section 52 of Civil Service Commission Memorandum Circular No. 19-99.

[23] *OCA v. Ibay*, AM No. P-02-1649, 29 November 2002; *OCA v. Sirios*, AM No. P-02-1659, 28 August 2003.

[24] *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out*, AM No. 2005-07-SC, 19 April 2006*; Prado v. Discipulo*, AM No. HOJ-07-01, 12 June 2008.

commission of similar or graver offense in the future shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. RTJ-05-1917. April 16, 2009]
(Formerly OCA I.P.I. No. 04-2006-RTJ)

DEE C. CHUAN & SONS, INC., represented by EFREN A. MADLANGSAKAY, *complainant, vs.* **JUDGE WILLIAM SIMON P. PERALTA, Presiding Judge Regional Trial Court, Manila, Branch 50,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDGES ARE MANDATED BY THE CONSTITUTION TO DECIDE OR RESOLVE ALL MATTERS FILED BEFORE THEIR COURTS WITHIN 90 DAYS FROM THE TIME THE CASE IS SUBMITTED FOR DECISION; EFFECT OF NON-COMPLIANCE THERETO.— The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time the case is submitted for decision. Respondent ignored this mandate. He was also in violation of the Canon of Judicial Ethics and Code of Judicial Conduct which require judges to dispose of the court's business promptly and decide cases within the required periods. x x x Failure to comply within the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases. Considering that the subject case was an unlawful detainer case, its prompt resolution was a matter of public policy

as it was subject to summary procedure. It is disappointing that it was the respondent himself who caused the delay.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; JUDGES; FAILURE TO RESOLVE MOTIONS AND INCIDENTS WITHIN THE PRESCRIBED PERIOD OF THREE MONTHS IS CONSIDERED AS GROSS INEFFICIENCY.— The Court has always considered a judge's failure to resolve motions and incidents within the prescribed period of three months as gross inefficiency. It undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute. Undue delay cannot be countenanced at a time when the clogging of the court dockets is still the bane of the judiciary. The *raison d' etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably.

3. ID.; ID.; ID.; A RESOLUTION OF THE COURT REQUIRING COMMENT ON AN ADMINISTRATIVE COMPLAINT AGAINST OFFICIALS AND EMPLOYEES OF THE JUDICIARY IS NOT TO BE CONSTRUED AS A MERE REQUEST, NOR IT SHOULD BE COMPLIED WITH PARTIALLY, INADEQUATELY OR SELECTIVELY; CASE AT BAR.— [I]t is distressing that in his one-page comment containing two very brief paragraphs, respondent did not even bother to counter the accusation of DCCSI. Neither did he offer any reason or justification on why it took him more than a year to resolve the motions. The Court will not tolerate the indifference of respondent judges to administrative complaints and to resolutions requiring comment on such complaints. An order or resolution of this Court is not to be construed as a mere request, **nor should it be complied with partially, inadequately or selectively**. To do so shows disrespect to the Court, an act only too deserving of reproof. Respondent judge ought to be reminded that a resolution of this Court requiring comment on an administrative complaint against officials and employees of the Judiciary is not to be construed as a mere request from this Court. On the contrary, respondents in administrative cases are **to take such resolutions seriously by commenting on all accusations or allegations against them as it is their duty to preserve the integrity of the judiciary**. The Supreme Court can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking

proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.

4. JUDICIAL ETHICS; JUDGES; DELAY IN RENDERING A DECISION OR ORDER AND FAILURE TO COMPLY WITH THE COURT'S RULES, DIRECTIVES AND CIRCULARS BOTH CONSTITUTE LESS SERIOUS OFFENSES UNDER THE RULES OF COURT; SANCTION.— A magistrate's delay in rendering a decision or order and failure to comply with this Court's rules, directives and circulars both constitute less serious offenses under Rule 140, Section 9 of the Rules of Court. Section 11(B) of Rule 140 provides the following sanctions for less serious offenses: Sec. 11. Sanctions. — xxx B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed: 1. Suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

5. ID.; ID.; ID.; RESPONDENT JUDGE'S DELAY CONSTITUTES BREACH OF CANONS 1, 11, 12 AND RULE 12.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Pursuant to A.M. No. 02-9-02-SC, this administrative case against respondent as a judge based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. Violation of the fundamental tenets of judicial conduct embodied in the Code of Judicial Conduct constitutes a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR): CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES. CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS. Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers. Respondent must always bear in mind that it is a magistrate's duty to uphold the integrity of the judiciary at all times. Respondent's delay also runs counter to Canon

12 and Rule 12.04 of the CPR which provides: CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE. x x x Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

R E S O L U T I O N

CORONA, *J.*:

In a verified complaint dated May 5, 2004 filed in the Office of the Court Administrator (OCA), complainant Dee C. Chuan & Sons, Inc.[1] (DCCSI) which was the plaintiff in Civil Case No. 02-105031 entitled *Dee C. Chuan & Sons, Inc. v. Tek Hua Enterprising Corporation, Manuel C. Tiong and So Ping Bun*, charged respondent Judge William Simon P. Peralta, Presiding Judge of the Regional Trial Court (RTC) of Manila, Branch 50, with undue delay in the disposition of pending motions in connection with that case.

Complainant alleges that on September 13, 2002, the Metropolitan Trial Court (MeTC) of Manila, Branch 6[2] rendered a decision[3] in the unlawful detainer case ordering defendants Tek Hua Enterprising Corporation (represented by its president Manuel C. Tiong) and So Ping Bun to vacate the leased premises and to jointly pay the cost of suit, attorney's fees and rentals for the reasonable use and occupation of the premises beginning June 1991.[4]

An appeal was filed in RTC Manila and the case was raffled to Branch 50 wherein respondent was presiding judge.[5] On March 18, 2003, DCCSI filed a "motion to dismiss appeal and

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[1] Represented by its comptroller Efren A. Madlangsakay; *rollo*, p. 3.

[2] Penned by Judge Ma. Theresa Dolores C. Gomez-Estoesta; *id.*, p. 24.

[3] In Civil Case No. 161061-CV; *id.*, p. 5.

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

[5] Docketed as Civil Case No. 02-105031.

for issuance of writ of execution" for failure of the appellants to post the required bond and to pay the rentals due in accordance with the decision of the MeTC. Acting on the motion, respondent issued an order dated March 21, 2003 requiring the appellants to file their comment thereto. Consequently, three motions to resolve were filed by DCCSI dated August 11, 2003, October 20, 2003 and December 3, 2003 respectively. However, despite the lapse of more than one year, respondent failed and refused to resolve the pending motions, prompting complainant to file this complaint.[6]

In his comment dated June 4, 2004, respondent merely informed the OCA that the subject case *"ha(d) been resolved by (his) Court and the same (was) already for mailing"* and attached a copy of his order dated May 5, 2004. In his order, he dismissed the appeal for failure of the appellants to file their memorandum and directed the issuance of a writ of execution in favor of DCCSI.

The OCA, in its report dated December 15, 2004, found that respondent indeed failed to resolve several motions for more than a year and showed indifference in his comment. It recommended that respondent be held liable for inefficiency in the performance of his official duties and fined in the amount of ₱11,000.

We agree with the findings and recommendation of the OCA but modify the penalty.

The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time the case is submitted for decision.[7] Respondent ignored this mandate. He was also in violation of the Canon of Judicial Ethics[8] and Code of Judicial Conduct[9] which require

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[6] *Rollo*, pp. 24-25.

[7] Constitution, Article VIII, Section 15.

[8] The New Code of Judicial Conduct for the Philippine Judiciary took effect on June 1, 2004. The act complained of was committed in 2003. In any event, Section 6 of Canons of Judicial Ethics provided:

judges to dispose of the court's business promptly and decide cases within the required periods.[10]

For more than a year, the respondent failed to resolve several motions – the motion to dismiss appeal and for issuance of writ of execution as well as the three motions to resolve. Had the OCA not required him to comment on this complaint, these motions might well have remained pending up to now.

Failure to comply within the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.[11] Considering that the subject case was an unlawful detainer case, its prompt resolution was a matter of public policy as it was subject to summary procedure.[12] It is disappointing that it was the respondent himself who caused the delay.[13]

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6. Promptness

[A judge] should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied.

[9] Canon 3, Rule 3.05 provided:

Rule 3.05 — A judge shall dispose of the court's business promptly and decide cases within the required periods.

[10] The New Code of Judicial Conduct for the Philippine Judiciary superseded the Canons of Judicial Ethics and the Code of Judicial Conduct to the extent that the provisions or concepts therein are embodied in the new code. Provided, however, that in case of deficiency or absence of specific provisions in the new code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a suppletory character.

Canon 6, Section 5 of the New Code of Judicial Conduct provides:

Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

[11] *Salvador v. Limsiaco*, A.M. No. MTJ-08-1695, 16 April 2008, 551 SCRA 373, 377, citing *Mosquero v. Legaspi*, A.M. No. No. RTJ-99-1511, 10 July 2000, 335 SCRA 326.

[12] *Bernaldez v. Avelino*, A.M. No. MTJ-07-1672, 9 July 2007, 527 SCRA 11, 20, citing *Office of the Court Administrator v. Judge Henry B. Avelino*, MTJ No. 05-1606, 9 December 2005, 477 SCRA 1.

[13] *Id.*, citing *Bank of the Philippine Islands v. Generoso*, A.M. No. MTJ-94-407, 25 October 1995, 249 SCRA 477.

The Court has always considered a judge's failure to resolve motions and incidents within the prescribed period of three months as gross inefficiency.[14] It undermines the people's faith and confidence in the judiciary,[15] lowers its standards and brings it to disrepute.[16] Undue delay cannot be countenanced at a time when the clogging of the court dockets is still the bane of the judiciary.[17] The *raison d' etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably.[18]

It is opportune to remind respondent of the evils of judicial delay:

> Delay derails the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly prosecuted. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. More than this, possibilities for error in fact-finding multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If courts do not get the facts right, there is little chance for their judgment to be right.[19]

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[14] *Pantig v. Daing, Jr.,* A.M. No. RTJ-03-1791, 8 July 2004, 434 SCRA 7, 17, citing *Guintu vs. Judge Lucero*, A.M. No. MTJ-93-794, 23 August 1996, 261 SCRA 1, 7.

[15] *Concerned Trial Lawyers of Manila v. Veneracion*, A.M. No. RTJ-05-1920, 26 April 2006, 488 SCRA 285, 296.

[16] *Espineli v. Español*, A.M. No. RTJ-03-1785, 10 March 2005, 453 SCRA 96, 99, citing *Office of the Court Administrator v. Quilala*, A.M. No. MTJ-01-1341, 15 February 2001, 351 SCRA 597.

[17] *Concerned Trial Lawyers of Manila v. Veneracion*, *supra* note 15, citing *Re: Report on the Judicial Audit in the RTC, Branch 71, Antipolo City*, A.M. No. 03-11-652-RTC, 21 July 2004, 434 SCRA 555.

[18] *Lim, Jr. v. Magallanes*, A.M. No. RTJ-05-1932, 2 April 2007, 520 SCRA 12, citing *Vicente Pichon v. Judge Lucilo Rallos*, 444 Phil. 131 (2003).

[19] *Orocio v. Roxas*, A.M. Nos. 07-115-CA-J and CA-08-46-J, 19 August 2008, citing *Pac. Transport. Co. v. Stoot*, 530 S.W.2d 930, 931 (Tex. 1975).

Furthermore, it is distressing that in his one-page comment containing two very brief paragraphs, respondent did not even bother to counter the accusation of DCCSI. Neither did he offer any reason or justification on why it took him more than a year to resolve the motions.

The Court will not tolerate the indifference of respondent judges to administrative complaints and to resolutions requiring comment on such complaints. An order or resolution of this Court is not to be construed as a mere request, **nor should it be complied with partially, inadequately or selectively**.[20] To do so shows disrespect to the Court, an act only too deserving of reproof.[21]

> Respondent judge ought to be reminded that a resolution of this Court requiring comment on an administrative complaint against officials and employees of the Judiciary is not to be construed as a mere request from this Court. On the contrary, respondents in administrative cases are **to take such resolutions seriously by commenting on all accusations or allegations against them as it is their duty to preserve the integrity of the judiciary**. The Supreme Court can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.[22]
>
> (Emphasis supplied)

A magistrate's delay in rendering a decision or order and failure to comply with this Court's rules, directives and circulars both constitute less serious offenses under Rule 140, Section 9 of the Rules of Court.[23] Section 11(B) of Rule 140 provides the following sanctions for less serious offenses:

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[20] *Goforth v. Huelar, Jr.,* A.M. No. P-07-2372, 23 July 2008, citing *Lumapas v. Tamin*, A.M. No. RTJ-99-1519, 26 June 2003, 405 SCRA 30.

[21] *Id.*

[22] *Office of the Court Administrator v. Villegas*, A.M. No. RTJ-00-1526, 3 June 2004, 430 SCRA 422, 426, citing the OCA Reply, pp. 1-2.

[23] As amended by A.M. No. 01-8-10-SC effective October 1, 2001. Sec. 9 states:

Sec. 11. Sanctions. —

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

x x x x x x x x x

In the light of the circumstances of this case, we find that a fine of ₱15,000 would be just and fair.

Pursuant to A.M. No. 02-9-02-SC,[24] this administrative case against respondent as a judge based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar.[25]

Violation of the fundamental tenets of judicial conduct embodied in the Code of Judicial Conduct constitutes a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR):

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Sec. 9. Less Serious Charges. — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

x x x x x x x x x

4. Violation of Supreme Court rules, directives and circulars;

x x x x x x x x x

[24] Dated September 17, 2002 and took effect on October 1, 2002.

[25] *Maddela v. Dallong-Galicinao* , A.C. No. 6491, 31 January 2005, 450 SCRA 19, 25.

Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers.[26] Respondent must always bear in mind that it is a magistrate's duty to uphold the integrity of the judiciary at all times.

Respondent's delay also runs counter to Canon 12 and Rule 12.04 of the CPR which provides:

CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

x x x x x x x x x

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

For such violation of Canons 1, 11, 12 and Rule 12.04 of the CPR, he should be further fined in the amount of ₱5,000.

WHEREFORE, respondent Judge William Simon P. Peralta, Presiding Judge of the Regional Trial Court, Manila, Branch 50 is hereby found *GUILTY* of two less serious offenses: (1) undue delay in rendering a decision or order and (2) violation of Supreme Court directives. He is *FINED* ₱15,000 payable within 10 days from his receipt of this resolution.

Respondent is further hereby *FINED* ₱5,000 for his violation of Canons 1, 11, 12 and Rule 12.04 of the Code of Professional Responsibility payable within the same period stated above.

He is *STERNLY WARNED* that the commission of the same or similar acts in the future shall be dealt with more severely.

Let copies of this resolution be furnished the Office of the Court Administrator and the Office of the Bar Confidant to be attached to respondent's records.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

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[26] *Juan de la Cruz (Concerned Citizen of Legazpi City) v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 232.

THIRD DIVISION

[G.R. No. 132540. April 16, 2009]

ALBAY ELECTRIC COOPERATIVE, INC., EDGARDO A. SAN PABLO, and EVAN CALLEJA, *petitioners, vs.* **HON. RAFAEL P. SANTELICES, in his capacity as the Presiding Judge of the Regional Trial Court of Legazpi City, Branch No. 2, and MAYON INTERNATIONAL HOTEL, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GROUNDS.— We have consistently ruled that *certiorari* lies only where it is clearly shown that there is a patent and gross abuse of discretion amounting to an evasion of positive duty or 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. *Certiorari* may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case, even if its findings are not correct. Its questioned acts would at most constitute errors of law and not abuse of discretion correctible by *certiorari.* In other words, *certiorari* will issue only to correct errors of jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions.

2. ID.; ID.; ID.; INTERLOCUTORY ORDERS MAY BE ASSAILED BY THE EXTRAORDINARY WRIT ONLY WHEN IT IS SHOWN THAT THE COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION; PRINCIPLE OF HIERARCHY OF COURTS MUST BE OBSERVED.— x x x An interlocutory order may be assailed by *certiorari* or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by *certiorari* will not only delay the administration of justice but will also unduly burden the courts.

We must stress that the assailed RTC Orders are but resolutions on incidental matters that do not touch on the merits of the case or put an end to the proceedings. The remedy against an interlocutory order is not to resort forthwith to *Certiorari,* but to continue with the case in due course; and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law, incorporating in said appeal the ground for assailing the interlocutory Orders. Thus, ALECO acted precipitately in resorting to *Certiorari* to test the correctness of the RTC orders dated 17 October 1997, 12 November 1997 and 11 February 1998. Even assuming that ALECO has a cause of action that is ripe for the extraordinary writ of *certiorari,* the petition should have been initially filed with the Court of Appeals under the principle of hierarchy of courts. It has been our consistent rule that while this Court has concurrent jurisdiction with the Court of Appeals and the Regional Trial Courts (for writs enforceable within their respective regions) to issue writs of *mandamus*, prohibition or *certiorari*, the litigants are well advised against taking a direct recourse to this Court. This concurrence is not to be taken as unrestrained freedom of choice as to which court the application of the writ will be directed. Instead, litigants should initially seek the proper relief from the lower courts. As a court of last resort, this Court should not be burdened with the task of dealing with causes in the first instance. Where the issuance of an extraordinary writ is concurrently within the competence of the Court of Appeals, litigants must observe the principle of hierarchy of courts. This Court's original jurisdiction to issue extraordinary writs should be exercised only where absolutely necessary, or where serious and important reasons therefor exist. In this case, ALECO failed to show the existence of such serious and important reasons to justify their direct resort to this court in violation of the principle of hierarchy of courts.

3. ID.; CIVIL PROCEDURE; ACTIONS; WHERE A DECISION ON THE MERITS OF A CASE IS RENDERED AND THE SAME HAS BECOME FINAL AND EXECUTORY, THE ACTION ON PROCEDURAL MATTERS OR ISSUES BECOMES MOOT AND ACADEMIC.— The final and executory Decision dated 30 July 2007 of the Court of Appeals in CA-G.R. CV No. 68491, affirming with modification the Decision dated 7 August 2000

of the RTC in Civil Case No. 9441, rendered moot the first issue raised in the instant Petition on the setting by Judge Santelices of the pre-trial conference in Civil Case No. 9441 on 12 November 1997, purportedly without MIH filing the proper motion for the same and prior to the filing of the last pleading in said case. Clearly, this is a question of procedure, particularly involving the application of and compliance with Section 1, Rule 18 of the 1997 Rules of Civil Procedure. It is axiomatic that where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues becomes moot and academic.

4. ID.; ID.; ID.; SECOND ISSUE IN CASE AT BAR RENDERED MOOT AND ACADEMIC BY THE WAIVER MANIFESTED BY PRIVATE RESPONDENT; WAIVER, ELUCIDATED.— The Court notes that MIH, in its Manifestation, categorically (1) waives whatever right or claim it may have by virtue of Judge Santelices' Orders dated 12 November 1997 and 11 February 1998; and (2) joins petitioners in their prayer for the Court to declare said Orders a nullity. Given that MIH manifests before this Court that it will no longer seek the enforcement or execution of the award for transportation expense and court appearance fee in its favor under RTC Orders dated 12 November 1997 and 11 February 1998, then there is even no need for the Court to rule on the validity or nullity of the said Orders. MIH may already be bound by its waiver. Waiver is a renunciation of what has been established in favor of one or for his benefit, because he prejudices nobody thereby; if he suffers loss, he is the one to blame. Article 6 of the Civil Code provides that "(r)ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a person with a right recognized by law." A reading of the assailed Orders dated 12 November 1997 and 11 February 1998 of Judge Santelices in Civil Case No. 9441 would readily reveal that he awarded transportation expense and court appearance fee to MIH as compensation for the inconvenience caused the latter and its counsel by the last-minute cancellation of the pre-trial conference scheduled on 12 November 1997. The awards were entirely for the benefit of MIH, and so it was entirely within the right of MIH to waive the same – to willingly suffer the loss resulting from such waiver. Considering that 10 years have passed since the

issuance of the RTC Orders in question, as well as the nominal amounts involved, it is not that difficult to comprehend why MIH, at this stage, would rather waive, than insist, on its right or claim to the awards of transportation expense and court appearance fee.

5. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; ELEMENTS; ACTUAL CASE OR CONTROVERSY; EXPLAINED.— The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value, as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. Needless to stress, courts exist to decide actual controversies, not to give opinions upon abstract propositions. That a court will not sit for the purpose of trying moot cases and spend time in deciding questions, the resolution of which cannot in any way affect the rights of the person or persons presenting them is well settled.

APPEARANCES OF COUNSEL

Macasinag Layosa Peralta Evan & Associates for petitioner.
Franklin G. Abadilla for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Petitioners Albay Electric Cooperative, Inc. (ALECO), Edgardo A. San Pablo (San Pablo), and Evan Calleja (Calleja) come to this Court by way of a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure assailing the Orders dated 17 October 1997, 12 November 1997, and 11 February 1998, issued by public respondent Hon. Rafael P. Santelices

(Judge Santelices), Presiding Judge of the Regional Trial Court (RTC) of Legazpi City, Branch 2, in Civil Case No. 9441.

Private respondent Mayon International Hotel, Inc. (MIH) filed on 3 October 1997, before the RTC, a Complaint[1] against petitioners for Damages Due to Illegal Electric Disconnection and Extortion with Temporary Restraining Order and/or Preliminary Mandatory Injunction, which was docketed as Civil Case No. 9441. MIH alleged that on 16 September 1997, at 3:00 p.m., ALECO employees, led by San Pablo and Calleja, tampered with the security seal, plastic seal, padlock, and sealing lead of the current transformer (CT) box of MIH. Thereafter, ALECO maliciously blamed said tampering, which its own employees committed, on MIH, in an attempt to extort money from the latter. In an undated and unsigned billing, ALECO charged MIH ₱1,482,718.56 differential for electricity consumed, an amount which ALECO unilaterally and arbitrarily computed, in violation of Section 6 of Republic Act No. 7832.[2]

Petitioners, on the other hand, had a different version of the events. According to petitioners, on 16 September 1997, at about 3:00 o'clock in the afternoon, Calleja, Head of the ALECO Task Force on Systems Loss Reduction Program, together with other ALECO employees Jose Galang, Richard Aramburo, and Lorenzo Mendioro, went to conduct a routinary inspection of the electrical connections/facilities at MIH. Calleja and his men sought permission from Conversion Lorica, Head of the Engineering and Maintenance Department of MIH, who accompanied Calleja and his group to the Energy Room. Calleja saw that the padlock securing the CT box of MIH had been tampered with. Performing a routine test on the electric meter, where he unscrewed the tapping of the current transformer connection, Calleja observed that the kilowatt-hour disk rotated backwards or in reverse. Certain that some tampering must

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[1] Records, Vol. I, p. 1.

[2] An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/ Materials, Rationalizing System Losses by Phasing Out Pilferage Losses as a Component Thereof, and for Other Purposes.

have been done with the inside of the CT box, Calleja sent one of his men to fetch and inform San Pablo, General Manager of ALECO, of the initial findings from the inspection conducted. Responding to Calleja's call, San Pablo proceeded to MIH accompanied by Engineer Alex Realoza and Senior Police Officer 2 Danilo A. Lerin of the Legazpi City Philippine National Police (PNP). Upon close inspection by ALECO employees of the CT box, they observed that the lead and plastic seals, as well as the padlock securing said device, were all tampered with. Because the padlock could not be opened by its key, San Pablo requested Lorica for a hack or steel saw to cut the padlock. When the CT box was finally opened after the padlock was sawed off, it was revealed that the lead seal at the terminal cover had been cut, and there was a switching or interchanging of the lines in one of the terminals inside the CT box, which induced opposing currents into the kilowatt-hour meter, the gadget recording energy consumption. Because of such switching/ interchanging of the lines inside the CT box, the recording of the electrical consumption by the kilowatt-hour meter could already be controlled. The kilowatt-hour meter disk could even be made to rotate backwards or in reverse, depending upon the load.

While Civil Case No. 9441 is still pending, petitioners already seek recourse from this Court via the instant Petition for *Certiorari*, alleging several irregularities committed by RTC Judge Santelices in the conduct of the proceedings *a quo*, without or in excess of jurisdiction or with grave abuse of discretion.

First, petitioners aver that Judge Santelices, as the Executive Judge of the RTC of Legazpi City, assigned Civil Case No. 9441 to his own branch, Branch 2,[3] without notifying ALECO about the pendency of said case and the schedule of raffle of the same, utterly disregarding

[3] Re RTC order dated 3 October 1997 reads:

Considering the urgency of the matter, the case was referred to the Office of the Executive Judge for special raffle. Special raffle was thus conducted today 2:00 0'clock in the afternoon and after raffle, the case found its way into the sala of Branch 2 of the Regional Trial Court. (Records, Vol. I, p. 21.)

and failing to comply with Administrative Circular No. 20-95[4] dated 12 September 1995.

Second, Judge Santelices, in his Order dated 17 October 1997, set the pre-trial conference of Civil Case No. 9441 on 12 November 1997 at 8:30 a.m., even when MIH, as the plaintiff in said case, had not yet filed any motion for the setting of the same;[5] nor had the last pleading therein been filed or the period for such filing expired. Pertinent portions of the said Order reads:

> The court taking advantage of the presence of the parties and counsels, set the case for pre-trial and trial on the merits. The pre-trial will be on November 12, 1997 at 8:30 o'clock in the morning. Immediately after the trial, the case will be heard on the merits and the [herein private respondent MIH] will continue presenting their evidence on November 13 and 14, 1997 both at 8:30 o'clock in the morning. The [herein petitioners] will present evidence on November 17 and 18, 1997, both at 8:30 o'clock in the morning.
>
> These dates being agreed upon in open court, are intransferable in character. Medical certificate will not be entertained unless the issuing doctor is presented on the witness stand to identify the medical certificate.[6]

Third, on 11 November 1997, a day before the scheduled pre-trial conference in Civil Case No. 9441, Atty. Wilfredo

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[4] Subject: Re Special Rules for Temporary Restraining Orders and Preliminary Injunctions.

1. Where an application for temporary restraining order (TRO) or writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such complaint or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel.

[5] Attached was the original certification dated 11 February 1998 issued by Mr. Elmer Paje, Officer-in-Charge of the RTC Legazpi City, Branch 2, as Annex "A", which states: "This is to certify that the plaintiff in Civil Case No. 9441, entitled, *MAYON INTERNATIONAL HOTEL, versus ALBAY ELECTRIC COMPANY, et al.*, did not file a Motion to Set Pre-trial Conference in this case. Given this 11th day of February 1998, at Legazpi City, upon request of Atty. Nescito C. Hilario." (Records, Vol. I, p. 262.)

[6] Records, Vol. I, pp. 56-57.

Matias filed with the RTC a motion to withdraw his appearance as counsel *de parte* for petitioners, which was duly noted by Judge Santelices.[7] Without a lawyer, petitioners did not know what to do since the pre-trial conference was already set for the next day. The tight situation compelled petitioners to request Atty. Danilo V. Roleda (Atty. Roleda), Councilor of Manila, to attend the 12 November 1997 pre-trial conference as their special counsel.

Atty. Roleda appeared as special counsel for petitioners before the RTC on 12 November 1997, but only for the purpose of seeking the cancellation of the pre-trial conference scheduled on said date on the ground that he was not familiar with Civil Case No. 9441. However, Atty. Jesus F. Balicanta (Atty. Balicanta) of M.M. Lazaro & Associates, counsel for MIH, objected to the cancellation of the pre-trial conference. After a lengthy argument with Atty. Roleda, Judge Santelices gave in to the cancellation of the pre-trial conference scheduled on 12 November 1997, but ordered petitioners to reimburse Atty. Balicanta for his air transportation expenses amounting to ₱2,500.00 and pay his court appearance fee for the day amounting to ₱3,000.00. In his Order dated 12 November 1997, Judge Santelices stated:

> Today's hearing is supposed to be for pre-trial of this case. Attached to the record however, is a motion filed by the counsel on record for the [herein petitioners] Atty. Wifredo Matias, withdrawing his appearance as such counsel.
>
> It appears that the withdrawal is with the conformity of the [petitioners]. The [herein private respondent MIH] however, together with counsel, as well as the collaborating counsel were present. Counsel for the [MIH] was insisting that the Court shall proceed with the pre-trial and that [petitioner] ALECO be declared as in default for not appearing at today's hearing nor giving the authority to anybody to appear for and its behalf.
>
> Special appearance was entered by Atty. Danilo V. Roleda solely for the purpose of seeking cancellation of today's pre-trial and for resetting to another date on the ground that he is new in the case.

[7] *Id.* at 187.

The Court, considering that Atty. Roleda has just appeared today and he might not be knowledgeable of the case, agreed to the cancellation of today's hearing, but considering that counsel for the [MIH] had to travel from Manila where he has his law office to Legazpi City and incurred expenses, it is just but proper that the counsel for the [MIH] be reimbursed for the expenses incurred. The withdrawal of appearance, as it appears from the record was just filed yesterday at 2:45 o'clock in the afternoon, the general manager of ALECO likewise filed a request for cancellation, but it was filed yesterday at 3:00 o'clock in the afternoon, the motion for cancellation of the hearing therefore does not conform with the rules. They should have filed the motion three (3) days before the scheduled hearing or perhaps, should have called [MIH's] counsel by a long distance or sent a telegram in order to avoid their coming over to attend the hearing and incur expenses.

PREMISES CONSIDERED, the pre-trial for today is cancelled and is reset to December 10, 1997 at 8:30 o'clock in the morning. This date being agreed upon in open Court is intransferrable in character. [Petitioners] are likewise directed to reimburse the expenses of counsel's transportation expenses in the amount of ₱2,500.00 plus appearance fee of ₱3,000.00.[8]

Petitioners, through their succeeding counsel, Atty. Nescito C. Hilario, filed a Motion for Reconsideration[9] of the foregoing Order. Judge Santelices, in another Order dated 11 February 1998, denied said Motion.[10] Judge Santelices refused to reconsider and reverse his 12 November 1997 Order for the following reasons:

There is yet another motion to be resolved and this is a motion for reconsideration filed by the said counsel Atty. Nescito Hilario, filed on December 10, 1997 or on the day of the scheduled pre-trial. What is being sought to be reconsidered by said motion is the order of the Court requiring the [herein petitioners] to reimburse [herein private respondent MIH's] counsel the amount of ₱2,500.00, representing transportation expenses and ₱3,000.00 for appearance fee.

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[8] *Id.* at 198-199.

[9] *Id.* at 213.

[10] *Id.* at 240.

Counsel alleged that said order is not countenanced by the 1997 Rules on Civil Procedure, nor by any law for that matter, hence the questioned order is illegal because it is without any legal basis, and therefore, an exercise of grave abuse of discretion amounting to lack of jurisdiction.

The Court must admit that there was some error in the order. The reimbursement should not be made to [MIH's] counsel but rather, it should be to the [MIH] itself because it is the latter that pays for the traveling expenses of counsel and the appearance fee.

The reason for the Court issuing that order was that [MIH's] counsel has to come all the way from Manila just to attend the scheduled pre-trial on that day. [Petitioners'] previous counsel has withdrawn his appearance, but considering that the [petitioners] knew of the said scheduled pre-trial, they appeared. [Petitioners] even secured the services of a new lawyer to enter a special appearance just for the purpose of cancelling the pre-trial because the previous lawyer has withdrawn.

If the [petitioners] could secure the services of a new lawyer, who likewise is from Metro Manila, could they not have notified the other party and/or counsel of the fact that their lawyer has withdrawn and that [petitioners] are not ready for pre-trial. Perhaps, notice could have been made at least even by way of telegram, to forewarn [MIH]. If [MIH] and/or counsel receives such information by whatever means to the satisfaction of the Court and despite receipt of such information, [MIH] and/or counsel still presented themselves at the scheduled pre-trial, there could have been no reason whatsoever to order [petitioners] to reimburse [MIH] the traveling expenses incurred by it for the lawyer including the appearance fee.

PREMISES CONSIDERED, the motion for reconsideration is likewise DENIED.[11]

Hence, petitioners presented the following issues for adjudication by this Court:

I. WHETHER OR NOT RESPONDENT JUDGE RAFAEL P. SANTELICES HAS ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN

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[11] *Id.* at 266-267.

HE SET THE PRE-TRIAL OF CIVIL CASE NO. 9441 IN UTTER DISREGARD OF SECTION 1 OF RULE 18 OF THE 1997 RULES OF CIVIL PROCEDURE;[12] AND

II. WHETHER OR NOT RESPONDENT JUDGE RAFAEL P. SANTELICES HAS ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF HIS JURISDICTION WHEN HE ISSUED THE SUBJECT ORDERS DATED NOVEMBER 12, 1997 AND FEBRUARY 11, 1998 REQUIRING THE HEREIN PETITIONERS TO PAY AND REIMBURSE RESPONDENT MAYON OR ATTY. JESUS F. BALICANTA OF M.M. LAZARO & ASSOCIATES FOR HIS TRANSPORTATION EXPENSES AMOUNTING TO ₱2,500.00 AND COURT APPEARANCE FEE FOR NOVEMBER 12, 1997 AMOUNTING TO ₱3,000.00 FOR ATTENDING THE SUBJECT PRE-TRIAL CONFERENCE OF CIVIL CASE NO. 9441.

The Court emphasizes, however, that no temporary restraining order or writ of preliminary injunction was issued by this Court to enjoin the RTC from proceeding with Civil Case No. 9441. Consequently, the RTC already rendered a Decision on 7 August 2000 in Civil Case No. 9441, the dispositive portion of which provides:

WHEREFORE, premises considered, decision is hereby rendered, in favor of the [herein petitioners] and against the [herein private respondent MIH],

a) Ordering the complaint DISMISSED.

b) Ordering the [MIH] to pay [petitioner] Albay Electric Cooperative, Inc. (ALECO) ₱2,908,763.00, the sum equivalent to double the value of the estimated electricity illegally used referred to as differential billing pursuant to the last proviso in the first paragraph of Sec. 6, Rep. Act No. 7832.

c) Ordering the [MIH] to pay [petitioners] exemplary damages of ₱250,000.00.

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[12] SECTION 1. *When conducted.* – After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

d) Ordering the [MIH] to pay the [petitioners] Edgardo San Pablo and Evan Calleja ₱1,000,000.00 each, as moral damages.

e) Ordering the [MIH] to pay [petitioners] ₱600,000.00 as attorney's fees, litigation and incidental expenses.

Costs against the [MIH].[13]

MIH then filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 68491. On 30 July 2007, the Court of Appeals rendered a Decision[14] in CA-G.R. CV No. 68491 in which it decreed:

WHEREFORE, in view of all the foregoing, the assailed decision dated August 7, 2000 of Branch 6, Regional Trial Court of Legazpi City, in Civil Case No. 9441 is AFFIRMED with MODIFICATION that the award of actual damages in favor of [herein petitioner] Albay Electric Cooperative, Inc. is reduced to One Million Four Hundred Fifty-Four Thousand Three Hundred Eighty-One and 50/100 (₱1,454,381.50) Pesos and the award of moral and exemplary damages as well as attorney's fees are hereby DELETED.[15]

Since no motion for reconsideration or appeal of said Decision had been filed, the 30 July 2007 Decision of the Court of Appeals in CA-G.R. CV No. 68491 already became final and executory. In a Resolution dated 15 February 2008, the appellate court ordered that Entry of Judgment be made in CA-G.R. CV No. 68491.

We first hew our attention to the propriety of a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure as resorted to by ALECO in the instant case.

We have consistently ruled that *certiorari* lies only where it is clearly shown that there is a patent and gross abuse of discretion amounting to an evasion of positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in

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[13] CA *rollo*, p. 139.

[14] Penned by Associate Justice Sesinando E. Villon with Associate Justices Martin S. Villarama, Jr. and Noel G. Tijam, concurring; CA *rollo,* pp. 273-284.

[15] CA *rollo*, p. 283.

contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. *Certiorari* may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case, even if its findings are not correct. Its questioned acts would at most constitute errors of law and not abuse of discretion correctible by *certiorari.*[16]

In other words, *certiorari* will issue only to correct errors of jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions. An interlocutory order may be assailed by *certiorari* or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by *certiorari* will not only delay the administration of justice but will also unduly burden the courts.[17]

We must stress that the assailed RTC Orders are but resolutions on incidental matters that do not touch on the merits of the case or put an end to the proceedings. The remedy against an interlocutory order is not to resort forthwith to *Certiorari,* but to continue with the case in due course; and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law,[18] incorporating in said appeal the ground for assailing the interlocutory Orders. Thus, ALECO acted precipitately in resorting to *Certiorari* to test the correctness of the RTC orders dated 17 October 1997, 12 November 1997 and 11 February 1998.

Even assuming that ALECO has a cause of action that is ripe for the extraordinary writ of *certiorari,* the petition should have been initially filed with the Court of Appeals under the principle of hierarchy of courts. It has been our consistent rule that while this Court has concurrent jurisdiction with the Court

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[16] *Lee v. People,* 441 Phil. 705, 713-714 (2002).

[17] *Id.*

[18] *Angara v. Fedman Development Corporation*, G.R. No. 156822, 18 October 2004, 440 SCRA 479.

of Appeals and the Regional Trial Courts (for writs enforceable within their respective regions) to issue writs of *mandamus*, prohibition or *certiorari*, the litigants are well advised against taking a direct recourse to this Court. This concurrence is not to be taken as unrestrained freedom of choice as to which court the application of the writ will be directed.[19] Instead, litigants should initially seek the proper relief from the lower courts. As a court of last resort, this Court should not be burdened with the task of dealing with causes in the first instance. Where the issuance of an extraordinary writ is concurrently within the competence of the Court of Appeals, litigants must observe the principle of hierarchy of courts. This Court's original jurisdiction to issue extraordinary writs should be exercised only where absolutely necessary, or where serious and important reasons therefor exist.[20] In this case, ALECO failed to show the existence of such serious and important reasons to justify their direct resort to this court in violation of the principle of hierarchy of courts.

Additionally, instead of filing a Memorandum herein, MIH filed a Manifestation on 20 December 2006 informing this Court of the following:

> RESPONDENT-MAYON INTERNATIONAL HOTEL, INC., thru counsel, in compliance with this Most Honorable Court's resolution dated January 10, 2005, most respectfully manifests (in lieu of a memorandum required therein) that the **lapse of almost nine (9) years** since the filing of the present petition on February 24, 1998, let alone the **reported passing away of Respondent-Judge Santelices** – has **rendered the issues in the present petition of no significance whatsoever**, for which reason:
>
> 1. Respondent-Mayon International Hotel, Inc. hereby **WAIVES** whatever right or claim it may have by virtue of Respondent-Judge Santelices' subject "orders" dated November 12, 1997 and February 11, 1998 with respect to "the amounts of ₱2,500.00 for transportation expenses and ₱3,000.00 for court appearance fee;" and

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[19] *Paradero v. Abragan*, 468 Phil. 277, 288 (2004).

[20] *Pearson v. Intermediate Appellate Court,* 356 Phil. 341, 355 (1998).

2. Respondent-Mayon International Hotel, Inc. hereby **JOINS** the Petitioners in their prayer that Respondent-Judge Santelices' above-subject "Orders" be declared a nullity, and that "the pre-trial conferences called by the said Judge Santelices be declared null and void and without legal effect."[21] (Emphasis ours.)

At the end of its Manifestation, MIH prays to this Court:

WHEREFORE, it is most respectfully prayed: (a) that the foregoing manifestation/waiver/joinder be NOTED and MADE OF RECORD; and (b) that the same be deemed sufficient compliance with this Most Honorable Court's aforesaid pertinent resolution.

Other reliefs as may be just and equitable in the premises are likewise prayed for.[22]

Given the foregoing developments, the Court deems that the issues presently before it have already become moot and academic.

The final and executory Decision dated 30 July 2007 of the Court of Appeals in CA-G.R. CV No. 68491, affirming with modification the Decision dated 7 August 2000 of the RTC in Civil Case No. 9441, rendered moot the first issue raised in the instant Petition on the setting by Judge Santelices of the pre-trial conference in Civil Case No. 9441 on 12 November 1997, purportedly without MIH filing the proper motion for the same and prior to the filing of the last pleading in said case. Clearly, this is a question of procedure, particularly involving the application of and compliance with Section 1, Rule 18 of the 1997 Rules of Civil Procedure. It is axiomatic that where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues becomes moot and academic.[23]

Similarly, the Manifestation filed by MIH before this Court on 20 December 2006 rendered moot and academic the second issue broached in the Petition at bar on the propriety of the Orders dated 12 November 1997 and 11 February 1998 issued

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[21] *Rollo,* pp. 94-95.

[22] *Id.*

[23] *Flores v. Court of Appeals,* 328 Phil. 992, 1027 (1996).

by Judge Santelices, directing petitioners to pay MIH ₱2,500.00 and ₱3,000.00, as transportation expense and court appearance fee, respectively, of MIH's counsel who attended the pre-trial conference held on 12 November 1997.

The Court notes that MIH, in its Manifestation, categorically (1) waives whatever right or claim it may have by virtue of Judge Santelices' Orders dated 12 November 1997 and 11 February 1998; and (2) joins petitioners in their prayer for the Court to declare said Orders a nullity. Given that MIH manifests before this Court that it will no longer seek the enforcement or execution of the award for transportation expense and court appearance fee in its favor under RTC Orders dated 12 November 1997 and 11 February 1998, then there is even no need for the Court to rule on the validity or nullity of the said Orders. MIH may already be bound by its waiver.

Waiver is a renunciation of what has been established in favor of one or for his benefit, because he prejudices nobody thereby; if he suffers loss, he is the one to blame.[24] Article 6 of the Civil Code provides that "(r)ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a person with a right recognized by law." A reading of the assailed Orders dated 12 November 1997 and 11 February 1998 of Judge Santelices in Civil Case No. 9441 would readily reveal that he awarded transportation expense and court appearance fee to MIH as compensation for the inconvenience caused the latter and its counsel by the last-minute cancellation of the pre-trial conference scheduled on 12 November 1997. The awards were entirely for the benefit of MIH, and so it was entirely within the right of MIH to waive the same – to willingly suffer the loss resulting from such waiver. Considering that 10 years have passed since the issuance of the RTC Orders in question, as well as the nominal amounts involved, it is not that difficult to comprehend why MIH, at this stage, would rather waive, than insist, on its right or claim to the awards of transportation expense and court appearance fee.

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[24] *National Food Authority v. Court of Appeals*, 370 Phil. 735, 748 (1999).

With the final and executory judgment in Civil Case No. 9441 and the waiver by MIH of any right or claim under the assailed RTC Orders dated 12 November 1997 and 11 February 1998, there is no more justiciable controversy for adjudication by this Court.

An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties.[25]

The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value, as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[26]

Needless to stress, courts exist to decide actual controversies, not to give opinions upon abstract propositions. That a court will not sit for the purpose of trying moot cases and spend time in deciding questions, the resolution of which cannot in any way affect the rights of the person or persons presenting them is well settled.[27]

The court should refrain from expressing its opinion in a case in which no practical relief may be granted in view of a supervening event. It is a rule almost unanimously observed

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[25] *Santiago v. Court of Appeals*, G.R. No. 121908, 26 January 1998, 285 SCRA 16, 21.

[26] *Republic v. Tan*, G.R. No. 145255, 30 March 2004, 426 SCRA 485, 493.

[27] *Delgado v. Court of Appeals,* G.R. No. 137881, 19 August 2005, 467 SCRA 418, 428.

that courts of justice will take cognizance only of justiciable controversies wherein actual and not merely hypothetical issues are involved.[28]

WHEREFORE, premises considered, the instant Petition is *DISMISSED* for being moot and academic. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 138814. April 16, 2009]

MAKATI STOCK EXCHANGE, INC., MA. VIVIAN YUCHENGCO, ADOLFO M. DUARTE, MYRON C. PAPA, NORBERTO C. NAZARENO, GEORGE UY-TIOCO, ANTONIO A. LOPA, RAMON B. ARNAIZ, LUIS J.L. VIRATA, and ANTONIO GARCIA, JR. *petitioners, vs.* **MIGUEL V. CAMPOS, substituted by JULIA ORTIGAS VDA. DE CAMPOS,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; CAUSE OF ACTION; ELEMENTS.— A cause of action is the act or omission by which a party violates a right of another. A complaint states a cause of action where it contains three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the

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[28] *Jaafar v. Commission on Elections*, 364 Phil. 322, 327-328 (1999).

[1] Per Resolution of 24 October 2001.

defendant, and (3) the act or omission of the defendant in violation of said legal right. If these elements are absent, the complaint becomes vulnerable to dismissal on the ground of failure to state a cause of action.

2. ID.; ID.; ID.; ID.; THE TEST OF SUFFICIENCY OF THE FACTS FOUND IN A COMPLAINT AS CONSTITUTING A CAUSE OF ACTION IS WHETHER OR NOT ADMITTING THE FACTS ALLEGED, THE COURT CAN RENDER A VALID JUDGMENT UPON THE SAME IN ACCORDANCE WITH THE PRAYER THEREOF.— If a defendant moves to dismiss the complaint on the ground of lack of cause of action, he is regarded as having hypothetically admitted all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendant.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RIGHT AND OBLIGATION, DEFINED.— [T]he terms *right* and *obligation* in respondent's Petition are not magic words that would automatically lead to the conclusion that such Petition sufficiently states a cause of action. *Right* and *obligation* are legal terms with specific legal meaning. A *right* is a claim or title to an interest in anything whatsoever that is enforceable by law. An *obligation* is defined in the Civil Code as a juridical necessity to give, to do or not to do. For every right enjoyed by any person, there is a corresponding obligation on the part of another person to respect such right. Thus, Justice J.B.L. Reyes offers the definition given by Arias Ramos as a more complete definition: An obligation is a juridical relation whereby a person (called the creditor) may demand from another (called the debtor) the observance of a determinative conduct (the giving, doing or not doing), and in case of breach, may demand satisfaction from the assets of the latter.

4. ID.; ID.; SOURCES OF OBLIGATION; THE MERE ASSERTION OF A RIGHT AND CLAIM OF AN OBLIGATION IN AN

INITIATORY PLEADING WITHOUT IDENTIFYING THE BASIS OR SOURCE THEREOF IS MERELY A CONCLUSION OF FACT AND LAW; CASE AT BAR.— The Civil Code enumerates the sources of obligations: Art. 1157. Obligations arise from: (1) Law; (2) Contracts; (3) Quasi-contracts; (4) Acts or omissions punished by law; and (5) Quasi-delicts. Therefore, an obligation imposed on a person, and the corresponding right granted to another, must be rooted in at least one of these five sources. The mere assertion of a right and claim of an obligation in an initiatory pleading, whether a Complaint or Petition, without identifying the basis or source thereof, is merely a *conclusion of fact and law*. A pleading should state the *ultimate facts* essential to the rights of action or defense asserted, as distinguished from mere *conclusions of fact* or *conclusions of law*. In the case at bar, although the Petition in SEC Case No. 02-94-4678 does allege respondent's right to subscribe to the IPOs of corporations listed in the stock market at their offering prices, and petitioners' obligation to continue respecting and observing such right, the Petition utterly failed to lay down the source or basis of respondent's right and/or petitioners' obligation.

5. ID.; ID.; ID.; AS A GENERAL RULE, A PRACTICE OR CUSTOM IS NOT A SOURCE OF A LEGALLY DEMANDABLE OR ENFORCEABLE RIGHT; THERE IS NO LAW APPLICABLE IN CASE AT BAR THAT CONVERTS THE PRACTICE OF ALLOCATING INITIAL PUBLIC OFFERING (IPO) SHARES TO MAKATI STOCK EXCHANGE MEMBERS, FOR SUBSCRIPTION AT THEIR OFFERING PRICES, INTO AN ENFORCEABLE OR DEMANDABLE RIGHT.— A *practice* or *custom* is, as a general rule, not a source of a legally demandable or enforceable right. Indeed, in labor cases, benefits which were voluntarily given by the employer, and which have ripened into company practice, are considered as rights that cannot be diminished by the employer. Nevertheless, even in such cases, the source of the employees' right is not custom, but ultimately, the law, since Article 100 of the Labor Code explicitly prohibits elimination or diminution of benefits. There is no such law in this case that converts the practice of allocating IPO shares to MKSE members, for subscription at their offering prices, into an enforceable or demandable right. Thus, even if it is hypothetically admitted that *normally*, twenty five percent (25%) of the IPOs are divided equally between the two stock

exchanges — which, in turn, divide their respective allocation equally among their members, including the Chairman Emeritus, who pay for IPO shares at the offering price — the Court cannot grant respondent's prayer for damages which allegedly resulted from the MKSE Board Resolution dated 3 June 1993 deviating from said practice by no longer allocating any shares to respondent.

6. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION; PETITION OF RESPONDENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION WAS PROPERLY DISMISSED.— Accordingly, the instant Petition should be granted. The Petition in SEC Case No. 02-94-4678 should be dismissed for failure to state a cause of action. It does not matter that the SEC *en banc*, in its Order dated 14 August 1995 in SEC-EB No. 403, overstepped its bounds by not limiting itself to the issue of whether respondent's Petition before the SICD sufficiently stated a cause of action. The SEC *en banc* may have been mistaken in considering extraneous evidence in granting petitioners' Motion to Dismiss, but its discussion thereof are merely superfluous and *obiter dictum*. In the main, the SEC *en banc* did correctly dismiss the Petition in SEC Case No. 02-94-4678 for its failure to state the basis for respondent's alleged right, to wit: Private respondent Campos has failed to establish the basis or authority for his alleged right to participate equally in the IPO allocations of the Exchange. He cited paragraph 11 of the amended articles of incorporation of the Exchange in support of his position but a careful reading of the said provision shows nothing therein that would bear out his claim. The provision merely created the position of chairman emeritus of the Exchange but it mentioned nothing about conferring upon the occupant thereof the right to receive IPO allocations.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guno for petitioners.
Pastelero Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 seeking the reversal of the Decision[2] dated 11 February 1997 and Resolution dated 18 May 1999 of the Court of Appeals in CA-G.R. SP No. 38455.

The facts of the case are as follows:

SEC Case No. 02-94-4678 was instituted on 10 February 1994 by respondent Miguel V. Campos, who filed with the Securities, Investigation and Clearing Department (SICD) of the Securities and Exchange Commission (SEC), a Petition against herein petitioners Makati Stock Exchange, Inc. (MKSE) and MKSE directors, Ma. Vivian Yuchengco, Adolfo M. Duarte, Myron C. Papa, Norberto C. Nazareno, George Uy-Tioco, Antonio A, Lopa, Ramon B. Arnaiz, Luis J.L. Virata, and Antonio Garcia, Jr. Respondent, in said Petition, sought: (1) the nullification of the Resolution dated 3 June 1993 of the MKSE Board of Directors, which allegedly deprived him of his right to participate equally in the allocation of Initial Public Offerings (IPO) of corporations registered with MKSE; (2) the delivery of the IPO shares he was allegedly deprived of, for which he would pay IPO prices; and (3) the payment of ₱2 million as moral damages, ₱1 million as exemplary damages, and ₱500,000.00 as attorney's fees and litigation expenses.

On 14 February 1994, the SICD issued an Order granting respondent's prayer for the issuance of a Temporary Restraining Order to enjoin petitioners from implementing or enforcing the 3 June 1993 Resolution of the MKSE Board of Directors.

The SICD subsequently issued another Order on 10 March 1994 granting respondent's application for a Writ of Preliminary Injunction, to continuously enjoin, during the pendency of SEC Case No. 02-94-4678, the implementation or enforcement of

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[2] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Jesus M. Elbinias and Hilarion L. Aquino, concurring; *rollo*, pp. 30-36.

the MKSE Board Resolution in question. Petitioners assailed this SICD Order dated 10 March 1994 in a Petition for *Certiorari* filed with the SEC *en banc*, docketed as SEC-EB No. 393.

On 11 March 1994, petitioners filed a Motion to Dismiss respondent's Petition in SEC Case No. 02-94-4678, based on the following grounds: (1) the Petition became moot due to the cancellation of the license of MKSE; (2) the SICD had no jurisdiction over the Petition; and (3) the Petition failed to state a cause of action.

The SICD denied petitioner's Motion to Dismiss in an Order dated 4 May 1994. Petitioners again challenged the 4 May 1994 Order of SICD before the SEC *en banc* through another Petition for *Certiorari*, docketed as SEC-EB No. 403.

In an Order dated 31 May 1995 in SEC-EB No. 393, the SEC *en banc* nullified the 10 March 1994 Order of SICD in SEC Case No. 02-94-4678 granting a Writ of Preliminary Injunction in favor of respondent. Likewise, in an Order dated 14 August 1995 in SEC-EB No. 403, the SEC *en banc* annulled the 4 May 1994 Order of SICD in SEC Case No. 02-94-4678 denying petitioners' Motion to Dismiss, and accordingly ordered the dismissal of respondent's Petition before the SICD.

Respondent filed a Petition for *Certiorari* with the Court of Appeals assailing the Orders of the SEC *en banc* dated 31 May 1995 and 14 August 1995 in SEC-EB No. 393 and SEC-EB No. 403, respectively. Respondent's Petition before the appellate court was docketed as CA-G.R. SP No. 38455.

On 11 February 1997, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 38455, granting respondent's Petition for *Certiorari*, thus:

> WHEREFORE, the petition in so far as it prays for annulment of the Orders dated May 31, 1995 and August 14, 1995 in SEC-EB Case Nos. 393 and 403 is GRANTED. The said orders are hereby rendered null and void and set aside.

Petitioners filed a Motion for Reconsideration of the foregoing Decision but it was denied by the Court of Appeals in a Resolution

dated 18 May 1999.

Hence, the present Petition for Review raising the following arguments:

I.

THE SEC *EN BANC* DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FILED BY RESPONDENT BECAUSE ON ITS FACE, IT FAILED TO STATE A CAUSE OF ACTION.

II.

THE GRANT OF THE IPO ALLOCATIONS IN FAVOR OF RESPONDENT WAS A MERE ACCOMMODATION GIVEN TO HIM BY THE BOARD OF [DIRECTORS] OF THE MAKATI STOCK EXCHANGE, INC.

III.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE SEC *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT MADE AN EXTENDED INQUIRY AND PROCEEDED TO MAKE A DETERMINATION AS TO THE TRUTH OF RESPONDENT'S ALLEGATIONS IN HIS PETITION AND USED AS BASIS THE EVIDENCE ADDUCED DURING THE HEARING ON THE APPLICATION FOR THE WRIT OF PRELIMINARY INJUNCTION TO DETERMINE THE EXISTENCE OR VALIDITY OF A STATED CAUSE OF ACTION.

IV.

IPO ALLOCATIONS GRANTED TO BROKERS ARE NOT TO BE BOUGHT BY THE BROKERS FOR THEMSELVES BUT ARE TO BE DISTRIBUTED TO THE INVESTING PUBLIC. HENCE, RESPONDENT'S CLAIM FOR DAMAGES IS ILLUSORY AND HIS PETITION A NUISANCE SUIT.[3]

On 18 September 2001, counsel for respondent manifested to this Court that his client died on 7 May 2001. In a Resolution dated 24 October 2001, the Court directed the substitution

[3] *Rollo*, p. 144.

of respondent by his surviving spouse, Julia Ortigas *vda. de* Campos.

Petitioners want this Court to affirm the dismissal by the SEC *en banc* of respondent's Petition in SEC Case No. 02-94-4678 for failure to state a cause of action. On the other hand, respondent insists on the sufficiency of his Petition and seeks the continuation of the proceedings before the SICD.

A cause of action is the act or omission by which a party violates a right of another.[4] A complaint states a cause of action where it contains three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. If these elements are absent, the complaint becomes vulnerable to dismissal on the ground of failure to state a cause of action.

If a defendant moves to dismiss the complaint on the ground of lack of cause of action, he is regarded as having hypothetically admitted all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendant.[5]

Given the foregoing, the issue of whether respondent's Petition in SEC Case No. 02-94-4678 sufficiently states a cause of action may be alternatively stated as whether, hypothetically admitting to be true the allegations in respondent's Petition in SEC Case No. 02-94-4678, the SICD may render a valid judgment in accordance with the prayer of said Petition.

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[4] Revised Rules of Court, Rule 2, Section 2.

[5] *Fil-Estate Golf and Development, Inc. v. Court of Appeals*, 333 Phil. 465, 490-491 (1996).

A reading of the exact text of respondent's Petition in SEC Case No. 02-94-4678 is, therefore, unavoidable. Pertinent portions of the said Petition reads:

7. In recognition of petitioner's invaluable services, the general membership of respondent corporation [MKSE] passed a resolution sometime in 1989 amending its Articles of Incorporation, to include the following provision therein:

> "ELEVENTH – WHEREAS, Mr. Miguel Campos is the only surviving incorporator of the Makati Stock Exchange, Inc. who has maintained his membership;
>
> "WHEREAS, he has unselfishly served the Exchange in various capacities, as governor from 1977 to the present and as President from 1972 to 1976 and again as President from 1988 to the present;
>
> "WHEREAS, such dedicated service and leadership which has contributed to the advancement and well being not only of the Exchange and its members but also to the Securities industry, needs to be recognized and appreciated;
>
> "WHEREAS, as such, the Board of Governors in its meeting held on February 09, 1989 has correspondingly adopted a resolution recognizing his valuable service to the Exchange, reward the same, and preserve for posterity such recognition by proposing a resolution to the membership body which would make him as Chairman Emeritus for life and install in the Exchange premises a commemorative bronze plaque in his honor;
>
> "NOW, THEREFORE, for and in consideration of the above premises, the position of the "Chairman Emeritus" to be occupied by Mr. Miguel Campos during his lifetime and irregardless of his continued membership in the Exchange with the Privilege to attend all membership meetings as well as the meetings of the Board of Governors of the Exchange, is hereby created."

8. Hence, to this day, petitioner is not only an active member of the respondent corporation, but its Chairman Emeritus as well.

9. Correspondingly, at all times material to this petition, as an active member and Chairman Emeritus of respondent corporation, petitioner has always enjoyed the right given to all the other members to participate equally in the Initial Public Offerings (IPOs for brevity) of corporations.

10. IPOs are shares of corporations offered for sale to the public, prior to the listing in the trading floor of the country's two stock exchanges. Normally, Twenty Five Percent (25%) of these shares are divided equally between the two stock exchanges which in turn divide these equally among their members, who pay therefor at the offering price.

11. However, on June 3, 1993, during a meeting of the Board of Directors of respondent-corporation, individual respondents passed a resolution to stop giving petitioner the IPOs he is entitled to, based on the ground that these shares were allegedly benefiting Gerardo O. Lanuza, Jr., who these individual respondents wanted to get even with, for having filed cases before the Securities and Exchange (SEC) for their disqualification as member of the Board of Directors of respondent corporation.

12. Hence, from June 3, 1993 up to the present time, petitioner has been deprived of his right to subscribe to the IPOs of corporations listing in the stock market at their offering prices.

13. The collective act of the individual respondents in depriving petitioner of his right to a share in the IPOs for the aforementioned reason, is unjust, dishonest and done in bad faith, causing petitioner substantial financial damage.[6]

There is no question that the Petition in SEC Case No. 02-94-4678 asserts a **right** in favor of respondent, particularly, respondent's alleged right to subscribe to the IPOs of corporations listed in the stock market at their offering prices; and stipulates the correlative **obligation** of petitioners to respect respondent's right, specifically, by continuing to allow respondent to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

However, the terms *right* and *obligation* in respondent's Petition are not magic words that would automatically lead to the conclusion that such Petition sufficiently states a cause of action. *Right* and *obligation* are legal terms with specific legal meaning. A *right* is a claim or title to an interest in anything whatsoever that is enforceable by law.[7] An *obligation*

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[6] *Rollo*, pp. 50-52.

[7] *Bailey v. Miller*, 91 N.E. 24, 25, Ind. App. 475, cited in 37A Words and Phrases 363.

is defined in the Civil Code as a juridical necessity to give, to do or not to do.[8] For every right enjoyed by any person, there is a corresponding obligation on the part of another person to respect such right. Thus, Justice J.B.L. Reyes offers[9] the definition given by Arias Ramos as a more complete definition:

> An obligation is a juridical relation whereby a person (called the creditor) may demand from another (called the debtor) the observance of a determinative conduct (the giving, doing or not doing), and in case of breach, may demand satisfaction from the assets of the latter.

The Civil Code enumerates the sources of obligations:

> Art. 1157. Obligations arise from:
>
> (1) Law;
>
> (2) Contracts;
>
> (3) Quasi-contracts;
>
> (4) Acts or omissions punished by law; and
>
> (5) Quasi-delicts.

Therefore, an obligation imposed on a person, and the corresponding right granted to another, must be rooted in at least one of these five sources. The mere assertion of a right and claim of an obligation in an initiatory pleading, whether a Complaint or Petition, without identifying the basis or source thereof, is merely a *conclusion of fact and law*. A pleading should state the *ultimate facts* essential to the rights of action or defense asserted, as distinguished from mere *conclusions of fact* or *conclusions of law*.[10] Thus, a Complaint or Petition filed by a person claiming a right to the Office of the President of this Republic, but without stating the source of his purported

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[8] Civil Code, Article 1156.

[9] Lawyer's Journal, 31 January 1951, p. 47.

[10] *Abad v. Court of First Instance of Pangasinan*, G.R. Nos. 58507-08, 26 February 1992, 206 SCRA 567, 579-580.

right, cannot be said to have sufficiently stated a cause of action. Also, a person claiming to be the owner of a parcel of land cannot merely state that he has a right to the ownership thereof, but must likewise assert in the Complaint either a mode of acquisition of ownership or at least a certificate of title in his name.

In the case at bar, although the Petition in SEC Case No. 02-94-4678 does allege respondent's right to subscribe to the IPOs of corporations listed in the stock market at their offering prices, and petitioners' obligation to continue respecting and observing such right, the Petition utterly failed to lay down the source or basis of respondent's right and/or petitioners' obligation.

Respondent merely quoted in his Petition the MKSE Board Resolution, passed sometime in 1989, granting him the position of Chairman Emeritus of MKSE for life. However, there is nothing in the said Petition from which the Court can deduce that respondent, by virtue of his position as Chairman Emeritus of MKSE, was granted by law, contract, or any other legal source, the right to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

A meticulous review of the Petition reveals that the allocation of IPO shares was merely alleged to have been done in accord with a *practice* normally observed by the members of the stock exchange, to wit:

> IPOs are shares of corporations offered for sale to the public, prior to their listing in the trading floor of the country's two stock exchanges. **Normally, Twenty-Five Percent (25%) of these shares are divided equally between the two stock exchanges which in turn divide these equally among their members, who pay therefor at the offering price.**[11] (Emphasis supplied)

A *practice* or *custom* is, as a general rule, not a source of a legally demandable or enforceable right.[12] Indeed, in labor

[11] *Rollo*, pp. 51-52.

[12] A distinction, however, should be made between Municipal Law and Public International Law. Custom is one of the primary sources of International Law, and is thus a source of legal rights within such sphere.

cases, benefits which were voluntarily given by the employer, and which have ripened into company practice, are considered as rights that cannot be diminished by the employer.[13] Nevertheless, even in such cases, the source of the employees' right is not custom, but ultimately, the law, since Article 100 of the Labor Code explicitly prohibits elimination or diminution of benefits.

There is no such law in this case that converts the practice of allocating IPO shares to MKSE members, for subscription at their offering prices, into an enforceable or demandable right. Thus, even if it is hypothetically admitted that *normally*, twenty five percent (25%) of the IPOs are divided equally between the two stock exchanges — which, in turn, divide their respective allocation equally among their members, including the Chairman Emeritus, who pay for IPO shares at the offering price — the Court cannot grant respondent's prayer for damages which allegedly resulted from the MKSE Board Resolution dated 3 June 1993 deviating from said practice by no longer allocating any shares to respondent.

Accordingly, the instant Petition should be granted. The Petition in SEC Case No. 02-94-4678 should be dismissed for failure to state a cause of action. It does not matter that the SEC *en banc*, in its Order dated 14 August 1995 in SEC-EB No. 403, overstepped its bounds by not limiting itself to the issue of whether respondent's Petition before the SICD sufficiently stated a cause of action. The SEC *en banc* may have been mistaken in considering extraneous evidence in granting petitioners' Motion to Dismiss, but its discussion thereof are merely superfluous and *obiter dictum*. In the main, the SEC *en banc* did correctly dismiss the Petition in SEC Case No. 02-94-4678 for its failure to state the basis for respondent's alleged right, to wit:

Private respondent Campos has failed to establish the basis or authority for his alleged right to participate equally in the IPO

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[13] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU*, G.R. No. 170734, 14 May 2008, 554 SCRA 110, 118.

allocations of the Exchange. He cited paragraph 11 of the amended articles of incorporation of the Exchange in support of his position but a careful reading of the said provision shows nothing therein that would bear out his claim. The provision merely created the position of chairman emeritus of the Exchange but it mentioned nothing about conferring upon the occupant thereof the right to receive IPO allocations.[14]

With the dismissal of respondent's Petition in SEC Case No. 02-94-4678, there is no more need for this Court to resolve the propriety of the issuance by SCID of a writ of preliminary injunction in said case.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Court of Appeals dated 11 February 1997 and its Resolution dated 18 May 1999 in CA-G.R. SP No. 38455 are *REVERSED* and *SET ASIDE*. The Orders dated 31 May 1995 and 14 August 1995 of the Securities and Exchange Commission *en banc* in SEC-EB Case No. 393 and No. 403, respectively, are hereby reinstated. No pronouncement as to costs.

SO ORDERED.

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

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[14] *Rollo*, p. 95.

FIRST DIVISION

[G.R. No. 140717. April 16, 2009]

ANNIE L. MANUBAY, ANNE MARIE L. MANUBAY, JAMES JOHN L. MANUBAY, JAMES FRANCIS L. MANUBAY, ANNE MARGARETH L. MANUBAY and MANUBAY AGRO-INDUSTRIAL DEVELOPMENT CORP., INC. represented by ATTY. JAIME A. MANUBAY, *petitioners, vs.* **HON. ERNESTO D. GARILAO, in his capacity as the Secretary of the Department of Agrarian Reform,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF QUALIFIED POLITICAL AGENCY; AS DEPARTMENT SECRETARIES ARE ALTER EGOS OF THE PRESIDENT, THEIR DECISIONS, AS A RULE, NEED NOT BE APPEALED TO THE OFFICE OF THE PRESIDENT.— Under the doctrine of qualified political agency, department secretaries are alter egos or assistants of the President and their acts are presumed to be those of the latter unless disapproved or reprobated by him. Thus, as a rule, an aggrieved party affected by the decision of a cabinet secretary need not appeal to the OP and may file a petition for *certiorari* directly in the Court of Appeals assailing the act of the said secretary.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GROUNDS.— Section 1 of Rule 65 of the Rules of Court provides that, for a petition for *certiorari* to prosper, petitioner must show (1) the public respondent acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and (2) there is no appeal or a plain, speedy and adequate remedy in the ordinary course of law.

3. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; ELUCIDATED; ABSENT IN CASE AT BAR.— In a petition for *certiorari* premised on grave abuse of discretion, it must be shown that public respondent patently and grossly abused his discretion and that such abuse amounted to an evasion of positive duty

or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law. In other words, the public respondent exercised his power arbitrarily and despotically by reason of passion or hostility. Here, inasmuch as respondent had a valid ground to deny petitioners' application, he did not commit grave abuse of discretion.

4. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; A PARTY AGGRIEVED BY AN ORDER OF AN ADMINISTRATIVE OFFICIAL SHOULD FIRST APPEAL TO THE HIGHER ADMINISTRATIVE AUTHORITY BEFORE SEEKING JUDICIAL RELIEF.— Furthermore, DAR-AO No. 7, s. 1997 requires an appeal (of the denial of application of conversion) to the OP. It was the *plain, speedy and adequate remedy* contemplated by Section 1 of Rule 65. Needless to state, elevating the matter to the OP was consistent with the doctrine of exhaustion of administrative remedies. A party aggrieved by an order of an administrative official should first appeal to the higher administrative authority before seeking judicial relief. Otherwise, as in this case, the complaint will be dismissed for being premature or for having no cause of action.

APPEARANCES OF COUNSEL

Michael G. Jornales for petitioners.
Delfin B. Samson for Department of Agrarian Reform.

R E S O L U T I O N

CORONA, *J.*:

At the heart of this controversy is a 124-hectare land in Barrio Cadlan, Pili, Camarines Sur owned by petitioners Annie, Anne Marie, James John, James Francis and Anne Margareth (all surnamed Manubay)[1] and Manubay Agro-Industrial Development Corporation.[2]

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[1] Registered co-owners of lot no. 293, a 99.2559-hectare property, covered by TCT No. 12691.

[2] Registered owner of lot nos. 360, 229, 388, 232 and 170 covered by TCT Nos. 12357, 12358, 12359 and 12360 respectively, covering an aggregate area of 25,0651 hectares.

On November 15, 1994, the Municipal Agrarian Reform Officer (MARO) of Pili issued a notice of coverage placing the property under the comprehensive agrarian reform program (CARP).[3] Petitioners did not protest the notice.

On July 1, 1996, petitioners filed an application at the Department of Agrarian Reform (DAR) for conversion of the property from agricultural to residential.[4]

On August 26, 1996, the *Sangguniang Bayan* of Pili passed Resolution No. 145 approving the Comprehensive Zoning Ordinance of 1996 of the Municipality of Pili, Camarines Sur.[5] The ordinance reclassified the subject property from agricultural to highly urbanized intended for mixed residential and commercial use.[6]

Thereafter, petitioners requested DAR Regional Director Percival C. Dalugdug to set aside the November 15, 1994 notice of coverage. They pointed out that the land had been reclassified and the property was no longer suitable for agricultural purposes. Director Dalugdug denied their request in a letter dated November 13, 1996:[7]

> Relative to land conversions, we are guided in our actions by [DAR-Administrative Order (AO)] No. 12, s. 1994 which clearly states that **no application for conversions shall be accepted on lands for compulsory acquisition already given notices of coverage**. Applications may only be accepted if the notice of coverage has been lifted for one reason or another.
>
> x x x x x x x x x
>
> Please note that your properties have already been issued notices of coverage by the MARO of Pili last November 15, 1994 which is

[3] Notice of Coverage issued by MARO Nelson S. Tongco. *Rollo,* p. 142.

[4] *Id.,* pp. 54-64.

[5] Ordinance No. 40-1, s. 1996.

[6] Certificate of Eligibility for Conversion issued by the Sangguniang Bayan of Pili. Dated July 9, 1996. *Rollo,* p. 95.

[7] *Id.*, p. 112. Petitioners subsequently requested Director Dalugdug to reconsider his November 13, 1996 decision but he refused to do so in a letter dated December 6, 1996. *Id.*, pp. 113-114.

almost two years prior to your submission of the application for conversion. To reiterate, **for us to entertain your application**, **you must first have these notices lifted whether because of retention or exemption**. Since the basis of your claims of exemption (*i.e.*, not yet covered per instruction by the Secretary, and reclassification under the Pili land use plan) are not valid, we are sorry to inform you that we can no longer entertain your application…. (emphasis supplied)

Respondent Ernesto Garilao, then DAR Secretary, upheld Director Dalugdug and denied petitioners' application for conversion, considering that the property had already been placed under the CARP.[8]

Aggrieved, petitioners separately asked respondent to reconsider. They insisted that, because the MARO issued a notice of coverage, not a notice of acquisition, their application for conversion should have been approved. The motions were denied.[9]

On April 28, 1998, petitioners filed a petition for *certiorari* in the Court of Appeals (CA) assailing the denial of their application for conversion.[10] They averred that respondent acted with grave abuse of discretion when he denied their application. According to them, the issuance of a mere notice of coverage placing agricultural land under the CARP was not a ground for the denial of such application.

In a resolution dated June 1, 1999, the CA dismissed the petition.[11] DAR-AO No. 7, s. 1997[12] provides that the decision

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[8] Order dated September 16, 1996. *Id.*, pp. 116-119.

[9] Orders dated January 14, 1998 and February 25, 1998. *Id.*, pp. 144-15 and 165-170, respectively.

[10] Docketed as CA-G.R. SP No. 472244.

[11] Penned by Associate Justice Ma. Alicia Austria-Martinez (now a member of this Court) and concurred in by Associate Justices Salvador J. Valdez, Jr. (retired) and Renato C. Dacudao (retired) of the Ninth Division of the Court of Appeals. *Rollo,* pp. 16-18.

[12] DAR-A.O. No. 7, s. 1999, par. XIV provides:

XIV. APPEAL FROM THE DECISION OF THE UNDERSECRETARY OR SECRETARY.

of the DAR Secretary may be appealed either to the Office of the President (OP) or to the CA. Considering that the issue raised by petitioners involved the administrative implementation of the CARP, the OP was more competent to rule on the issue. Moreover, by failing to bring the matter to the said office, petitioner did not exhaust all available administrative remedies before resorting to a petition for *certiorari*.

Petitioners moved for reconsideration but it was denied.[13] Hence, this recourse.

Petitioners contend that the CA erred in dismissing the petition for *certiorari* as they did not violate the rule on exhaustion of administrative remedies. The act of a department secretary may be directly challenged in a petition for *certiorari*.

We dismiss the petition.

Under the doctrine of qualified political agency, department secretaries are alter egos or assistants of the President and their acts are presumed to be those of the latter unless disapproved or reprobated by him.[14] Thus, as a rule, an aggrieved party affected by the decision of a cabinet secretary need not appeal to the OP and may file a petition for *certiorari* directly in the Court of Appeals assailing the act of the said secretary.[15]

Section 1 of Rule 65 of the Rules of Court provides that, for a petition for *certiorari* to prosper, petitioner must show (1) the public respondent acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and (2) there is no appeal or a plain, speedy and adequate remedy in the ordinary course of law.

Appeal from the Decision of the Undersecretary shall be made to the Secretary and **from the Secretary to the Office of the President or the Court of Appeals** as the case may be. The mode of appeal/motion for reconsideration and appeal fee from Undersecretary to the Office of the Secretary shall be the same as that of the Regional Director to the Office of the Secretary.

[13] Dated November 4, 1999. *Id.*, p. 19.

[14] See *DENR v. DENR Region 12 Employees,* 456 Phil. 635, 644 (2003).

[15] Ruben E. Agpalo, *PHILIPPINE ADMINISTRATIVE LAW* 1999 ed., 354.

In a petition for *certiorari* premised on grave abuse of discretion, it must be shown that public respondent patently and grossly abused his discretion and that such abuse amounted to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law. In other words, the public respondent exercised his power arbitrarily and despotically by reason of passion or hostility.[16]

Here, inasmuch as respondent had a valid ground to deny petitioners' application, he did not commit grave abuse of discretion.

Furthermore, DAR-AO No. 7, s. 1997 requires an appeal (of the denial of application of conversion) to the OP. It was the *plain, speedy and adequate remedy* contemplated by Section 1 of Rule 65.

Needless to state, elevating the matter to the OP was consistent with the doctrine of exhaustion of administrative remedies. A party aggrieved by an order of an administrative official should first appeal to the higher administrative authority before seeking judicial relief. Otherwise, as in this case, the complaint will be dismissed for being premature or for having no cause of action.[17]

WHEREFORE, the June 1, 1999 and November 4, 1999 resolutions of the Court of Appeals in CA-G.R. SP No. 47244 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

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[16] See *Aggabao v. Commission on Elections,* G.R. No. 163756, 26 January 2005, 449 SCRA 400. See *also Zarate v. Maybank,* G.R. No. 160976, 8 June 2005, 459 SCRA 785. See *also Agustin v. Court of Appeals,* G.R. No. 162571, 15 June 2005, 460 SCRA 315.

[17] See *Pangasinan State University v. Court of Appeals,* G.R. No. 162321, 29 July 2007, 526 SCRA 92, 99.

SECOND DIVISION

[G.R. No. 149907. April 16, 2009]

ROMA DRUG and ROMEO RODRIGUEZ, as Proprietor of ROMA DRUG, *petitioners, vs.* **THE REGIONAL TRIAL COURT OF GUAGUA, PAMPANGA, THE PROVINCIAL PROSECUTOR OF PAMPANGA, BUREAU OF FOOD & DRUGS (BFAD) and GLAXO SMITHKLINE,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE; WITH THE AMENDMENT OF SECTION 72 THEREOF BY SECTION 7 OF REPUBLIC ACT NO. 9502 (UNIVERSALLY ACCESSIBLE CHEAPER AND QUALITY MEDICINES ACT OF 2008), THIRD PERSONS ARE GRANTED THE RIGHT TO IMPORT DRUGS OR MEDICINES WHOSE PATENT WERE REGISTERED IN THE PHILIPPINES BY THE OWNER OF THE PRODUCT.— The constitutional aspect of this petition raises obviously interesting questions. However, such questions have in fact been mooted with the passage in 2008 of Republic Act No. 9502, also known as the "Universally Accessible Cheaper and Quality Medicines Act of 2008". Section 7 of Rep. Act No. 9502 amends Section 72 of the Intellectual Property Code in that the later law unequivocally grants third persons the right to import drugs or medicines whose patent were registered in the Philippines by the owner of the product: Sec. 7. Section 72 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, is hereby amended to read as follows: "Sec. 72. Limitations of Patent Rights. – The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances: "72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: Provided, **That, with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or**

anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party; x x x

2. STATUTORY CONSTRUCTION; WHERE A STATUTE OF LATER DATE CLEARLY REVEALS AN INTENTION ON THE PART OF THE LEGISLATURE TO ABROGATE A PRIOR ACT ON THE SUBJECT, THAT INTENTION MUST BE GIVEN EFFECT.— It may be that Rep. Act No. 9502 did not expressly repeal any provision of the SLCD. However, it is clear that the SLCO's classification of "unregistered imported drugs" as "counterfeit drugs," and of corresponding criminal penalties therefore are irreconcilably in the imposition conflict with Rep. Act No. 9502 since the latter indubitably grants private third persons the unqualified right to import or otherwise use such drugs. Where a statute of later date, such as Rep. Act No. 9502, clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject that intention must be given effect. When a subsequent enactment covering a field of operation coterminus with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails and the prior law yields to the extent of the conflict. Irreconcilable inconsistency between two laws embracing the same subject may exist when the later law nullifies the reason or purpose of the earlier act, so that the latter loses all meaning and function. *Legis posteriors priores contrarias abrogant*.

APPEARANCES OF COUNSEL

Roque and Roque Law Firm for petitioners.
Poblador Bautista and Reyes for private respondents.

D E C I S I O N

TINGA, *J.*:

On 14 August 2000, a team composed of the National Bureau of Investigation (NBI) operatives and inspectors of the Bureau

of Food and Drugs (BFAD) conducted a raid on petitioner Roma Drug, a duly registered sole proprietorship of petitioner Romeo Rodriguez (Rodriguez) operating a drug store located at San Matias, Guagua, Pampanga. The raid was conducted pursuant to a search warrant[1] issued by the Regional Trial Court (RTC), Branch 57, Angeles City. The raiding team seized several imported medicines, including *Augmentin* (375mg.) tablets, *Orbenin* (500mg.) capsules, *Amoxil* (250mg.) capsules and *Ampiclox* (500mg.).[2] It appears that Roma Drug is one of six drug stores which were raided on or around the same time upon the request of SmithKline Beecham Research Limited (SmithKline), a duly registered corporation which is the local distributor of pharmaceutical products manufactured by its parent London-based corporation. The local SmithKline has since merged with Glaxo Wellcome Phil. Inc to form Glaxo SmithKline, private respondent in this case. The seized medicines, which were manufactured by SmithKline, were imported directly from abroad and not purchased through the local SmithKline, the authorized Philippine distributor of these products.

The NBI subsequently filed a complaint against Rodriguez for violation of Section 4 (in relation to Sections 3 and 5) of Republic Act No. 8203, also known as the Special Law on Counterfeit Drugs (SLCD), with the Office of the Provincial Prosecutor in San Fernando, Pampanga. The section prohibits the sale of counterfeit drugs, which under Section 3(b)(3), includes "an unregistered imported drug product." The term "unregistered" signifies the lack of registration with the Bureau of Patent, Trademark and Technology Transfer of a trademark, tradename or other identification mark of a drug in the name of a natural or juridical person, the process of which is governed under Part III of the Intellectual Property Code.

In this case, there is no doubt that the subject seized drugs are identical in content with their Philippine-registered counterparts. There is no claim that they were adulterated in any way or mislabeled at least. Their classification as "counterfeit"

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[1] Search Warrant No. 00-43.

[2] *Rollo*, p. 7.

is based solely on the fact that they were imported from abroad and not purchased from the Philippine-registered owner of the patent or trademark of the drugs.

During preliminary investigation, Rodriguez challenged the constitutionality of the SLCD. However, Assistant Provincial Prosecutor Celerina C. Pineda skirted the challenge and issued a Resolution dated 17 August 2001 recommending that Rodriguez be charged with violation of Section 4(a) of the SLCD. The recommendation was approved by Provincial Prosecutor Jesus Y. Manarang approved the recommendation.[3]

Hence, the present Petition for Prohibition questing the RTC-Guagua Pampanga and the Provincial Prosecutor to desist from further prosecuting Rodriguez, and that Sections 3(b)(3), 4 and 5 of the SLCD be declared unconstitutional. In gist, Rodriguez asserts that the challenged provisions contravene three provisions of the Constitution. The first is the equal protection clause of the Bill of Rights. The two other provisions are Section 11, Article XIII, which mandates that the State make "essential goods, health and other social services available to all the people at affordable cost;" and Section 15, Article II, which states that it is the policy of the State "to protect and promote the right to health of the people and instill health consciousness among them."

Through its Resolution dated 15 October 2001, the Court issued a temporary restraining order enjoining the RTC from proceeding with the trial against Rodriguez, and the BFAD, the NBI and Glaxo Smithkline from prosecuting the petitioners.[4]

Glaxo Smithkline and the Office of the Solicitor General (OSG) have opposed the petition, the latter in behalf of public respondents RTC, Provincial Prosecutor and Bureau of Food and Drugs (BFAD). On the constitutional issue, Glaxo Smithkline asserts the rule that the SLCD is presumed constitutional, arguing that both Section 15, Article II and Section 11, Article XIII "are not self-executing provisions, the disregard of which can give

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[3] *Rollo*, p. 56.

[4] *Rollo*, p. 134.

rise to a cause of action in the courts." It adds that Section 11, Article XIII in particular cannot be work "to the oppression and unlawful of the property rights of the legitimate manufacturers, importers or distributors, who take pains in having imported drug products registered before the BFAD." Glaxo Smithkline further claims that the SLCD does not in fact conflict with the aforementioned constitutional provisions and in fact are in accord with constitutional precepts in favor of the people's right to health.

The Office of the Solicitor General casts the question as one of policy wisdom of the law that is, beyond the interference of the judiciary.[5] Again, the presumption of constitutionality of statutes is invoked, and the assertion is made that there is no clear and unequivocal breach of the Constitution presented by the SLCD.

II.

The constitutional aspect of this petition raises obviously interesting questions. However, such questions have in fact been mooted with the passage in 2008 of Republic Act No. 9502, also known as the "Universally Accessible Cheaper and Quality Medicines Act of 2008."[6]

Section 7 of Rep. Act No. 9502 amends Section 72 of the Intellectual Property Code in that the later law unequivocally grants third persons the right to import drugs or medicines whose patent were registered in the Philippines by the owner of the product:

> Sec. 7. Section 72 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, is hereby amended to read as follows:
>
> "Sec. 72. Limitations of Patent Rights. – The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

[5] *Rollo*, p. 711.

[6] See Rep. Act No. 9502, Sec. 1.

"72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: Provided, **That, with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: *Provided*, *further*, <u>That the right to import the drugs and medicines contemplated in this section</u> shall be available to any government agency <u>or any private third party</u>;**

"72.2. Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, That it does not significantly prejudice the economic interests of the owner of the patent;

"72.3. Where the act consists of making or using exclusively for experimental use of the invention for scientific purposes or educational purposes and such other activities directly related to such scientific or educational experimental use;

"72.4. In the case of drugs and medicines, where the act includes testing, using, making or selling the invention including any data related thereto, solely for purposes reasonably related to the development and submission of information and issuance of approvals by government regulatory agencies required under any law of the Philippines or of another country that regulates the manufacture, construction, use or sale of any product: Provided, That, in order to protect the data submitted by the original patent holder from unfair commercial use provided in Article 39.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the Intellectual Property Office, in consultation with the appropriate government agencies, shall issue the appropriate rules and regulations necessary therein not later than one hundred twenty (120) days after the enactment of this law;

"72.5. Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the right to import the drugs and medicines contemplated in

this section shall be available to any government agency or any private third party; xxx[7]

The unqualified right of private third parties such as petitioner to import or possess "unregistered imported drugs" in the Philippines is further confirmed by the "Implementing Rules to Republic Act No. 9502" promulgated on 4 November 2008.[8] The relevant provisions thereof read:

Rule 9. Limitations on Patent Rights. The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 of the IP Code as enumerated hereunder:

(i) Introduction in the Philippines or Anywhere Else in the World.

Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: *Provided*, That, with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: *Provided, further*, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party. *(72.1)*

The drugs and medicines are deemed introduced when they have been sold or offered for sale anywhere else in the world. *(n)*

It may be that Rep. Act No. 9502 did not expressly repeal any provision of the SLCD. However, it is clear that the SLCO's classification of "unregistered imported drugs" as "counterfeit drugs," and of corresponding criminal penalties therefore are irreconcilably in the imposition conflict with Rep. Act No. 9502 since the latter indubitably grants private third persons the unqualified right to import or otherwise use such drugs. Where a statute of later date, such as Rep. Act No. 9502, clearly reveals an intention on the part of the legislature to abrogate

[7] Rep. Act No. 9502, Section 7.

[8] Available from the website of the Intellectual Property Office (http://www.ipophil.gov.ph/).

a prior act on the subject that intention must be given effect.[9] When a subsequent enactment covering a field of operation coterminus with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails and the prior law yields to the extent of the conflict.[10] Irreconcilable inconsistency between two laws embracing the same subject may exist when the later law nullifies the reason or purpose of the earlier act, so that the latter loses all meaning and function.[11] *Legis posteriors priores contrarias abrogant.*

For the reasons above-stated, the prosecution of petitioner is no longer warranted and the quested writ of prohibition should accordingly be issued.

III.

Had the Court proceeded to directly confront the constitutionality of the assailed provisions of the SLCD, it is apparent that it would have at least placed in doubt the validity of the provisions. As written, the law makes a criminal of any person who imports an unregistered drug regardless of the purpose, even if the medicine can spell life or death for someone in the Philippines. It does not accommodate the situation where the drug is out of stock in the Philippines, beyond the reach of a patient who urgently depends on it. It does not allow husbands, wives, children, siblings, parents to import the drug in behalf of their loved ones too physically ill to travel and avail of the meager personal use exemption allotted by the law. It discriminates, at the expense of health, against poor Filipinos without means to travel abroad to purchase less expensive medicines in favor of their wealthier brethren able to do so. Less urgently perhaps, but still within the range of constitutionally

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[9] R. AGPALO, *STATUTORY CONSTRUCTION* (1995 ed.), at 315.

[10] SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION 463, 464; cited in *Ramirez v. Court of Appeals*, G.R. No. 23984, 24 January 1974, 55 SCRA 261.

[11] AGPALO, *supra* note 9 at 317.

protected behavior, it deprives Filipinos to choose a less expensive regime for their health care by denying them a plausible and safe means of purchasing medicines at a cheaper cost.

The absurd results from this far-reaching ban extends to implications that deny the basic decencies of humanity. The law would make criminals of doctors from abroad on medical missions of such humanitarian organizations such as the International Red Cross, the International Red Crescent, *Medicin Sans Frontieres*, and other like-minded groups who necessarily bring their own pharmaceutical drugs when they embark on their missions of mercy. After all, they are disabled from invoking the bare "personal use" exemption afforded by the SLCD.

Even worse is the fact that the law is not content with simply banning, at civil costs, the importation of unregistered drugs. It equates the importers of such drugs, many of whom motivated to do so out of altruism or basic human love, with the malevolents who would alter or counterfeit pharmaceutical drugs for reasons of profit at the expense of public safety. Note that the SLCD is a special law, and the traditional treatment of penal provisions of special laws is that of *malum prohibitum*–or punishable regardless of motive or criminal intent. **For a law that is intended to help save lives, the SLCD has revealed itself as a heartless, soulless *legislative piece*.**

The challenged provisions of the SLCD apparently proscribe a range of constitutionally permissible behavior. It is laudable that with the passage of Rep. Act No. 9502, the State has reversed course and allowed for a sensible and compassionate approach with respect to the importation of pharmaceutical drugs urgently necessary for the people's constitutionally-recognized right to health.

WHEREFORE, the petition is *GRANTED* in part. A writ of prohibition is hereby *ISSUED* commanding respondents from prosecuting petitioner Romeo Rodriguez for violation of Section 4 or Rep. Act No. 8203. The Temporary Restraining Order dated 15 October 2001 is hereby made *PERMANENT*. No pronouncements as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 152318. April 16, 2009]

DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT, also known as GERMAN AGENCY FOR TECHNICAL COOPERATION, (GTZ) HANS PETER PAULENZ and ANNE NICOLAY, *petitioners, vs.* **HON. COURT OF APPEALS, HON. ARIEL CADIENTE SANTOS, Labor Arbiter of the Arbitration Branch, National Labor Relations Commission, and BERNADETTE CARMELLA MAGTAAS, CAROLINA DIONCO, CHRISTOPHER RAMOS, MELVIN DELA PAZ, RANDY TAMAYO and EDGARDO RAMILLO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC INTERNATIONAL LAW; DOCTRINE OF STATE IMMUNITY FROM SUIT; THE FACT THAT A FOREIGN STATE ENTERED INTO A CONTRACT WITH A PRIVATE PARTY DID NOT DISQUALIFY IT FROM INVOKING THE IMMUNITY FROM SUIT.— x x x The SHINE project was implemented pursuant to the bilateral agreements between the Philippine and German governments. GTZ was tasked, under the 1991 agreement, with the implementation of the contributions of the German government. The activities performed by GTZ pertaining to the SHINE project are governmental in nature, related as they are to the promotion of health insurance in the Philippines. The fact that GTZ entered

into employment contracts with the private respondents did not disqualify it from invoking immunity from suit, as held in cases such as *Holy See v. Rosario, Jr.*, which set forth what remains valid doctrine: Certainly, the mere entering into a contract by a foreign state with a private party cannot be the ultimate test. Such an act can only be the start of the inquiry. The logical question is whether the foreign state is engaged in the activity in the regular course of business. If the foreign state is not engaged regularly in a business or trade, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act *jure imperii*, especially when it is not undertaken for gain or profit.

2. ID.; ID.; ID.; AVAILABLE TO FOREIGN STATES WHEN SUED IN THE COURTS OF THE LOCAL STATE TO MAINTAIN THE PEACE OF NATIONS.— The principle of state immunity from suit, whether a local state or a foreign state, is reflected in Section 9, Article XVI of the Constitution, which states that "the State may not be sued without its consent." Who or what consists of "the State"? For one, the doctrine is available to foreign States insofar as they are sought to be sued in the courts of the local State, necessary as it is to avoid "unduly vexing the peace of nations." If the instant suit had been brought directly against the Federal Republic of Germany, there would be no doubt that it is a suit brought against a State, and the only necessary inquiry is whether said State had consented to be sued. However, the present suit was brought against GTZ. It is necessary for us to understand what precisely are the parameters of the legal personality of GTZ.

3. ID.; ID.; ID.; TEST OF SUABILITY IN CASES OF GOVERNMENT AGENCIES.— Counsel for GTZ characterizes GTZ as "the implementing agency of the Government of the Federal Republic of Germany," a depiction similarly adopted by the OSG. Assuming that characterization is correct, it does not automatically invest GTZ with the ability to invoke State immunity from suit. The distinction lies in whether the agency is incorporated or unincorporated. The following lucid discussion from Justice Isagani Cruz is pertinent: Where suit is filed not against the government itself or its officials but against one of its entities, it must be ascertained whether or not the State, as the principal that may ultimately be held liable,

has given its consent to be sued. **This ascertainment will depend in the first instance on whether the government agency impleaded is incorporated or unincorporated. An incorporated agency has a charter of its own that invests it with a separate juridical personality**, like the Social Security System, the University of the Philippines, and the City of Manila. By contrast, the unincorporated agency is so called because it has no separate juridical personality but is merged in the general machinery of the government, like the Department of Justice, the Bureau of Mines and the Government Printing Office. **If the agency is incorporated, the test of its suability is found in its charter. The simple rule is that it is suable if its charter says so, and this is true regardless of the functions it is performing. Municipal corporations, for example, like provinces and cities, are agencies of the State when they are engaged in governmental functions and therefore should enjoy the sovereign immunity from suit. Nevertheless, they are subject to suit even in the performance of such functions because their charter provides that they can sue and be sued**. State immunity from suit may be waived by general or special law. The special law can take the form of the original charter of the incorporated government agency. Jurisprudence is replete with examples of incorporated government agencies which were ruled not entitled to invoke immunity from suit, owing to provisions in their charters manifesting their consent to be sued. x x x

4. ID.; ID.; ID.; WHEN A STATE OR INTERNATIONAL AGENCY WISHES TO PLEAD SOVEREIGN OR DIPLOMATIC IMMUNITY IN A FOREIGN COURT, IT REQUESTS THE FOREIGN OFFICE OF THE STATE WHERE IT IS SUED TO CONVEY TO THE COURT THAT SAID DEFENDANT IS ENTITLED TO IMMUNITY; CASE AT BAR.— x x x Our ruling in *Holy See v. Del Rosario* provided a template on how a foreign entity desiring to invoke State immunity from suit could duly prove such immunity before our local courts. The principles enunciated in that case were derived from public international law. We stated then: In Public International Law, when a state or international agency wishes to plead sovereign or diplomatic immunity in a foreign court, it requests the Foreign Office of the state where it is sued to convey to the court that said defendant is entitled to immunity. In the United States, the procedure followed is the process of "suggestion," where the foreign state or the international organization sued in an

American court requests the Secretary of State to make a determination as to whether it is entitled to immunity. If the Secretary of State finds that the defendant is immune from suit, he, in turn, asks the Attorney General to submit to the court a "suggestion" that the defendant is entitled to immunity. In England, a similar procedure is followed, only the Foreign Office issues a certification to that effect instead of submitting a "suggestion" (O'Connell, I International Law 130 [1965]; Note: Immunity from Suit of Foreign Sovereign Instrumentalities and Obligations, 50 Yale Law Journal 1088 [1941]). In the Philippines, the practice is for the foreign government or the international organization to first secure an executive endorsement of its claim of sovereign or diplomatic immunity. But how the Philippine Foreign Office conveys its endorsement to the courts varies. In *International Catholic Migration Commission v. Calleja*, 190 SCRA 130 (1990), the Secretary of Foreign Affairs just sent a letter directly to the Secretary of Labor and Employment, informing the latter that the respondent-employer could not be sued because it enjoyed diplomatic immunity. In *World Health Organization v. Aquino*, 48 SCRA 242 (1972), the Secretary of Foreign Affairs sent the trial court a telegram to that effect. In *Baer v. Tizon*, 57 SCRA 1 (1974), the U.S. Embassy asked the Secretary of Foreign Affairs to request the Solicitor General to make, in behalf of the Commander of the United States Naval Base at Olongapo City, Zambales, a "suggestion" to respondent Judge. The Solicitor General embodied the "suggestion" in a Manifestation and Memorandum as *amicus curiae*. x x x [A]s narrated in *Holy See*, it was the Secretary of Foreign Affairs which directed the OSG to intervene in behalf of the United States government in the *Baer* case, and such fact is manifest enough of the endorsement by the Foreign Office. We do not find a similar circumstance that bears here. The Court is thus holds and so rules that GTZ consistently has been unable to establish with satisfaction that it enjoys the immunity from suit generally enjoyed by its parent country, the Federal Republic of Germany. x x x

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LABOR ARBITER'S DECISION WAS NOT A PATENT NULLITY; EXPLAINED.— x x x [B]oth the Labor Arbiter and the Court of Appeals acted within proper bounds when they refused to acknowledge that GTZ is so immune by dismissing the complaint against it. Our finding has additional ramifications

on the failure of GTZ to properly appeal the Labor Arbiter's decision to the NLRC. As pointed out by the OSG, the direct recourse to the Court of Appeals while bypassing the NLRC could have been sanctioned had the Labor Arbiter's decision been a "patent nullity." Since the Labor Arbiter acted properly in deciding the complaint, notwithstanding GTZ's claim of immunity, we cannot see how the decision could have translated into a "patent nullity." As a result, there was no basis for petitioners in foregoing the appeal to the NLRC by filing directly with the Court of Appeals the petition for *certiorari*. It then follows that the Court of Appeals acted correctly in dismissing the petition on that ground. x x x

6. ID.; APPEALS; EFFECT OF FAILURE TO PERFECT AN APPEAL FROM THE LABOR ARBITER'S DECISION; CASE AT BAR.— x x x As a further consequence, since petitioners failed to perfect an appeal from the Labor Arbiter's Decision, the same has long become final and executory. All other questions related to this case, such as whether or not private respondents were illegally dismissed, are no longer susceptible to review, respecting as we do the finality of the Labor Arbiter's Decision.

APPEARANCES OF COUNSEL

Jose Ngaw & Dante Diaz for petitioners.
Mel Mariano T. Ramos for Pura T. Ramos.
Ignacio Litong & Associates for private respondents.

D E C I S I O N

TINGA, *J.*:

On 7 September 1971, the governments of the Federal Republic of Germany and the Republic of the Philippines ratified an Agreement concerning Technical Co-operation (Agreement) in Bonn, capital of what was then West Germany. The Agreement affirmed the countries' "common interest in promoting the technical and economic development of their States, and recogni[zed] the benefits to be derived by both States from closer technical co-operation," and allowed for the conclusion of "arrangements concerning individual projects

of technical co-operation."[1] While the Agreement provided for a limited term of effectivity of five (5) years, it nonetheless was stated that "[t]he Agreement shall be tacitly extended for successive periods of one year unless either of the two Contracting Parties denounces it in writing three months prior to its expiry," and that even upon the Agreement's expiry, its provisions would "continue to apply to any projects agreed upon x x x until their completion."[2]

On 10 December 1999, the Philippine government, through then Foreign Affairs Secretary Domingo Siazon, and the German government, agreed to an Arrangement in furtherance of the 1971 Agreement. This Arrangement affirmed the common commitment of both governments to promote jointly a project called, Social Health Insurance—Networking and Empowerment (SHINE), which was designed to "enable Philippine families–especially poor ones–to maintain their health and secure health care of sustainable quality."[3] It appears that SHINE had already been in existence even prior to the effectivity of the Arrangement, though the record does not indicate when exactly SHINE was constituted. Nonetheless, the Arrangement stated the various obligations of the Filipino and German governments. The relevant provisions of the Arrangement are reproduced as follows:

3. The Government of the Federal Republic of Germany shall make the following contributions to the project.

It shall

(a) second

- one expert in health economy, insurance and health systems for up to 48 expert/months,
- one expert in system development for up to 10 expert/months
- short-term experts to deal with special tasks for a total of up to 18 expert/months,

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[1] *Rollo*, p. 51.

[2] *Id.* at 56-57.

[3] *Id.* at 59.

- project assistants/guest students as required, who shall work on the project as part of their basic and further training and assume specific project tasks under the separately financed junior staff promotion programme of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ);

(b) provide *in situ*

- short-term experts to deal with diverse special tasks for a total of up to 27 expert/months,
- five local experts in health economy, health insurance, community health systems, information technology, information systems, training and community mobilization for a total of up to 240 expert/months,
- local and auxiliary personnel for a total of up to 120 months;

(c) supply inputs, in particular

- two cross-country vehicles,
- ten computers with accessories,
- office furnishings and equipment

up to a total value of DM 310,000 (three hundred and ten thousand Deutsche Mark);

(c) meet

- the cost of accommodation for the seconded experts and their families in so far as this cost is not met by the seconded experts themselves,
- the cost of official travel by the experts referred to in sub-paragraph (a) above within and outside the Republic of the Philippines,
- the cost of seminars and courses,
- the cost of transport and insurance to the project site of inputs to be supplied pursuant to sub-paragraph (c) above, excluding the charges and storage fees referred to in paragraph 4(d) below,
- a proportion of the operating and administrative costs;

x x x x x x x x x

4. The Government of the Republic of the Philippines shall make the following contributions to the project:

It shall

(a) – provide the necessary Philippine experts for the project, in particular one project coordinator in the Philippine Health Insurance Corporation (Philhealth), at least three further experts and a sufficient number of administrative and auxiliary personnel, as well as health personnel in the pilot provinces and in the other project partners, in particular one responsible expert for each pilot province and for each association representing the various target groups,

- release suitably qualified experts from their duties for attendance at the envisaged basic and further training activities; it shall only nominate such candidates as have given an undertaking to work on the project for at least five years after completing their training and shall ensure that these Philippine experts receive appropriate remuneration,

- ensure that the project field offices have sufficient expendables,

- make available the land and buildings required for the project;

(b) assume an increasing proportion of the running and operating costs of the project;

(c) afford the seconded experts any assistance they may require in carrying out the tasks assigned to them and place at their disposal all necessary records and documents;

(d) guarantee that

- the project is provided with an itemized budget of its own in order to ensure smooth continuation of the project.

- the necessary legal and administrative framework is created for the project,

- the project is coordinated in close cooperation with other national and international agencies relevant to implementation,

- the inputs supplied for the project on behalf of the Government of the Federal Republic of Germany are exempted from the cost of licenses, harbour dues, import and export duties and other public charges and fees, as well as storage fees, or that any costs thereof are met, and that they are cleared by customs without delay. The aforementioned exemptions shall, at the request of the implementing agencies also apply to inputs procured in the Republic of the Philippines,

- the tasks of the seconded experts are taken over as soon as possible by Philippine experts,

- examinations passed by Philippine nationals pursuant to this Arrangement are recognized in accordance with their respective standards and that the persons concerned are afforded such opportunities with regard to careers, appointments and advancement as are commensurate with their training.[4]

In the arraignment, both governments likewise named their respective implementing organizations for SHINE. The Philippines designated the Department of Health (DOH) and the Philippine Health Insurance Corporation (Philhealth) with the implementation of SHINE. For their part, the German government "charge[d] the Deustche Gesellschaft für Technische Zusammenarbeit[5] (GTZ[6]) GmbH, Eschborn, with the implementation of its contributions."[7]

Private respondents were engaged as contract employees hired by GTZ to work for SHINE on various dates between December of 1998 to September of 1999. Bernadette Carmela Magtaas was hired as an "information systems manager and project officer of SHINE;"[8] Carolina Dionco as a "Project Assistant of SHINE;"[9] Christopher Ramos as "a project assistant and liason personnel of NHI related SHINE activities by GTZ;"[10] Melvin Dela Paz and Randy Tamayo as programmers;[11] and Edgardo Ramilo as "driver, messenger and multipurpose service man."[12] The employment contracts of all six private respondents

[4] *Id.* at 59-62.

[5] See *id.* at 2. Also known as the German Agency for Technical Cooperation.

[6] "GTZ" is apparently the acronym by which petitioner is commonly identified; we adopt the same for purposes of brevity.

[7] *Rollo,* p. 62.

[8] *Id.* at 64-67.

[9] *Id.* at 68-71.

[10] *Id.* at 72-75.

[11] *Id.* at 76-79, 80-83.

[12] *Id.* at 84-87.

all specified Dr. Rainer Tollkotter, identified as an adviser of GTZ, as the "employer." At the same time, all the contracts commonly provided that "[i]t is mutually agreed and understood that [Dr. Tollkotter, as employer] is a seconded GTZ expert who is hiring the Employee on behalf of GTZ and for a Philippine-German bilateral project named 'Social Health Insurance—Networking and Empowerment (SHINE)' which will end at a given time."[13]

In September of 1999, Anne Nicolay (Nicolay), a Belgian national, assumed the post of SHINE Project Manager. Disagreements eventually arose between Nicolay and private respondents in matters such as proposed salary adjustments, and the course Nicolay was taking in the implementation of SHINE different from her predecessors. The dispute culminated in a letter[14] dated 8 June 2000, signed by the private respondents, addressed to Nicolay, and copies furnished officials of the DOH, Philheath, and the director of the Manila office of GTZ. The letter raised several issues which private respondents claim had been brought up several times in the past, but have not been given appropriate response. It was claimed that SHINE under Nicolay had veered away from its original purpose to facilitate the development of social health insurance by shoring up the national health insurance program and strengthening local initiatives, as Nicolay had refused to support local partners and new initiatives on the premise that community and local government unit schemes were not sustainable—a philosophy that supposedly betrayed Nicolay's lack of understanding of the purpose of the project. Private respondents further alleged that as a result of Nicolay's "new thrust, resources have been used inappropriately;" that the new management style was "not congruent with the original goals of the project;" that Nicolay herself suffered from "cultural insensitivity" that consequently failed to sustain healthy relations with SHINE's partners and staff.

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[13] See *id.* at 64, 68, 72, 76, 80, 84.

[14] *Rollo*, pp. 156-158.

The letter ended with these ominous words:

> The issues that we [the private respondents] have stated here are very crucial to us in working for the project. We could no longer find any reason to stay with the project unless ALL of these issues be addressed immediately and appropriately.[15]

In response, Nicolay wrote each of the private respondents a letter dated 21 June 2000, all similarly worded except for their respective addressees. She informed private respondents that the "project's orientations and evolution" were decided in consensus with partner institutions, Philhealth and the DOH, and thus no longer subject to modifications. More pertinently, she stated:

> You have firmly and unequivocally stated in the last paragraph of your 8th June 2000 letter that you and the five other staff "could no longer find any reason to stay with the project unless ALL of these issues be addressed immediately and appropriately." Under the foregoing premises and circumstances, it is now imperative that I am to accept your resignation, which I expect to receive as soon as possible.[16]

Taken aback, private respondents replied with a common letter, clarifying that their earlier letter was not intended as a resignation letter, but one that merely intended to raise attention to what they perceived as vital issues.[17] Negotiations ensued between private respondents and Nicolay, but for naught. Each of the private respondents received a letter from Nicolay dated 11 July 2000, informing them of the pre-termination of their contracts of employment on the grounds of "serious and gross insubordination, among others, resulting to loss of confidence and trust."[18]

On 21 August 2000, the private respondents filed a complaint for illegal dismissal with the NLRC. Named as respondents

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[15] *Id.* at 157. Emphasis in the original.

[16] *Id.* at 159, 160, 161, 162, 163 & 164. Emphasis not ours.

[17] *Id.* at 165.

[18] *Id.* at 168-173.

therein where GTZ, the Director of its Manila office Hans Peter Paulenz, its Assistant Project Manager Christian Jahn, and Nicolay.

On 25 October 2005, GTZ, through counsel, filed a Motion to Dismiss, on the ground that the Labor Arbiter had no jurisdiction over the case, as its acts were undertaken in the discharge of the governmental functions and sovereign acts of the Government of the Federal Republic of Germany. This was opposed by private respondents with the arguments that GTZ had failed to secure a certification that it was immune from suit from the Department of Foreign Affairs, and that it was GTZ and not the German government which had implemented the SHINE Project and entered into the contracts of employment.

On 27 November 2000, the Labor Arbiter issued an Order[19] denying the Motion to Dismiss. The Order cited, among others, that GTZ was a private corporation which entered into an employment contract; and that GTZ had failed to secure from the DFA a certification as to its diplomatic status.

On 7 February 2001, GTZ filed with the Labor Arbiter a "Reiterating Motion to Dismiss," again praying that the Motion to Dismiss be granted on the jurisdictional ground, and reprising the arguments for dismissal it had earlier raised.[20] No action was taken by the Labor Arbiter on this new motion. Instead, on 15 October 2001, the Labor Arbiter rendered a Decision[21] granting the complaint for illegal dismissal. The Decision concluded that respondents were dismissed without lawful cause, there being "a total lack of due process both substantive and procedural [*sic*]."[22] GTZ was faulted for failing to observe the notice requirements in the labor law. The Decision likewise proceeded from the premise that GTZ had treated the letter

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[19] See *id.* at 204-205. Order penned by Labor Arbiter Ariel Cadiente Santos, the Labor Arbiter who heard and eventually decided the complaint for illegal dismissal.

[20] See *id.* at 206-211.

[21] *Id.* at 212-223.

[22] *Id.*

dated 8 June 2000 as a resignation letter, and devoted some focus in debunking this theory.

The Decision initially offered that it "need not discuss the jurisdictional aspect considering that the same had already been lengthily discussed in the Order de[n]ying respondents' Motion to Dismiss."[23] Nonetheless, it proceeded to discuss the jurisdictional aspect, in this wise:

> Under pain of being repetitious, the undersigned Labor Arbiter has jurisdiction to entertain the complaint on the following grounds:
>
> Firstly, under the employment contract entered into between complainants and respondents, specifically Section 10 thereof, it provides that "contract partners agree that his contract shall be subject to the LAWS of the jurisdiction of the locality in which the service is performed."
>
> Secondly, respondent having entered into contract, they can no longer invoke the sovereignty of the Federal Republic of Germany.
>
> Lastly, it is imperative to be immune from suit, respondents should have secured from the Department of Foreign Affairs a certification of respondents' diplomatic status and entitlement to diplomatic privileges including immunity from suits. Having failed in this regard, respondents cannot escape liability from the shelter of sovereign immunity.[*sic*][24]

Notably, GTZ did not file a motion for reconsideration to the Labor Arbiter's Decision or elevate said decision for appeal to the NLRC. Instead, GTZ opted to assail the decision by way of a special civil action for *certiorari* filed with the Court of Appeals.[25] On 10 December 2001, the Court of Appeals promulgated a Resolution[26] dismissing GTZ's petition, finding

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[23] *Id.* at 219.

[24] *Id.* at 220-221.

[25] Docketed as CA-G.R. SP No. 67794.

[26] *Rollo*, pp. 48-49. Resolution penned by Associate Justice Salvador T. Valdez, Jr. of the Court of Appeals Former Fifteenth Division, and concurred in by Associate Justices Mercedes Gozo-Dadole and Sergio L. Pestaño.

that "judicial recourse at this stage of the case is uncalled for[,] [t]he appropriate remedy of the petitioners [being] an appeal to the NLRC x x x."[27] A motion for reconsideration to this Resolution proved fruitless for GTZ.[28]

Thus, the present petition for review under Rule 45, assailing the decision and resolutions of the Court of Appeals and of the Labor Arbiter. GTZ's arguments center on whether the Court of Appeals could have entertained its petition for *certiorari* despite its not having undertaken an appeal before the NLRC; and whether the complaint for illegal dismissal should have been dismissed for lack of jurisdiction on account of GTZ's insistence that it enjoys immunity from suit. No special arguments are directed with respect to petitioners Hans Peter Paulenz and Anne Nicolay, respectively the then Director and the then Project Manager of GTZ in the Philippines; so we have to presume that the arguments raised in behalf of GTZ's alleged immunity from suit extend to them as well.

The Court required the Office of the Solicitor General (OSG) to file a Comment on the petition. In its Comment dated 7 November 2005, the OSG took the side of GTZ, with the prayer that the petition be granted on the ground that GTZ was immune from suit, citing in particular its assigned functions in implementing the SHINE program—a joint undertaking of the Philippine and German governments which was neither proprietary nor commercial in nature.

The Court of Appeals had premised the dismissal of GTZ's petition on its procedural misstep in bypassing an appeal to NLRC and challenging the Labor Arbiter's Decision directly with the appellate court by way of a Rule 65 petition. In dismissing the petition, the Court of Appeals relied on our ruling in *Air Service Cooperative v. Court of Appeals*.[29] The central issue in that case was whether a decision of a Labor Arbiter

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[27] *Id.* at 45.

[28] The Resolution denying the Motion for Reconsideration was promulgated on 4 March 2002.

[29] 354 Phil. 905 (1998).

rendered without jurisdiction over the subject matter may be annulled in a petition before a Regional Trial Court. That case may be differentiated from the present case, since the Regional Trial Court does not have original or appellate jurisdiction to review a decision rendered by a Labor Arbiter. In contrast, there is no doubt, as affirmed by jurisprudence, that the Court of Appeals has jurisdiction to review, by way of its original *certiorari* jurisdiction, decisions ruling on complaints for illegal dismissal.

Nonetheless, the Court of Appeals is correct in pronouncing the general rule that the proper recourse from the decision of the Labor Arbiter is to first appeal the same to the NLRC. *Air Services* is in fact clearly detrimental to petitioner's position in one regard. The Court therein noted that on account of the failure to correctly appeal the decision of the Labor Arbiter to the NLRC, such judgment consequently became final and executory.[30] GTZ goes as far as to "request" that the Court re-examine *Air Services*, a suggestion that is needlessly improvident under the circumstances. *Air Services* affirms doctrines grounded in sound procedural rules that have allowed for the considered and orderly disposition of labor cases.

The OSG points out, citing *Heirs of Mayor Nemencio Galvez v. Court of Appeals*,[31] that even when appeal is available, the Court has nonetheless allowed a writ of *certiorari* when the orders of the lower court were issued either in excess of or without jurisdiction. Indeed, the Court has ruled before that the failure to employ available intermediate recourses, such as a motion for reconsideration, is not a fatal infirmity if the ruling assailed is a patent nullity. This approach suggested by the OSG allows the Court to inquire directly into what is the main issue–whether GTZ enjoys immunity from suit.

The arguments raised by GTZ and the OSG are rooted in several indisputable facts. The SHINE project was implemented pursuant to the bilateral agreements between the Philippine

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[30] *Id.* at 916-917.

[31] 325 Phil. 1028 (1996).

and German governments. GTZ was tasked, under the 1991 agreement, with the implementation of the contributions of the German government. The activities performed by GTZ pertaining to the SHINE project are governmental in nature, related as they are to the promotion of health insurance in the Philippines. The fact that GTZ entered into employment contracts with the private respondents did not disqualify it from invoking immunity from suit, as held in cases such as *Holy See v. Rosario, Jr.*,[32] which set forth what remains valid doctrine:

> Certainly, the mere entering into a contract by a foreign state with a private party cannot be the ultimate test. Such an act can only be the start of the inquiry. The logical question is whether the foreign state is engaged in the activity in the regular course of business. If the foreign state is not engaged regularly in a business or trade, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act *jure imperii*, especially when it is not undertaken for gain or profit.[33]

Beyond dispute is the tenability of the comment points raised by GTZ and the OSG that GTZ was not performing proprietary functions notwithstanding its entry into the particular employment contracts. Yet there is an equally fundamental premise which GTZ and the OSG fail to address, namely: Is GTZ, by conception, able to enjoy the Federal Republic's immunity from suit?

The principle of state immunity from suit, whether a local state or a foreign state, is reflected in Section 9, Article XVI of the Constitution, which states that "the State may not be sued without its consent." Who or what consists of "the State"? For one, the doctrine is available to foreign States insofar as they are sought to be sued in the courts of the local State,[34] necessary as it is to avoid "unduly vexing the peace of nations."

If the instant suit had been brought directly against the Federal Republic of Germany, there would be no doubt that it is a suit

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[32] G.R. No. 101949, 1 December 1994, 238 SCRA 524.

[33] *Id.* at 536.

[34] See *Syquia v. Almeda Lopez*, 84 Phil. 312 (1949).

brought against a State, and the only necessary inquiry is whether said State had consented to be sued. However, the present suit was brought against GTZ. It is necessary for us to understand what precisely are the parameters of the legal personality of GTZ.

Counsel for GTZ characterizes GTZ as "the implementing agency of the Government of the Federal Republic of Germany," a depiction similarly adopted by the OSG. Assuming that characterization is correct, it does not automatically invest GTZ with the ability to invoke State immunity from suit. The distinction lies in whether the agency is incorporated or unincorporated. The following lucid discussion from Justice Isagani Cruz is pertinent:

> Where suit is filed not against the government itself or its officials but against one of its entities, it must be ascertained whether or not the State, as the principal that may ultimately be held liable, has given its consent to be sued. **This ascertainment will depend in the first instance on whether the government agency impleaded is incorporated or unincorporated.**
>
> **An incorporated agency has a charter of its own that invests it with a separate juridical personality**, like the Social Security System, the University of the Philippines, and the City of Manila. By contrast, the unincorporated agency is so called because it has no separate juridical personality but is merged in the general machinery of the government, like the Department of Justice, the Bureau of Mines and the Government Printing Office.
>
> **If the agency is incorporated, the test of its suability is found in its charter. The simple rule is that it is suable if its charter says so, and this is true regardless of the functions it is performing**. **Municipal corporations, for example, like provinces and cities, are agencies of the State when they are engaged in governmental functions and therefore should enjoy the sovereign immunity from suit. Nevertheless, they are subject to suit even in the performance of such functions because their charter provides that they can sue and be sued**.[35]

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[35] I. CRUZ, *PHILIPPINE POLITICAL LAW* (2002 ed.) at 43. Emphasis supplied. See also *Metran v. Paredes*, 79 Phil. 819 (1948).

State immunity from suit may be waived by general or special law.[36] The special law can take the form of the original charter of the incorporated government agency. Jurisprudence is replete with examples of incorporated government agencies which were ruled not entitled to invoke immunity from suit, owing to provisions in their charters manifesting their consent to be sued. These include the National Irrigation Administration,[37] the former Central Bank,[38] and the National Power Corporation.[39] In *SSS v. Court of Appeals*,[40] the Court through Justice Melencio-Herrera explained that by virtue of an express provision in its charter allowing it to sue and be sued, the Social Security System did not enjoy immunity from suit:

> We come now to the amendability of the SSS to judicial action and legal responsibility for its acts. To our minds, there should be no question on this score considering that the SSS is a juridical entity with a personality of its own. It has corporate powers separate and distinct from the Government. SSS' own organic act specifically provides that it can sue and be sued in Court. These words "sue and be sued" embrace all civil process incident to a legal action. So that, even assuming that the SSS, as it claims, enjoys immunity from suit as an entity performing governmental functions, by virtue of the explicit provision of the aforecited enabling law, the Government must be deemed to have waived immunity in respect of the SSS, although it does not thereby concede its liability. That statutory law has given to the private citizen a remedy for the enforcement and protection of his rights. The SSS thereby has been required to submit to the jurisdiction of the Courts, subject to its right to interpose any lawful defense. Whether the SSS performs governmental or proprietary functions thus becomes unnecessary to belabor. For by that waiver, a private citizen may bring a suit against it for varied objectives,

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[36] See *Traders Royal Bank v. Intermediate Appellate Court*, G.R. No. 68514, 17 December 1990, 192 SCRA 305, 310.

[37] See *Fontanilla v. Maliaman*, G.R. Nos. 55963 & 61045, 27 February 1991, 194 SCRA 486.

[38] See *Arcega v. Court of Appeals*, 160 Phil. 919 (1975); *Olizo v. Central Bank*, 120 Phil. 355 (1964).

[39] See *Rayo v. CFI of Bulacan*, 196 Phil. 572 (1981).

[40] See *SSS v. Court of Appeals*, 205 Phil. 609 (1983).

such as, in this case, to obtain compensation in damages arising from contract, and even for tort.

A recent case squarely in point anent the principle, involving the National Power Corporation, is that of *Rayo v. Court of First Instance of Bulacan*, 110 SCRA 457 (1981), wherein this Court, speaking through Mr. Justice Vicente Abad Santos, ruled:

> "It is not necessary to write an extended dissertation on whether or not the NPC performs a governmental function with respect to the management and operation of the Angat Dam. It is sufficient to say that the government has organized a private corporation, put money in it and has allowed it to sue and be sued in any court under its charter. (R.A. No. 6395, Sec. 3[d]). As a government, owned and controlled corporation, it has a personality of its own, distinct and separate from that of the Government. Moreover, the charter provision that the NPC can 'sue and be sued in any court' is without qualification on the cause of action and accordingly it can include a tort claim such as the one instituted by the petitioners."[41]

It is useful to note that on the part of the Philippine government, it had designated two entities, the Department of Health and the Philippine Health Insurance Corporation (PHIC), as the implementing agencies in behalf of the Philippines. The PHIC was established under Republic Act No. 7875, Section 16(g) of which grants the corporation the power "to sue and be sued in court." Applying the previously cited jurisprudence, PHIC would not enjoy immunity from suit even in the performance of its functions connected with SHINE, however, governmental in nature as they may be.

Is GTZ an incorporated agency of the German government? There is some mystery surrounding that question. Neither GTZ nor the OSG go beyond the claim that petitioner is "the implementing agency of the Government of the Federal Republic of Germany." On the other hand, private respondents asserted before the Labor Arbiter that GTZ was "a private corporation engaged in the implementation of development projects."[42] The

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[41] *Id.* at 624.

[42] See *rollo*, p. 110.

Labor Arbiter accepted that claim in his Order denying the Motion to Dismiss,[43] though he was silent on that point in his Decision. Nevertheless, private respondents argue in their Comment that the finding that GTZ was a private corporation "was never controverted, and is therefore deemed admitted."[44] In its Reply, GTZ controverts that finding, saying that it is a matter of public knowledge that the status of petitioner GTZ is that of the "implementing agency," and not that of a private corporation.[45]

In truth, private respondents were unable to adduce any evidence to substantiate their claim that GTZ was a "private corporation," and the Labor Arbiter acted rashly in accepting such claim without explanation. But neither has GTZ supplied any evidence defining its legal nature beyond that of the bare descriptive "implementing agency." There is no doubt that the 1991 Agreement designated GTZ as the "implementing agency" in behalf of the German government. Yet the catch is that such term has no precise definition that is responsive to our concerns. Inherently, an agent acts in behalf of a principal, and the GTZ can be said to act in behalf of the German state. But that is as far as "implementing agency" could take us. The term by itself does not supply whether GTZ is incorporated or unincorporated, whether it is owned by the German state or by private interests, whether it has juridical personality independent of the German government or none at all.

GTZ itself provides a more helpful clue, inadvertently, through its own official Internet website.[46] In the "Corporate Profile" section of the English language version of its site, GTZ describes itself as follows:

As an international cooperation enterprise for sustainable development with worldwide operations, the federally owned Deutsche

[43] *Id.* at 204.

[44] *Id.* at 278.

[45] *Id.* at 317.

[46] German language version at http://www.gtz.de/de/index.htm, while the English language version is at http://www.gtz.de/en/ (Last visited, 23 March 2009).

Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH supports the German Government in achieving its development-policy objectives. It provides viable, forward-looking solutions for political, economic, ecological and social development in a globalised world. Working under difficult conditions, GTZ promotes complex reforms and change processes. Its corporate objective is to improve people's living conditions on a sustainable basis.

GTZ is a federal enterprise based in Eschborn near Frankfurt am Main. It was founded in 1975 as a company under private law. The German Federal Ministry for Economic Cooperation and Development (BMZ) is its major client. The company also operates on behalf of other German ministries, the governments of other countries and international clients, such as the European Commission, the United Nations and the World Bank, as well as on behalf of private enterprises. GTZ works on a public-benefit basis. All surpluses generated are channeled [*sic*] back into its own international cooperation projects for sustainable development.[47]

GTZ's own website elicits that petitioner is "federally owned," a "federal enterprise," and "founded in 1975 as a company under private law." GTZ clearly has a very meaningful relationship with the Federal Republic of Germany, which apparently owns it. At the same time, it appears that GTZ was actually organized not through a legislative public charter, but under private law, in the same way that Philippine corporations can be organized under the Corporation Code even if fully owned by the Philippine government.

This self-description of GTZ in its own official website gives further cause for pause in adopting petitioners' argument that GTZ is entitled to immunity from suit because it is "an implementing agency." The above-quoted statement does not dispute the characterization of GTZ as an "implementing agency of the Federal Republic of Germany," yet it bolsters the notion that as a company organized under private law, it has a legal personality independent of that of the Federal Republic of Germany.

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[47] "GTZ. Corporate Profile," at http://www.gtz.de/en/unternehmen/1698.htm (Last visited, 23 March 2009).

The Federal Republic of Germany, in its own official website,[48] also makes reference to GTZ and describes it in this manner:

> x x x Going by the principle of "sustainable development," the German Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit GmbH, GTZ) takes on non-profit projects in international "technical cooperation." **The GTZ is a private company owned by the Federal Republic of Germany**.[49]

Again, we are uncertain of the corresponding legal implications under German law surrounding "a private company owned by the Federal Republic of Germany." Yet taking the description on face value, the apparent equivalent under Philippine law is that of a corporation organized under the Corporation Code but owned by the Philippine government, or a government-owned or controlled corporation without original charter. And it bears notice that Section 36 of the Corporate Code states that "[e]very corporation incorporated under this Code has the power and capacity x x x to sue and be sued in its corporate name."[50]

It is entirely possible that under German law, an entity such as GTZ or particularly GTZ itself has not been vested or has been specifically deprived the power and capacity to sue and/or be sued. Yet in the proceedings below and before this Court, GTZ has failed to establish that under German law, it has not consented to be sued despite it being owned by the Federal Republic of Germany. We adhere to the rule that in the absence of evidence to the contrary, foreign laws on a particular subject are presumed to be the same as those of the Philippines,[51] and following the most intelligent assumption we can gather,

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[48] http://www.deutschland.de (Last visited, 23 March 2009).

[49] "Das Deutschland Portal > German Technical Cooperation", at http://www.deutschland.de/ link.php?lang=2&category2=249&link_id=391 (Last visited, 23 March 2009, emphasis supplied).

[50] See CORPORATION CODE, Sec. 36.

[51] *Board of Commissioners v. Dela Rosa*, G.R. Nos. 95122-23, 31 May 1991, 197 SCRA 854; *Miciano v. Brimo*, 50 Phil. 867 (1924); *Lim and Lim v. Collector of Customs*, 36 Phil. 472; *Yam Ka Lim v. Collector of Customs*, 30 Phil. 46 (1915).

GTZ is akin to a governmental owned or controlled corporation without original charter which, by virtue of the Corporation Code, has expressly consented to be sued. At the very least, like the Labor Arbiter and the Court of Appeals, this Court has no basis in fact to conclude or presume that GTZ enjoys immunity from suit.

This absence of basis in fact leads to another important point, alluded to by the Labor Arbiter in his rulings. Our ruling in *Holy See v. Del Rosario*[52] provided a template on how a foreign entity desiring to invoke State immunity from suit could duly prove such immunity before our local courts. The principles enunciated in that case were derived from public international law. We stated then:

> In Public International Law, when a state or international agency wishes to plead sovereign or diplomatic immunity in a foreign court, it requests the Foreign Office of the state where it is sued to convey to the court that said defendant is entitled to immunity.
>
> In the United States, the procedure followed is the process of "suggestion," where the foreign state or the international organization sued in an American court requests the Secretary of State to make a determination as to whether it is entitled to immunity. If the Secretary of State finds that the defendant is immune from suit, he, in turn, asks the Attorney General to submit to the court a "suggestion" that the defendant is entitled to immunity. In England, a similar procedure is followed, only the Foreign Office issues a certification to that effect instead of submitting a "suggestion" (O'Connell, I International Law 130 [1965]; Note: Immunity from Suit of Foreign Sovereign Instrumentalities and Obligations, 50 Yale Law Journal 1088 [1941]).
>
> In the Philippines, the practice is for the foreign government or the international organization to first secure an executive endorsement of its claim of sovereign or diplomatic immunity. But how the Philippine Foreign Office conveys its endorsement to the courts varies. In *International Catholic Migration Commission v. Calleja*, 190 SCRA 130 (1990), the Secretary of Foreign Affairs just sent a letter directly to the Secretary of Labor and Employment, informing the latter that the respondent-employer could not be sued because it enjoyed

[52] *Supra* note 38.

diplomatic immunity. In *World Health Organization v. Aquino*, 48 SCRA 242 (1972), the Secretary of Foreign Affairs sent the trial court a telegram to that effect. In *Baer v. Tizon*, 57 SCRA 1 (1974), the U.S. Embassy asked the Secretary of Foreign Affairs to request the Solicitor General to make, in behalf of the Commander of the United States Naval Base at Olongapo City, Zambales, a "suggestion" to respondent Judge. The Solicitor General embodied the "suggestion" in a Manifestation and Memorandum as *amicus curiae*.[53]

It is to be recalled that the Labor Arbiter, in both of his rulings, noted that it was imperative for petitioners to secure from the Department of Foreign Affairs "a certification of respondents' diplomatic status and entitlement to diplomatic privileges including immunity from suits."[54] The requirement might not necessarily be imperative. However, had GTZ obtained such certification from the DFA, it would have provided factual basis for its claim of immunity that would, at the very least, establish a disputable evidentiary presumption that the foreign party is indeed immune which the opposing party will have to overcome with its own factual evidence. We do not see why GTZ could not have secured such certification or endorsement from the DFA for purposes of this case. Certainly, it would have been highly prudential for GTZ to obtain the same after the Labor Arbiter had denied the motion to dismiss. Still, even at this juncture, we do not see any evidence that the DFA, the office of the executive branch in charge of our diplomatic relations, has indeed endorsed GTZ's claim of immunity. It may be possible that GTZ tried, but failed to secure such certification, due to the same concerns that we have discussed herein.

Would the fact that the Solicitor General has endorsed GTZ's claim of State's immunity from suit before this Court sufficiently substitute for the DFA certification? Note that the rule in public international law quoted in *Holy See* referred to endorsement by the Foreign Office of the State where the suit is filed, such foreign office in the Philippines being the Department of Foreign

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[53] *Id.* at 532.

[54] See *rollo*, pp. 204, 221.

Affairs. Nowhere in the Comment of the OSG is it manifested that the DFA has endorsed GTZ's claim, or that the OSG had solicited the DFA's views on the issue. The arguments raised by the OSG are virtually the same as the arguments raised by GTZ without any indication of any special and distinct perspective maintained by the Philippine government on the issue. The Comment filed by the OSG does not inspire the same degree of confidence as a certification from the DFA would have elicited.

Holy See made reference to *Baer v. Tizon*,[55] and that in the said case, the United States Embassy asked the Secretary of Foreign Affairs to request the Solicitor General to make a "suggestion" to the trial court, accomplished by way of a Manifestation and Memorandum, that the petitioner therein enjoyed immunity as the Commander of the Subic Bay Naval Base. Such circumstance is actually not narrated in the text of *Baer* itself and was likely supplied in *Holy See* because its author, Justice Camilio Quiason, had appeared as the Solicitor in behalf of the OSG in *Baer*. Nonetheless, as narrated in *Holy See*, it was the Secretary of Foreign Affairs which directed the OSG to intervene in behalf of the United States government in the *Baer* case, and such fact is manifest enough of the endorsement by the Foreign Office. We do not find a similar circumstance that bears here.

The Court is thus holds and so rules that GTZ consistently has been unable to establish with satisfaction that it enjoys the immunity from suit generally enjoyed by its parent country, the Federal Republic of Germany. Consequently, both the Labor Arbiter and the Court of Appeals acted within proper bounds when they refused to acknowledge that GTZ is so immune by dismissing the complaint against it. Our finding has additional ramifications on the failure of GTZ to properly appeal the Labor Arbiter's decision to the NLRC. As pointed out by the OSG, the direct recourse to the Court of Appeals while bypassing the NLRC could have been sanctioned had the Labor Arbiter's decision been a "patent nullity." Since the Labor Arbiter acted

[55] 156 Phil. 1 (1974).

properly in deciding the complaint, notwithstanding GTZ's claim of immunity, we cannot see how the decision could have translated into a "patent nullity."

As a result, there was no basis for petitioners in foregoing the appeal to the NLRC by filing directly with the Court of Appeals the petition for *certiorari*. It then follows that the Court of Appeals acted correctly in dismissing the petition on that ground. As a further consequence, since petitioners failed to perfect an appeal from the Labor Arbiter's Decision, the same has long become final and executory. All other questions related to this case, such as whether or not private respondents were illegally dismissed, are no longer susceptible to review, respecting as we do the finality of the Labor Arbiter's Decision.

A final note. This decision should not be seen as deviation from the more common methodology employed in ascertaining whether a party enjoys State immunity from suit, one which focuses on the particular functions exercised by the party and determines whether these are proprietary or sovereign in nature. The nature of the acts performed by the entity invoking immunity remains the most important barometer for testing whether the privilege of State immunity from suit should apply. At the same time, our Constitution stipulates that a State immunity from suit is conditional on its withholding of consent; hence, the laws and circumstances pertaining to the creation and legal personality of an instrumentality or agency invoking immunity remain relevant. Consent to be sued, as exhibited in this decision, is often conferred by the very same statute or general law creating the instrumentality or agency.

WHEREFORE, the petition is *DENIED*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 156766. April 16, 2009]

ROSARIO A. GATUS, *petitioner, vs.* **QUALITY HOUSE, INC. and CHRISTOPHER CHUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; THE CONCLUSION OF THE COURT OF APPEALS THAT PETITIONER'S DISMISSAL WAS FOR A JUST CAUSE WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.— We concur with the CA that there is substantial evidence to support the conclusion that petitioner was dismissed for a just cause. We likewise conclude that no doubt exists in the evidence presented that would call for the application of the rule that doubts must be resolved in favor of the employee. Our own reading of the evidence tells us that the assault on supervisor Leonilo Echavez on June 30, 1997 did indeed take place; that the person who assaulted Echavez was Ferdinand Gatus, the petitioner's husband, is also beyond doubt. Thus, the real factual issue is reduced to the petitioner's connection with, or participation in, the assault on Echavez. If she did cause, motivate or participate in the attack, then the labor arbiter and the CA are correct in their conclusions; otherwise, we should uphold the NLRC's factual findings. We find in the first place that the petitioner harbored a deep resentment against Nilo Echavez, which she reported to her husband Ferdinand. This report infuriated Ferdinand. The petitioner herself provided the basis for this conclusion when she stated in her June 30, 1997 explanation that: *Talagang guilty si Nilo na talagang pinahihirapan ako sa trabaho. Hindi sa nagrereklamo ako; talagang sinasadya nila dahil independent ako. Iyan ang talagang dahilan kaya nila ako ginaganun sa trabaho. Sinabi ko kay Rene noong Sabado dahil hindi ko na matiis ang ginagawa nila sa akin. Sabi ni Rene kayo ang nagsisimula eh. At saka sa trabaho nakikita ko si Shelly, Nelia at Nilo na nagtatawanan tapos nakatingin sa akin. Minsan nahuli ko si Nelia at Shelly na nahihirapan na raw ako.* [*sic*] *Kaya sinumbong ko si Nilo sa mister ko kaya nagalit.* More than providing for the motivation, the petitioner was at the scene

of the attack and actively encouraged it. x x x Under these facts, Ferdinand Gatus would not have acted as he did in the afternoon of June 30, 1997 had petitioner not worked him up into a sufficiently irate mood that led to the attack. In effect, petitioner pushed her husband to get back at Echavez for what the latter had done to her at the workplace. Beyond providing mere motivation, petitioner was even at the scene of the attack and actively prodded her husband to continue with the attack. This is a form of participation no less that led the CA to conclude that – The mauling incident that resulted from the prodding of private respondent shows her to be unfit to continue working for her employer. Her admitted grievances translated into the concrete act of violence performed against her supervisor who represented her employer. Undoubtedly, her continued employment would cause undue strain in the workplace. Taken lightly, the incident would inspire the breakdown of respect and discipline among the workforce. That the petitioner's transgression merits the penalty of dismissal is fully supported by our past rulings. It is, at the very least, a serious misconduct of a grave and aggravated character that directly violated the personal security of another employee due to an employment-related cause. x x x

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; DUE PROCESS IN JUST CAUSES; ABSENCE OF FORMAL OR ACTUAL HEARING IS NOT A VIOLATION THEREOF PROVIDED A PARTY IS GIVEN THE OPPORTUNITY TO BE HEARD; CASE AT BAR.— [T]he CA was correct when it concluded that the petitioner was not denied due process in the consideration of her dismissal. The petitioner insinuated in this regard that due process requires a formal hearing as an absolute requirement in employee dismissals. The pertinent provision of the Labor Code on the matter of hearing is Article 277, which provides—ART. 277. *Miscellaneous provisions*. – x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend

himself x x x. We note and stress once more for everyone's guidance that the law itself only requires **"ample opportunity to be heard."** The essence of this requirement as an element of due process in administrative proceedings is **the chance to explain one's side.** Jurisprudence has amply clarified that administrative due process cannot be fully equated with due process in the strict judicial sense, and that there is no violation of due process even if no formal or actual hearing was conducted, provided a party is given a chance to explain his side. What is frowned upon is the denial of the opportunity to be heard. x x x In the present case, we significantly note that petitioner, after filing her explanation in response to the employer's July 1, 1997 memo, never asked for any clarificatory hearing during the plant-level proceedings. She also had ample opportunity to explain her side *vis-à-vis* the principal charge against her — her involvement in the incident of June 30, 1997. It is a matter of record that the petitioner lost no time in submitting the required explanation, as she submitted it on the very same day that the memo was served on her. The explanation, in Filipino, narrated among others the indifferent and discriminatory treatment she had been receiving from the group of Nilo Echavez, which she also told her husband who got mad. Taken together with the testimonies of other witnesses who gave their statements on how the petitioner encouraged her husband to attack Echavez (all of which were duly and seasonably disclosed), the petitioner cannot claim that the respondent company did not give her ample opportunity to be heard. All told, we are convinced that the respondent company acted based on a valid cause for dismissal and observed the required procedures in so acting.

VELASCO, JR., *J., concurring and dissenting opinion:*

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; JUST CAUSES; PETITIONER VALIDLY DISMISSED FOR CAUSE IN CASE AT BAR.— Insofar as the existence of a valid cause for the dismissal of petitioner Rosario Gatus is concerned, I concur with the *ponencia* of my esteemed colleague.

2. ID.; ID.; ID.; ID.; DUE PROCESS IN JUST CAUSES; "AMPLE OPPORTUNITY TO BE HEARD AND DEFEND HIMSELF";

ELUCIDATED.— With due respect, I beg to disagree with the *ponencia*'s resolution of this issue for the following reasons: (1) Art. 277(b) of the Labor Code provides that: (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter **ample opportunity to be heard and to defend himself** with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal xxx [before] the [NLRC]. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. As I articulated in my concurring and dissenting opinions in a similar case, Art. 277(b) makes reference to according workers "ample opportunity to be heard and defend themselves," but without going into specifics as to what would constitute "ample opportunity." On the postulate, however, that all reasonable doubts in the interpretation of labor laws should be resolved in favor of labor, the words "ample opportunity" should be given a liberal construction as would advance the rights of workers. Webster defines "ample" as "considerably more than adequate or sufficient; marked by more than adequate measure of strength, force, effectiveness or influence." In the context of Art. 277(b) of the Code, "ample opportunity" connotes any kind of assistance that management must accord the employee to enable him to prepare adequately for his defense, including legal representation, irresistibly suggesting that ample opportunity very well covers actual hearing or conference. To put it a bit differently, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this sense, the perceived discrepancy between Art. 277(b) and the IRR in question is more imagined than real and definitely not irreconcilable. It is true that Art. 277(b) speaks **only** of ample opportunity to be heard, not "actual hearing." But as earlier discussed, if not implied, the requisite

hearing is subsumed in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the term "actual hearing" is not used in Art. 277(b), the same thing is true as regards the second written notice informing the employee of the employer's decision which is likewise unclear in said provision.

3. ID.; ID.; ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS FORMULATED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND PRESCRIBING THE DUE PROCEDURAL STANDARDS IN TERMINATION CASES SHOULD BE LIBERALLY CONSTRUED TO FAVOR WORKERS; EXPLAINED.— As earlier indicated and as Art. 4 of the Labor Code no less states, all doubts in the implementation and interpretation of the provisions of the Code, including its IRR, shall be resolved in favor of labor. Since the Code itself -invests the DOLE the quasi-legislative power to issue rules and regulations to set the standard guidelines for the realization of the provision, then the IRR should be liberally construed to favor workers. The IRR, being a result of such rule-making authority, has the force and effect of a statute. It bears to stress that Art. 277 of the Code granted the DOLE the authority to develop the guidelines to enforce the process. It is obviously pursuant to this mandate that the DOLE formulated the ensuing Rule I, Sec. 2(d) of the Implementing Rules of Book VI of the Labor Code prescribing due procedural standards in termination cases: (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes defined in Article 282 of the Labor Code: (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side. (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him. (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. The standards of due process embodied in Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code, and now in Sec. 2(d)(ii), Rule I, Implementing Rules of Books VI of the Labor Code, do not go beyond the terms of

the Labor Code. If at all, the IRR assumes a clarificatory function, encapsulating, as it were, a rather abstract concept into a concrete idea. Indeed, under what adjudicatory setting can an employer best accord employees with an ample opportunity to be heard and defend themselves with the assistance of a representative than in a formal hearing or conference which the IRR provides? It is in that scenario that the playing field becomes even, where the employees are at least given a reasonable chance to respond to the charges made against them, present their evidence in chief, or rebutting evidence in a formal hearing or conference. Therefore, in my humble opinion, there is no discrepancy between the law and the rules implementing the Labor Code.

4. ID.; ID.; ID.; ID.; ID.; ID.; RIGHT TO A HEARING; RATIONALE.— (3) Denying the employees of their right to a hearing in a termination case would necessarily deny them the opportunity to belie the inculpatory allegations made in the first notice and prove their innocence, if that be the case. Notice can be taken of the limited opportunity given to the employees by the directive in the first written notice that embodies the charges. As it usually happens, the directive allows them, within a fixed limited period, just to explain their side, a veritable show-cause routine, but without the right to present evidence. Moreover, a hearing gives employees a lead time to secure expert legal advice to brief him of his rights and obligations under, and the intricacies of, the law. A mere first notice is not adequate enough for employees to collate and sift evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice which cites the company rules breached, without detailing the facts and circumstances relevant to the charges and without appending the pieces of supporting evidence. Lastly, the holding of an actual hearing will obviate the obnoxious practice of railroaded dismissals, as the employers would be compelled present convincing evidence to support the charges. In all, the advantages far outweigh the disadvantages in holding an actual hearing. (4) On the practical viewpoint, a hearing affords both the employer and the employee the opportunity to address minor irritants and settle any misunderstanding *via* the use of alternative dispute resolution to avoid the filing of labor relation cases. It is important that a hearing is prescribed by the law since this is the most opportune time for discussing amicable settlement. Relations

between the parties may still be cordial, and the likelihood of a compromise is high during the hearing stage. Once a termination order issues, the possibility of an amicable settlement is almost nil owing to the ill-feelings engendered by the dismissal proceedings. Thus, a hearing can most certainly assist the parties come up with an out-of-court settlement which would be less expensive, creating a "win-win" situation for them.

5. ID.; ID.; ID.; ID.; ID.; A LIBERAL INTERPRETATION OF ARTICLE 277(B) OF THE LABOR CODE WOULD HEW WITH THE PRESCRIPTION OF ARTICLE XIII OF THE CONSTITUTION ON FULL PROTECTION TO LABOR AND THE PROMOTION OF SOCIAL JUSTICE.— [A] liberal interpretation of Art. 277(b) of the Labor Code would hew with the prescription of Art. XIII of the Constitution on full protection to labor and the promotion of social justice, a basic postulate that "those who have less in life must have more in law." Social justice commands that the State, as *parens patriae*, and guardian of the general welfare of the people, afford protection to the needy and the less fortunate members of society, meaning the working class. This command becomes all the more urgent in labor cases where security of tenure is an integral issue. The Court said so in *Rance v. NLRC*, where we declared: It is the policy of the state to assure the right of workers to "security of tenure" x x x. The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code x x x. Dismissal is not justified for being arbitrary where the workers were denied due process x x x and a clear denial of due process, or constitutional right must be safeguarded against at all times. x x x In the normal course of an employer-employee relationship, the latter is oftentimes on the disadvantage or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively depriving them from their usual means of livelihood. One's right to his work is a property right well within the context of the constitutional guarantee against depriving one of property without due process.

APPEARANCES OF COUNSEL

Potenciano A. Flores Jr. for petitioner.
Baizas Magsino Recinto Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Assailed before this Court *via* a petition for review under Rule 45 of the Rules of Court are:

(a) the Decision of the Court of Appeals (*CA*) promulgated on September 25, 2002[1] which reversed and set aside the decision of the National Labor Relations Commission (*NLRC*) promulgated on July 28, 1999;[2] and

(b) the Resolution of the CA promulgated on January 15, 2003, which denied the motion for reconsideration of its September 25, 2002 Decision.[3]

THE FACTS

Petitioner Rosario A. Gatus (*petitioner*) started her employment as an assembler with respondent Quality House, Inc. (*respondent company*) on July 14, 1987. The respondent company placed her under preventive suspension on July 1, 1997 through a notice that partly stated: "In view of the incident that occurred yesterday, 30 June 1997, between 4:00 to 4:30 p.m. at Mapa Avenue, Sta. Mesa, Manila involving your husband, Ferdinand Gatus, yourself and your co-employee, Leonilo Echavez,[4] you are hereby given a preventive suspension starting today, 01 July 1997, to end on 08 July 1997, pending investigation of the case."[5]

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[1] Penned by Associate Justice Portia A. Hormachuelos, and concurred in by Associate Justice Elvi S. John Asuncion and Associate Justice Juan Q. Enriquez; *rollo*, pp. 51-57.

[2] *Id.*, pp. 110-114.

[3] *Id.*, p. 59.

[4] Also referred to as Nilo Echavez.

[5] *Id.*, p. 60.

The assailed decision narrated the June 30, 1997 incident as follows:

> It appears that on June 30, 1997, Mr. Echavez [petitioner] and her husband and other employees of [respondent] corporation, namely, Nelia Burabo and Reynaldo Padayao, were in a waiting shed when [petitioner's] husband suddenly turned towards Echavez and mauled the latter. Echavez fell to the ground and sustained several bruises, soft tissue swelling and musculoskeletal pain, as shown by a medico-legal report (*Rollo*, p. 65) and Echavez' affidavit (*Rollo*, pp. 70-71). Witnesses executed affidavits stating that private respondent had instigated her husband by urging him: *"Sige pa! sige pa!"*[6]

The petitioner promptly submitted on the same date her explanation in response to the respondent company's July 1, 1997 notice.[7] She complained in Filipino that she was experiencing difficulties in her work, caused by her co-employees Shelly, Rene and Nilo Echavez, due to her trade union activities. She claimed that she was being harassed by the three, especially Nilo Echavez, because she did not join the Philippine Association of Free Labor Unions (*PAFLU*). She said she preferred to be an independent unionist. She narrated that the harassment and humiliation persisted to the point of becoming unbearable; she was left with no recourse but to tell her husband about her workplace problems. This made her husband mad.

The petitioner responded to the preventive suspension by filing, on July 7, 1997, a complaint for illegal suspension and damages against the respondents. In a memorandum dated July 9, 1997, the respondent company, through Director Carmelita C. Go, terminated the petitioner's employment.[8] The petitioner accordingly amended her complaint on September 10, 1997, to reflect her charges of unfair labor practice and illegal dismissal, with claims for moral and exemplary damages.

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[6] *Id.*, p. 52, par. 1.

[7] *Id.*, p. 61.

[8] *Id.*, p. 62.

The petitioner reiterated before the labor arbiter her concerns about her workplace difficulties. She especially bewailed the discrimination against her by the respondents and by supervisor Leonilo Echavez on account of her active participation in the formation of the Quality House, Inc. Workers Union (an independent labor union) and her disaffiliation, together with other employees, from PAFLU. She reported her difficulties to her husband Ferdinand Gatus (Ferdinand), who promptly confronted Echavez; the confrontation led to the encounter between Ferdinand and Echavez when the latter was about to attack Ferdinand.[9]

The respondents' Reply narrated the infractions the petitioner committed during her employment that showed her continuing poor work attitude, and for which she received the penalties of reprimand and two suspensions. She was also transferred to another section when her work attitude turned from bad to worse. The last infraction was the June 30, 1997 incident when, at her instigation, her husband Ferdinand physically attacked Leonilo Echavez. The respondent company terminated her services when it found her explanation unsatisfactory. The termination was effective upon her receipt of the respondent company's memo dated July 9, 1997.[10]

Labor Arbiter Potenciano S. Cañizares, Jr. dismissed the complaint for lack of merit on March 25, 1998.[11] The arbiter found no substantial evidence that showed that the respondents committed unfair labor practice. He likewise found that the mauling incident that occurred outside, but adjacent to, the respondent company's premises was instigated by petitioner; that it was a work-related matter; and that her act of bringing her husband Ferdinand to physically assault her supervisor was worse than if she did the assault herself. The arbiter concluded that the petitioner's continued service with the company would be inimical to the employer's interest, and that her dismissal was for a just cause under Art. 282 of the Labor Code.

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[9] *Supra* note 6.

[10] *Supra* note 8.

[11] *Rollo*, pp. 95-101.

The petitioner appealed to the NLRC on April 30, 1998.[12] On July 28, 1999, the NLRC affirmed the labor arbiter's ruling, finding that the physical assault on Leonilo Echavez that the petitioner instigated constitutes a just cause for the termination of her employment.[13]

The petitioner moved for, and successfully secured, a reconsideration of the NLRC's decision.[14] The new NLRC ruling, promulgated on June 8, 2001,[15] referred the case to Labor Arbiter Luis D. Flores for review and hearing, with instructions to rely on Article 221 of the Labor Code if necessary.[16] On November 15, 2000, Arbiter Flores submitted a report recommending the petitioner's reinstatement, with full backwages and without loss of seniority rights. The NLRC found the report to be supported by the facts and the law and, on this basis, reversed its earlier decision. The respondents unsuccessfully moved for the reconsideration of the NLRC's reconsidered ruling, and thereafter sought relief from the CA by way of a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court.

In view of the variance in the findings of fact of the labor arbiter with those of the NLRC, as well as the allegation of grave abuse of discretion, the CA opted to review the facts of the case, as an exception to the rule that factual findings of quasi-judicial agencies, like the NLRC, are accorded respect and finality, if supported by substantial evidence. On September 25, 2002, the CA promulgated the decision assailed in the present

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[12] *Id.*, pp. 102-109.

[13] *Id.*, pp. 110-114.

[14] *Id.*, pp. 115-125.

[15] *Id.*, pp. 127- 137.

[16] Art. 221 — *Technical rules not binding and prior resort to amicable settlement.* — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts.

petition, ruling that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it reinstated the petitioner and awarded her monetary benefits. The petitioner filed the present petition with this Court when the CA denied, on January 15, 2003, the motion for reconsideration she subsequently filed.[17]

THE PETITION

The petition is anchored on the following grounds —

1. the CA erred in reversing and setting aside the decision of the NLRC and reinstating that of the labor arbiter, contrary to the evidence and settled jurisprudence.

2. the CA erred in not resolving the doubt in the evidence presented by the employee and that of the employer in favor of the employee.

In a memorandum filed on August 13, 2003,[18] the petitioner claims that: the CA did not give any plausible or legal reason in upholding the findings of the labor arbiter and disregarding those of the NLRC – it merely brushed aside the NLRC's well-founded conclusions and adopted the factual findings of the labor arbiter; and, these findings of the labor arbiter rested solely on the respondents' naked assertions and self-serving statements, in marked contrast with the findings of the NLRC which are entitled to respect and finality because they are supported by substantial evidence. Citing *Sanyo Travel Corporation, et al. v. NLRC, et al.,*[19] the petitioner posits that the employer must prove the validity of a dismissal; it is not for the employee to prove its invalidity.

The petitioner further contends that the respondents failed to prove that her dismissal was for a just and valid cause; thus, her dismissal was illegal for contravening Article 277 (b)[20] of

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[17] *Supra* note 3.

[18] *Rollo*, pp. 171-202.

[19] G.R. No. 121449, October 2, 1997, 280 SCRA 129.

[20] x x x The burden of proving the termination was for a valid or authorized cause shall rest on the employer x x x.

the Labor Code. She essentially questions the CA's finding that she instigated her husband's assault on her supervisor. Her alleged utterance of the words *"sige pa, sige pa"* was never proven; even the statements of her supervisor, Leonilo Echavez, regarding the incident (which the labor arbiter relied upon) were inconsistent. In fact, the affidavit which Echavez submitted to the Office of the Prosecutor did not state that she uttered the words *"sige pa, sige pa"*; thus, the Prosecutor's Office did not find sufficient evidence to conclude that she participated in the incident. The petitioner also claims that the CA wrongly adopted the labor arbiter's conclusion that her act of complaining to her husband about her supervisor constitutes an admission of her participation in the assault. She alleges that it is only natural for a wife to relate to her husband her workplace experiences, as she has no one to talk to except the person closest to her heart; this communication cannot thus be considered an act of instigation. The petitioner asserts that since doubts exist regarding the alleged instigation, such doubts should be resolved in her favor.

The petitioner also submits that the act attributed to her does not pertain to the performance of her duties, and is not an act that would render her unfit to continue working for the company.

Further, the petitioner faults the CA for citing her poor work attitude as an additional basis for dismissal and as a reason that militates against her retention in the company; she claimed that this cited reason is not true, is beside the point and an afterthought. She argues that her previous infractions may be used as a ground for dismissal only if they directly relate to the proximate cause of dismissal; this linkage was not shown in the present case.

Lastly, the petitioner claims that she was dismissed without prior administrative investigation that allowed her to confront her accusers and the witnesses against her; she was simply placed under preventive suspension and eventually dismissed from work without any hearing.

THE CASE FOR RESPONDENTS

In a memorandum filed on August 21, 2003,[21] the respondents raise the following issues –

1. whether the petition distinctly sets forth questions of law;

2. whether the findings of fact of the CA are conclusive;

3. whether the appellate court erred in rendering the decisions subject of the petition; and

4. whether the petitioner's termination from employment is valid.

On the first issue, the respondents claim that the petition is fatally defective because it did not raise questions of law, as required under Rule 45 of the Rules of Court. They contend that the petition calls for a re-evaluation and re-assessment of the evidence considered and passed upon by the appellate court.

The respondents see no need for the re-examination of the facts since the CA's findings of fact are conclusive on the Court and are supported by substantial evidence. To stress that the assailed CA rulings are supported by evidence, they point to the previous dismissals of the petitioner's complaint: *first*, by the labor arbiter in his March 25, 1998 decision[22] in NLRC-NCR Case No. 00-07-04771-97; *second*, by the NLRC's July 28, 1999 decision;[23] and *third*, by the CA's decision[24] dated September 25, 2002, and resolution[25] dated January 15, 2003.

The respondents insist that the CA committed no error in reviewing the evidence presented. While the factual findings of the NLRC are generally conclusive and binding on the appellate courts, there were conflicting factual findings by the

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[21] *Rollo*, pp. 205-237.

[22] *Supra* note 11.

[23] *Supra* note 13.

[24] *Supra* note 1.

[25] *Supra* note 3.

labor arbiter and by the NLRC, which necessitated a re-examination of the evidence.

OUR RULING

We find no merit in the petition. The CA correctly reversed the NLRC, thereby giving way to the labor arbiter's ruling that the petitioner was not illegally dismissed.

At the outset, we clarify that the petition properly raises both factual and legal questions. The variance in the factual findings below compels us to look at the evidence to settle the factual issues raised. The petition likewise raises the legal issue of whether the petitioner has been accorded due process.

The Evidentiary Issue

We concur with the CA that there is substantial evidence to support the conclusion that petitioner was dismissed for a just cause. We likewise conclude that no doubt exists in the evidence presented that would call for the application of the rule that doubts must be resolved in favor of the employee.[26]

Our own reading of the evidence tells us that the assault on supervisor Leonilo Echavez on June 30, 1997[27] did indeed take place; that the person who assaulted Echavez was Ferdinand Gatus, the petitioner's husband, is also beyond doubt. Thus, the real factual issue is reduced to the petitioner's connection with, or participation in, the assault on Echavez. If she did cause, motivate or participate in the attack, then the labor arbiter and the CA are correct in their conclusions; otherwise, we should uphold the NLRC's factual findings.

We find in the first place that the petitioner harbored a deep resentment against Nilo Echavez, which she reported to her husband Ferdinand. This report infuriated Ferdinand. The petitioner herself provided the basis for this conclusion when she stated in her June 30, 1997 explanation that:

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[26] *Sy v. Court of Appeals,* G.R. No. 142293, February 27, 2003, 398 SCRA 301.

[27] *Supra* note 5.

Talagang guilty si Nilo na talagang pinahihirapan ako sa trabaho. Hindi sa nagrereklamo ako; talagang sinasadya nila dahil independent ako. Iyan ang talagang dahilan kaya nila ako ginaganun sa trabaho. Sinabi ko kay Rene noong Sabado dahil hindi ko na matiis ang ginagawa nila sa akin. Sabi ni Rene kayo ang nagsisimula eh. At saka sa trabaho nakikita ko si Shelly, Nelia at Nilo na nagtatawanan tapos nakatingin sa akin. Minsan nahuli ko si Nelia at Shelly na nahihirapan na raw ako. [*sic*] *Kaya sinumbong ko si Nilo sa mister ko kaya nagalit.*

More than providing for the motivation, the petitioner was at the scene of the attack and actively encouraged it. Thus, the CA concluded—

It is undisputed that private respondent's act of instigating her husband to inflict more violence ("*Sige pa! Sige pa*!") on her supervisor enraged and emboldened him. The incident was work-related having been brought about by respondent's constant complaints about perceived discrimination against her in the workplace. The fact that her husband, who was not an employee of the corporation, came to the waiting shed at the precise time that the unsuspecting supervisor Echavez was in the waiting shed supported Arbiter Cañizares finding that the husband purposely went to the company's premises to confront the supervisor and thereafter to maul the latter.

The petitioner tried to downplay her involvement in the incident of June 30, 1997 with her denial that she urged her husband to continue hitting Echavez. She contended that she could not have uttered the exhortatory remarks *"sige pa, sige pa"* at the moment her husband was attacking Echavez, because Echavez himself did not mention it in his affidavit before the Prosecutor's Office. Echavez, however, referred to the petitioner's presence and participation in the Incident Report he filed with the respondent company.[28] He was corroborated on this point by two of the petitioner's co-employees, Nelia Burabo and Reynaldo Padayao, who witnessed the incident.[29]

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[28] *Rollo*, pp. 79-80; Annex "G", Respondents' Position Paper in NLRC-NCR-No. 00-07-04771-97.

[29] *Id.,* pp. 80-89.

Significantly, the petitioner had nothing to say about the corroborating statements of Burabo and Padayao.

Under these facts, Ferdinand Gatus would not have acted as he did in the afternoon of June 30, 1997 had petitioner not worked him up into a sufficiently irate mood that led to the attack. In effect, petitioner pushed her husband to get back at Echavez for what the latter had done to her at the workplace. Beyond providing mere motivation, petitioner was even at the scene of the attack and actively prodded her husband to continue with the attack. This is a form of participation no less that led the CA to conclude that —

> The mauling incident that resulted from the prodding of private respondent shows her to be unfit to continue working for her employer. Her admitted grievances translated into the concrete act of violence performed against her supervisor who represented her employer. Undoubtedly, her continued employment would cause undue strain in the workplace. Taken lightly, the incident would inspire the breakdown of respect and discipline among the workforce.

That the petitioner's transgression merits the penalty of dismissal is fully supported by our past rulings.[30] It is, at the very least, a serious misconduct of a grave and aggravated character that directly violated the personal security of another employee due to an employment-related cause. Thus, the disciplinary measure imposed is not a matter where the company and we should tread carefully and show administrative leniency.

The Due Process Issue

Similarly, the CA was correct when it concluded that the petitioner was not denied due process in the consideration of her dismissal. The petitioner insinuated in this regard that due process requires a formal hearing as an absolute requirement in employee dismissals.

The pertinent provision of the Labor Code on the matter of hearing is Article 277, which provides—

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[30] *Royo v. NLRC*, G.R. No. 109609, May 8, 1996, 256 SCRA 639; *Flores v. NLRC*, G.R. No. 109362, May 15, 1996, 256 SCRA 735.

ART. 277. *Miscellaneous provisions.* — x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

We note and stress once more for everyone's guidance that the law itself only requires **"ample opportunity to be heard."** The essence of this requirement as an element of due process in administrative proceedings is **the chance to explain one's side**. Jurisprudence has amply clarified that administrative due process cannot be fully equated with due process in the strict judicial sense,[31] and that there is no violation of due process even if no formal or actual hearing was conducted, provided a party is given a chance to explain his side. What is frowned upon is the denial of the opportunity to be heard.[32] We have decisively settled this issue in ***Felix B. Perez and Amante G. Doria v. Philippine Telegraph and Telephone Company and***

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[31] *Concerned Officials of MWSS v. Vasquez,* G.R. No. 109113, January 25, 1995, 240 SCRA 502.

[32] *Phil. Airlines, Inc. v. NLRC,* G.R. No. 87353, July 3, 1991, 198 SCRA 748; see also *Audion Electric Co. v. NLRC,* G.R. No. 106648, June 19, 1999, 308 SCRA 341.

Jose Luis Santiago,[33] a decision penned by Mr. Justice Renato C. Corona, where we held:

> Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).
>
> Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should not be taken to mean an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment. The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. The "*very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.*"
>
> The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To continue it to a single rigid proceeding such as a formal hearing will defeat its spirit.
>
> Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outline therein shall be observed "*substantially,*" not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*

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[33] G.R. No. 152048, March 31, 2009.

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. "*To be heard" does not mean verbal argumentation inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.* Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial type" hearing, although preferred is not absolutely necessary to satisfy the employee's right to be heard.

In the present case, we significantly note that petitioner, after filing her explanation in response to the employer's July 1, 1997 memo, never asked for any clarificatory hearing during the plant-level proceedings. She also had ample opportunity to explain her side *vis-à-vis* the principal charge against her — her involvement in the incident of June 30, 1997. It is a matter of record that the petitioner lost no time in submitting the required explanation,[34] as she submitted it on the very same day that the memo was served on her.[35] The explanation, in Filipino, narrated among others the indifferent and discriminatory treatment she had been receiving from the group of Nilo Echavez, which she also told her husband who got mad. Taken together with the testimonies of other witnesses who gave their statements on how the petitioner encouraged her husband to attack Echavez (all of which were duly and seasonably disclosed), the petitioner cannot claim that the respondent company did not give her ample opportunity to be heard. All told, we are convinced that the respondent company acted based on a valid cause for dismissal and observed the required procedures in so acting.

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[34] *Supra* note 6.

[35] *Supra* note 4.

On the previous infractions that the CA cited in justifying the petitioner's dismissal,[36] we note that the CA did not dismiss the petitioner on the basis of these previous infractions. These were cited, more than anything else, as background and supporting information, regarding the petitioner's work attitude: she had low regard for her job and would not hesitate to disrupt the workplace and her co-employees, as she had manifested in the June 30, 1997 incident. That these infractions do not have direct bearing on the proximate cause for her dismissal – the incident of June 30, 1997 – is not a valid argument, as they were not in fact cited as considerations directly related to the proximate cause; they merely served as gauges of her work attitude and her continued fitness to stay in the respondent company.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit. Costs against the petitioner.

SO ORDERED.

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

Velasco, Jr., J., with concurring and dissenting opinion.

CONCURRING and DISSENTING OPINION

VELASCO, JR., *J.*:

Insofar as the existence of a valid cause for the dismissal of petitioner Rosario Gatus is concerned, I concur with the *ponencia* of my esteemed colleague. However, I would like to take exception to the conclusion that petitioner was not denied due process in the consideration of her dismissal, she having been given the opportunity to be heard when "the company asked her to explain her side *vis-à-vis* the principal charge against her––her involvement in the [mauling] incident of June 30, 1997."[1]

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[36] *Rollo*, p. 198.

[1] *Ponencia*, p. 11.

As can be gathered from the *ponencia*, on July 1, 1997, respondent company placed petitioner under preventive suspension pending an investigation on the June 30 incident referred to, where she allegedly urged her husband to continue hitting her co-employee, one Nilo Echavez. On the very day she received the preventive suspension notice, petitioner submitted her explanation. Following petitioner's filing of a complaint for illegal suspension––later amended to cover illegal dismissal––the company, via a memorandum of July 9, 1997, terminated petitioner's employment without a formal hearing.

My dissent revolves around only on this main issue: Was Gatus, before her dismissal, entitled to a formal hearing or conference as mandated by the Implementing Rules and Regulations (IRR) of Book V of the Labor Code?

The *ponencia* answered the poser in the negative. As there held, Article 277(b) of the Labor Code merely requires the employer to provide an employee with ample opportunity to be heard, which in turn means the chance to explain one's side. The *ponencia* would seem to suggest that Section 2(b), Rule XXIII of the IRR of V of the Code,[2] by requiring a formal hearing, went beyond the terms and provisions of the Labor Code.

With due respect, I beg to disagree with the *ponencia*'s resolution of this issue for the following reasons:

(1) Art. 277(b) of the Labor Code provides that:

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter **ample opportunity to be heard and to defend himself** with the assistance of his representative if he so desires in accordance

[2] Now only Sec. 2(d)(ii), Rule I, Implementing Rules of Book VI of the Labor Code remains, as amended by Department Order No. 40-03, Series of 2003.

with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal xxx [before] the [NLRC]. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied.)

As I articulated in my concurring and dissenting opinions in a similar case,[3] Art. 277(b) makes reference to according workers "ample opportunity to be heard and defend themselves," but without going into specifics as to what would constitute "ample opportunity." On the postulate, however, that all reasonable doubts in the interpretation of labor laws should be resolved in favor of labor,[4] the words "ample opportunity" should be given a liberal construction as would advance the rights of workers. Webster defines "ample" as "considerably more than adequate or sufficient; marked by more than adequate measure of strength, force, effectiveness or influence."[5] In the context of Art. 277(b) of the Code, "ample opportunity" connotes any kind of assistance that management must accord the employee to enable him to prepare adequately for his defense, including legal representation,[6] irresistibly suggesting that ample opportunity very well covers actual hearing or conference. To put it a bit differently, opportunity to be heard does not exclude an actual or formal hearing since such requirement would grant more than sufficient chance for an employee to be heard and adduce evidence. In this sense, the perceived discrepancy between Art. 277(b) and the IRR in question is more imagined than real and definitely not irreconcilable.

It is true that Art. 277(b) speaks **only** of ample opportunity to be heard, not "actual hearing." But as earlier discussed,

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[3] *Perez v. PT &T*, G.R. No. 152048, April 7, 2009.

[4] *IPI v. Sec. of Labor*, G.R. Nos. 92181-83, January 9, 1992.

[5] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 74 (1993).

[6] *Balayan Colleges v. NLRC*, 255 SCRA 1; *Manebo v. NLRC*, 229 SCAD 240.

if not implied, the requisite hearing is subsumed in the phrase "ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires." Even if the term "actual hearing" is not used in Art. 277(b), the same thing is true as regards the second written notice informing the employee of the employer's decision which is likewise unclear in said provision. Thus, the reality that Art. 277(b) does not expressly mention actual hearing is not, without more, a legal impediment for the Department of Labor and Employment (DOLE) Secretary issuing a rule (Sec. 2[d][ii], Rule I, Implementing Rules of Book VI of the Labor Code) implementing the provision that what really is contemplated is an actual hearing or conference. It cannot be overemphasized that the Secretary of Labor likewise issued a rule on the need for a second written notice on the decision rendered in illegal dismissal proceedings notwithstanding the glaring silence of Art. 277(b) on the need for a written notice of the employer's/management's decision.

(2) As earlier indicated and as Art. 4 of the Labor Code no less states, all doubts in the implementation and interpretation of the provisions of the Code, including its IRR, shall be resolved in favor of labor. Since the Code itself -invests the DOLE the quasi-legislative power to issue rules and regulations to set the standard guidelines for the realization of the provision, then the IRR should be liberally construed to favor workers. The IRR, being a result of such rule-making authority, has the force and effect of a statute. It bears to stress that Art. 277 of the Code granted the DOLE the authority to develop the guidelines to enforce the process. It is obviously pursuant to this mandate that the DOLE formulated the ensuing Rule I, Sec. 2(d) of the Implementing Rules of Book VI of the Labor Code prescribing due procedural standards in termination cases:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The standards of due process embodied in Sec. 2(b), Rule XXIII, Implementing Rules of Book V of the Labor Code, and now in Sec. 2(d)(ii), Rule I, Implementing Rules of Books VI of the Labor Code, do not go beyond the terms of the Labor Code. If at all, the IRR assumes a clarificatory function, encapsulating, as it were, a rather abstract concept into a concrete idea. Indeed, under what adjudicatory setting can an employer best accord employees with an ample opportunity to be heard and defend themselves with the assistance of a representative than in a formal hearing or conference which the IRR provides? It is in that scenario that the playing field becomes even, where the employees are at least given a reasonable chance to respond to the charges made against them, present their evidence in chief, or rebut evidence in a formal hearing or conference. Therefore, in my humble opinion, there is no discrepancy between the law and the rules implementing the Labor Code.

(3) Denying the employees of their right to a hearing in a termination case would necessarily deny them the opportunity to belie the inculpatory allegations made in the first notice and prove their innocence, if that be the case. Notice can be taken of the limited opportunity given to the employees by the directive in the first written notice that embodies the charges. As it usually happens, the directive allows them, within a fixed limited period, just to explain their side, a veritable show-cause routine, but without the right to present evidence. Moreover, a hearing gives employees a lead time to secure expert legal advice to brief him of his rights and obligations under, and the intricacies

of, the law. A mere first notice is not adequate enough for employees to collate and sift evidence for their defense. Most often, the first notice merely serves as or is limited to a general notice which cites the company rules breached, without detailing the facts and circumstances relevant to the charges and without appending the pieces of supporting evidence. Lastly, the holding of an actual hearing will obviate the obnoxious practice of railroaded dismissals, as the employers would be compelled present convincing evidence to support the charges. In all, the advantages far outweigh the disadvantages in holding an actual hearing.

(4) On the practical viewpoint, a hearing affords both the employer and the employee the opportunity to address minor irritants and settle any misunderstanding *via* the use of alternative dispute resolution to avoid the filing of labor relation cases. It is important that a hearing is prescribed by the law since this is the most opportune time for discussing amicable settlement. Relations between the parties may still be cordial, and the likelihood of a compromise is high during the hearing stage. Once a termination order issues, the possibility of an amicable settlement is almost nil owing to the ill-feelings engendered by the dismissal proceedings. Thus, a hearing can most certainly assist the parties come up with an out-of-court settlement which would be less expensive, creating a "win-win" situation for them.

(5) Last, but not least, a liberal interpretation of Art. 277(b) of the Labor Code would hew with the prescription of Art. XIII of the Constitution on full protection to labor and the promotion of social justice, a basic postulate that "those who have less in life must have more in law." Social justice commands that the State, as *parens patriae*, and guardian of the general welfare of the people, afford protection to the needy and the less fortunate members of society, meaning the working class. This command becomes all the more urgent in labor cases where security of tenure is an integral issue. The Court said so in *Rance v. NLRC*, where we declared:

> It is the policy of the state to assure the right of workers to "security of tenure" x x x. The guarantee is an act of social justice. When a

person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code x x x. Dismissal is not justified for being arbitrary where the workers were denied due process x x x and a clear denial of due process, or constitutional right must be safeguarded against at all times.[7] x x x (Citations omitted.)

In the normal course of an employer-employee relationship, the latter is oftentimes on the disadvantage or inferior position. Without the mandatory requirement of a hearing, employees may be unjustly terminated from their work, effectively depriving them from their usual means of livelihood. One's right to his work is a property right well within the context of the constitutional guarantee[8] against depriving one of property without due process.

The Court, to be sure, has applied the imperatives of social justice even to instances of justifiable termination by granting equitable relief to the erring employees. We also termed social justice as "compassionate" justice.[9] As it were, poverty and gross inequality are among the underlying major problems of the country. Given this postulate, laws and procedures which have the aim of alleviating those problems should be liberally construed and interpreted in favor of the underprivileged. Thus, the Labor Code should receive a liberal interpretation as to attain its lofty purpose.[10] That should have been the case here.

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[7] No. 68147, June 30, 1988, 163 SCRA 279, 284-285.

[8] *Batangas Laguna Tayabas Bus Co. v. Court of Appeals*, No. L-38482, June 18, 1976, 71 SCRA 470, 480.

[9] *Tanala, v. NLRC*, G.R. No. 116588, January 24, 1996, 252 SCRA 314.

[10] *Manahan v. Employees' Compensation Commission*, No. L-44899, April 22, 1981, 104 SCRA 198, 202.

FIRST DIVISION

[G.R. No. 157862. April 16, 2009]

PHILIPPINE COUNTRYSIDE RURAL BANK (LILOAN, CEBU), INC., *petitioner, vs.* **JOVENAL B. TORING,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; ELUCIDATED.— A summary judgment is a procedural technique designed to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record. Its purpose is to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper and the movant is not allowed to obtain immediate relief. A "genuine issue" is such issue of fact which requires presentation of evidence as distinguished from a sham, fictitious, contrived, or false claim. Section 3 of Rule 35 provides two requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE ASSAILED SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES OF FACT THAT NECESSITATE THE PRESENTATION OF EVIDENCE IN A FORMAL TRIAL.— Applying these principles to the present case, we find that the Court of Appeals committed reversible error in affirming the assailed summary judgment of the trial court. A perusal of the parties' respective pleadings shows that there are genuine issues of fact that necessitate the presentation of evidence in a formal trial.

3. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; THE PARTY WHO MOVES THEREFOR HAS THE BURDEN OF DEMONSTRATING CLEARLY THE ABSENCE OF ANY GENUINE ISSUES OF FACT; CASE AT BAR.— Since summary judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admission of the parties, the party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issues of fact, or that the issue posed in the complaint is patently not substantial as not to constitute a genuine issue for trial. Clearly, respondent did not overcome the burden. It can be seen from the allegations in the parties' respective pleadings that relevant genuine issues need to be resolved requiring a full blown trial. Summary judgment cannot take the place of a trial since the facts as pleaded by the parties are contested. Respondent then is not entitled to a judgment as a matter of law.

APPEARANCES OF COUNSEL

The Law Firm of Antonio Navarro III and Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Resolution[2] dated 12 March 2003 of the Court of Appeals, which reversed its earlier Decision[3] dated 30 September 2002 in CA-G.R. SP No. 68131 and affirmed the Summary Judgment dated 27 June 2000 of the Regional Trial Court of Mandaue City, Branch 55, in Civil Case No. MAN-2647.

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 50-58. Penned by Justice Bernardo P. Abesamis with Justices Cancio C. Garcia (retired member of this Court) and Rebecca De Guia-Salvador, concurring.

[3] *Id.* at 40-49. Penned by Justice Bernardo P. Abesamis with Justices Cancio C. Garcia (retired member of this Court) and Rebecca De Guia-Salvador, concurring.

The Facts

Jovenal B. Toring, respondent, is the registered owner of a 13,890 square meter parcel of land located in Barrio Basak, Lapu-Lapu City. The land, identified as Lot 2842 of the Cadastral Survey of Opon, L.R.C. Record No. 1003, is covered by Transfer Certificate of Title (TCT) No. 26401.[4]

On 8 July 1993, respondent secured a ₱2,000,000 loan from petitioner Philippine Countryside Rural Bank (Liloan, Cebu), Inc. To secure the loan, respondent mortgaged to petitioner a portion of the land consisting of 8,890 square meters. The remaining 5,000 square meters were allegedly sold by respondent to Edwin Jumao-as as evidenced by a Deed of Absolute Sale[5] dated 25 May 1993. A month after, through a Deed of Donation,[6] Edwin Jumao-as contributed a portion of the same land, consisting of 2,000 square meters, in favor of Barangay Basak, Lapu-Lapu City. Petitioner allegedly only approved a loan amounting to ₱1,000,000 after knowing that a portion of the land was sold to a third party.

However, in the Real Estate Mortgage contract[7] executed between petitioner and respondent, the entire land area of 13,890 square meters was mortgaged. Also, the appraised value of the land, estimated at ₱2,000,000, was the amount included in the mortgage contract as the value of the principal loan. Thereafter, respondent surrendered to petitioner the owner's duplicate copy of TCT No. 26401 and the actual physical possession of the land.

On 22 March 1996, due to non-payment of the mortgage debt, petitioner sent a demand letter to respondent informing him of petitioner's intention to foreclose the mortgage.[8] Respondent reacted by filing a Complaint for *Mandamus* with

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[4] *Id.* at 66-69.

[5] *Id.* at 70-71.

[6] *Id.* at 72-74.

[7] *Id.* at 96-97.

[8] *Id.* at 167.

Damages and with Prayer for Temporary Restraining Order and a Writ of Preliminary Injunction against petitioner with the Regional Trial Court (RTC) of Mandaue City, Branch 55, docketed as Civil Case No. MAN-2647.[9]

In the complaint, respondent prayed to restrain petitioner from foreclosing the entire property covered by the mortgage contract because only the remaining 8,890 square meters and not the entire area of 13,890 square meters of the land was validly mortgaged by respondent to petitioner. Respondent further requested the trial court to direct petitioner to lend the owner's duplicate copy of TCT No. 26401 for the purpose of annotating with the Register of Deeds of Lapu-Lapu City the deed of sale made to Edwin Jumao-as and the deed of donation to Barangay Basak in accordance with an order of a co-equal court, RTC of Lapu-Lapu City, Branch 53, in Cadastral Case No. 19.

Earlier, the Register of Deeds of Lapu-Lapu City refused to register the deed of sale and the deed of donation involving respondent's title and to issue the corresponding transfer certificates of title because of the non-submission of the pertinent subdivision plan and technical descriptions approved by the Bureau of Land as required by Section 58 of Presidential Decree No. 1529 (PD1529).[10] Thus, Barangay Basak filed with the

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[9] *Id.* at 59-64.

[10] Section 58. *Procedure where conveyance involves portion of land.* — If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.

Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding

RTC of Lapu-Lapu City, Branch 53, a Petition for the Registration and/or Annotation of the Deed of Absolute Sale and Deed of Donation on TCT No. 26401, docketed as Cadastral Case No. 19.

On 23 November 1993, the RTC of Lapu-Lapu City, Branch 53, granted the petition.[11] The RTC ruled that Section 58 of PD 1529 allows the annotation of the deed of sale on TCT No. 26401, which has the effect of showing the purchaser's title to the portion conveyed to him. However, with regard to the deed of donation, its annotation on the title must wait until the approved subdivision plan and technical descriptions have been submitted to the Register of Deeds in accordance with the same provision of law. The dispositive portion states:

> WHEREFORE, the foregoing considered, this Court hereby directs the Register of Deeds of Lapu-Lapu City to annotate on Transfer Certificate of Title No. 26401 the Deed of Absolute Sale dated May 25, 1993 executed by Jovenal B. Toring in favor of Edwin T. Jumao-as, which was acknowledged before Notary Public Rosario E. Mendoza. In this connection, Jovenal B. Toring, who has expressed his conformity to the petition, is hereby ordered to make available his owner's duplicate of TCT No. 26401.
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> SO ORDERED.[12]

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certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion: Provided, however, that pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of cancelling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots.

[11] *Rollo*, pp. 78-81.

[12] *Id.* at 80-81.

Respondent, in order to abide by the decision made by the trial court, allegedly made several requests to petitioner to produce the owner's duplicate copy of TCT No. 26401 so that it may be presented to the Register of Deeds for titling. However, all his requests were supposedly ignored by petitioner.

On 19 April 1996, the RTC of Mandaue City, Branch 55, issued a temporary restraining order to prevent petitioner from foreclosing the entire property and from selling it in public auction.[13]

On 3 May 1996, petitioner filed an Opposition[14] to respondent's application for preliminary injunction. Petitioner claimed that respondent never presented a copy of the deed of absolute sale dated 25 May 1993 and that the RTC Order dated 23 November 1993 had already been cancelled as annotated at the back of TCT No. 26401.

At the hearing held on 10 May 1996, the trial court ordered the parties to submit their respective memoranda. Accordingly, respondent submitted his Memorandum in Support of the Application for Writ of Preliminary Injunction dated 16 May 1996. Here, respondent cited the testimony given by petitioner's branch manager, Joshur Judd D. Lanete (Lanete) in another case, Civil Case No. 2893-L entitled "*Barangay Basak, Lapu-Lapu City v. Romulo Jereza, Gerardo Petalinghug and Galleon & Agra Realty Development Corporation*" filed with the RTC of Lapu-Lapu City, Branch 27. In the testimony, Lanete admitted that petitioner had knowledge of the sale of the land to Edwin Jumao-as and that petitioner approved the loan of respondent in the amount of ₱1,000,000.

On 13 June 1996, petitioner filed its Answer with Counterclaim.[15] Petitioner admitted that respondent secured a loan with the bank; that the collateral given to secure the payment of the loan involved the entire 13,890 square meter land covered

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[13] *Id.* at 82.

[14] *Id.* at 83-86.

[15] *Id.* at 89-95.

by TCT No. 26401 which is owned by respondent; and that petitioner threatened to foreclose the mortgage for non-payment of the debt as it fell due.

However, petitioner denied knowledge that the 5,000 square meter portion of the land mortgaged by respondent was sold to Edwin Jumao-as; that 2,000 square meters of the portion sold were donated to Barangay Basak; and that respondent only mortgaged the remaining area of 8,890 square meters to petitioner. Petitioner alleged that the deed of sale executed was simulated and that the mortgage contract clearly showed that the entire area of 13,890 square meter of land had been included in the contract.

Further, petitioner denied knowledge of the filing of a petition in court by Barangay Basak and the issuance by Lanete of the two certifications[16] dated 19 November 1993. The two certifications indicated that petitioner had no objection to the donation made with the portion of the land covered by TCT No. 26401 and that such portion was free from liens and encumbrances. The certifications state:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that we have no objection to the noble purpose in the pursuit of public interest regarding the donation of Mr. Edwin T. Jumao-as in favor of Barangay Basak of the 2,000 sq. m. that will be annotated at the back of TCT No. 26401.

This certification is issued for whatever purpose it may serve.

Issued this 19th day of November, 1993.

x x x x x x x x x

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Lot 2842-A subdivided by Engr. Vicente Concepcion, Geodetic Engineer comprising an area of 2,000 sq. m.

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

donated to Barangay Basak part of TCT No. 26401 is free from liens & encumbrances.

This certification is issued for whatever purpose it may serve.

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In an Order[17] dated 18 June 1996, the trial court favorably granted the issuance of a writ of preliminary injunction.

On 19 February 1999, respondent filed a Motion for Leave to File Incorporated Amended Complaint. In the amended complaint, respondent alleged that aside from the remaining 8,890 square meter land covered by TCT No. 26401, another property was also mortgaged to secure the payment of the loan. This property was a condominium unit located in Natividad Centrum I, Cebu City, covered by Condominium Certificate of Title (CCT) No. 209.[18] Respondent stated that the loan had already been fully paid, as evidenced by the Cancellation and Discharge of Mortgage on the condominium unit issued by petitioner on 11 October 1995.[19] The respondent prayed for the return of TCT No. 26401, as the loan secured by the mortgage had already been paid.

On 30 April 1999, petitioner filed a Motion to Declare Plaintiff in Contempt of Court with Opposition to Amend the Complaint.[20] Petitioner denied the claim that the mortgage over the condominium unit was constituted to guarantee the same loan as that secured by the land covered by TCT No. 26401. Petitioner cited that the mortgage over the condominium unit was a totally different transaction executed a year after the mortgage on the land.

On 8 October 1999, respondent filed a Motion for Summary Judgment[21] under Rule 35 of the 1997 Rules of Civil Procedure

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[17] *Id.* at 98-99.

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

[19] *Id.* at 127.

[20] *Id.* at 128-132.

[21] *Id.* at 135-142.

based on respondent's affidavit attached to the motion reiterating the allegations in his complaint. Petitioner, in turn, filed its opposition to the motion[22] insisting that summary judgment is proper only where there are no genuine issues as to any material fact. However, all the material allegations in the complaint have been disputed by petitioner.

On 27 June 2000, the trial court granted the motion for summary judgment and decided the case in favor of respondent.[23] The dispositive portion of the decision states:

> WHEREFORE, judgment is rendered in favor of plaintiff Jovenal B. Toring and against defendant Philippine Countryside Rural Bank (Liloan, Cebu), ordering the bank to surrender the owner's duplicate copy of TCT No. 26401 for the purpose of annotating/registering with the Register of Deeds of Lapu-Lapu City the Deed of Absolute Sale and the Deed of Donation above-mentioned in accordance with the Order of the Regional Trail (sic) Court, Branch 53, Lapu-Lapu City in Cad. Case No. 19. Likewise, the writ of injunction issued is ordered made permanent.
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> SO ORDERED.[24]

Petitioner filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 68131.

The Ruling of the Court of Appeals

On 30 September 2002, the appellate court reversed the decision of the trial court and recognized the authority of petitioner to foreclose the mortgage on the entire property covered by TCT No. 26401.[25] The relevant portions of the decision state:

> A cursory examination of TCT No. 26401 reveals that the alleged Deed of Sale dated May 25, 1993 was never registered and annotated therein. What appears on the said title is a Deed of Absolute Sale in favor of Edwin Jumao-as dated September 3, 1993. As such, the

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[22] *Id.* at 168-173.

[23] *Id.* at 203-211.

[24] *Id.* at 211.

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

Deed of Donation in favor of Barangay Basak is not valid since at the time of its execution, the alleged donor Edwin Jumao-as has not yet acquired any portion of TCT No. 26401. As aptly put by defendant-appellant, it would be putting the cart before the horse.

Defendant-appellant contended that the trial court erred in giving credence to the testimony of the bank manager given in another case. We believe the trial court, indeed, erred in doing so.

It bears stressing that what was given weight by the trial court are the several pages of Transcript of Stenographic Notes (TSN) relating to the testimony given by the bank manager of defendant-appellant bank. The testimony deserves scant consideration for two obvious reasons: (1) It was made in another entirely different case involving different parties and; (2) The bank manager was not actually presented in court for cross-examination.

The actual presentation of the bank manager would have clarified the circumstances surrounding the issuance of the aforesaid two (2) letters both dated November 19, 1993. The circumstances surrounding the issuance of the said letters and the reasons for their issuance should have been unearthed in a full-blown trial in view of the claim by defendant-appellant that it "*suffered damages out of and from the malicious maneuvers of the plaintiff in successfully winning the feeling of defendant's Branch Manager.*" Hence, in light of these doubts, plaintiff-appellant cannot unduly benefit from the trial court's decision to grant his motion for summary judgment which deprived defendant-appellant its right to cross-examine its own bank manager and squeeze the entire truth from him.

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WHEREFORE, premises considered, plaintiff-appellant's Appeal is hereby DENIED for lack of merit while that of defendant-appellant is hereby given DUE COURSE. Consequently, the appealed Order dated June 27, 2000 of the Regional Trial Court, Branch 55, Mandaue City, is VACATED and SET ASIDE. Defendant-appellant's authority to foreclose the mortgage over the entire property covered by TCT No. 26401 is hereby recognized.

SO ORDERED.[26]

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[26] *Id.* at 47-48.

Respondent then filed a Motion for Reconsideration. In a Resolution[27] dated 12 March 2003, the Court of Appeals granted the motion and set aside its original decision, thereby affirming the decision of the trial court dated 27 June 2000. The appellate court ruled that petitioner should return to respondent the owner's duplicate copy of TCT No. 26401 for the proper annotation of the deed of sale and deed of donation. It further stated that petitioner had no more reason to hold the land's title for two reasons: (1) the existence of a final and executory judgment in Cadastral Case No. 19 of the RTC of Lapu-Lapu City, Branch 53; and (2) the full payment of respondent's real estate mortgage as shown by the Cancellation and Discharge of Mortgage of CCT No. 209 dated 11 October 1995 issued by petitioner. The appellate court observed that the release of the security could only mean that the obligation of respondent to petitioner had been fully satisfied. The relevant portions of the resolution state:

> A cursory review of the records show that the pleadings, affidavits and exhibits in support of plaintiff-appellant's motion for summary judgment are sufficient to overcome the material allegations in defendant-appellant's answer. Herein plaintiff-appellant has proven the cause of action and has shown that the defense merely interposed its objections solely for the purpose of delay. Hence, the allowance of summary judgment by the trial court was proper.
>
> As regards the Deed of Absolute Sale dated May 25, 1993 and the Deed of Donation dated June 15, 1993 as testified to by Mr. Joshur Jude B. Lanete, the findings and conclusion of the court *a quo* in its Order dated June 27, 200[0], is very enlightening in the case at bench, to wit:
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> > "Carefully evaluating the evidence, the court feels, and so holds, "that the subject property is about to be foreclosed by the defendant bank knowing fully well from the start that only an area of 8,890 square meters out of the 13,890 square meters was validly mortgaged to them and the remaining 5,000 square meters was subject to a deed of sale executed by plaintiff for Mr. Edwin Jumao-as and the latter even donated 2,000 square

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[27] *Id.* at 50-58.

meters hereof to Barangay Basak of Lapu-Lapu City." (par. 3, Order dated April 19, 1996).

This finding is supported by the testimony of defendant's bank manager, Joshur Judd B. Lanete given last December 13, 1993 in Civil Case No. 2893-L entitled *Barangay Basak, Lapu-Lapu City, plaintiff versus Romulo Jereza, Gerardo Patalinghug and Galleon Agro & Realty Development Corp., defendants* (TSN), Chavez, December 13, 1993 p.m., attached to Plaintiff's Memorandum in Support Application for Writ of Preliminary Injunction) wherein he testified that the defendant bank is aware that portion of subject consisting of 5,000 square meters sold by plaintiff Toring to Edwin Jumao-as and that 2,000 square meters of the 5,000 square meters sold to Mr. Jumao-as was donated by the latter to Barangay Basak, Lapu-Lapu City, that was why the loan application of Toring in the amount of ₱2,000,000 was reduced to only ₱1,000,000 which latter amount was approved by the defendant bank, pertinent portion of Lanete's testimony is reproduced hereunder:

x x x x x x x x x

Mr. Lanete, therefore, in testifying before the court judicially admitted that defendant bank knew that the mortgaged property is only 8,890 square meters and not the entire property covered by TCT No. 26401 that was why the loan amount applied for by plaintiff was reduced and approved by the defendant bank from ₱2,000,000 to ₱1,000,000.

x x x x x x x x x

The doctrine of apparent authority is applicable in this case. "As laid out in *Prudential Bank vs. Court of Appeals* (223 SCRA 350 (1993), where it was held: "Conformably, we have declared in countless decisions that the principal is liable for representation yields to the principal's true representation and the contract is considered as entered into between the principal and the third person (citing *NFA vs. IAC*, 184 SCRA 166.) x x x

The testimony of Mr. Lanete is considered a judicial admission and should be given great weight in the appreciation of the factual circumstances of the case at bench. x x x

Defendant-appellant's denial premised merely on the ground that the said testimony was given in another case and the time to cross-examine was not accorded to it holds no water.

Being in the nature of a judicial admission, Mr. Lanete's testimony is conclusive and need not be held under cross-examination for no evidence may be presented to prove an agreement that has been admitted.

x x x x x x x x x

Perusal of the records at Bench reveals that there is truth as to the plaintiff-appellant's contention in his petition that the amount of his mortgage with the defendant bank has been fully satisfied as shown by the Cancellation and Discharge of Mortgage dated October 11, 1995 issued by the defendant-appellant bank (Rural Bank of Liloan (CEBU)) signed by its President and attested by Jennifer C. Asingua and Joshur Judd B. Lanete. The release of the title of the condominium unit as a security will only mean that the obligation of the plaintiff-appellant has been fully satisfied, hence, the defendant bank should now also return the owner's duplicate copy of TCT No. 26401.

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If defendant-appellant will not be enjoined and/or restrained from foreclosing the entire portion of the aforementioned parcel of land, plaintiff-appellant will undoubtedly be susceptible to civil and criminal actions.

x x x x x x x x x

Without a doubt, plaintiff-appellant is entitled to a maintenance and preservation of status quo ante, otherwise any judgment in court in the case at bench will be rendered nugatory.[28]

Hence, the instant petition.

The Issue

The issue is whether the trial court correctly granted the motion for summary judgment based on the pleadings, affidavits, and admissions submitted by respondent.

The Court's Ruling

The petition has merit.

Petitioner insists that the Court of Appeals erred in affirming the summary judgment rendered by the trial court. Petitioner

[28] *Id.* at 53-57.

contends that the case cannot be adjudicated based merely on the affidavit attached by respondent to his motion for summary judgment reiterating his allegations in the complaint, as what transpired in this case. There are genuine issues of fact that need to be tried and resolved through a full blown trial on the merits.

Sections 1 and 3, Rule 35 of the Rules of Court state:

SECTION 1. *Summary Judgment for Claimant.* — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

SEC. 3. *Motion and Proceedings thereon.* — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

A summary judgment is a procedural technique designed to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record. Its purpose is to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.[29] Conversely, where the pleadings tender a genuine issue, summary judgment is not proper and the movant is not allowed to obtain immediate relief. A "genuine issue" is such issue of fact which requires presentation of

[29] *Nocom v. Camerino*, G.R. No. 182894, 10 February 2009.

evidence as distinguished from a sham, fictitious, contrived, or false claim.[30]

Section 3 of Rule 35 provides two requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.[31]

Applying these principles to the present case, we find that the Court of Appeals committed reversible error in affirming the assailed summary judgment of the trial court. A perusal of the parties' respective pleadings shows that there are genuine issues of fact that necessitate the presentation of evidence in a formal trial.

Petitioner, in response to the complaint and other motions filed by respondent, filed several pleadings showing the existence of genuine issues: (1) Vigorous Opposition to Plaintiff's Application for Preliminary Injunction, where petitioner specifically denied having knowledge of the alleged Deed of Absolute Sale dated 25 May 1993; (2) Answer with Counterclaim, where petitioner attached a copy of the Real Estate Mortgage contract showing that respondent mortgaged a total of 13,890 square meters and not just 8,890 square meters; (3) Vehement Opposition to Plaintiff's Motion for Reconsideration, where petitioner pointed out that the testimony given by its branch manager, Lanete, in Civil Case No. 2893-L before RTC of Lapu-Lapu City, Branch 27, was not a judicial admission because the latter was not a party to the case and that his acts were not valid corporate acts, neither was he ever appointed as agent of petitioner; and (4) Opposition to Amend the Complaint, where petitioner denied that the obligation had been fully paid and that the mortgage over the condominium unit was constituted to guarantee the same loan as that secured by the land covered by TCT No. 26401.

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[30] *Manufacturers Hanover Trust Co. v. Guerrero*, 445 Phil. 770 (2003).

[31] *Solidbank Corporation v. Court of Appeals*, 439 Phil. 23 (2002).

The main issue to be resolved revolves on who is entitled to the land covered by TCT No. 26401. From this main issue, other relevant issues need to be decided on: (1) whether the Deed of Absolute Sale dated 25 May 1993 pertaining to the 13,890 square meter land is a real or simulated contract between respondent and Edwin Jumao-as; (2) whether such sale occurred prior to the loan obtained by respondent from petitioner; (3) whether petitioner was aware of the deed of sale to Edwin Jumao-as and deed of donation to Barangay Basak, Lapu-Lapu City, when it approved the loan of respondent; (4) whether the real estate mortgage contract covered the entire property covered by TCT No. 26401; (5) whether the loan approved by petitioner amounted to ₱2,000,000 or ₱1,000,000; (6) whether the testimony of petitioner's branch manager may be considered as a judicial admission even if such was made in an entirely different case and before a different court involving different parties; (7) whether petitioner was aware of the Order dated 23 November 1993 of the RTC of Lapu-Lapu City, Branch 53, and if steps had been taken to implement such Order; (8) whether the mortgage over the condominium unit was used to secure the same obligation as that secured by the land covered by TCT No. 26401; and (9) whether the loan obligation of respondent to petitioner had been fully paid.

Since summary judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admission of the parties, the party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issues of fact, or that the issue posed in the complaint is patently not substantial as not to constitute a genuine issue for trial.

Clearly, respondent did not overcome the burden. It can be seen from the allegations in the parties' respective pleadings that relevant genuine issues need to be resolved requiring a full blown trial. Summary judgment cannot take the place of a trial since the facts as pleaded by the parties are contested. Respondent then is not entitled to a judgment as a matter of law.

However, while the summary judgment of the RTC of Mandaue City, Branch 55, is not proper under the circumstances stated above, Civil Case No. MAN-2647 should not be dismissed. Instead, the case should be remanded to the trial court for further proceedings and proper disposition in accordance with a regular trial on the merits.

WHEREFORE, we *PARTLY GRANT* the petition. We *SET ASIDE* the Resolution of the Court of Appeals dated 30 September 2002 in CA-G.R. SP No. 68131 which affirmed the Summary Judgment dated 27 June 2000 of the Regional Trial Court of Mandaue City, Branch 55, in Civil Case No. MAN-2647. We *REMAND* the case to the Regional Trial Court of Mandaue City, Branch 55, for further proceedings in accordance with this Decision.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 158805. April 16, 2009]

VALLEY GOLF & COUNTRY CLUB, INC., *petitioner, vs.* **ROSA O. *VDA. DE* CARAM,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; SECTION 67 ON STOCK CORPORATION'S RECOURSE ON UNPAID SUBSCRIPTIONS, INAPT TO A NON-STOCK CORPORATION *VIS-À-VIS* A MEMBER'S OUTSTANDING

DUES. — The procedure under Section 67 of the Corporation Code for the stock corporation's recourse on unpaid subscriptions is inapt to a non-stock corporation *vis-à-vis* a member's outstanding dues. The basic factual backdrops in the two situations are disperate. In the latter, the member has fully paid for his membership share, while in the former, the stockholder has not yet fully paid for the share or shares of stock he subscribed to, thereby authorizing the stock corporation to call on the unpaid subscription, declare the shares delinquent and subject the delinquent shares to a sale at public auction.

2. ID.; ID.; NON-STOCK CORPORATIONS; TERMINATION OF MEMBERSHIP, CONSTRUED. — There is a specific provision under the Title XI, on Non-Stock Corporations of the Corporation Code dealing with termination of membership. Section 91 of the Corporation Code provides: SEC. 91. *Termination of membership.*—Membership shall **be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws.** Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. Clearly, the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone, as is the situation in this case.

3. ID.; ID.; ID.; ID.; POWER TO EFFECT TERMINATION WITHOUT CONSTITUTING LIEN ON MEMBERSHIP SHARE/ SELLING THE SAME AT PUBLIC AUCTION; IN CASE AT BAR, HOWEVER, MEMBERSHIP ADJUNCT TO OWNERSHIP OF SHARE REQUIRING DISPOSAL THEREOF TO TERMINATE MEMBERSHIP. — Generally in theory, a non-stock corporation has the power to effect the termination of a member without having to constitute a lien on the membership share or to undertake the elaborate process of selling the same at public auction. The articles of incorporation or the by-laws can very well simply provide that the failure of a member to pay the dues on time is cause for the board of directors to terminate membership. Yet Valley Golf was organized in such a way that membership is adjunct to ownership of a share in the club; hence the necessity to dispose of the share to terminate membership. Share ownership introduces another dimension to the case—the reality that termination of membership may

also lead to the infringement of property rights. Even though Valley Golf is a non-stock corporation, as evinced by the fact that it is not authorized to distribute to the holder of its shares dividends or allotments of the surplus profits on the basis of shares held, the Golf Share has an assigned value reflected on the certificate of membership itself. Termination of membership in Valley Golf does not merely lead to the withdrawal of the rights and privileges of the member to club properties and facilities but also to the loss of the Golf Share itself for which the member had fully paid. The claim of Valley Golf is limited to the amount of unpaid dues plus incremental costs. On the other hand, Caram's loss may encompass not only the amount he had paid for the share but also the price it would have fetched in the market at the time his membership was terminated.

4. ID.; ID.; ID.; ID.; NOTICE TO MEMBER BEFORE SHARES PUT UP FOR SALE, NONE PROVIDED IN BY-LAWS IN CASE AT BAR; APPLICABLE RULES. — The by-laws does not provide for a mode of notice to the member before the board of directors puts up the Golf Share for sale, yet the sale marks the termination of membership. Does the Corporation Code permit the termination of membership without due notice to the member? The Code itself is silent on that matter, and the argument can be made that if no notice is provided for in the articles of incorporation or in the by-laws, then termination may be effected without any notice at all. Membership in Valley Golf, however, entails the acquisition of a property right. In turn, the loss of such property right could also involve the application of aspects of civil law, in addition to the provisions of the Corporation Code. To put it simply, when the loss of membership in a non-stock corporation also entails the loss of property rights, the manner of deprivation of such property right should also be in accordance with the provisions of the Civil Code. It has been held that a by-law providing that if a member fails to pay dues for a year, he shall be deemed to have relinquished his membership and may be excluded from the rooms of the association and his certificate of membership shall be sold at auction, and any surplus of the proceeds be paid over him, does not *ipso facto* terminate the membership of one whose dues are a year in arrears; the remedy given for non-payment of dues is not exclusive because the corporation, so long as he remains a member, may sue on his agreement and collect them.

5. ID.; ID.; ID.; ID.; WHERE TERMINATION OF MEMBERSHIP LINKED TO DEPRIVATION OF PROPERTY RIGHTS OVER THE SHARES, SUBSTANTIAL JUSTICE MUST BE OBSERVED; CASE AT BAR.— It may be conceded that the actions of Valley Golf were, technically speaking, in accord with the provisions of its by-laws on termination of membership, vaguely defined as these are. Yet especially since the termination of membership in Valley Golf is inextricably linked to the deprivation of property rights over the Golf Share, the emergence of such adverse consequences make legal and equitable standards come to fore. It is unmistakably wise public policy to require that the termination of membership in a non-stock corporation be done in accordance with substantial justice. No matter how one may precisely define such term, it is evident in this case that the termination of Caram's membership betrayed the dictates of substantial justice. Valley Golf alleges in its present petition that it was notified of the death of Caram only in March of 1990, a claim which is reiterated in its Reply to respondent's Comment. Yet this claim is belied by the very demand letters sent by Valley Golf to Caram's mailing address. The letters dated 25 January 1987 and 7 March 1987, both of which were sent within a few months after Caram's death are both addressed to "Est. of Fermin Z. Caram, Jr.;" and the abbreviation "[e]st." can only be taken to refer to "estate." This is to be distinguished from the two earlier letters, both sent prior to Caram's death on 6 October 1986, which were addressed to Caram himself. Inexplicably, the final letter dated 3 May 1987 was again addressed to Caram himself, although the fact that the two previous letters were directed at the estate of Caram stands as incontrovertible proof that Valley Golf had known of Caram's death even prior to the auction sale. What do these facts reveal? Valley Golf acted in clear bad faith when it sent the final notice to Caram under the pretense they believed him to be still alive, when in fact they had very well known that he had already died. That it was in the final notice that Valley Golf had perpetrated the duplicity is especially blameworthy, since it was that notice that carried the final threat that his Golf Share would be sold at public auction should he fail to settle his account on or before 31 May 1987. x x x **at the time of the final notice, Valley Golf knew that Caram, having died and gone, would not be able to settle the obligation himself, yet they persisted in sending him notice to provide a**

color of regularity to the resulting sale. That reason alone, evocative as it is of the absence of substantial justice in the sale of the Golf Share, is sufficient to nullify the sale and sustain the rulings of the SEC and the Court of Appeals. Moreover, the utter and appalling bad faith exhibited by Valley Golf in sending out the final notice to Caram on the deliberate pretense that he was still alive could bring into operation Articles Articles 19, 20 and 21 under the Chapter on Human Relations of the Civil Code. These provisions enunciate a general obligation under law for every person to act fairly and in good faith towards one another. Non-stock corporations and its officers are not exempt from that obligation.

6. ID.; ID.; ID.; ID.; LIEN ON MEMBERSHIP SHARE TO ANSWER FOR OBLIGATIONS TO THE CORPORATION FINDS APPLICABLE PARALLELS UNDER THE CIVIL CODE AS SHARES CONSIDERED PERSONAL PROPERTY THAT CAN BE CONSTITUTED AS SECURITY FOR PRINCIPAL OBLIGATION. — The arrangement provided for in the by-laws of Valley Golf whereby a lien is constituted on the membership share to answer for subsequent obligations to the corporation finds applicable parallels under the Civil Code. Membership shares are considered as movable or personal property, and they can be constituted as security to secure a principal obligation, such as the dues and fees. There are at least two contractual modes under the Civil Code by which personal property can be used to secure a principal obligation. The first is through a contract of pledge, while the second is through a chattel mortgage. A pledge would require the pledgor to surrender possession of the thing pledged, *i.e.*, the membership share, to the pledge in order that the contract of pledge may be constituted. If delivery of the share cannot be effected, the suitable security transaction is the chattel mortgage. Under Article 2124 of the Civil Code, movables may be the object of a chattel mortgage. The Chattel mortgage is governed by Act No. 1508, otherwise known The Chattel Mortgage Law, and the Civil Code.

7. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES JUSTIFIED BY THE PRESENCE OF BAD FAITH IN CASE AT BAR. — The award of damages sustained by the Court of Appeals was for moral damages in the sum of ₱50,000.00 and exemplary damages in the sum of ₱10,000.00. Both awards should

be sustained. In pretending to give actual notice to Caram despite full knowledge that he was in fact dead, Valley Golf exhibited utter bad faith. The award of moral damages was based on a finding by the hearing officer that Valley Golf had "considerably besmirched the reputation and good credit standing of the plaintiff and her family," such justification having foundation under Article 2217 of the Civil Code. No cause has been submitted to detract from such award. In addition, exemplary damages were awarded "to [Valley Golf] defendant from repeating similar acts in the future and to protect the interest of its stockholders… and by way of example or correction for the public good." Such conclusion is in accordance with Article 2229 of the Civil Code, which establishes liability for exemplary damages.

APPEARANCES OF COUNSEL

Abejo & Partners Law Office for petitioner.
De Los Angeles Aguirre Olaguer & Sto. Domingo Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

May a non-stock corporation seize and dispose of the membership share of a fully-paid member on account of its unpaid debts to the corporation when it is authorized to do so under the corporate by-laws but not by the Articles of Incorporation? Such is the central issue raised in this petition, which arose after petitioner Valley Golf & Country Club (Valley Golf) sold the membership share of a member who had been delinquent in the payment of his monthly dues.

I.

The facts that preceded this petition are simple. Valley Golf & Country Club (Valley Golf) is a duly constituted non-stock, non-profit corporation which operates a golf course. The members and their guests are entitled to play golf on the said course and otherwise avail of the facilities and privileges provided by Valley

Golf.[1] The shareholders are likewise assessed monthly membership dues.

In 1961, the late Congressman Fermin Z. Caram, Jr. (Caram),[2] the husband of the present respondent, subscribed to purchased and paid for in full one share (Golf Share) in the capital stock of Valley Golf. He was issued Stock Certificate No. 389 dated 26 January 1961 for the Golf Share.[3] The Stock Certificate likewise indicates a par value of ₱9,000.00.

Valley Golf would subsequently allege that beginning 25 January 1980, Caram stopped paying his monthly dues, which were continually assessed until 31 June 1987. Valley Golf claims to have sent five (5) letters to Caram concerning his delinquent account within the period from 27 January 1986 until 3 May 1987, all forwarded to P.O. Box No. 1566, Makati Commercial Center Post Office, the mailing address which Caram allegedly furnished Valley Golf.[4] The first letter informed Caram that his account as of 31 December 1985 was delinquent and that his club privileges were suspended pursuant to Section 3, Article VII of the by-laws of Valley Golf.[5] Despite such notice of delinquency, the second letter, dated 26 August 1986, stated that should Caram's account remain unpaid for 45 days, his name would be "included in the delinquent list to be posted on the club's bulletin board."[6] The third letter, dated 25 January 1987, again informed Caram of his delinquent account and the suspension of his club privileges.[7] The fourth letter, dated 7 March 1987, informed Caram that should he fail to settle his delinquencies, then totaling ₱7,525.45, within ten (10) days from receipt thereof Valley Golf would exercise its right to sell the Golf Share to satisfy the outstanding amount, again pursuant

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[1] *Rollo*, p. 8.

[2] A former representative from Iloilo.

[3] SEC records, p. 61.

[4] *Rollo*, p. 60.

[5] *Id.* at 82.

[6] *Id.* at 83.

[7] *Id.* at 84.

to the provisions of the by-laws.[8] The final letter, dated 3 May 1987, issued a final deadline until 31 May 1987 for Caram to settle his account, or otherwise face the sale of the Golf Share to satisfy the claims of Valley Golf.[9]

The Golf Share was sold at public auction on 11 June 1987 for ₱25,000.00 after the Board of Directors had authorized the sale in a meeting on 11 April 1987, and the Notice of Auction Sale was published in the 6 June 1987 edition of the *Philippine Daily Inquirer*.[10]

As it turned out, Caram had died on 6 October 1986. Respondent initiated intestate proceedings before the Regional Trial Court (RTC) of Iloilo City, Branch 35, to settle her husband's estate.[11] Unaware of the pending controversy over the Golf Share, the Caram family and the RTC included the same as part of Caram's estate. The RTC approved a project of partition of Caram's estate on 29 August 1989. The Golf Share was adjudicated to respondent, who paid the corresponding estate tax due, including that on the Golf Share.

It was only through a letter dated 15 May 1990 that the heirs of Caram learned of the sale of the Golf Share following their inquiry with Valley Golf about the share. After a series of correspondence, the Caram heirs were subsequently informed, in a letter dated 15 October 1990, that they were entitled to the refund of ₱11,066.52 out of the proceeds of the sale of the Golf Share, which amount had been in the custody of Valley Golf since 11 June 1987.[12]

Respondent filed an action for reconveyance of the share with damages before the Securities and Exchange Commission (SEC) against Valley Golf.[13] On 15 November 1996, SEC

[8] *Id.* at 85.

[9] *Id.* at 86.

[10] *Id.* at 59.

[11] *Id.* at 30.

[12] *Id.* at 59.

[13] Docketed as SEC Case No. 4160.

Hearing Officer Elpidio S. Salgado rendered a decision in favor of respondent, ordering Valley Golf to convey ownership of the Golf Share or in the alternative to issue one fully paid share of stock of Valley Golf the same class as the Golf Share to respondent. Damages totaling ₱90,000.00 were also awarded to respondent.[14]

The SEC hearing officer noted that under Section 67, paragraph 2 of the Corporation Code, a share stock could only be deemed delinquent and sold in an extrajudicial sale at public auction only upon the failure of the stockholder to pay the unpaid subscription or balance for the share. The section could not have applied in Caram's case since he had fully paid for the Golf Share and he had been assessed not for the share itself but for his delinquent club dues. Proceeding from the foregoing premises, the SEC hearing officer concluded that the auction sale had no basis in law and was thus a nullity.

The SEC hearing officer did entertain Valley Golf's argument that the sale of the Golf Share was authorized under the by-laws. However, it was ruled that pursuant to Section 6 of the Corporation Code, "a provision creating a lien upon shares of stock for unpaid debts, liabilities, or assessments of stockholders to the corporation, should be embodied in the Articles of Incorporation, and not merely in the by-laws, because Section 6 (par.1) prescribes that the shares of stock of a corporation may have such rights, privileges and restrictions as may be stated in the articles of incorporation."[15] It was observed that the Articles of Incorporation of Valley Golf did not impose any lien, liability or restriction on the Golf Share or, for that matter, even any conditionality that the Golf Share would be subject to assessment of monthly dues or a lien on the share for non-payment of such dues.[16] In the same vein, it was opined that

[14] ₱50,000.00 in moral damages, ₱10,000.00 in exemplary damages, and ₱30,000.00 in litigation expenses and attorney's fees. *Rollo*, pp. 80-81.

[15] *Id.* at 76. Cited as authority for this holding was a textbook on Philippine Corporation Law (H. DE LEON, *THE CORPORATION CODE OF THE PHILIPPINES*, p. 464 [1989 ed.]), which in turn cited an SEC Opinion dated 13 April 1981.

[16] *Id.*

since Section 98 of the Corporation Code provides that restrictions on transfer of shares should appear in the articles of incorporation, by-laws and the certificate of stock to be valid and binding on any purchaser in good faith, there was more reason to apply the said rule to club delinquencies to constitute a lien on golf shares.[17]

The SEC hearing officer further held that the delinquency in monthly club dues was merely an ordinary debt enforceable by judicial action in a civil case. The decision generally affirmed respondent's assertion that Caram was not properly notified of the delinquencies, citing Caram's letter dated 7 July 1978 to Valley Golf about the change in his mailing address. He also noted that Valley Golf had sent most of the letters after Caram's death. In all, the decision concluded that the sale of the Golf Share was effectively a deprivation of property without due process of law.

On appeal to the SEC *en banc*,[18] said body promulgated a decision[19] on 9 May 2000, affirming the hearing officer's decision *in toto*. Again, the SEC found that Section 67 of the Corporation Code could not justify the sale of the Golf Share since it applies only to unpaid subscriptions and not to delinquent membership dues. The SEC also cited a general rule, formulated in American jurisprudence, that a corporation has no right to dispose of shares of stock for delinquent assessments, dues, service fees and other unliquidated charges unless there is an express grant to do so, either by the statute itself or by the charter of a corporation.[20] Said rule, taken in conjunction with Section 6 of the Corporation Code, militated against the validity of the sale

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[17] *Id.* at 76.

[18] Docketed as SEC-AC No. 595.

[19] Signed by SEC "Chair[person]" Lilia R. Bautista, and Associate Commissioners Fe Eloisa C. Gloria, Edijer A. Martinez and Rosalinda U. Casiguran. See *rollo*, p. 63.

[20] *Rollo*, pp. 61-62. Primary citation was made to another local textbook (R. Lopez, *The Corporation Code of the Philippines*, Vol. II, 1994 Ed.), which in turn cited *Schutch v. Farmers Union Milling and Grain Co*., 116 Neb. 14; 22 CRA (NS) 1015; and 18 AM. JUR., 2 Ed 880.

of the Golf Share, the SEC stressed. In view of these premises, which according to the SEC entailed the nullity of the sale, the body found it unnecessary to rule on whether there was valid notice of the sale at public auction.

Valley Golf elevated the SEC's decision to the Court of Appeals by way of a petition for review.[21] On 4 April 2003, the appellate court rendered a decision[22] affirming the decisions of the SEC and the hearing officer, with modification consisting of the deletion of the award of attorney's fees. This time, Valley Golf's central argument was that its by-laws, rather than Section 67 of the Corporation Code, authorized the auction sale of the Golf Share. Nonetheless, the Court of Appeals found that the by-law provisions cited by Valley Golf are "of doubtful validity," as they purportedly conflict with Section 6 of the Code, which mandates that "rights privileges or restrictions attached to a share of stock should be stated in the articles of incorporation.[23] It noted that what or who had become delinquent was "was Mr. Caram himself and not his golf share," and such being the case, the unpaid account "should have been filed as a money claim in the proceedings for the settlement of his estate, instead of the petitioner selling his golf share to satisfy the account."[24]

The Court of Appeals also adopted the findings of the hearing officer that the notices had not been properly served on Caram or his heirs, thus effectively depriving respondent of property without due process of law. While it upheld the award of damages, the appellate court struck down the award of attorney's fees since there was no discussion on the basis of such award in the body of the decisions of both the hearing officer and the SEC.[25]

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[21] Docketed as CA-G.R. SP No. 59083.

[22] Penned by Justice Salvador J. Valdez, Jr., and concurred in by Justices Bienvenido L. Reyes and Danilo B. Pine.

[23] *Rollo*, p. 34.

[24] *Id.* at 35.

[25] *Id.* at 37.

There is one other fact of note, mentioned in passing by the SEC hearing officer[26] but ignored by the SEC *en banc* and the Court of Appeals. Valley Golf's third and fourth demand letters dated 25 January 1987 and 7 March 1987, respectively, were both addressed to "Est. of Fermin Z. Caram, Jr." The abbreviation "Est." can only be taken to refer to "Estate." Unlike the first two demand letters, the third and fourth letters were sent after Caram had died on 6 October 1986. However, the fifth and final demand letter, dated 3 May 1987 or twenty-eight (28) days before the sale, was again addressed to Fermin Caram himself and not to his estate, as if he were still alive. The foregoing particular facts are especially significant to our disposition of this case.

II.

In its petition before this Court, Valley Golf concedes that Section 67 of the Corporation Code, which authorizes the auction sale of shares with delinquent subscriptions, is not applicable in this case. Nonetheless, it argues that the by-laws of Valley Golf authorizes the sale of delinquent shares and that the by-laws constitute a valid law or contractual agreement between the corporation and its stockholders or their respective successors. Caram, by becoming a member of Valley Golf, bound himself to observe its by-laws which constitutes "the rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it."[27] It also points out that the by-laws itself had duly passed the SEC's scrutiny and approval.

Valley Golf further argues that it was error on the part of the Court of Appeals to rely, as it did, upon Section 6 of the Corporation Code "to nullify the subject provisions of the By-Laws."[28] Section 6 referrs to "restrictions" on the shares of

[26] *Id.* at 74.

[27] *Id.* at 15.

[28] *Id.* at 16.

stock which should be stated in the articles of incorporation, as differentiated from "liens" which under the by-laws would serve as basis for the auction sale of the share. Since Section 6 refers to restrictions and not to liens, Valley Golf submits that "liens" are excluded from the ambit of the provision. It further proffers that assuming that liens and restrictions are synonymous, Section 6 itself utilizes the permissive word "may," thus evincing the non-mandatory character of the requirement that restrictions or liens be stated in the articles of incorporation.

Valley Golf also argues that the Court of Appeals erred in relying on the factual findings of the hearing officer, which are allegedly replete with errors and contradictions. Finally, it assails the award of moral and exemplary damages.

III.

As found by the SEC and the Court of Appeals, the Articles of Incorporation of Valley Golf does not contain any provision authorizing the corporation to create any lien on a member's Golf Share as a consequence of the member's unpaid assessments or dues to Valley Golf. Before this Court, Valley Golf asserts that such a provision is contained in its by-laws. We required the parties to submit a certified copy of the by-laws of Valley Golf in effect as of 11 June 1987.[29] In compliance, Valley Golf submitted a copy of its by-laws, originally adopted on 6 June 1958[30] and amended on 26 November 1986.[31] The amendments bear no relevance to the issue of delinquent membership dues. The relevant provisions, found in Article VIII entitled "Club Accounts," are reproduced below:

> Section 1. *Lien*.—The Club has the first lien on the share of the stockholder who has, in his/her/its name, or in the name of an assignee, outstanding accounts and liabilities in favor of the Club to secure the payment thereof.
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> x x x x x x x x x

[29] *Id.* at 168.

[30] *Id.* at 182.

[31] *Id.* at 174.

Section 3. The account of any member shall be presented to such member every month. If any statement of accounts remains unpaid for a period forty-five (45) days after cut-off date, said member maybe (*sic*) posted as deliqnuent (*sic*). No delinquent member shall be entitled to enjoy the privileges of such membership for the duration of the deliquency (*sic*). After the member shall have been posted as delinquent, the Board may order his/her/its share sold to satisfy the claims of the club; after which the member loses his/her/its rights and privileges permanently. No member can be indebted to the Club at any time any amount in excess of the credit limit set by the Board of Directors from time to time. The unpaid account referred to here includes non-payment of dues, charges and other assessments and non-payment for subscriptions.[32]

To bolster its cause, Valley Golf proffers the proposition that by virtue of the by-law provisions a lien is created on the shares of its members to ensure payment of dues, charges and other assessments on the members. Both the SEC and the Court of Appeals debunked the tenability or applicability of the proposition through two common thrusts.

Firstly, they correctly noted that the procedure under Section 67 of the Corporation Code for the stock corporation's recourse on unpaid subscriptions is inapt to a non-stock corporation *vis-à-vis* a member's outstanding dues. The basic factual backdrops in the two situations are disperate. In the latter, the member has fully paid for his membership share, while in the former, the stockholder has not yet fully paid for the share or shares of stock he subscribed to, thereby authorizing the stock corporation to call on the unpaid subscription, declare the shares delinquent and subject the delinquent shares to a sale at public auction.[33]

Secondly, the two bodies below concluded that following Section 6 of the Corporation Code, which provides:

The shares of stock of stock corporation may be divided into classes or series of shares, or both, any of which classes or series of shares

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[32] *Id.* at 181-182.

[33] See also CORPORATION CODE, Sec. 68.

may have such rights, privileges or restrictions as may be stated in the articles of incorporation x x x [34]

the lien on the Golf Share in favor of Valley Golf is not valid, as the power to constitute such a lien should be provided in the articles of incorporation, and not merely in the by-laws.

However, there is a specific provision under the Title XI, on Non-Stock Corporations of the Corporation Code dealing with termination of membership. Section 91 of the Corporation Code provides:

SEC. 91. *Termination of membership.*—Membership shall **be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws**. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. (Emphasis supplied)

Clearly, the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone, as is the situation in this case. Thus, both the SEC and the appellate court are wrong in holding that the establishment of a lien and the loss of the Golf Share consequent to the enforcement of the lien should have been provided for in the articles of incorporation.

IV.

Given that the cause for termination of membership in a non-stock corporation may be established through the by-laws alone and need not be set forth in the articles of incorporation, is there any cause to invalidate the lien and the subsequent sale of the Golf Share by Valley Golf?

Former SEC Chairperson, Rosario Lopez, in her commentaries on the Corporation Code, explains the import of Section 91 in a manner relevant to this case:

The prevailing rule is that the provisions of the articles of incorporation or by-laws of termination of membership must be strictly

[34] CORPORATION CODE, Sec. 6.

complied with and applied to the letter. Thus, an association whose member fails to pay his membership due and annual due as required in the by-laws, and which provides for the termination or suspension of erring members as well as prohibits the latter from intervening in any manner in the operational activities of the association, must be observed because by-laws are self-imposed private laws binding on all members, directors and officers of the corporation.[35]

Examining closely the relevant by-law provisions of Valley Golf,[36] it appears that termination of membership may occur when the following successive conditions are met: (1) presentation of the account of the member; (2) failure of the member to settle the account within forty-five days after the cut-off date; (3) posting of the member as delinquent; and (4) issuance of an order by the board of directors that the share of the delinquent member be sold to satisfy the claims of Valley Golf. These conditions found in by-laws duly approved by the SEC warrant due respect and we are disinclined to rule against the validity of the by-law provisions.

At the same time, two points warrant special attention.

A.

Valley Golf has sought to accomplish the termination of Caram's membership through the sale of the Golf Share, justifying the sale through the constitution of a lien on the Golf Share under Section 1, Article VIII of its by-laws. Generally in theory, a non-stock corporation has the power to effect the termination of a member without having to constitute a lien on the membership share or to undertake the elaborate process of selling the same at public auction. The articles of incorporation or the by-laws can very well simply provide that the failure of a member to pay the dues on time is cause for the board of directors to terminate membership. Yet Valley Golf was organized in such a way that membership is adjunct to ownership of a share in

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[35] R. LOPEZ, *III THE CORPORATION CODE OF THE PHILIPPINES* (1994 ed.), at 976; citing SEC Opinion dated 16 June 1992, Mr. Emerito Sematano.

[36] *Supra* note 32.

the club; hence the necessity to dispose of the share to terminate membership.

Share ownership introduces another dimension to the case—the reality that termination of membership may also lead to the infringement of property rights. Even though Valley Golf is a non-stock corporation, as evinced by the fact that it is not authorized to distribute to the holder of its shares dividends or allotments of the surplus profits on the basis of shares held,[37] the Golf Share has an assigned value reflected on the certificate of membership itself.[38] Termination of membership in Valley Golf does not merely lead to the withdrawal of the rights and privileges of the member to club properties and facilities but also to the loss of the Golf Share itself for which the member had fully paid.

The claim of Valley Golf is limited to the amount of unpaid dues plus incremental costs. On the other hand, Caram's loss may encompass not only the amount he had paid for the share but also the price it would have fetched in the market at the time his membership was terminated.

There is an easy way to remedy what is obviously an unfair situation. Taking the same example, Valley Golf seizes the share, sells it to itself or a third person for ₱100.000.00, then refunds ₱99,000.00 back to the delinquent member. On its face, such a mechanism obviates the inequity of the first example, and assures that the loss sustained by the delinquent member is commensurate to the actual debt owed to Valley Golf. After all, applying civil law concepts, the pecuniary injury sustained by Valley Golf attributable to the delinquent member is only to the extent of the unpaid debt, and it would be difficult to foresee what right under law Valley Golf would have to the remainder of the sale's proceeds.

A refund mechanism may disquiet concerns of undue loss of property rights corresponding to termination of membership.

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[37] See CORPORATION CODE, Sec. 3.

[38] Caram's Certificate, issue din 1961, bore a stated par value of Nine Thousand Pesos. See Records, p. 61. According to respondent, as of 1999, the club share was being traded at 1.2 Million Pesos. *Id.* at 62.

Yet noticeably, the by-laws of Valley Golf does not require the Club to refund to the discharged member the remainder of the proceeds of the sale after the outstanding obligation is extinguished. After petitioner had filed her complaint though, Valley Golf did inform her that the heirs of Caram are entitled to such refund.

B.

Let us now turn to the other significant concern.

The by-laws does not provide for a mode of notice to the member before the board of directors puts up the Golf Share for sale, yet the sale marks the termination of membership. Whatever semblance of a notice that is afforded is bare at best, ambiguous at most. The member is entitled to receive a statement of account every month; however, the mode by which the member is to receive such notice is not elaborated upon. If the member fails to pay within 45 days from the due date, Valley Golf is immediately entitled to have the member "posted as delinquent." While the assignation of "delinquent status" is evident enough, it is not as clear what the word "posted" entails. Connotatively, the word could imply the physical posting of the notice of delinquency within the club premises, such as a bulletin board, which we recognize is often the case. Still, the actual posting modality is uncertain from the language of the by-laws.

The moment the member is "posted as delinquent," Valley Golf is immediately enabled to seize the share and sell the same, thereby terminating membership in the club. The by-laws does not require any notice to the member from the time delinquency is posted to the day the sale of the share is actually held. The setup is to the extreme detriment to the member, who upon being notified that the lien on his share is due for execution would be duly motivated to settle his accounts to foreclose such possibility.

Does the Corporation Code permit the termination of membership without due notice to the member? The Code itself is silent on that matter, and the argument can be made that if no notice is provided for in the articles of incorporation or in

the by-laws, then termination may be effected without any notice at all. Support for such an argument can be drawn from our ruling in *Long v. Basa*,[39] which pertains to a religious corporation that is also a non-stock corporation.[40] Therein, the Court upheld the expulsion of church members despite the absence of any provision on prior notice in the by-laws, stating that the members had "waived such notice by adhering to those by-laws[,] became members of the church voluntarily[,] entered into its covenant and subscribed to its rules [and by] doing so, they are bound by their consent."[41]

However, a distinction should be made between membership in a religious corporation, which ordinarily does not involve the purchase of ownership shares, and membership in a non-stock corporation such as Valley Golf, where the purchase of an ownership share is a condition *sine qua non*. Membership in Valley Golf entails the acquisition of a property right. In turn, the loss of such property right could also involve the application of aspects of civil law, in addition to the provisions of the Corporation Code. To put it simply, when the loss of membership in a non-stock corporation also entails the loss of property rights, the manner of deprivation of such property right should also be in accordance with the provisions of the Civil Code.

It has been held that a by-law providing that if a member fails to pay dues for a year, he shall be deemed to have relinquished his membership and may be excluded from the rooms of the association and his certificate of membership shall be sold at auction, and any surplus of the proceeds be paid over him, does not *ipso facto* terminate the membership of one whose dues are a year in arrears; the remedy given for non-payment of dues is not exclusive because the corporation, so long as he remains a member, may sue on his agreement and collect them.[42]

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[39] G.R. Nos. 134693-94, 27 September 2001, 366 SCRA 113.

[40] See CORPORATION CODE, Sec. 109.

[41] *Supra* note 39.

[42] R. AGPALO, *COMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES*, p. 390; citing SEC Opinion dated 10 March 1987. The SEC Quarterly Bulletin, Vol. XXI, No. 1, March 1987, pp. 14-15.

V.

With these foregoing concerns in mind, were the actions of Valley Golf concerning the Golf Share and membership of Caram warranted? We believe not.

It may be conceded that the actions of Valley Golf were, technically speaking, in accord with the provisions of its by-laws on termination of membership, vaguely defined as these are. Yet especially since the termination of membership in Valley Golf is inextricably linked to the deprivation of property rights over the Golf Share, the emergence of such adverse consequences make legal and equitable standards come to fore.

The commentaries of Lopez advert to an SEC Opinion dated 29 September 1987 which we can cite with approval. Lopez cites:

> [I]n order that the action of a corporation in expelling a member for cause may be valid, it is essential, in the absence of a waiver, that there shall be a hearing or trial of the charge against him, with reasonable notice to him and a fair opportunity to be heard in his defense. (Fletcher Cyc. Corp., *supra*) **If the method of trial is not regulated by the by-laws of the association, it should at least permit substantial justice.** The hearing must be conducted fairly and openly and the body of persons before whom it is heard or who are to decide the case must be unprejudiced. (SEC opinion dated September 29, 1987, Bacalaran-Sucat Drivers Association)

It is unmistakably wise public policy to require that the termination of membership in a non-stock corporation be done in accordance with substantial justice. No matter how one may precisely define such term, it is evident in this case that the termination of Caram's membership betrayed the dictates of substantial justice.

Valley Golf alleges in its present petition that it was notified of the death of Caram only in March of 1990,[43] a claim which is reiterated in its Reply to respondent's Comment.[44] Yet this

[43] *Rollo*, p. 10.

[44] "Likewise, at the time of said sale, petitioner had no knowledge of Mr. Caram's recent death, nor did it receive any notice thereof from Mr. Caram's heirs or his estate administrator." See *id.* at 157.

claim is belied by the very demand letters sent by Valley Golf to Caram's mailing address. The letters dated 25 January 1987 and 7 March 1987, both of which were sent within a few months after Caram's death are both addressed to "Est. of Fermin Z. Caram, Jr.;" and the abbreviation "[e]st." can only be taken to refer to "estate." This is to be distinguished from the two earlier letters, both sent prior to Caram's death on 6 October 1986, which were addressed to Caram himself. Inexplicably, the final letter dated 3 May 1987 was again addressed to Caram himself, although the fact that the two previous letters were directed at the estate of Caram stands as incontrovertible proof that Valley Golf had known of Caram's death even prior to the auction sale.

Interestingly, Valley Golf did not claim before the Court of Appeals that they had learned of Caram's death only after the auction sale. It also appears that Valley Golf had conceded before the SEC that some of the notices it had sent were addressed to the estate of Caram, and not the decedent himself.[45]

What do these facts reveal? Valley Golf acted in clear bad faith when it sent the final notice to Caram under the pretense they believed him to be still alive, when in fact they had very well known that he had already died. That it was in the final notice that Valley Golf had perpetrated the duplicity is especially blameworthy, since it was that notice that carried the final threat that his Golf Share would be sold at public auction should he fail to settle his account on or before 31 May 1987.

Valley Golf could have very well addressed that notice to the estate of Caram, as it had done with the third and fourth notices. That it did not do so signifies that Valley Golf was bent on selling the Golf Share, impervious to potential complications that would impede its intentions, such as the need

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[45] The decision of the SEC Hearing Officer, in narrating the version of facts as presented by Valley Golf in its Answer, states: "That defendant had dutifully informed the late Congressman Fermin Caram, Jr. during his lifetime about the unpaid accounts with defendant and that the estate of the late Fermin Caram, Jr. was likewise informed that the share of the deceased had been posted delinquent…" See *rollo*, p. 71.

to pursue the claim before the estate proceedings of Caram. By pretending to assume that Caram was then still alive, Valley Golf would have been able to capitalize on his previous unresponsiveness to their notices and proceed in feigned good faith with the sale. Whatever the reason Caram was unable to respond to the earlier notices, the fact remains that **at the time of the final notice, Valley Golf knew that Caram, having died and gone, would not be able to settle the obligation himself, yet they persisted in sending him notice to provide a color of regularity to the resulting sale.**

That reason alone, evocative as it is of the absence of substantial justice in the sale of the Golf Share, is sufficient to nullify the sale and sustain the rulings of the SEC and the Court of Appeals.

Moreover, the utter and appalling bad faith exhibited by Valley Golf in sending out the final notice to Caram on the deliberate pretense that he was still alive could bring into operation Articles 19, 20 and 21 under the Chapter on Human Relations of the Civil Code.[46] These provisions enunciate a general obligation under law for every person to act fairly and in good faith towards one another. Non-stock corporations and its officers are not exempt from that obligation.

VI.

Another point. The by-laws of Valley Golf is discomfiting enough in that it fails to provide any formal notice and hearing procedure before a member's share may be seized and sold. The Court would have been satisfied had the by-laws or the articles of incorporation established a procedure which assures that the member would in reality be actually notified of the

[46] Art. 19. Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

pending accounts and provide the opportunity for such member to settle such accounts before the membership share could be seized then sold to answer for the debt. As we have emphasized, membership in Valley Golf and many other like-situated non-stock corporations actually involves the purchase of a membership share, which is a substantially expensive property. As a result, termination of membership does not only lead to loss of bragging rights, but the actual deprivation of property.

The Court has no intention to interfere with how non-stock corporations should run their daily affairs. The Court also respects the fact that membership is non-stock corporations is a voluntary arrangement, and that the member who signs up is bound to adhere to what the articles of incorporation or the by-laws provide, even if provisions are detrimental to the interest of the member. At the same time, in the absence of a satisfactory procedure under the articles of incorporation or the by-laws that affords a member the opportunity to defend against the deprivation of significant property rights in accordance with substantial justice, the terms of the by-laws or articles of incorporation will not suffice. There will be need in such case to refer to substantive law. Such a flaw attends the articles of incorporation and by-laws of Valley Golf. The Court deems it judicious to refer to the protections afforded by the Civil Code, with respect to the preservation, maintenance, and defense from loss of property rights.

The arrangement provided for in the afore-quoted by-laws of Valley Golf whereby a lien is constituted on the membership share to answer for subsequent obligations to the corporation finds applicable parallels under the Civil Code. Membership shares are considered as movable or personal property,[47] and they can be constituted as security to secure a principal obligation, such as the dues and fees. There are at least two contractual modes under the Civil Code by which personal property can be used to secure a principal obligation. The first is through a contract of pledge,[48] while the second is through a chattel

[47] See CIVIL CODE, Art. 414.

[48] See CIVIL CODE, Art. 2085 in relation to Arts. 2093 & 2095.

mortgage.[49] A pledge would require the pledgor to surrender possession of the thing pledged, *i.e.*, the membership share, to the pledge in order that the contract of pledge may be constituted.[50]

Is delivery of the share cannot be effected, the suitable security transaction is the chattel mortgage. Under Article 2124 of the Civil Code, movables may be the object of a chattel mortgage. The Chattel mortgage is governed by Act No. 1508, otherwise known The Chattel Mortgage Law,[51] and the Civil Code.

In this case, Caram had not signed any document that manifests his agreement to constitute his Golf Share as security in favor of Valley Golf to answer for his obligations to the club. There is no document we can assess that it is substantially compliant with the form of chattel mortgages under Section 5 of Act No. 1508. The by-laws could not suffice for that purpose since it is not designed as a bilateral contract between Caram and Valley Golf, or a vehicle by which Caram expressed his consent to constitute his Golf Share as security for his account with Valley Golf.

VII.

We finally turn to the matter of damages. The award of damages sustained by the Court of Appeals was for moral damages in the sum of ₱50,000.00 and exemplary damages in the sum of ₱10,000.00. Both awards should be sustained. In pretending to give actual notice to Caram despite full knowledge that he was in fact dead, Valley Golf exhibited utter bad faith.

The award of moral damages was based on a finding by the hearing officer that Valley Golf had "considerably besmirched the reputation and good credit standing of the plaintiff and her family," such justification having foundation under Article 2217 of the Civil Code. No cause has been submitted to detract from such award. In addition, exemplary damages were awarded

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[49] See CIVIL CODE, Art. 2124.

[50] See CIVIL CODE, Art. 2093.

[51] Act No. 1508, as amended.

"to [Valley Golf] defendant from repeating similar acts in the future and to protect the interest of its stockholders… and by way of example or correction for the public good." Such conclusion is in accordance with Article 2229 of the Civil Code, which establishes liability for exemplary damages.

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

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 158819. April 16, 2009]

ANTERO LUISTRO, *petitioner, vs.* **COURT OF APPEALS and FIRST GAS POWER CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; RESOLUTION OF MOTION; CLEAR AND DISTINCT DECLARATION OF REASONS THEREFOR; ABSENT IN CASE AT BAR.— Section 3, Rule 16 of the 1997 Rules of Civil Procedure provides: Sec. 3. *Resolution of motion*. - After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading. The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable. In every case, the resolution shall state clearly and distinctly the reasons therefor. The Rules prescribe that the resolution of the motion to dismiss shall clearly and distinctly declare the reasons therefor. The

directive proscribes the common practice of perfunctorily dismissing the motion for lack of merit which can often pose difficulty and misunderstanding on the part of the aggrieved party in taking recourse therefrom and likewise on the higher court called upon to resolve the same, usually on *certiorari*. In this case, the trial court merely stated: Examining the allegations in the complaint the Court finds that a cause of action sufficiently exist[s] against defendants. The trial court did not explain why a sufficient cause of action existed in this case. The trial court merely cited Article 19 of the Civil Code which provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." The disposition of the trial court clearly fell short of the requirement set forth under Section 3, Rule 16 of the 1997 Rules of Civil Procedure.

2. ID.; ID.; ID.; MOTION TO DISMISS BASED ON LACK OF CAUSE OF ACTION; SUFFICIENCY THEREOF. — In a motion to dismiss based on lack of cause of action, the question posed to the court for determination is the sufficiency of the allegation of facts made in the complaint to constitute a cause of action. To sustain a motion to dismiss for lack of cause of action, it must be shown that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain.

3. ID.; ID.; ALLEGATIONS IN PLEADINGS; FRAUD, MISTAKE, CONDITION OF THE MIND; THAT FRAUD MUST BE STATED WITH PARTICULARITY, WANTING IN CASE AT BAR. — Section 5, Rule 8 of the 1997 Rules of Civil Procedure states: Section 5. *Fraud, mistake, condition of the mind.* — In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally. Again, the complaint falls short of the requirement that fraud must be stated with particularity. Not only did petitioner fail to allege with particularity the fraud allegedly committed by respondent. A review of the Contract shows that its contents were explained to petitioner. There is clearly no basis for the allegation that petitioner only signed the Contract because of fraud perpetrated by respondent.

APPEARANCES OF COUNSEL

Pedro N. Belmi for petitioner.
Puno & Puno for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 9 December 2002 Decision[2] and 18 June 2003 Resolution[3] in CA-G.R. SP No. 68703.

The Antecedent Facts

First Gas Power Corporation (respondent) operates a gas-fired power generating facility by virtue of a Power Purchase Agreement (PPA) with the Manila Electric Company (Meralco). Respondent sells the electric power generated by its facility to Meralco.

On 2 September 1997, respondent entered into a Substation Interconnection Agreement (SIA) with Meralco and the National Power Corporation (NPC). The SIA required respondent to design, finance, construct, commission, and energize a 230-kilovolt electric power transmission line, approximately 25 km. in length from its power plant site in Sta. Rita, Batangas City to Calaca, Batangas. Respondent's obligation under the SIA entailed the acquisition of easements of right-of-way over affected lands located along the designated route of the transmission line.

On 25 March 1997, respondent entered into a Contract of Easement of Right-of-Way (Contract) with Antero Luistro

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 40-51. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Ruben T. Reyes (a retired member of this Court) and Edgardo F. Sundiam, concurring.

[3] *Id.* at 53-54.

(petitioner), owner of a parcel of land located in Barangay Maigsing Dahilig, Lemery, Batangas. Under the Contract, petitioner granted respondent perpetual easement over a 100-sq. m. portion of his property for the erection of the transmission line tower and a 25-year easement over 2,453.60 sq. m. portion of the property for the right to pass overhead line cables. The Contract covered a total area of 2,553.60 sq. m. for a consideration of ₱88,608 to cover the easement fee, tower pole, guy occupancy fees and improvements. Respondent then commenced the construction of the transmission line tower and the stringing of overhead transmission line cables above petitioner's property covered by the Contract.

On 23 December 1998, petitioner's counsel wrote a letter to respondent's president asking for a temporary stoppage of all kinds of work within the vicinity of petitioner's residential house pending settlement of petitioner's grievance that the house and other improvements lay underneath the transmission wire/line being constructed and would endanger the life and health of the persons in the vicinity. Petitioner also referred the concerns to the NPC in a letter dated 19 April 1999. However, the NPC set aside petitioner's concerns and considered the matter closed.

On 7 September 2000, petitioner filed a complaint[4] for "Rescission/Amendment And Or Modification of Contract Of Easement With Damages," docketed as Civil Case No. 142-2000, against respondent and First Balfour Beatty Realty, Inc. (defendants). Petitioner alleged that respondent, by means of fraud and machinations of words, was able to convince him to enter into the Contract. Petitioner alleged that he entered into the Contract under misrepresentation, promises, false and fraudulent assurances, and tricks of respondent. Petitioner alleged that while his house was supposed to be 20 to 25 meters away from the transmission wire/line, it turned out after the installation of Posts 97 and 98 that his house was only 7.23 meters directly underneath the transmission wire/line. Petitioner alleged that

[4] *Id*. at 55-60.

the powerful 230 kilovolts passing the transmission wire/line continuously endanger the lives, limbs, and properties of petitioner and his family.

Respondent filed a Motion to Dismiss[5] on the ground that petitioner failed to state a cause of action in his complaint.

The Ruling of the Trial Court

In its Order[6] dated 24 January 2001, the Regional Trial Court of Lemery, Batangas, Branch 5 (trial court) denied the Motion to Dismiss and directed defendants to file their respective answers within ten days from receipt of the order. Respondent filed a Motion for Reconsideration. In its 13 November 2001 Order,[7] the trial court denied the motion.

Respondent filed a petition for certiorari before the Court of Appeals assailing the 24 January 2001 and 13 November 2001 Orders of the trial court.

The Ruling of the Court of Appeals

In its 9 December 2001 Decision, the Court of Appeals set aside the trial court's 24 January 2001 and 13 November 2001 Orders and ordered the dismissal of the complaint for failure to state a cause of action insofar as respondent was concerned. The Court of Appeals ruled that the trial court failed to comply with Section 3, Rule 16 of the 1997 Rules of Civil Procedure which requires that in every case, the resolution shall state clearly and distinctly the reasons therefor. The Court of Appeals ruled that the trial court failed to consider that when the ground for dismissal was failure to state a cause of action, its sufficiency could only be determined by considering the facts alleged in the complaint. The Court of Appeals ruled that the undertaking as regards the distance of the transmission wire/line from petitioner's house which respondent allegedly breached was not in the Contract. The Court of Appeals ruled that the alleged

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[5] *Id*. at 74-89.

[6] *Id*. at 97-98. Penned by Executive Judge Eutiquio L. Quitain.

[7] *Id*. at 109.

right of petitioner as stated in the complaint did not exist and was without any basis.

The Court of Appeals further ruled that it could not sustain the allegation of fraud because petitioner failed to state with particularity the circumstances constituting the alleged fraud. The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, foregoing premises considered, the petition is hereby GRANTED and the assailed Orders dated January 24, 2001 and November 13, 2001 of the Regional Trial Court, Branch 5, Lemery, Batangas in Civil Case No. 142-2000 are hereby SET ASIDE insofar as petitioner is concerned as the lower court is hereby ORDERED to dismiss the complaint for failure to state a cause of action insofar as petitioner is concerned.
>
> SO ORDERED.[8]

Petitioner filed a motion for reconsideration. In its 18 June 2003 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

The Issues

Petitioner raises the following issues in his Memorandum:

1. Whether the trial court's 24 January 2001 and 13 November 2001 Orders failed to comply with Section 3, Rule 16 of the 1997 Rules of Civil Procedure;

2. Whether the complaint states a sufficient cause of action; and

3. Whether the complaint alleges fraud with particularity as required under Section 5, Rule 8 of the 1997 Rules of Civil Procedure.

The Ruling of this Court

The petition has no merit.

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[8] *Id.* at 50.

Violation of Section 3, Rule 16 of the 1997 Rules of Civil Procedure

Section 3, Rule 16 of the 1997 Rules of Civil Procedure provides:

> Sec. 3. *Resolution of motion*. — After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading.
>
> The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.
>
> In every case, the resolution shall state clearly and distinctly the reasons therefor.

The Rules prescribe that the resolution of the motion to dismiss shall clearly and distinctly declare the reasons therefor. The directive proscribes the common practice of perfunctorily dismissing the motion for lack of merit which can often pose difficulty and misunderstanding on the part of the aggrieved party in taking recourse therefrom and likewise on the higher court called upon to resolve the same, usually on *certiorari*.[9] In this case, the trial court merely stated:

> Examining the allegations in the complaint the Court finds that a cause of action sufficiently exist[s] against defendants.[10]

The trial court did not explain why a sufficient cause of action existed in this case. The trial court merely cited Article 19 of the Civil Code which provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." The disposition of the trial court clearly fell short of the requirement set forth under Section 3, Rule 16 of the 1997 Rules of Civil Procedure.

Sufficiency of Cause of Action

In a motion to dismiss based on lack of cause of action, the question posed to the court for determination is the sufficiency

[9] *Barrazona v. Regional Trial Court, Br. 61, Baguio City*, G.R. No. 154282, 7 April 2006, 486 SCRA 555.

[10] *Rollo*, p. 97.

of the allegation of facts made in the complaint to constitute a cause of action.[11] To sustain a motion to dismiss for lack of cause of action, it must be shown that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain.[12]

In this case, we agree with the Court of Appeals that the complaint lacked sufficient cause of action. The complaint was based on the alleged breach of the Contract and violation of the undertaking that petitioner's house was supposed to be 20 to 25 meters away from the transmission wire/line. Petitioner alleged in the complaint that contrary to what had been "assured and promised," his house turned out to be only 7.23 meters directly underneath the transmission wire/line.

As pointed out by the Court of Appeals, there was no such undertaking in the Contract. The Contract only granted respondent a perpetual easement over 100 sq. m. portion of petitioner's property, as well as 25 years easement of right-of-way over the property or portions thereof, as indicated in the sketch plan, for the installation and maintenance of wooden poles, steel towers, tower footings, and electric and guy wires. Therefore, the alleged right of petitioner, which respondent supposed to have violated, did not exist in the Contract.

Allegation of Fraud

Section 5, Rule 8 of the 1997 Rules of Civil Procedure states:

> Section 5. *Fraud, mistake, condition of the mind.* - In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally.

Again, the complaint falls short of the requirement that fraud must be stated with particularity. The complaint merely states:

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[11] *Santiago v. Subic Bay Metropolitan Authority*, G.R. No. 156888, 20 November 2006, 507 SCRA 283.

[12] *Universal Aquarius, Inc. v. Q.C. Human Resources Management Corporation*, G.R. No. 155990, 12 September 2007, 533 SCRA 38.

4. That sometime in the year of 1997, the consolidator-facilitator of the Defendants FGPC and Balfour by means of fraud and machinations of words were able to convince[] the plaintiff to enter into 'CONTRACT OF EASEMENT OF RIGHT OF WAY' wherein the latter granted in favor of the defendant FGPC the right to erect [its] Tower No. 98 on the land of the plaintiff situated at Barangay Maigsing Dahilig, Lemery 4209 Batangas including the right to Install Transmission Lines over a portion of the same property for a consideration therein stated, a xerox copy of said contract is hereto attached as [] ANNEXES "A" up to "A-4" of the complaint;

5. That the said contract, (Annexes "A" up to "A-4") was entered into by the plaintiff under the "MISREPRESENTATION, PROMISES, FALSE AND FRAUDULENT ASSURANCES AND TRICKS" of the defendants[.][13]

Not only did petitioner fail to allege with particularity the fraud allegedly committed by respondent. A review of the Contract shows that its contents were explained to petitioner. The Contract states:

Bago ko/namin nilagdaan ang kasulatang ito ay ipinaliwanag muna sa akin/amin sa wikang Tagalog/ o sa wikang aking/aming naiintindihan. Ang nilalaman nito'y lubusan ko/naming nauunawaan kaya't lumagda kami rito ng kusang loob, walang sinumang pumilit o tumakot sa akin/amin.[14]

There is clearly no basis for the allegation that petitioner only signed the Contract because of fraud perpetrated by respondent.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 9 December 2002 Decision and 18 June 2003 Resolution in CA-G.R. SP No. 68703.

SO ORDERED.

Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

Puno, C.J. (Chairperson), no part.

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[13] *Rollo*, p. 56.

[14] *Id*. at 64.

FIRST DIVISION

[G.R. No. 160918. April 16, 2009]

CONCEPCION B. ALCANTARA, Herein substituted by her son DR. ANTONIO B. ALCANTARA, *petitioner, vs.* **HILARIA ROBLE DE TEMPLA, ALBERTO ROBLE, MARIANO ROBLE, ELEODORA ROBLE DE MOLINO, and RODABLADO ROBLE, as the heirs of the late JESUSA BOOC; GALA YCONG DE TABLADA, CIRIACA YCONG DE BALDADO, VICENTE YCONG, HILARIO YCONG (deceased), represented by his heirs JOY, ALEX, and SOFIA all surnamed YCONG, and LEONARDA YCONG, his surviving spouse, as the heirs of the late COLUMBA BOOC; GERVASIO BOOC; JULIETA BOOC as heir of the late CANDELARIO BOOC; CONSUELO LLAMAS *VDA. DE* BOOC; ROGELIO BOOC; and LOURDES BOOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE PROPER; DISTINGUISHED FROM QUESTIONS OF FACT. — A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED; EXCEPTIONS. — The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court.

The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioners are not disputed by the respondents; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. After a careful review of the records, the Court finds that none of these circumstances is present.

APPEARANCES OF COUNSEL

Emmanuel I. Seno & Manolito M. Seno for petitioner.
Sisinio M. Andales & Eleno M. Andales, Jr. for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review under Rule 45 of the Rules of Court. The petition challenges the 13 November 2003 Decision[2] of the Court of Appeals in CA-G.R. CV No. 61731. The Court of Appeals affirmed with modification the 15 December 1997 Decision[3] of the Regional Trial Court (RTC), Judicial Region 7, Branch 27, Lapu-Lapu City in Civil Case No. 426-L.

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[1] *Rollo*, pp. 3-20.

[2] *Id.* at 24-42. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Conrado M. Vasquez, Jr. and Arsenio J. Magpale concurring.

[3] CA *rollo*, pp. 54-59. Penned by Judge Teodoro K. Risos.

The Facts

Jesusa Booc (Jesusa), Candelario Booc (Candelario), Columba Booc Ycong (Columba), Gervasio Booc (Gervasio), and Concepcion Booc Alcantara (Concepcion) were siblings. They inherited five parcels of land — Lot Nos. 2464, 2361, 336, 2360 and 2393 (Lots 1 to 5) situated in Lapu-Lapu City. Concepcion watched over the properties since she lived nearby.

Lot 1 was covered by Original Certificate (OCT) No. RO-0571,[4] in the names of Jesusa, Candelario, Columba, Gervasio, and Concepcion. It consisted of 2,017 square meters (sq.m.). On 31 August 1976, the State expropriated 1,575 sq.m. and paid ₱47,250. Upon the request of Concepcion, the Register of Deeds issued Transfer Certificate of Title (TCT) No. 7849 in the names of Jesusa, the heirs of Columba, Gervasio, and Concepcion. TCT No. 7849 covered the remaining 442 sq.m. On 4 August 1978, Gervasio sold 62 sq.m. to Marienela Rama (Marienela). On 28 September 1978, the heirs of Jesusa and Columba sold 124 sq.m. to Antonio del Prado. On 23 March 1988, Concepcion sold 127 sq.m. to Antonio del Prado.

Lot 2 was covered by OCT No. RO-0570,[5] in the names of Jesusa, Candelario, Columba, Gervasio, and Concepcion. It consisted of 8,895 sq.m. In an extrajudicial settlement[6] dated 27 August 1963, the siblings divided the property — Jesusa got 945.55 sq.m., Candelario 945.55, Columba 945.55, Gervasio 945.55, and Concepcion 5,112.8. In an affidavit of confirmation and correction dated 29 August 1963, Jesusa and Candelario waived their shares in favor of Concepcion. Candelario signed the document while Jesusa did not. Upon the request of Gervasio, the Register of Deeds issued TCT No. 7747 in his name covering his share. The Register of Deeds also issued TCT No. 7748 in the names of the heirs of Columba covering Columba's share, and TCT No. 1243 in the name of Concepcion covering her

[4] *Rollo*, p. 133.

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

[6] Records, pp. 15-16.

total share of 7,003.6 sq.m. Concepcion sold her total share to her son, Antonio Alcantara.

Lot 3 was covered by OCT No. RO-0568,[7] in the name of Adriana Dungog (Adriana). Adriana was the mother of Jesusa, Candelario, Columba, Gervasio, and Concepcion. Lot 3 consisted of 1,947 sq.m. and was available for partition. The heirs of Candelario waived their share in favor of Concepcion.

Lot 4 was covered by OCT No. RO-0569,[8] in the name of Margarita Patalinghug (Margarita). Margarita was the grandmother of Jesusa, Candelario, Columba, Gervasio, and Concepcion. The share of Ceferino Booc in Lot 4 consisted of 3,065 sq.m. Ceferino was the son of Margarita and the father of Jesusa, Candelario, Columba, Gervasio, and Concepcion. The five siblings allegedly divided the property with each getting 613 sq.m. Jesusa and Candelario allegedly waived their shares in favor of Concepcion. Thus, Concepcion got a total share of 1,839 sq.m. Concepcion sold her total share to Antonio Alcantara.

Lot 5 was covered by OCT No. RO-0001,[9] in the name of Adriana. It consisted of 16,669.5 sq.m. In the extrajudicial settlement dated 27 August 1963, the siblings divided the property — Jesusa, Candelario, Columba, and Gervasio got 4,167.375 sq.m. each.

In a complaint[10] dated 15 September 1979 and filed with the RTC, the heirs of Jesusa, the heirs of Candelario, the heirs of Columba, and Gervasio prayed that Lots 1 to 5 be declared as common properties and partitioned.

In her answer[11] dated 20 June 1981, Concepcion alleged that the only properties available for partition were Lots 1 and 3 and that the action for partition had prescribed.

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[7] *Rollo*, p. 136.

[8] *Id*. at 137-138.

[9] *Id*. at 139.

[10] Records, pp. 1-8.

[11] *Id*. at 130-138.

The RTC's Ruling

In its 15 December 1997 Decision, the RTC held that (1) the claim that the action for partition had prescribed was unmeritorious; (2) only 422 sq.m. of Lot 1 were available for partition — the portions expropriated by the State and sold to Antonio del Prado were excluded; (3) Jesusa did not waive her share in Lot 2 in favor of Concepcion; and (4) there was no proof that any portion of Lot 4 was partitioned, waived, or sold. The RTC held that:

> [A]s against the positive assertion of plaintiffs' demand for partition of the five (5) parcels of land in litigation, the defenses set up by the defendant were suppositions and assumptions bordering on hearsay evidence not admissible in court. The substantial evidence put up by the plaintiffs through and by the testimonies of Hilaria Templa, Julita Booc, Atty. William Garcia of the Ministry of Public Highways, and one Rodelio Pangatungan, an employee of the Register of Deeds of Lapu-lapu City, are adequate to support the claim of the plaintiffs.
>
> **Defendant's contention that the claim of the plaintiffs has been barred by acquisitive prescription and laches is without merit**. Under the law, "no co-owner shall be obliged to remain in the co-ownership and that such co-owner may demand at any time partition of the thing owned in common insofar as his share is concerned" (Art. 484-501, New Civil Code; *Aguilar vs. Court of Appeals*, 227 SCRA 472). This means that **the co-owner may demand at any time the partition of their property which implies therefore that an action to demand a partition is imprescriptible and cannot be barred by laches**" [sic] (*Salvador vs. Court of Appeals*, 243 SCRA 239).
>
> **The partition however is limited to what is left unencumbered of the parcels of land in litigation. With respect to Parcel I, Lot No. 2464, the Court notes that a portion thereof has long been conveyed for value to a certain Antonio del Prado**, evidenced by a duly notarized Deed of Sale (Exhibit "1") showing that Lot No. 2464-B with an area of 124 sq.m., has already been sold on September 28, 1978, by Gala Tablada, Ciriaca Ycong, Hilaria Roble Templa and Eleodora Roble Molino. **Also to be excluded from the partition is that portion sold by the heirs to the Republic of the Philippines** on August 31, 1976, long before the filing of the present action, consisting of 1,575 sq.m.; [sic]

With respect to Parcel II, Lot 2361, the court notes that only Candelario Booc ceded his interest over the lot, consisting of 945.55 sq.m., in favor of defendant Concepcion Alcantara, evidenced by a Waiver (Exhibit "4") and the Extrajudicial Settlement (Exhibit "5" [sic]) covering the particular lot. **Although Jesusa Roble was mentioned therein, the court observes that she did not affix her signature therein, thus, in no way could she or her successors-in-interest be bound by its contents**. There is therefore no hindrance over the partition of the lot in accordance with the Extrajudicial Settlement executed in 1963.

With respect to Parcel III, Lot No. 336, Exhibit "3" shows that Consuelo *vda. De* Booc, Rogelio Booc, Carmelita Booc and Lourdes Booc, representing themselves as the sole heirs of the late Candelario Booc, waived their interest and participation over Lot No. 336 in favor of Concepcion Alcantara under the Waiver dated August 18, 1971. This waiver however binds only the aforementioned heirs and cannot, in any manner, affect the rights and interests of the other heirs with respect to the said lot. Consequently, the other heirs remain co-owners of the remaining portion not covered by the waiver and hence have the right to demand the partition of the same anytime.

With respect to Lot No. 2360, other than the annotations entered in the title covering the lot, **the court notes that there is no showing that the heirs of Margarita Patalinghug, original registered owner of the property, have settled or partitioned the property in accordance with law as no copy of the Extrajudicial Settlement or the sale to Antonio Alcantara have been offered in evidence**. The court therefore believes that a partition of the same among the heirs of Margarita Patalinghug, is in order.

Finally, with respect to Lot 2393, it is very clear from the Extrajudicial Settlement (Exhibit "5"), that the said lot was adjudicated to Jesusa Roble, Candelario Booc, Gerva[s]io Booc and Columba Booc Ycong survived by Gala Ycong, Vicenta Ycong, Ciriaca Ycong, Hilario Ycong and Leonardo Ycong, each to have a share of 4,167.375 sq.m. There being no evidence that the said shares have been sold by the said heirs to other persons, the court believes that a partition of the same is in order.[12] (Emphasis supplied)

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[12] CA *rollo*, pp. 57-58.

While the case was pending, Concepcion died. Antonio Alcantara substituted Concepcion. Feeling aggrieved, Antonio Alcantara appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 13 November 2003 Decision, the Court of Appeals affirmed with modification the 15 December 1997 Decision of the RTC. The Court of Appeals held that (1) an action for partition filed by a co-owner is imprescriptible and cannot be barred by laches; (2) only 129 sq.m. of Lot 1 were available for partition — the portions expropriated by the State and sold to Marienela and Antonio del Prado were excluded; (3) Jesusa did not waive or sell her share in Lot 2 to Concepcion; and (4) the partition of Lot 4 was void. The Court of Appeals held that:

> Prescinding from the foregoing and after a meticulous poring over the contentions of the parties, We rule that **with regard to Parcel I**, the 442 sq.m. (Lot 2464-B) remaining after the sale 1,575 sq.m. thereof to the government could have been available for partition among the heirs of the late Jesusa, Candelario, Columba, Gerva[s]io and Concepcion had it not been partially conveyed to third persons by said heirs. But before We delve into that, it must be stressed that **TCT No. 7849, covering Lot 2464-B is fatally defective inasmuch as it was issued in the names of Jesusa, Columba, Gerva[s]io and Concepcion only to the exclusion of Candelario Booc, who is a co-owner of said lot as evidenced by OCT No. RO-0571, and also because it was issued on the basis of a mere letter-request filed and signed only by Concepcion Alcantara. Suffice it to state that the Register of Deeds of Lapu-Lapu City has no basis in issuing TCT No. 7849 in the names of Jesusa, Columba, Gerva[s]io and Concepcion only because under OCT No. RO-0571, Candelario is a registered co-owner of Lot 2464. In the absence of any document showing that Candelario waived or ceded his rights over the lot in question in favor of the other co-owners, the Register of Deeds is not legally warranted to issue TCT No. 7849 to the exclusion of Candelario Booc**. Now, anent the subsequent conveyances, it was earlier mentioned that **Lot 2464-B was already partially conveyed by Gerva[s]io to a certain Marienela Rama to the extent of 62 sq.m. on August 4, 1978; by the Heirs of Columba and the Heirs of Jesusa to Antonio del Prado to the extent of 124 sq.m. on September 28,**

1978; and by Concepcion Alcantara to Antonio del Prado to the extent of 127 sq.m. on March 23, 1988. Such conveyances are deemed valid considering that the plaintiff-appellees did not come up with sufficient controverting evidence proving that the subsequent purchasers were purchasers in bad faith and that said conveyances were fictitious and simulated. With this, only 129 sq.m. of Lot 2464-B remains free and and available for partition. Had there been no previous conveyances involving Lot 2462-B, the 442 sq.m. should have been divided equally among Jesusa, Candelario, Columbia, Gerva[s]io and Concepcion at 88.4 per share. However considering that Lot 2464-B was already conveyed partially to third persons by Gerva[s]io, Concepcion, the Heirs of Columba and the Heirs of Jesusa, the division of the 129 sq.m. Remaining shall in the following computation:

I.) The heirs of Candelario shall get the whole 88.4 sq.m. considering that Candelario did not convey wholly or partially his share in Lot 2464-B to third persons nor ceded or waived his share in favor of the other co-owners;

II.) The heirs of Gerva[s]io, Heirs of Columba and Heirs of Jesusa, considering that each of their predecessor-in-interest have sold 62 sq.m.; they shall only be entitled to 26.4 sq.m. each. But since only 40.6 sq.m. remains after deducting the 88.4 sq.m. share of Candelario, they shall divide it among themselves equally at 13.53 sq.m. each. The deficiency of 12.87 sq.m. to complete their shares of 88.4 sq.m. shall be derived from the share of Concepcion Alcantara in the other parcels of land subject to partition;

III.) The heirs of Concepcion Alcantara shall get nothing from Lot 2464-B considering that Concepcion sold 127 sq.m., which is 38.6 sq.m. in excess of her 88.4 sq.m. share. The 38.6 sq.m. in excess of Concepcion's share shall be deducted from her share in the other parcels of land subject to partition to compensate with the deficiency in the shares of Gerva[s]io, Jesusa and Columba to the extent of 12.87 sq.m. each.

The subsequent deeds of extrajudicial partition of Lot 2464-B executed by and among defendant Concepcion, plaintiffs Gerva[s]io, heirs of Jesusa, heirs of Columba and Antonio del Prado as per annotation on TCT No. 7849 are considered void insofar as the partition of the 129 sq.m. portion is concerned considering that Candelario Booc was not included therein.

Anent Parcel II, We rule that it must be partitioned in accordance with Exhibit "5". Contrary to the assertion of the defendant-appellant that Exhibit "5" was nullified by the court *a quo* in its decision, it must be stressed that the court *a quo* was silent on that point. In fact, the court *a quo* even ordered the partition of Parcel II in accordance with Exhibit "5". In this regard, it is likewise the finding of this Court that Parcel II must be partitioned pursuant to Exhibit 5. It must be stressed that Exhibit "5", being a notarized document; is entitled to full faith and credit on its face. In the absence of clear, strong and convincing evidence showing falsity or fraud, such notarized document is presumed valid. The burden of proof that Exhibit "5" is a forged or fictitious document rests upon the plaintiff-appellees. However, in the instant case, the plaintiff-appellees miserably failed to come up with clear and convincing evidence showing that Exhibit "5" was indeed fictitiously and fraudulently executed by original defendant Concepcion Alcantara. **As regards Exhibit "4", it is only valid and binding against Candelario Booc who was the lone signatory thereof. It is not binding against Jesusa Roble because she did not affix her signature thereto. With regard to the deed of sale allegedly executed by Jose and Jesusa Roble over their [share] of 945.55 sq.m. in Lot 2361 in favor of original defendant Concepcion Alcantara on October 26, 1962 as per annotation on OCT No. RO-0570** (Entry 4583-V-I-D.B.)**, We rule that it is of doubtful authenticity in view of the *prima facie* finding of falsification committed by Concepcion Alcantara of the City Fiscal of Lapu-Lapu City in a Resolution dated February 29, 1984)** [sic]. **Furthermore, such alleged deed of sale was not presented in evidence by the defendant-appellant, as such, there could be no way by which the court *a quo* could examine the authenticity or regularity of said document**. Consequently, TCT No. 1243 issued in the name of Concepcion Alcantara is void insofar as the share of Jesusa Roble consisting of 945.5 sq.m. was fraudulently included therein. In the same vein, the sale executed by Concepcion Alcantara of the land covered by TCT No. 1243 in favor of her son Antonio Alcantara on January 26, 1979 is void insofar as it included the share of Jesusa Roble in Lot 2361. In this regard, the heirs of Jesusa Roble are entitled to their share in Lot 2361 consisting of 945.5 sq.m. Gerva[s]io Booc as well as Columba Booc had already got their respective shares in Lot 2361 consisting of 945.5 each as evidenced by TCT Nos. 7747 and 7748, respectively. The heirs of Concepcion Alcantara shall get their share in accordance with Exhibit "5", that is, 5,112.8 sq.m. plus

the share of Candelario Booc consisting of 945.5 sq.m. which was waived by the latter pursuant to Exhibit "4".

With regard to Parcel III consisting of 1,947 sq.m., We concur with the finding of the court *a quo* that it is still subject to partition (389.4 sq.m. per heir). But considering that the heirs of Candelario Booc executed a waiver of their father's share in said lot in favor of Concepcion Alcantara, they are excluded from the partition thereof. Also, considering that this land is free from liens and conveyances, the deficiency in the shares of Gerva[s]io, Jesusa and Columba to the extent of 12.87 sq.m. each in Parcel I shall be derived from the share of Concepcion Alcantara in this land. Thus, the following partition:

I.) The heirs of Gerva[s]io Booc shall get 402.27 sq.m. (389.4 sq.m. plus 12.87 sq.m.);

II.) The heirs of Jesusa Roble shall get 402.27 sq.m. (389.4 sq.m. plus 12.87 sq.m.);

III.) The heirs of Columba Ycong shall get 402.27 sq.m. (389.4 sq.m. plus 12.87 sq.m.);

IV.) The heirs of Concepcion Alcantara shall get 740.19 sq.m. (389.4 sq.m. representing Concepcion's share in addition to the share of Candelario Booc consisting of 389.4 sq.m. minus the 38.61 sq.m., representing the deficiency in the shares of Gerva[s]io, Jesusa and Columba in Parcel I)

Anent Parcel IV, it appears that there has already been a partition of said land among the children of Margarita Patalinghug and by which Ceferino Booc got his share of 3,065 sq.m. This shall be the subject of partition among Jesusa, Candelario, Gerva[s]io, Columba and Concepcion. If Ceferino Booc's share would be divided among his five children, each child shall get 613 sq.m. However, **as it appeared in the records, only Gerva[s]io, Columba and Concepcion were able to partition the 3,065 sq.m. among themselves, as evidenced by Exhibit "P"** (p. 66, O.R.). **Jesusa and Candelario were excluded in said partition. With this, We rule that Exhibit "P" is void in so far as it deprived Jesusa and Candelario of their rightful share in their father's estate. Although it was stated in Exhibit "P" that Jesusa and Candelario ceded their shares in favor of Concepcion Alcantara, nevertheless, this was not backed up by document on record. Exhibit "P" is merely self-serving, thus, must be struck down**. Resultantly, TCT No. 1526 covering 1,839 sq.m. issued in the name of Concepcion

Alcantara is void in so far as the 1226 sq.m. representing the shares of Jesusa and Candelario were included therein. In fine, Concepcion Alcantara shall only get 613 sq.m. The same is also true with Jesusa and Candelario who are entitled to 613 sq.m. each.

Anent Parcel V, it must be partitioned pursuant to Exhibit "5" whereby Jesusa, Gerva[s]io, Columba and Candelario shall get 4,167 sq.m. each. Concepcion Alcantara is no longer entitled to her share in the land considering that she already got her share in relation to Parcel II.[13] (Emphasis supplied)

Hence, the instant petition. Antonio Alcantara alleged that (1) "exhibits 1 to 5" should be given full weight; (2) Concepcion did not commit falsification; (3) he was a buyer in good faith; and (4) there was no co-ownership.

The Court's Ruling

The petition is unmeritorious.

A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.[14]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[15] In *Paterno v. Paterno*,[16] the Court held that:

Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are

[13] *Rollo*, pp. 36-40.

[14] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

[15] *Id.*

[16] G.R. No. 63680, 23 March 1990, 183 SCRA 630, 636-637.

without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth.

Whether "exhibits 1 to 5" should be given full weight, whether Concepcion committed falsification, whether Antonio Alcantara was a buyer in good faith, and whether a co-ownership existed are all questions of fact. These questions can only be resolved after reviewing the probative value of the evidence. At the least, the Court has to determine what "exhibits 1 to 5" refer to as Antonio Alcantara failed to describe or submit copies of such documents.

The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioners are not disputed by the respondents; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[17] After a careful

[17] *Ilagan-Mendoza v. Court of Appeals*, G.R. No. 171374, 8 April 2008, 550 SCRA 635, 647.

review of the records, the Court finds that none of these circumstances is present.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 13 November 2003 Decision of the Court of Appeals in CA-G.R. CV No. 61731.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

FIRST DIVISION

[G.R. No. 164170. April 16, 2009]

MACA-ANGCOS ALAWIYA *y* ABDUL, ISAGANI ABDUL *y* SIACOR, and SARAH LANGCO *y* ANGLI, *petitioners, vs.* **COURT OF APPEALS, SECRETARY OF JUSTICE SIMEON A. DATUMANONG, P/C INSP. MICHAEL ANGELO BERNARDO MARTIN, P/INSP. ALLANJING ESTRADA MEDINA, PO3 ARNOLD RAMOS ASIS, PO2 PEDRO SANTOS GUTIERREZ, PO2 IGNACIO DE PAZ, and PO2 ANTONIO SEBASTIAN BERIDA, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; PRIOR APPROVAL BY THE OMBUDSMAN NOT REQUIRED FOR THE INVESTIGATION AND PROSECUTION OF CRIMINAL CASE AGAINST ACCUSED POLICEMEN. — The Office of the Solicitor General (OSG), which is representing the Secretary of Justice, agrees with petitioners that prior approval by the Ombudsman is not required for the investigation and prosecution of the criminal case against the accused policemen. The OSG correctly cites the case of *Honasan II v. The Panel of*

Investigating Prosecutors of the Department of Justice, where the Court held that the power of the Ombudsman to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government such as the provincial, city and state prosecutors. In view of the foregoing, both the Court of Appeals and the Secretary of Justice clearly erred in ruling that prior approval by the Ombudsman is required for the investigation and prosecution of the criminal case against the accused policemen.

2. ID.; REVISED ADMINISTRATIVE CODE; SECRETARY OF JUSTICE RETAINS THE POWER TO REVIEW RESOLUTIONS OF HIS SUBORDINATES EVEN AFTER INFORMATION HAS ALREADY BEEN FILED IN COURT. — Settled is the rule that the Secretary of Justice retains the power to review resolutions of his subordinates even after the information has already been filed in court. In *Marcelo v. Court of Appeals*, reiterated in *Roberts, Jr. v. Court of Appeals,* this Court clarified that nothing in *Crespo v. Mogul* forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases despite an information already having been filed in court. The nature of the power of control of the Secretary of Justice over prosecutors was explained in *Ledesma v. Court of Appeals* in this wise: Decisions or resolutions of prosecutors are subject to appeal to the Secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, **nullify, reverse or modify their rulings**.

3. ID.; ID.; ID.; REVERSAL OF STATE PROSECUTOR'S RESOLUTION IS NOT EXECUTIVE ACQUITTAL; EFFECT ONCE INFORMATION IS FILED IN COURT. — The Secretary of Justice's reversal of the Resolution of State Prosecutor Velasco did not amount to "executive acquittal" because the Secretary of Justice was simply exercising his power to review, which included the power to reverse the ruling of the State Prosecutor. However, once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. Trial judges are not bound by the Secretary of Justice's reversal of the prosecutor's resolution finding probable cause. Trial judges are required to make their own assessment of the existence of

probable cause, separately and independently of the evaluation by the Secretary of Justice. The trial court is mandated to independently evaluate or assess the existence of probable cause and it may either agree or disagree with the recommendation of the Secretary of Justice. The trial court is not bound to adopt the resolution of the Secretary of Justice. Reliance alone on the resolution of the Secretary of Justice amounts to an abdication of the trial court's duty and jurisdiction to determine the existence of probable cause. Considering that the Information has already been filed with the trial court, then the trial court, upon filing of the appropriate motion by the prosecutor, should be given the opportunity to perform its duty of evaluating, independently of the Resolution of the Secretary of Justice recommending the withdrawal of the Information against the accused, the merits of the case and assess whether probable cause exists to hold the accused for trial for kidnapping for ransom.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH INFORMATION WHEN ACCUSED HAD NOT BEEN ARRESTED YET, NOT PROPER. — There is nothing in the Rules governing a motion to quash which requires that the accused should be under the custody of the law prior to the filing of a motion to quash on the ground that the officer filing the information had no authority to do so. Custody of the law is not required for the adjudication of reliefs other than an application for bail. However, while the accused are not yet under the custody of the law, any question on the jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when the accused invokes the special jurisdiction of the court by impugning such jurisdiction over his person. At any rate, the accused's motion to quash, on the ground of lack of authority of the filing officer, would have never prospered because as discussed earlier, the Ombudsman's power to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government.

5. ID.; ID.; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE BY THE COURT IN EXCEPTIONAL CASES.— Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is

confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. However, in the following exceptional cases, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation.

APPEARANCES OF COUNSEL

Fornier & Fornier Law Firm for petitioner.
The Solicitor General for public respondent.
Reynaldo J. Lugtu for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 4 February 2004 Decision[2] and 25 June 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 76345. The Court of Appeals dismissed the petition for *certiorari* filed by petitioners Maca-Angcos Alawiya *y* Abdul, Isagani Abdul *y* Siacor, and Sarah Langco *y* Angli.

The Facts

On 18 September 2001, petitioners executed sworn statements[4] before the General Assignment Section of the Western Police

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[1] Though the petition was captioned as a "Petition for *Certiorari* and for Review on *Certiorari*," the Court shall treat the present petition as a petition for review on *certiorari* under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 151-162. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong concurring.

[3] *Id.* at 209-211. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong concurring.

[4] CA *rollo*, pp. 66-87.

District in United Nations Avenue, Manila, charging accused P/C Insp. Michael Angelo Bernardo Martin, P/Insp. Allanjing Estrada Medina, PO3 Arnold Ramos Asis, PO2 Pedro Santos Gutierrez, PO2 Ignacio De Paz and PO2 Antonio Sebastian Berida, Jr., who were all policemen assigned at that time at the Northern Police District, with kidnapping for ransom.

The sworn-statements of petitioners commonly alleged that at about 10:00 in the morning of 11 September 2001, while petitioners were cruising on board a vehicle along United Nations Avenue, a blue Toyota Sedan bumped their vehicle from behind; that when they went out of their vehicle to assess the damage, several armed men alighted from the Toyota Sedan, poked guns at, blindfolded, and forced them to ride in the Toyota Sedan; that they were brought to an office where ₱10,000,000 and two vehicles were demanded from them in exchange for their freedom; that, after haggling, the amount was reduced to ₱700,000 plus the two vehicles; that the money and vehicles were delivered in the late evening of 11 September 2001; that they were released in the early morning of 12 September 2001 in Quiapo after they handed the Deed of Sale and registration papers of the two vehicles.

After the initial investigation by the Western Police District, the case was reported to the Philippine National Police Intelligence Group in Camp Crame, where a lateral coordination was made with the Philippine National Police-National Capital Regional Police Office Regional Intelligence and Investigation Division (PNP-NCR-RID) for the identification, arrest and filing of appropriate charges against the accused. After its own investigation, the PNP-NCR-RID recommended that accused be charged with violation of Article 267 of the Revised Penal Code,[5] as amended by Republic Act No. 7659.

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[5] ART. 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

State Prosecutor Emmanuel Y. Velasco (State Prosecutor Velasco), who conducted the preliminary investigation, issued a Resolution[6] dated 14 January 2002, recommending that the accused be indicted for the crime of kidnapping for ransom. The Resolution was endorsed for approval by Assistant Chief State Prosecutor Nilo C. Mariano and approved by Chief State Prosecutor Jovencito R. Zuño.

On 24 January 2002, State Prosecutor Velasco filed with the Regional Trial Court of Manila, Branch 41,[7] an Information for Kidnapping for Ransom against the accused with no bail recommended. The Information, docketed as Criminal Case No. 02198832, reads as follows:

That on September 11, 2001 at about 10:00 AM along United Nations Avenue, Manila and within the jurisdiction of this Honorable Court, the above-named Accused, who are all police officers, conspiring, confederating and mutually helping one another and grouping themselves together, did then and there by force and intimidation, and by the use of high-powered firearms, willfully, unlawfully and feloniously take, carry away and deprive MACA-ANGCOS ALAWIYA, ISAGANI ABDUL and ZARAH LANGCO of their liberty against their will for the purpose of extorting ransom as in fact a demand for ransom was made as a condition for their release amounting to TEN MILLION PESOS (PHP10,000,000.00) which amount was later reduced to SEVEN HUNDRED THOUSAND (PHP700,000.00) plus two vehicles consisting of TOYOTA FX and MITSUBISHI

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[6] *Rollo*, pp. 63-68.

[7] Presided by Judge Rodolfo A. Ponferrada.

ADVENTURE to the damage and prejudice of MACA-ANGCOS ALAWIYA, ISAGANI ABDUL and SARAH LANGCO in said amount and such other amounts as may be awarded to them under the provisions of the Civil Code.

CONTRARY TO LAW.[8]

On 28 January 2002, the trial court, upon motion by the prosecution, issued a Hold Departure Order against the accused.[9] On even date, the trial court issued a Warrant of Arrest against all the accused.[10]

Meanwhile, on 8 February 2002, the accused filed a petition for review of the Resolution of State Prosecutor Velasco with the Office of the Secretary of Justice.

On 18 February 2002, the accused moved for the quashal of the Information on the ground that "the officer who filed the Information has no authority do so."[11]

In an Order[12] dated 27 February 2002, the trial court denied the motion to quash on the ground that under the ruling in *People v. Mapalao*,[13] an accused who is at large is not entitled to bail or other relief. The trial court also held that the jurisdiction and power of the Ombudsman under Section 15(1) of Republic Act No. 6770 (RA 6770),[14] as well as Administrative Order No. 8

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[8] *Rollo*, pp. 69-70.

[9] *Id.* at 72.

[10] *Id.* at 73.

[11] CA *rollo*, pp. 134-137.

[12] *Rollo*, pp. 74-75.

[13] 274 Phil. 354 (1991).

[14] 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 this primary jurisdiction, it may take

of the Office of the Ombudsman, are not exclusive but shared or concurrent with the regular prosecutors. Thus, the authority of the Department of Justice to investigate, file the information and prosecute the case could no longer be questioned.

In a Resolution[15] promulgated on 24 September 2002, then Secretary of Justice Hernando B. Perez reversed the ruling of State Prosecutor Velasco and ordered the latter to cause the withdrawal or dismissal of the Information for kidnapping for ransom. The Secretary of Justice ruled that there was no prior approval by the Office of the Ombudsman before the Information for kidnapping was filed with the trial court. He also found that the incident complained of was a bungled buy-bust operation, not kidnapping for ransom.

On 11 October 2002, petitioners filed a Motion for Reconsideration, which was denied by then Secretary of Justice Simeon A. Datumanong in a Resolution promulgated on 17 February 2003.[16]

Petitioners filed a petition for *certiorari* with the Court of Appeals, seeking the nullification of the Secretary of Justice's ruling for having been rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court of Appeals rendered a Decision of 4 February 2004 dismissing the petition for *certiorari*. The Court of Appeals denied the petitioners' motion for reconsideration in a Resolution of 25 June 2004.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals sustained the finding of the Secretary of Justice that the incident complained of was a bungled buy-

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over, at any stage, from any investigatory agency of Government, the investigation of such cases;

x x x x x x x x x

[15] *Rollo*, pp. 77-82.

[16] *Id.* at 83-84.

bust operation, contrary to the finding of State Prosecutor Velasco, that it was a kidnapping for ransom.

The Court of Appeals gave credence to the accused's documentary evidence which supported their claim that the incident was a botched buy-bust operation. The Court of Appeals specifically noted the *Sinumpaang Salaysay* of Cesar Landayan (Landayan), who was driving a taxi at the time of the incident and was apprehended together with petitioners. The *Sinumpaang Salaysay* categorically stated that he and petitioners were released from accused's custody at about 12:50 in the afternoon of the same day, 11 September 2001. Thus, Cesar's statement refuted the complaint of petitioners that they were freed only in the morning of 12 September 2001 after a pay-off of ₱700,000 in casino chips and two vehicles. The Court of Appeals stressed that Landayan's *Sinumpaang Salaysay* was given on 14 September 2001, prior to petitioners' complaint for kidnapping for ransom which was filed on 18 September 2001 before the Western Police District. Having been executed prior to the filing of the complaint for kidnapping for ransom by petitioners, Cesar's *Sinumpaaang Salaysay* could not be discredited as a cover-up evidence.

The Court of Appeals upheld the Secretary of Justice's ruling that prior approval by the Office of the Ombudsman for the Military was needed for the filing of the Information before the RTC, pursuant to OMB-DOJ Joint Circular No. 95-001.[17]

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[17] The pertinent portions thereof are:

1. Preliminary investigation and prosecution of offenses committed by public officers and employees IN RELATION TO OFFICE whether cognizable by the SANDIGANBAYAN or the REGULAR COURTS, and whether filed with the OFFICE OF THE OMBUDSMAN or with the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall be under the control and supervision of the OFFICE OF THE OMBUDSMAN.

2. Unless the OMBUDSMAN under its Constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted by the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR, which shall rule thereon with finality.

The Court of Appeals further sustained the finding that there were sufficient evidence that the offense charged against accused was committed in relation to their office and that the accused were all acting in the discharge of their functions as policemen.

The Issues

The issues in this case are:

1. Whether the prior approval by the Office of the Ombudsman for the Military is required for the investigation and prosecution of the instant case against the accused;

2. Whether the reversal by the Secretary of Justice of the resolution of State Prosecutor Velasco amounted to an "executive acquittal;"

3. Whether the accused policemen can seek any relief (*via* a motion to quash the information) from the trial court when they had not been arrested yet; and

4. Whether there was probable cause against the accused for the crime of kidnapping for ransom.

The Ruling of this Court

On the prior approval by the Ombudsman for the investigation and prosecution of the case against the accused policemen

The Office of the Solicitor General (OSG), which is representing the Secretary of Justice, agrees with petitioners that prior approval by the Ombudsman is not required for the investigation and prosecution of the criminal case against the accused policemen. The OSG correctly cites the case of

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3. x x x

4. Considering that the OFFICE OF THE OMBUDSMAN has jurisdiction over public officers and employees and for effective monitoring of all investigations and prosecution of cases involving public officers and employees, the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall submit to the OFFICE OF THE OMBUDSMAN a monthly list of complaints filed with their respective offices against public officers and employees.

Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice,[18] where the Court held that the power of the Ombudsman to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government such as the provincial, city and state prosecutors. In view of the foregoing, both the Court of Appeals and the Secretary of Justice clearly erred in ruling that prior approval by the Ombudsman is required for the investigation and prosecution of the criminal case against the accused policemen.

On the reversal by the Secretary of Justice of the resolution of State Prosecutor Velasco

Settled is the rule that the Secretary of Justice retains the power to review resolutions of his subordinates even after the information has already been filed in court.[19] In *Marcelo v. Court of Appeals*,[20] reiterated in *Roberts, Jr. v. Court of Appeals*,[21] this Court clarified that nothing in *Crespo v. Mogul*[22] forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases despite an information already having been filed in court.[23] The nature of the power of control of the Secretary of Justice over prosecutors was explained in *Ledesma v. Court of Appeals*[24] in this wise:

> Decisions or resolutions of prosecutors are subject to appeal to the Secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, **nullify, reverse or modify their rulings.** (Emphasis supplied)

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[18] G.R. No. 159747, 13 April 2004, 427 SCRA 46, 70, and 74.

[19] *Dimatulac v. Villon*, 358 Phil. 328, 361 (1998).

[20] G.R. No. 106695, 4 August 1994, 235 SCRA 39, 48.

[21] 324 Phil. 568, 598 (1996).

[22] 235 Phil. 465, 476 (1987).

[23] See *Caoili v. Court of Appeals*, 347 Phil. 791, 795-796 (1997).

[24] 344 Phil. 207, 228-229 (1997).

Contrary to petitioners' contention, the Secretary of Justice's reversal of the Resolution of State Prosecutor Velasco did not amount to "executive acquittal" because the Secretary of Justice was simply exercising his power to review, which included the power to reverse the ruling of the State Prosecutor. However, once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court.[25] Trial judges are not bound by the Secretary of Justice's reversal of the prosecutor's resolution finding probable cause. Trial judges are required to make their own assessment of the existence of probable cause, separately and independently of the evaluation by the Secretary of Justice.[26]

On the motion to quash the information when the accused had not been arrested yet

People v. Mapalao,[27] as correctly argued by the OSG, does not squarely apply to the present case. In that case, one of the accused, Rex Magumnang, after arraignment and during the trial, escaped from detention and had not been apprehended since then. Accordingly, as to him the trial in *absentia* proceeded and thereafter the judgment of conviction was promulgated. The Court held that since the accused remained at large, he should not be afforded the right to appeal from the judgment of conviction unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested. While at large, the accused cannot seek relief from the court as he is deemed to have waived the same and he has no standing in court.[28] In *Mapalao*, the accused escaped while the trial of the case was on-going, whereas here, the accused have not been served the warrant of arrest and have not been arraigned. Therefore, *Mapalao* is definitely not on all fours with the present case.

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[25] *Crespo v. Mogul*, *supra* note 22.

[26] *Ledesma v. Court of Appeals*, *supra* at 235; *Jalandoni v. Drilon*, 383 Phil. 855, 872 (2000), citing *Crespo v. Mogul*, *supra* note 22.

[27] 274 Phil. 354 (1991).

[28] *Id.* at 363.

Furthermore, there is nothing in the Rules governing a motion to quash[29] which requires that the accused should be under the custody of the law prior to the filing of a motion to quash on the ground that the officer filing the information had no authority to do so. Custody of the law is not required for the adjudication of reliefs other than an application for bail.[30] However, while the accused are not yet under the custody of the law, any question on the jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when the accused invokes the special jurisdiction of the court by impugning such jurisdiction over his person.[31]

At any rate, the accused's motion to quash, on the ground of lack of authority of the filing officer, would have never prospered because as discussed earlier, the Ombudsman's power to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government.

On the existence or non-existence of probable cause

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[32] However, in the following exceptional cases, this Court may ultimately resolve the existence or non-

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[29] Rule 117 of the Rules of Court.

[30] *Miranda v. Tuliao*, G.R. No. 158763, 31 March 2006, 486 SCRA 377, 388, 390.

[31] *Id.* See *Santiago v. Vasquez*, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633, 643. See also Regalado, Florenz D., *Remedial Law Compendium*, Vol. II, Tenth Revised Edition, p. 478, where the author stated that by filing a motion to quash on other grounds (such as the lack of authority of the officer filing the information), the accused has submitted himself to the jurisdiction of the court.

[32] *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 615 (1996).

existence of probable cause by examining the records of the preliminary investigation.[33]

a. To afford adequate 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;

j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; [and]

k. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.

There is no clear showing that the present case falls under any of the recognized exceptions. Moreover, as stated earlier, **once the information is filed with the trial court**, any disposition of the information rests on the sound discretion of the court. The trial court is mandated to independently evaluate or assess the existence of probable cause and it may either agree or disagree with the recommendation of the Secretary of Justice. The trial court is not bound to adopt the resolution of the Secretary of Justice.[34] Reliance alone on the resolution

[33] *Id.* at 615-616, citing *Brocka v. Enrile,* G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183, 188-189. Citations omitted. See also *Samson v. Guingona*, 401 Phil. 167, 172 (2000).

[34] *Summerville General Merchandising & Co., Inc. v. Eugenio, Jr.,* G.R. No. 163741, 7 August 2007, 529 SCRA 274, 282, citing *Santos v. Orda, Jr.,* G.R. No. 158236, 1 September 2004, 437 SCRA 504, 516.

of the Secretary of Justice amounts to an abdication of the trial court's duty and jurisdiction to determine the existence of probable cause.[35]

Considering that the Information has already been filed with the trial court, then the trial court, upon filing of the appropriate motion by the prosecutor, should be given the opportunity to perform its duty of evaluating, independently of the Resolution of the Secretary of Justice recommending the withdrawal of the Information against the accused, the merits of the case and assess whether probable cause exists to hold the accused for trial for kidnapping for ransom.[36]

WHEREFORE, we *REMAND* this case to the Regional Trial Court, Branch 41, Manila, to independently evaluate or assess the merits of the case to determine whether probable cause exists to hold the accused for trial.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

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[35] *Id.*

[36] *Id.* See also *Roberts, Jr. v. Court of Appeals*, *supra* note 32.

THIRD DIVISION

[G.R. No. 165376. April 16, 2009]

AMADO BELTRAN, *petitioner, vs.* **MA. AMELITA VILLAROSA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COLLECTION CASE NOT AFFECTED BY DISMISSAL OF RELATED CRIMINAL AND ADMINISTRATIVE COMPLAINTS IN THE OMBUDSMAN.— The dismissal by the Ombudsman of the criminal and administrative complaints against petitioner does not mean that the instant civil case can no longer prosper. The RTC and the Court of Appeals have original and appellate jurisdiction, respectively, over the collection suit and the concomitant duty to resolve it based on the evidence of the parties.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE IN CIVIL CASES; ELUCIDATED. — In civil cases, the burden of proof is on the plaintiff to establish his/her case by 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. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

3. ID.; ID.; ID.; ID.; HOW DETERMINED. — The trial court judge correctly weighed the testimonies and documents presented by the parties in accordance with his discretion, guided by Section 1, Rule 133 of the Rules of Court, which states: SEC. 1. *Preponderance of evidence, how determined.* — 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.

4. ID.; ID.; CREDIBILITY OF WITNESS; FINDINGS OF TRIAL COURT, RESPECTED. — The finding of the trial court with respect to the credibility of witnesses is binding upon this Court. The trial court correctly pointed out that petitioner failed to give a cogent motive why respondent sued him. Thus, petitioner's denial, like alibi, is a weak defense and cannot prevail over the positive testimonies of respondent and her witnesses.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOID AND INEXISTENT CONTRACTS; DOCTRINE OF "*IN PARI DELICTO*." — Article 1411 of the Civil Code, which provides: Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract. *Ramirez v. Ramirez* held that under Article 1411, it must be shown that the nullity of the contract proceeds from an illegal cause or object, and the act of executing the contract constitutes a criminal offense. Object and cause are two separate elements, and the illegality of either element gives rise to the application of the doctrine of *pari delicto*. Object is the subject matter of the agreement, while cause is the essential reason which moves the parties to enter into the transaction.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioner.
Augusto S. Jimenez for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. CV No. 54395 promulgated on May 26, 2004 and its Resolution promulgated on September 7, 2004, which affirmed the Decision of the Regional Trial Court (RTC) of Makati City, Branch 66, holding petitioner Amado Beltran liable to respondent Ma. Amelita Villarosa in the amount of ₱740,940.00.

The facts, as summarized by the trial court,[2] are as follows:

Ana Marie Calimbas bought a Chrysler Town and Country van, 1990 model, with Motor No. LX 230853 and Serial Chassis No. ICAGY54R5LX230853,[3] from Primo Chrysler Motor Sales in Nevada. The van was shipped from Los Angeles to Manila under Bill of Lading No. ZIMOLAX9368 and consigned to Ana Marie Calimbas. The shipment arrived in Manila on January 19, 1991.

To facilitate the release of the van, Francis Calimbas, the husband of Ana Marie Calimbas, sought the assistance of Teresita Edu, President of Sokphil Corp., a brokerage corporation. When it took time for Teresita Edu to process the release of the van, she referred Francis Calimbas to petitioner, who was then the Supervising Assessor of the Liquidation Division of the Bureau of Customs.

Francis Calimbas and petitioner met at the office of Teresita Edu at the Port Area, Manila and it was agreed that petitioner would work out the release of the van for the consideration of ₱750,000.00, including the payment of duties, taxes and registration of the van.

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

[2] *Rollo,* pp. 73-76.

[3] Also IC4GY54LX230853, RTC Decision, *rollo*, p. 73; IC4GY54RLX230853, Court of Appeals' Decision, *rollo*, p. 27.

In the meantime, Francis Calimbas, who was in need of money, sold the van to his sister, respondent Villarosa, for ₱1,300,000.00. Sometime in the last week of March 1991, respondent gave petitioner ₱750,000.00 in two installments per the agreement between Francis Calimbas and petitioner. The first installment in the amount of ₱300,000.00 was given in the morning, while the second installment in the amount of ₱450,000.00 was given in the afternoon of the same day in the office of Teresita Edu and in the presence of Teresita Edu, Hector Arenas and Francis Calimbas.

After three or four days, petitioner delivered the van to respondent at a place near the Lyceum of the Philippines, Intramuros, Manila, together with the original copy of the Certificate of Registration[4] and photocopies of the following documents: the Certificate of Payment[5] in the amount of ₱740,940.00, Confirmation Certificate of Payment,[6] Official Receipt[7] and the Motor Vehicle Inspection Report[8] dated March 27, 1991 issued by the Land Transportation Office (LTO). Petitioner gave respondent only photocopies of the said documents reasoning that the originals were filed at the Bureau of Customs and the LTO.

Sometime in 1992, respondent sought to register the van with the LTO. However, the LTO refused to register the van on the ground that its supporting documents were spurious. Consequently, the Bureau of Customs issued a Warrant of Seizure and Detention[9] dated October 7, 1992 covering the van for violation of the Tariffs and Customs Code for non-payment of customs duties, taxes and other charges.

Upon the advice of a Deputy Commissioner of Customs, respondent availed of the Motor Legalization Program and

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[4] Exhibit "E", folder of exhibits, p. 8.

[5] Exhibit "A", folder of exhibits, p. 4.

[6] Exhibit "B", folder of exhibits, p. 5.

[7] Exhibit "C", folder of exhibits, p. 6.

[8] Exhibit "D", folder of exhibits, p. 7.

[9] Exhibit "F", folder of exhibits, p. 9.

voluntarily appeared before the Law Division of the Bureau of Customs on October 8, 1992, the day she received the warrant, and paid the sum of ₱369,424.00 for the taxes and other charges.[10] Consequently, the Bureau of Customs issued an Order,[11] dated November 13, 1992, quashing the Warrant of Seizure and Detention.

Through a letter-request dated December 16, 1993 to the Bureau of Customs, respondent sought an investigation on the authenticity of the van's supporting documents given by petitioner, namely: (1) Official Receipt No. 33002410 dated October 29, 1990 for ₱740,940.00 in the name of respondent; (2) Certificate of Payment No. 144228 dated October 30, 1990; and (3) LTO Confirmation Certificate No. 0253864 dated April 2, 1991. Respondent also requested the Bureau of Customs to determine the veracity of the affidavit of Morren Mission, delivery checker of the Marina Port Services, Inc. (Marina).

Evert[12] E. Samson, from the Customs Intelligence and Investigation Service, Investigation and Prosecution Division, conducted the investigation and found that the van's supporting documents (Certificate of Payment and Official Receipt) were spurious and that the papers of the van were not processed by the Bureau of Customs.

The findings of Samson were contained in a Memorandum dated February 14, 1994. The pertinent portion of the memorandum reads:

INITIAL FINDINGS:

In view of the aforementioned information, hereunder is the result of our verification:

1) Certification issued by Hilarion L. Amutan, Chief of the General Services Division, this Bureau, dated January 4, 1994 (Annex "E"), stated that Official Receipt No. 3300241 was issued to the Ninoy Aquino International Airport Customs' Office on October 9, 1990.

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[10] Exhibit "H", folder of exhibits, p. 12.

[11] Exhibit "G-1", folder of exhibits, p. 11.

[12] Also spelled "Ebert" in Exhibit "7", folder of exhibits, p. 31.

Verification with that Office on January 5, 1994 disclosed that said official receipt was issued to Acting Cashier Judith Vigila on October 5, 1990.

2) On the same certification, it was also stated that Certificate of Payment No. 144228 is within the inclusive Serial No. issued to the Formal Entry Division, Port of Manila on October 26, 1990 but [was] returned to Mr. Isidro Estrera, then Acting Chief, General Services Division. [V]erification with Mr. Amutan disclosed that CP No. 144228 is now in his custody. As shown to the undersigned, the complete booklet of Certificate of Payment (CP) No. 144221 to 144250 is still intact and remains unused.

3) Mr. Morren Mission, when invited to this office, admitted having issued Gate Pass No. 54492, a certified xerox copy of the said Gate Pass was furnished by Mr. Willy Telles of the Cargo Control Unit, Marina Port Services (now Asian Terminals Inc.) x x x.

4) LTO Confirmation Certificate No. 0253864 is yet to be verified with the Land Transportation Office (LTO) x x x.

x x x x x x x x x

Further verification also disclosed that said vehicle was released on February 21, 1992 at the Stalag Car Compound, Pier 9 by virtue of Gate Pass No. 54492 issued by Mr. Morren Mission, Delivery Checker, Marina Port Services (Annex "M") after PDIG No. 923249 (Annex "N") was presented to him by Mr. Kenneth Delos Santos and a certain N. Tadeja. They also presented a Special Power of Attorney No. 91-248 (Annex "O") duly registered with the Law Division, Port of Manila on February 19, 1991 x x x. Mr. Mission also added that Mr. N. Tadeja actually drove the said vehicle upon release.

On November 26, 1993, Joseph Encinas, Records Clerk, Collection Division, Port of Manila, issued a certification stating that as per record Entry No. 09265-91 consigned to Ana Calimbas was not received by their office and no payment of duties and taxes has been made. (Annex "Q")

OBSERVATIONS:

It was established that Official Receipt No. 33002410 dated October 29, 1990 for ₱740,940.00 in the name of Mrs. Amelita C. Villarosa is spurious in view of the fact that said receipt was issued to NAIA

Customs Office; therefore, [it] could not be issued at the Port of Manila where the shipment was illegally released.

It was also established that Certificate of Payment (CP) No. 144228 dated October 30, 1990 is spurious. Said CP remains unused and [is] presently in the custody of the Chief, General Services Division.

The issuance of Gate Pass No. 54492 was mainly based on the submitted PDIG No. 923249 which, according to the claim of Mr. Mission, was duly processed by the Bureau of Customs. [A]s to who is responsible in the production of PDIG No. 923249 and making it appear that it was duly processed by the Bureau of Customs has yet to be investigated and carefully studied.[13]

On February 8, 1993, respondent filed a collection suit[14] against petitioner with the Regional Trial Court (RTC) of Makati City for petitioner's failure to return the sum of ₱740,940.00 which petitioner received from respondent in consideration of petitioner's assurance that he would facilitate the release of the subject vehicle from the Bureau of Customs, and for the payment of all duties and taxes, and the registration of the vehicle with the LTO in respondent's name. The Complaint also sought for the payment of legal interest on the amount from March 1991 until full payment thereof, as well as damages and attorney's fees.

In his defense, petitioner countered that respondent has no cause of action against him because she is a stranger to him; no contract existed between them; and respondent's allegations are fabricated. He claimed that he only met respondent for the first time at the National Bureau of Investigation when he was arrested due to the complaint of respondent. He denied liability and submitted in evidence Gate Pass No. 54492[15] dated February 21, 1991, issued by Marina, showing that the subject vehicle in the name of consignee Ana Calimbas was released on the same date to her authorized representative. Petitioner pointed out that the release of the vehicle on February 21, 1991 would attest that no transactions between him and respondent could

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[13] Exhibit "7", folder of exhibits, pp. 32-33.

[14] Docketed as Civil Case No. 93-421.

[15] Exhibit "1", folder of exhibits, p. 22.

exist sometime in the third week of March 1991 as alleged by respondent.

Petitioner presented as witness, Morren Mission, the delivery checker of Marina, now Asian Terminal Incorporated, who stated that it was his duty to prepare a gate pass in order to release a cargo in the custody of Marina. He testified that on February 21, 1991, he prepared a gate pass[16] and issued the same to Kenneth Delos Santos who had a Special Power of Attorney[17] from one Ana Calimbas, the registered consignee of the subject vehicle, and that the van was actually released on the same day to Kenneth Delos Santos' driver, N. Tadeja.[18]

Moreover, petitioner stated that his signature never appeared in the alleged falsified documents which respondent attached to her Complaint. He asserted that he could not have transacted with respondent considering that his duties as Supervising Assessor, detailed as Principal Appraiser at the Informal Entry Division of the Bureau of Customs, had nothing to do with the payment of taxes and duties on imported vehicles nor releasing vehicles from the Bureau.

In addition, Section 3505 of the Tariff and Customs Code provides:

> SEC. 3505. *Supervision over Attorneys-in-fact.*—No person acting as agent or attorney-in-fact of other persons shall be allowed to deal in matters pertaining to customs and/or tariff unless his duly notarized power of attorney has been approved by the Collector of the port. No more than one such continuing power may be accepted or recognized from any one person or acting as agent in the importation of articles unless he be a licensed customs broker: Provided, That in ports of entry where there are two or more licensed customs brokers doing business as such customs brokers, no person shall act as agent or attorney-in-fact for any regular importer unless he is a full-time employee or official of such importer or principal receiving fixed compensation or salary as such.

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[16] *Id.*

[17] Exhibit "3-A", folder of exhibits, p. 25.

[18] TSN, September 13, 1994, pp. 11-13; 35-40.

From the foregoing, petitioner contends that since he was not the attorney-in-fact of respondent or of the latter's broker, he could not possibly participate in the processing or following-up of the release of the van aside from the fact that his position in the Bureau of Customs prevents him from engaging in such activities.

On June 14, 1993, upon motion by respondent and upon filing of a bond of ₱200,000.00, the RTC issued a writ of preliminary attachment and levy was made on petitioner's property.

In a Decision dated July 30, 1996, the RTC of Makati City, Branch 66, rendered judgment in favor of respondent. The dispositive portion of the Decision reads:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered, ordering defendant Amado Beltran to pay plaintiff Ma. Amelita Villarosa the sum of ₱740,940.00 plus 6% interest commencing on February 8, 1993, the date when subject complaint was filed.[19]

Petitioner appealed the RTC Decision to the Court of Appeals. In a Decision promulgated on May 26, 2004, the Court of Appeals affirmed the decision of the RTC with modification. The dispositive portion of the Decision reads:

> WHEREFORE, for lack of merit, the instant appeal is hereby DISMISSED. The trial court's decision is hereby AFFIRMED with modification that 12% interest per annum shall be imposed on the amount due upon finality of the trial court's decision until full payment thereof.[20]

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[21] promulgated on September 7, 2004.

Hence, petitioner filed this petition raising the following issues:

I

THE COURT OF APPEALS' DECISION ERRED IN DISREGARDING THE FINDINGS AND DECISIONS OF ADMINISTRATIVE BODIES,

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[19] *Rollo*, p. 79.

[20] *Id.* at 41.

[21] *Id.* at 42.

INCLUDING THE OMBUDSMAN, WHICH EXTENSIVELY INVESTIGATED RESPONDENT'S COMPLAINT AGAINST HEREIN PETITIONER.

II

IT LIKEWISE VIOLATES THE FUNDAMENTAL RULE THAT GIVES GREATER WEIGHT TO DOCUMENTARY THAN TESTIMONIAL EVIDENCE.

III

EVEN IF RESPONDENT'S VERSION IS TRUE, THE PARTIES WERE IN *PARI DELICTO*.[22]

The main issue is whether or not petitioner may be held liable to respondent in the amount of ₱740,940.00.

Petitioner claims that the Court of Appeals erred in disregarding the Resolution of the Ombudsman dismissing the administrative case against him for dishonesty on the ground of insufficient evidence and also the Ombudsman's Order dated June 23, 1999 dismissing the criminal complaints for Estafa and Falsification of Official Documents upon finding that no probable cause existed against him during the preliminary investigation. Petitioner argues that if his liability was not proven by mere substantial evidence, how can the Court of Appeals find him liable in this case on a preponderance of evidence.

The argument does not persuade.

The dismissal by the Ombudsman of the criminal and administrative complaints against petitioner does not mean that the instant civil case can no longer prosper. The RTC and the Court of Appeals have original and appellate jurisdiction, respectively, over the collection suit and the concomitant duty to resolve it based on the evidence of the parties.

In civil cases, the burden of proof is on the plaintiff to establish his/her case by preponderance of evidence.[23] "Preponderance

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[22] *Id.* at 12.

[23] *Ong v. Yap*, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 50.

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.[24] It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[25] In this case, the trial court found that respondent established her case by a preponderance of evidence, which finding was affirmed by the Court of Appeals.

Next, petitioner contends that the documentary evidence which belies respondent's story should not have been ignored. These documentary evidence are the following: the Certificate of Payment in the amount of ₱740,940.00.[26] Confirmation Certificate of Payment,[27] and Official Receipt.[28] According to petitioner, the Certificate of Payment showed that the taxes were paid on October 30, 1990. He argued that it was unbelievable that, assuming it was indeed a fake document and he knew of the forgery, he would have risked being immediately detected by respondent by giving a Certificate of Payment dated October 30, 1990 when he was supposed to have paid the duties and taxes only in March or April 1991. Further, the supporting documents were only photocopies, and no one in his right mind would accept mere photocopies as documentation for a vehicle worth ₱1.3 million.

Moreover, petitioner averred that Morren Mission, the delivery checker of Marina, testified that the vehicle was released to the consignee's attorney-in-fact, Kenneth Delos Santos, on February 21, 1991. This was evidenced by Gate Pass No. 54492[29] dated February 21, 1991, containing the description and engine number of the van, as well as the signatures of Mission and

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[24] *Id.* at 49-50.

[25] *Id.* at 50.

[26] *Id.* at 50.

[27] *Supra* note 6.

[28] *Supra* note 7.

[29] *Supra* note 14.

Kenneth Delos Santos' driver, N. Tadeja, who drove the vehicle out of the car compound. Mission's testimony was corroborated by Wilfredo Telles, gate pass clerk of Marina. The logbook of the Law Division of the Bureau of Customs also confirmed that Ana Calimbas, through Kenneth Delos Santos, was able to secure the release of the vehicle on February 19, 1991.

Petitioner alleged that the documents he relied upon were public documents and had the presumption of regularity so that to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant. He cited *People v. Fabro,*[30] which held that a writing or document made contemporaneously with a transaction in which are evidenced facts pertinent to an issue, when admitted as proof of these facts, is ordinarily regarded as more reliable proof and of greater probative value than oral testimony of a witness as to such facts based upon memory and recollection because human memory is fallible and its force diminishes with the lapse of time.

Petitioner's arguments lack merit.

The Court notes that the writing and testimony adverted to in *Fabro* is the Forensic Chemist's testimony and her written report. The Court therein held that as between the Forensic Chemist's testimony and her written report, the latter is considered as the more accurate account as to the amount of marijuana examined.

The aforementioned circumstance in *Fabro* is not similarly found in this case since the testimony of the defense witness and the document presented (gate pass) as regards the release of the subject vehicle did not vary.

Here, the trial court judge correctly weighed the testimonies and documents presented by the parties in accordance with his discretion, guided by Section 1, Rule 133 of the Rules of Court, which states:

SEC. 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case

[30] G.R. No. 114261, February 10, 2000, 325 SCRA 285, 293.

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.

As regards the gate pass showing release of the van on February 21, 1991, the trial court seriously doubted its authenticity, thus:

> . . . [I]f it were true that subject vehicle had long been released, then there was no reason for the plaintiff to seek assistance from defendant, who was then holding a high position in the Bureau of Customs, as Supervising Assessor of the Liquidation Division, to facilitate the release of the subject vehicle from the Bureau of Customs. For the truth is that the taxes and duties of the subject vehicle have not yet been paid and for which reason it was refused registration by the Land Transportation Office and a warrant of seizure and detention of the subject van was issued (Exh. "F").[31]

The Court also notes that Customs Investigator Evert Samson, who conducted the investigation on the authenticity of the vehicle's supporting documents, testified that when a vehicle is released from the Customs, it is presumed that tariffs and duties have been paid.[32] The fact that a Warrant of Seizure and Detention over the subject vehicle was issued by the Bureau of Customs on October 7, 1992 would show that it was not possible that the gate pass could be validly issued on February 21, 1991 to the consignee's authorized representative since the consignee, Ana Calimbas, had not paid for the customs duties and taxes of the vehicle. It appears that it was respondent who paid for the customs duties and taxes in the last week of

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[31] *Rollo*, p. 79.

[32] TSN, December 8, 1994, p. 58.

March 1991 through petitioner, but payment to the Bureau of Customs was not made as agreed upon because the documents evidencing payment were subsequently found to be spurious; thus, respondent filed this collection suit.

In addition, the logbook entry, which allegedly showed that Ana Calimbas secured the release of the vehicle on February 19, 1991, is questionable considering that she did not pay for the customs duties and taxes.

Hence, the presumption of regularity of the issuance of the gate pass and the logbook entry is controverted by the fact that the customs duties and taxes had not been paid by Ana Calimbas when the subject vehicle was allegedly released on February 21, 1991. The customs duties, taxes and other charges were paid by respondent only on October 8, 1992,[33] which payment rendered the seizure case academic.

Further, the van's supporting documents were mere photocopies because petitioner told respondent that the original documents were with the Bureau of Customs and the LTO.[34]

The trial court gave credence to the testimonies of respondent's witnesses, namely, Hector Arenas, Francis Calimbas and Teresita Edu, who testified that they were present when respondent and petitioner met in the office of Teresita Edu at the Port Area, Manila, where petitioner agreed to facilitate the release of the subject vehicle from the Bureau of Customs for the consideration of ₱750,000.00, including payment of the customs duties, taxes and registration of the van. They also testified that they were present when respondent gave petitioner the agreed amount in two installments in the last week of March 1991 in the office of Teresita Edu. The finding of the trial court with respect to the credibility of witnesses is binding upon this Court. The trial court correctly pointed out that petitioner failed to give a cogent motive why respondent sued him. Thus, petitioner's

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[33] Exhibit "H", folder of exhibits, p. 12.

[34] TSN, March 15, 1993, p. 5.

denial, like alibi, is a weak defense and cannot prevail over the positive testimonies of respondent and her witnesses.[35]

Finally, petitioner contends that even if respondent's version is true, the parties were in *pari delicto*, and the Court of Appeals should have refused to give them any relief. He alleged that the witnesses' testimonies showed that both parties engaged in an illegal transaction amounting to tax evasion, bribery, estafa and graft. In support of his argument, petitioner cited Article 1411 of the Civil Code, which provides:

> Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

Ramirez v. Ramirez[36] held that under Article 1411, it must be shown that the nullity of the contract proceeds from an illegal cause or object, and the act of executing the contract constitutes a criminal offense.[37] Object and cause are two separate elements, and the illegality of either element gives rise to the application of the doctrine of *pari delicto*.[38] Object is the subject matter of the agreement, while cause is the essential reason which moves the parties to enter into the transaction.[39]

In this case, the object of the agreement was to facilitate the release of the vehicle, which necessarily included payment of the customs duties and taxes to effect the release, and have the vehicle registered with the LTO. The cause which moved respondent to enter into the transaction was the non-release

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[35] *People v. Vivar*, G.R. No. 110260, August 11, 1994, 235 SCRA 257.

[36] G.R. No. 165088, March 17, 2006, 485 SCRA 92.

[37] *Id.* at 96.

[38] *Id.*

[39] *Id.*

of the van, while the cause for petitioner is the consideration given for the service.

From the foregoing, the object and cause of the contract are not illegal since respondent is entitled to the release of the vehicle after she has paid the corresponding customs duties and taxes, which she willingly did.

Petitioner's allegation that the transaction, based on respondent's version, amounts to the commission of criminal offenses is not the subject matter or issue in the instant civil action. Petitioner can file the proper complaint in the correct forum.

This civil action filed by respondent is for the reimbursement of money given to petitioner for the payment of customs duties and taxes of the subject vehicle in the amount ₱740,940.00 as evidenced by the Official Receipt[40] and Certificate of Payment.[41]

Considering that petitioner did not pay the customs duties and taxes as agreed upon, the trial court correctly held petitioner liable to respondent in the amount of ₱740,940.00, which ruling was affirmed by the Court of Appeals.

In fine, the Court of Appeals did not err in sustaining, with modification, the decision of the RTC.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 54395, promulgated on 26, 2004, and its Resolution promulgated on September 7, 2004, are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

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[40] *Supra* note 7.

[41] *Supra* note 5.

SECOND DIVISION

[G.R. No. 165443. April 16, 2009]

CALATAGAN GOLF CLUB, INC., *petitioner, vs.* **SIXTO CLEMENTE, JR.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; ACTION TO RECOVER DELINQUENT STOCK UNDER SECTION 69, NO APPLICATION IN CASE AT BAR. — There are fundamental differences that defy equivalence or even analogy between the sale of delinquent stock under Section 68 and the sale that occurred in this case. At the root of the sale of delinquent stock is the non-payment of the subscription price for the share of stock itself. The stockholder or subscriber has yet to fully pay for the value of the share or shares subscribed. In this case, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. Perhaps the analogy could have been made if Clemente had not yet fully paid for his share and the non-stock corporation, pursuant to an article or by-law provision designed to address that situation, decided to sell such share as a consequence. But that is not the case here, and there is no purpose for us to apply Section 69 to the case at bar. (Section 69 of the Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within six (6) months from the date of sale).

2. ID.; ID.; NON-STOCK CORPORATION; MEMBERSHIP TERMINATED ACCORDING TO THE BY-LAWS, CASE AT BAR.— Under Section 91 of the Corporation Code, membership in a non-stock corporation "shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws." The By-law provisions are elaborate in explaining the manner and the causes for the termination of membership in Calatagan, through the execution on the lien of the share. The Court is satisfied that the By-Laws, as written, affords due protection to the member by assuring that the member should be notified by the Secretary of the looming execution sale that would terminate membership in the club. In addition,

the By-Laws guarantees that after the execution sale, the proceeds of the sale would be returned to the former member after deducting the outstanding obligations. If followed to the letter, the termination of membership under this procedure outlined in the By-Laws would accord with substantial justice.

3. CIVIL LAW; HUMAN RELATIONS; GENERAL OBLIGATIONS UNDER THE LAW FOR EVERY PERSON TO ACT FAIRLY AND IN GOOD FAITH TOWARDS ONE ANOTHER; APPLICABLE TO A CORPORATION AND ITS MEMBERS. — The utter bad faith exhibited by Calatagan brings into operation Articles 19, 20 and 21 of the Civil Code, under the Chapter on Human Relations. These provisions, which the Court of Appeals did apply, enunciate a general obligation under law for every person to act fairly and in good faith towards one another. A non-stock corporation like Calatagan is not exempt from that obligation in its treatment of its members. The obligation of a corporation to treat every person honestly and in good faith extends even to its shareholders or members, even if the latter find themselves contractually bound to perform certain obligations to the corporation. A certificate of stock cannot be a charter of dehumanization.

4. ID.; DAMAGES; ACTUAL DAMAGES, WARRANTED FOR THE PECUNIARY INJURY SUSTAINED WITH THE WRONGFUL VIOLATION OF BY-LAWS IN CASE AT BAR.— The award of actual damages is of course warranted since Clemente has sustained pecuniary injury by reason of Calatagan's wrongful violation of its own By-Laws. It would not be feasible to deliver Clemente's original Certificate of Stock because it had already been cancelled and a new one issued in its place in the name of the purchases at the auction who was not impleaded in this case. However, the Court of Appeals instead directed that Calatagan to issue to Clemente a new certificate of stock. That sufficiently redresses the actual damages sustained by Clemente. After all, the certificate of stock is simply the evidence of the share.

5. ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES, WARRANTED IN CASE AT BAR.— The Court of Appeals also awarded Clemente ₱200,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees. We agree that the award of such damages

is warranted. The Court of Appeals cited Calatagan for violation of Article 32 of the Civil Code, which allows recovery of damages from any private individual "who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs" the right "against deprivation of property without due process of laws." The plain letter of the provision squarely entitles Clemente to damages from Calatagan. Even without Article 32 itself, Calatagan will still be bound to pay moral and exemplary damages to Clemente. The latter was able to duly prove that he had sustained mental anguish, serious anxiety and wounded feelings by reason of Calatagan's acts, thereby entitling him to moral damages under Article 2217 of the Civil Code. Moreover, it is evident that Calatagan's bad faith as exhibited in the course of its corporate actions warrants correction for the public good, thereby justifying exemplary damages under Article 2229 of the Civil Code.

APPEARANCES OF COUNSEL

Pangilinan Britanico Sarmiento & Franco Law Offices for petitioner.

Platon Martinez Flores San Pedro & Leano for respondent.

D E C I S I O N

TINGA, *J.*:

Seeking the reversal of the Decision[1] dated 1 June 2004 of the Court of Appeals in CA-G.R. SP No. 62331 and the reinstatement of the Decision dated 15 November 2000 of the Securities and Exchange Commission (SEC) in SEC Case No. 04-98-5954, petitioner Calatagan Golf Club, Inc. (Calatagan) filed this Rule 45 petition against respondent Sixto Clemente, Jr. (Clemente).

The key facts are undisputed.

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[1] *Rollo,* pp. 47-64; Penned by Associate Justice Arturo D. Brion (now a member of this Court, with Associate Justices Ruben T. Reyes (later appointed to and retired from this Court) and Eliezer de los Santos, concurring.

Clemente applied to purchase one share of stock of Calatagan, indicating in his application for membership his mailing address at "Phimco Industries, Inc. – P.O. Box 240, MCC," complete residential address, office and residence telephone numbers, as well as the company (Phimco) with which he was connected, Calatagan issued to him Certificate of Stock No. A-01295 on 2 May 1990 after paying ₱120,000.00 for the share.[2]

Calatagan charges monthly dues on its members to meet expenses for general operations, as well as costs for upkeep and improvement of the grounds and facilities. The provision on monthly dues is incorporated in Calatagan's Articles of Incorporation and By-Laws. It is also reproduced at the back of each certificate of stock.[3] As reproduced in the dorsal side of Certificate of Stock No. A-01295, the provision reads:

> 5. The owners of shares of stock shall be subject to the payment of monthly dues in an amount as may be prescribed in the by-laws or by the Board of Directors which shall in no case be less that [*sic*] ₱50.00 to meet the expenses for the general operations of the club, and the maintenance and improvement of its premises and facilities, in addition to such fees as may be charged for the actual use of the facilities x x x

When Clemente became a member the monthly charge stood at ₱400.00. He paid ₱3,000.00 for his monthly dues on 21 March 1991 and another ₱5,400.00 on 9 December 1991. Then he ceased paying the dues. At that point, his balance amounted to ₱400.00.[4]

Ten (10) months later, Calatagan made the initial step to collect Clemente's back accounts by sending a demand letter dated 21 September 1992. It was followed by a second letter dated 22 October 1992. Both letters were sent to Clemente's mailing address as indicated in his membership application but were sent back to sender with the postal note that the address had been closed.[5]

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[2] *Rollo,* pp. 47-48, 145.

[3] *Id.* at 48, 145.

[4] *Id*. at 48, 145-146.

[5] *Id*. at 48, 146.

Calatagan declared Clemente delinquent for having failed to pay his monthly dues for more than sixty (60) days, specifically ₱5,600.00 as of 31 October 1992. Calatagan also included Clemente's name in the list of delinquent members posted on the club's bulletin board. On 1 December 1992, Calatagan's board of directors adopted a resolution authorizing the foreclosure of shares of delinquent members, including Clemente's; and the public auction of these shares.

On 7 December 1992, Calatagan sent a third and final letter to Clemente, this time signed by its Corporate Secretary, Atty. Benjamin Tanedo, Jr. The letter contains a warning that unless Clemente settles his outstanding dues, his share would be included among the delinquent shares to be sold at public auction on 15 January 1993. Again, this letter was sent to Clemente's mailing address that had already been closed.[6]

On 5 January 1993, a notice of auction sale was posted on the Club's bulletin board, as well as on the club's premises. The auction sale took place as scheduled on 15 January 1993, and Clemente's share sold for ₱64,000.[7] According to the Certificate of Sale issued by Calatagan after the sale, Clemente's share was purchased by a Nestor A. Virata.[8] At the time of the sale, Clemente's accrued monthly dues amounted to ₱5,200.00.[9] A notice of foreclosure of Clemente's share was published in the 26 May 1993 issue of the *Business World*.[10]

Clemente learned of the sale of his share only in November of 1997.[11] He filed a claim with the Securities and Exchange Commission (SEC) seeking the restoration of his shareholding in Calatagan with damages.

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[6] *Id*. at 48-49, 146-147.

[7] *Rollo*, p. 49.

[8] Records, p. 250.

[9] *Id.*

[10] Records, p. 250.

[11] *Rollo,* pp. 49, 147.

On 15 November 2000, the SEC rendered a decision dismissing Clemente's complaint. Citing Section 69 of the Corporation Code which provides that the sale of shares at an auction sale can only be questioned within six (6) months from the date of sale, the SEC concluded that Clemente's claim, filed four (4) years after the sale, had already prescribed. The SEC further held that Calatagan had complied with all the requirements for a valid sale of the subject share, Clemente having failed to inform Calatagan that the address he had earlier supplied was no longer his address. Clemente, the SEC ruled, had acted in bad faith in assuming as he claimed that his non-payment of monthly dues would merely render his share "inactive."

Clemente filed a petition for review with the Court of Appeals. On 1 June 2004, the Court of Appeals promulgated a decision reversing the SEC. The appellate court restored Clemente's one share with a directive to Calatagan to issue in his a new share, and awarded to Clemente a total of ₱400,000.00 in damages, less the unpaid monthly dues of ₱5,200.00.

In rejecting the SEC's finding that the action had prescribed, the Court of Appeals cited the SEC's own ruling in SEC Case No. 4160, *Caram v. Valley Golf Country Club, Inc.*, that Section 69 of the Corporation Code specifically refers to unpaid subscriptions to capital stock, and not to any other debt of stockholders. With the insinuation that Section 69 does not apply to unpaid membership dues in non-stock corporations, the appellate court employed Article 1140 of the Civil Code as the proper rule of prescription. The provision sets the prescription period of actions to recover movables at eight (8) years.

The Court of Appeals also pointed out that since that Calatagan's first two demand letters had been returned to it as sender with the notation about the closure of the mailing address, it very well knew that its third and final demand letter also sent to the same mailing address would not be received by Clemente. It noted the by-law requirement that within ten (10) days after the Board has ordered the sale at auction of a member's share of stock for indebtedness, the Corporate Secretary shall notify the owner thereof and advise the

Membership Committee of such fact. Finally, the Court of Appeals ratiocinated that "a person who is in danger of the imminent loss of his property has the right to be notified and be given the chance to prevent the loss."[12]

Hence, the present appeal.

Calatagan maintains that the action of Clemente had prescribed pursuant to Section 69 of the Corporation Code, and that the requisite notices under both the law and the by-laws had been rendered to Clemente.

Section 69 of the Code provides that an action to recover delinquent stock sold must be commenced by the filing of a complaint within six (6) months from the date of sale. As correctly pointed out by the Court of Appeals, Section 69 is part of Title VIII of the Code entitled "Stocks and Stockholders" and refers specifically to unpaid subscriptions to capital stock, the sale of which is governed by the immediately preceding Section 68.

The Court of Appeals debunked both Calatagan's and the SEC's reliance on Section 69 by citing another SEC ruling in the case of *Caram v. Valley Golf*. In connection with Section 69, Calatagan raises a peripheral point made in the SEC's *Caram* ruling. In *Caram*, the SEC, using as take-off Section 6 of the Corporation Code which refers to "such rights, privileges or restrictions as may be stated in the articles of incorporation," pointed out that the Articles of Incorporation of Valley Golf does not "impose any lien, liability or restriction on the Golf Share [of Caram]," but only its (Valley Golf's) By-Laws does. Here, Calatagan stresses that its own Articles of Incorporation does provide that the monthly dues assessed on owners of shares of the corporation, along with all other obligations of the shareholders to the club, "shall constitute a first lien on the shares… and in the event of delinquency such shares may be ordered sold by the Board of Directors in the manner provided in the By-Laws to satisfy said dues or other obligations of the shareholders."[13] With its illative but

[12] *Id*. at 13.

[13] *Rollo*, p. 20.

incomprehensible logic, Calatagan concludes that the prescriptive period under Section 69 should also apply to the sale of Clemente's share as the lien that Calatagan perceives to be a restriction is stated in the articles of incorporation and not only in the by-laws.

We remain unconvinced.

There are fundamental differences that defy equivalence or even analogy between the sale of delinquent stock under Section 68 and the sale that occurred in this case. At the root of the sale of delinquent stock is the non-payment of the subscription price for the share of stock itself. The stockholder or subscriber has yet to fully pay for the value of the share or shares subscribed. In this case, Clemente had already fully paid for the share in Calatagan and no longer had any outstanding obligation to deprive him of full title to his share. Perhaps the analogy could have been made if Clemente had not yet fully paid for his share and the non-stock corporation, pursuant to an article or by-law provision designed to address that situation, decided to sell such share as a consequence. But that is not the case here, and there is no purpose for us to apply Section 69 to the case at bar.

Calatagan argues in the alternative that Clemente's suit is barred by Article 1146 of the Civil Code which establishes four (4) years as the prescriptive period for actions based upon injury to the rights of the plaintiff on the hypothesis that the suit is purely for damages. As a second alternative still, Calatagan posits that Clemente's action is governed by Article 1149 of the Civil Code which sets five (5) years as the period of prescription for all other actions whose prescriptive periods are not fixed in the Civil Code or in any other law. Neither article is applicable but Article 1140 of the Civil Code which provides that an action to recover movables shall prescribe in eight (8) years. Calatagan's action is for the recovery of a share of stock, plus damages.

Calatagan's advertence to the fact that the constitution of a lien on the member's share by virtue of the explicit provisions in its Articles of Incorporation and By-Laws is relevant but

ultimately of no help to its cause. Calatagan's Articles of Incorporation states that the "dues, together with all other obligations of members to the club, shall constitute a first lien on the shares, second only to any lien in favor of the national or local government, and in the event of delinquency such shares may be ordered sold by the Board of Directors in the manner provided in the By-Laws to satisfy said dues or other obligations of the stockholders."[14] In turn, there are several provisions in the By-laws that govern the payment of dues, the lapse into delinquency of the member, and the constitution and execution on the lien. We quote these provisions:

ARTICLE XII – MEMBER'S ACCOUNT

SEC. 31. (a) Billing Members, Posting of Delinquent Members – The Treasurer shall bill al (sic) members monthly. As soon as possible after the end of every month, a statement showing the account of bill of a member for said month will be prepared and sent to him. If the bill of any member remains unpaid by the 20th of the month following that in which the bill was incurred, the Treasurer shall notify him that if his bill is not paid in full by the end of the succeeding month his name will be posted as delinquent the following day at the Clubhouse bulletin board. While posted, a member, the immediate members of his family, and his guests, may not avail of the facilities of the Club.

(b) Members on the delinquent list for more than 60 days shall be reported to the Board and their shares or the shares of the juridical entities they represent shall thereafter be ordered sold by the Board at auction to satisfy the claims of the Club as provided for in Section 32 hereon. A member may pay his overdue account at any time before the auction sale.

Sec. 32. Lien on Shares; Sale of Share at Auction- The club shall have a first lien on every share of stock to secure debts of the members to the Club. This lien shall be annotated on the certificates of stock and may be enforced by the Club in the following manner:

(a) Within ten (10) days after the Board has ordered the sale at auction of a member's share of stock for indebtedness under Section 31(b) hereof, the Secretary shall notify the owner thereof, and shall advise the Membership Committee of such fact.

[14] See *rollo*, pp. 79-80.

(b) The Membership Committee shall then notify all applicants on the Waiting List and all registered stockholders of the availability of a share of stock for sale at auction at a specified date, time and place, and shall post a notice to that effect in the Club bulletin board for at least ten (10) days prior to the auction sale.

(c) On the date and hour fixed, the Membership Committee shall proceed with the auction by viva voce bidding and award the sale of the share of stock to the highest bidder.

(d) The purchase price shall be paid by the winning bidder to the Club within twenty-four (24) hours after the bidding. The winning bidder or the representative in the case of a juridical entity shall become a Regular Member upon payment of the purchase price and issuance of a new stock certificate in his name or in the name of the juridical entity he represents. The proceeds of the sale shall be paid by the Club to the selling stockholder after deducting his obligations to the Club.

(e) If no bids be received or if the winning bidder fails to pay the amount of this bid within twenty-four (24) hours after the bidding, the auction procedures may be repeated from time to time at the discretion of the Membership Committee until the share of stock be sold.

(f) If the proceeds from the sale of the share of stock are not sufficient to pay in full the indebtedness of the member, the member shall continue to be obligated to the Club for the unpaid balance. If the member whose share of stock is sold fails or refuse to surrender the stock certificate for cancellation, cancellation shall be effected in the books of the Club based on a record of the proceedings. Such cancellation shall render the unsurrendered stock certificate null and void and notice to this effect shall be duly published.

It is plain that Calatagan had endeavored to install a clear and comprehensive procedure to govern the payment of monthly dues, the declaration of a member as delinquent, and the constitution of a lien on the shares and its eventual public sale to answer for the member's debts. Under Section 91 of the Corporation Code, membership in a non-stock corporation "shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws." The By-law provisions are elaborate in explaining the manner and the causes for the

termination of membership in Calatagan, through the execution on the lien of the share. The Court is satisfied that the By-Laws, as written, affords due protection to the member by assuring that the member should be notified by the Secretary of the looming execution sale that would terminate membership in the club. In addition, the By-Laws guarantees that after the execution sale, the proceeds of the sale would be returned to the former member after deducting the outstanding obligations. If followed to the letter, the termination of membership under this procedure outlined in the By-Laws would accord with substantial justice.

Yet, did Calatagan actually comply with the by-law provisions when it sold Clemente's share? The appellate court's finding on this point warrants our approving citation, thus:

> In accordance with this provision, Calatagan sent the third and final demand letter to Clemente on December 7, 1992. The letter states that if the amount of delinquency is not paid, the share will be included among the delinquent shares to be sold at public auction. This letter was signed by Atty. Benjamin Tanedo, Jr., Calatagan Golf's Corporate Secretary. **It was again sent to Clemente's mailing address – Phimco Industries Inc., P.O. Box 240, MCC Makati.** As expected, it was returned because the post office box had been closed.
>
> Under the By-Laws, the Corporate Secretary is tasked to "give or cause to be given, all notices required by law or by these By-Laws. .. and … keep a record of the addresses of all stockholders. As quoted above, Sec. 32 (a) of the By-Laws further provides that "within ten (10) days after the Board has ordered the sale at auction of a member's share of stock for indebtedness under Section 31 (b) hereof, the Secretary shall notify the owner thereof and shall advise the Membership Committee of such fact.," The records do not disclose what report the Corporate Secretary transmitted to the Membership Committee to comply with Section 32(a). Obviously, the reason for this mandatory requirement is to give the Membership Committee the opportunity to find out, before the share is sold, if proper notice has been made to the shareholder member.
>
> We presume that the Corporate Secretary, as a lawyer is knowledgeable on the law and on the standards of good faith and fairness that the law requires. As custodian of corporate records,

he should also have known that the first two letters sent to Clemente were returned because the P.O. Box had been closed. Thus, we are surprised – given his knowledge of the law and of corporate records – that he would send the third and final letter – Clemente's last chance before his share is sold and his membership lost – to the same P.O. Box that had been closed.

Calatagan argues that it "exercised due diligence before the foreclosure sale" and "sent several notices to Clemente's specified mailing address." We do not agree; we cannot label as due diligence Calatagan's act of sending the December 7, 1992 letter to Clemente's mailing address knowing fully well that the P.O. Box had been closed. Due diligence or good faith imposes upon the Corporate Secretary – the chief repository of all corporate records – the obligation to check Clemente's other address which, under the By-Laws, have to be kept on file and are in fact on file. One obvious purpose of giving the Corporate Secretary the duty to keep the addresses of members on file is specifically for matters of this kind, when the member cannot be reached through his or her mailing address. Significantly, the Corporate Secretary does not have to do the actual verification of other addressees on record; a mere clerk can do the very simple task of checking the files as in fact clerks actually undertake these tasks. In fact, one telephone call to Clemente's phone numbers on file would have alerted him of his impending loss.

Ultimately, the petition must fail because Calatagan had failed to duly observe both the spirit and letter of its own by-laws. The by-law provisions was clearly conceived to afford due notice to the delinquent member of the impending sale, and not just to provide an intricate façade that would facilitate Calatagan's sale of the share. But then, the bad faith on Calatagan's part is palpable. As found by the Court of Appeals, Calatagan very well knew that Clemente's postal box to which it sent its previous letters had already been closed, yet it persisted in sending that final letter to the same postal box. What for? Just for the exercise, it appears, as it had known very well that the letter would never actually reach Clemente.

It is noteworthy that Clemente in his membership application had provided his residential address along with his residence and office telephone numbers. Nothing in Section 32 of Calatagan's By-Laws requires that the final notice prior to the

sale be made solely through the member's mailing address. Clemente cites our aphorism-like pronouncement in *Rizal Commercial Banking Corporation v. Court of Appeals*[15] that "[a] simple telephone call and an ounce of good faith x x x could have prevented this present controversy." That memorable observation is quite apt in this case.

Calatagan's bad faith and failure to observe its own By-Laws had resulted not merely in the loss of Clemente's privilege to play golf at its golf course and avail of its amenities, but also in significant pecuniary damage to him. For that loss, the only blame that could be thrown Clemente's way was his failure to notify Calatagan of the closure of the P.O. Box. That lapse, if we uphold Calatagan would cost Clemente a lot. But, in the first place, does he deserve answerability for failing to notify the club of the closure of the postal box? Indeed, knowing as he did that Calatagan was in possession of his home address as well as residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him. In addition, according to Clemente, he was not even aware of the closure of the postal box, the maintenance of which was not his responsibility but his employer Phimco's.

The utter bad faith exhibited by Calatagan brings into operation Articles 19, 20 and 21 of the Civil Code,[16] under the Chapter on Human Relations. These provisions, which the Court of Appeals did apply, enunciate a general obligation under law for every person to act fairly and in good faith towards one another. A non-stock corporation like Calatagan is not exempt

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[15] G.R. No. 133107, 25 March 1999, 305 SCRA 449.

[16] Art. 19. Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

from that obligation in its treatment of its members. The obligation of a corporation to treat every person honestly and in good faith extends even to its shareholders or members, even if the latter find themselves contractually bound to perform certain obligations to the corporation. A certificate of stock cannot be a charter of dehumanization.

We turn to the matter of damages. The award of actual damages is of course warranted since Clemente has sustained pecuniary injury by reason of Calatagan's wrongful violation of its own By-Laws. It would not be feasible to deliver Clemente's original Certificate of Stock because it had already been cancelled and a new one issued in its place in the name of the purchases at the auction who was not impleaded in this case. However, the Court of Appeals instead directed that Calatagan to issue to Clemente a new certificate of stock. That sufficiently redresses the actual damages sustained by Clemente. After all, the certificate of stock is simply the evidence of the share.

The Court of Appeals also awarded Clemente ₱200,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees. We agree that the award of such damages is warranted.

The Court of Appeals cited Calatagan for violation of Article 32 of the Civil Code, which allows recovery of damages from any private individual "who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs" the right "against deprivation of property without due process of laws." The plain letter of the provision squarely entitles Clemente to damages from Calatagan. Even without Article 32 itself, Calatagan will still be bound to pay moral and exemplary damages to Clemente. The latter was able to duly prove that he had sustained mental anguish, serious anxiety and wounded feelings by reason of Calatagan's acts, thereby entitling him to moral damages under Article 2217 of the Civil Code. Moreover, it is evident that Calatagan's bad faith as exhibited in the course of its corporate actions warrants correction for the public good, thereby justifying exemplary damages under Article 2229 of the Civil Code.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 168716. April 16, 2009]

HFS PHILIPPINES, INC., RUBEN T. DEL ROSARIO and IUM SHIPMANAGEMENT AS, *petitioners, vs.* **RONALDO R. PILAR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; VALUE THEREOF. — Just like any other contract, a CBA is the law between the contracting parties and compliance therewith in good faith is required by law. Inasmuch as respondent was a registered member of the Associated Marine Officers and Seaman's Union of the Philippines (AMOSUP), the present controversy should be decided in accordance with the CBA.

2. ID.; LABOR STANDARDS; OVERSEAS EMPLOYMENT; COMPANY-DESIGNATED PHYSICIAN'S DETERMINATION OF SEAFARER'S FITNESS/DISABILITY TO WORK; CLAIMANT MAY DISPUTE THE SAME BY SEASONABLY CONSULTING ANOTHER DOCTOR; CASE AT BAR. — We note that Section 20(B) of the employment contract states that it is the company-designated physician who determines a

[*] Justice Consuelo Ynares-Santiago as Raffle dated April 13, 2009 as additional member in lieu of Justice Antonio D. Brion who inhibited himself in this case.

seafarer's fitness to work or his degree of disability. Nonetheless, a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. x x x There was clearly a discrepancy between the certification of the company-designated physician and those of respondent's chosen doctors. The company-designated physician expectedly downplayed his findings on the ratings. It is for this reason that the employment contract affords the seaman the option to seek the opinion of an independent physician.

3. ID.; ID.; ID.; ID.; APPRECIATION OF CONFLICTING RESULTS THEREIN.— The bottomline is this: the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such a situation, we adopt the findings favorable to respondent. The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
J. Vincent H. Natividad for respondent.

D E C I S I O N

CORONA, *J.*:

This petition[1] seeks to reverse and set aside the November 22, 2004 decision[2] and June 22, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 85197.

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

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Eugenio S. Labitoria (retired) and Bienvenido L. Reyes of the Third Division of the Court of Appeals. *Rollo,* pp. 12-20.

[3] *Id.*, pp. 21-22.

On October 4, 2001, respondent Ronaldo R. Pilar was engaged by petitioners IUM Shipmanagement AS and its Philippine manning agent, HFS Philippines, Inc. (HFS), as a crew member of the Norwegian vessel M/V Hual Triumph under the following terms and conditions:

Duration of the contract	:	9 months
Position	:	Electrician
Basic monthly salary	:	US $981 per month
Hours of work	:	44 hours per week
Overtime	:	US $646 per month
Vacation leave with pay	:	8 days per month
Point of hire	:	Manila[4]

Respondent boarded the vessel on October 27, 2001.[5]

In March 2002 or roughly four months after he boarded M/V Hual Triumph, respondent complained of loss of appetite, nausea, vomiting and severe nervousness. Despite being given medical treatment, his condition did not improve.

When the vessel reached Nagoya, Japan on April 3, 2002, respondent was brought to the Komatsu Hospital where he was diagnosed with depression and gastric ulcer.[6] The attending physician declared him unfit for work and recommended his hospitalization and repatriation.[7] Respondent returned to Manila on the same day.

Upon reaching Manila, respondent was met by a representative of HFS who immediately brought him to the Medical Center Manila. HFS-designated physician Dr. Nicomedes G. Cruz confirmed that respondent was suffering from major depression.

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[4] Standard contract of employment of the Philippine Overseas Employment Agency, entered into by petitioners and respondent. *Id.,* p. 483.

[5] October 29, 2001 in some parts of the record.

[6] Declaration of illness/accident. *Rollo*, p. 524.

[7] Doctor's report. *Id.*, p. 525.

Thus, he placed respondent under continuous medical treatment for several months.[8]

On September 19, 2003, respondent was declared fit to work.[9]

Meanwhile, respondent likewise sought the opinion of other physicians.

Dr. Anselmo T. Tronco of the Philippine General Hospital[10] and Dr. Raymond Jude L. Changco of the Mary Chiles Hospital[11] opined that respondent continued to suffer from major depression.

Dr. Arlito C. Veneracion of the Mary Chiles Hospital, on the other hand, evaluated the results of respondent's ultrasound and endoscopy. He revealed that respondent was suffering "cholecystolithiasis, mild fatty liver and chronic gastritis."[12] Thus, Dr. Veneracion declared respondent unfit to work.[13]

On November 27, 2002, respondent filed a complaint for underpayment of disability and medical benefits and for moral and exemplary damages in the National Labor Relations

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[8] Diagnoses dated April 4, 2003, April 11, 2003, April 16, 2003, April 24, 2003, May 27, 2003, June 25, 2003, June 27, 2003, July 2, 2003, August 9, 2003 and August 20, 2003. *Id.*, pp. 530-542.

[9] According to respondent's SSS claim form, he last visited Dr. Cruz on September 19, 2002. *Id.*, p. 543.

[10] Diagnosis dated January 15, 2003. *Id.*, p. 542.

[11] Diagnosis dated August 20, 2003. *Id.*, p. 544.

[12] Medical certificate issued by Dr. Veneracion. *Id.*, p. 552.

[13] *Id.* Respondent's disability was classified under POEA Grade 7. *See* POEA Standard Contract of Employment for Seafarers, Sec. 32. It provides:

Section 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x x x x x x

ABDOMEN

x x x x x x x x x

4. Moderate residuals of disorder of the intra-abdominal organs secondary Grade 7 to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea.

Commission (NLRC).[14] Because respondent was a registered member of the Associated Marine Officers and Seaman's Union of the Philippines (AMOSUP), the NLRC referred the complaint to the National Conciliation and Mediation Board (NCMB) on May 6, 2003.[15]

In his position paper, respondent claimed that, while sleeping during his rest hours on March 9, 2002, he was suddenly awakened by his officer who hit him on the head. He was so traumatized by the incident that thereafter, he lost his appetite, vomited incessantly and experienced severe nervousness. He claimed to be entitled to disability compensation under Article 12 of the Collective Bargaining Agreement (CBA) between AMOSUP and the Norwegian Shipowner's Association which provides:

ARTICLE 12
DISABILITY COMPENSATION

If a seafarer due to no fault of his own, **suffers injury as a result of an accident while serving on board** or while traveling to or from the vessel on the company's business or due to marine peril, **and as a result his ability to work is permanently reduced, totally or partially**, **the Company shall pay him a disability compensation** which including the amounts stipulated by the [Philippine Overseas Employment Agency's] rules and regulation shall be maximum:

Radio officers, chief stewards, **electricians**, electro technicians	**US $90,000**
Ratings	US $70,000

The disability compensation shall be calculated on the basis of the POEA's schedule of disability or impediment for injuries at a percentage recommended by a doctor authorized by the Norwegian authorities for the medical examination of seafarers.

The company shall take out the necessary insurance to cover the benefits mentioned above. Coverage arranged with P & I Club

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[14] Docketed as NCR-OFW(M) 02-11-3032-00.

[15] Order penned by Facundo L. Leda. *Rollo,* pp. 448-450. The case was re-docketed as NCMB-NCR-CRN Case No. 06-007-03.

recognized by the Norwegian authorities will meet these requirements. (emphasis supplied)

Petitioners, on the other hand, asserted that in the absence of proof his depression was caused by an accident, respondent was not entitled to disability and medical benefits under Article 12 of the CBA. Instead, he was only entitled to the 120-day sick pay provided under Article 10 of the CBA which provides:

ARTICLE 10
SICKNESS AND INJURY

During the period of employment and at the time of signing off, the officer shall submit to a medical examination when requested by the company or its representative, at the company's expense.

While serving on board, **a sick or injured officer is entitled to treatment at the company's expense**. The company is not responsible for conservative denial treatment. If the officer is sick or injured at the termination of the service period, he has the same entitlement for a maximum period of one hundred and twenty (120) days from the date of signing off. In accordance with Part II, Section C of the [Philippine Overseas Employment Agency's (POEA)] rules and regulations, the officer must submit to a post-employment medical examination within three (3) working days after his return to the Philippines to obtain these benefits. If he should be unable by reason of physical incapacity to do so, a written notice to the agency within the same period is deemed as compliance provided the incapacity is certified by the Master or an authorized physician.

In the event of sickness or injury necessitating signing-off, **the officer is entitled to travel to Manila at the company's expense**.

The officer is entitled to sick pay (**at the same rate as basic wage**) **for up to 120 days after signing off, provided the sickness or the injury is verified by written statement from an authorized physician**. The sick pay will be in addition to the vacation leave compensation mentioned in Art. 8 but not in the addition to the termination pay compensation mentioned in Art. 5 points a to c.

It is understood that an officer who is signed off by reason of sickness or injury must return to the Philippines within the usual period of travel from the date and place of disembarkation indicated in homeward bound ticket. On arrival in the Philippines, he shall report

to the company's designated physician within three (3) working days from the time of arrival for post employment medical examination, otherwise, the employer's liability shall be deemed terminated. In case however, of failure to report due to officers' physical incapacity, a written notice to the company within three (3) working days from arrival is deemed as compliance provided the incapacity is certified by the Master or an authorized physician. (emphasis supplied)[16]

Pursuant to this provision, Section 20(B) of the Standard Employment Contract of the POEA between respondent and petitioners (employment contract) stated:

B. COMPENSATION AND BENEFITS FOR ILLNESS AND INJURY

The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

x x x x x x x x x

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

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

x x x x x x x x x

The NCMB held that the nature of respondent's occupation significantly contributed to the deterioration of his psychological condition. Respondent's depression was therefore a compensable sickness since it arose out of his employment. In view of the

[16] *Id.*, pp. 376-377.

principle of social justice (that those who have less in life should have more in the law), the NCMB awarded disability compensation to him:[17]

> WHEREFORE, judgment is hereby rendered in favor of [respondent]. [Petitioners], jointly and severally, are hereby ordered to pay disability benefits claimed by [respondent] in accordance with the [AMOSUP]-CBA in the amount of US$90,000 and attorney's fees equivalent to 10% of the total amount awarded.
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> SO ORDERED.

Aggrieved, petitioners assailed the NCMB decision in the CA via petition for *certiorari*[18] asserting that it committed grave abuse of discretion in awarding disability compensation to respondent. The NCMB erred in applying Article 12 of the CBA since the respondent's depression and gastric ulcer were not due to an accident.

In a decision dated November 22, 2004, the CA held that Article 12 of the CBA applies when a seafarer suffers an injury (1) as a consequence of an accident that took place on board the vessel or (2) while traveling to and from the vessel on company business or (3) due to a marine peril. Since respondent's illnesses were not the result of any of the said circumstances, he was not entitled to disability compensation granted by the CBA. Nonetheless, because he proved that his illnesses impaired him, he is entitled to disability benefits granted by Section 32[19] of the employment contract.[20]

Unsatisfied with the decision of the CA, petitioners moved for reconsideration but it was denied.[21]

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[17] Decision penned by voluntary arbitrator Hermenegildo C. Dumlao. Dated May 27, 2002. *Id.*, p. 269-276.

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

[19] Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted.

[20] *Supra* note 2.

[21] *Supra* note 3.

The primordial issue in this petition is whether respondent is entitled to disability pay.

Petitioners contend that the CA erred in awarding disability pay to respondent. Section 20(B) of the employment contract requires that the seafarer should be declared unfit for work by the company physician. Respondent, in this instance, was declared fit for work by Dr. Cruz.

We deny the petition.

Just like any other contract, a CBA is the law between the contracting parties and compliance therewith in good faith is required by law.[22] Inasmuch as respondent was a registered member of the AMOSUP, the present controversy should be decided in accordance with the CBA.

It is undisputed that respondent fell ill while he was onboard M/V Hual Triumph. This fact was confirmed not only by petitioner's accredited physicians but also by respondent's own independent physicians.

In view thereof, respondent is clearly entitled to sick-pay. Article 10 of the CBA and Section 20(B) of the employment contract apply when a seafarer contracts an illness in the course of his employment. They provide that if, in the opinion of the employer-accredited physician, the nature of the seafarer's illness, **regardless of its cause**, requires a sign-off (or repatriation to Manila), the seafarer is entitled to sick-pay equivalent to not more than 120-days worth of regular wage.

However, with regard to whether respondent is entitled to disability compensation, we rule in the negative. Article 12 of the CBA requires:

(a) the seafarer must suffer an injury;

(b) injury must have been the result of an accident while on board or while traveling to or from the vessel on

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[22] *Kimberly Clark Philippines v. Lorredo,* G.R. No. 103090, 21 September 2008, 226 SCRA 639, 643.

company's business or it must have been due to marine peril and

(c) as a result of the injury, he becomes totally or partially disabled.

This provision is limited to injuries. It does not cover all kinds of illnesses such as those suffered by respondent. Moreover, neither the NCMB nor the CA found that respondent's illnesses were the result of an accident or a marine peril.

Nonetheless, while respondent is not entitled to disability compensation under the CBA, Section 20(B) of the Contract provides:

5. **In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness the seafarer shall be compensated** in accordance with the schedule of benefits enumerated in Section [32] of this Contract. Computations arising from any illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted. (emphasis supplied)

Under this provision, a seafarer may be entitled to disability compensation if (1) he is shown to have contracted an illness or suffered an injury in the course of his employment and (2) such illness or injury resulted in his total or partial disability.

In this case, the company-accredited doctor opined that respondent was fit to work but respondent's own physicians declared otherwise.

We note that Section 20(B) of the employment contract states that it is the company-designated physician who determines a seafarer's fitness to work or his degree of disability. Nonetheless, a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.[23]

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[23] *Maunlad Transport, Inc. and/or Nippon Merchant Marine Company, Ltd., Inc. v. Manigo,* G.R. No. 161416, 13 June 2008.

Dr. Tronco made the following observations about respondent:

> The [patient] started to feel weak, anxious, depressed, with loss of interest and feeling of hopelessness one month before consultation. These symptoms interfered with work. He was thus repatriated on the fifth month of work as a seaman. He was given anti-depressants which led to his gradual improvement.
>
> Presently, [patient] is energetic and not anxious.
>
> Impression: major depression
>
> He will be maintained on Zoloft pills within the next [six to nine] months. Prognosis is good.[24]

However, Dr. Chango found that respondent's depression persisted:

> Patient is under medication but persists to be depressed. In view of this, I recommend that in the Schedule of Disability he be graded 6 (moderate mental disorder) which limits worker to ADL with some directed care.[25]

Dr. Veneracion, on the other hand, issued a certification to the following effect:

> This is to certify that I have seen and examined Mr. Ronaldo Pilar on September 22, 2003 at Mary Chiles General Hospital. Ultrasound done at March 26, 2003 showed cholecystilithiasis and mild fatty liver. Endoscopy with gastric biopsy done April 2, 2003 revealed chronic gastritis.
>
> Diagnosis: Cholecystilithiasis
> Mild fatty liver
> Chronic gastritis
>
> Remarks: POEA Disability Grade 7
> Unfit to work

This certification was issued upon Mr. Rolando Pilar's request for the purpose of claiming disability benefits. [26]

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[24] *Supra* note 10.

[25] *Supra* note 11.

[26] *Supra* note 12.

There was clearly a discrepancy between the certification of the company-designated physician and those of respondent's chosen doctors. The company-designated physician expectedly downplayed his findings on the ratings.[27] It is for this reason that the employment contract affords the seaman the option to seek the opinion of an independent physician.[28]

The company-designated physician declared respondent as having suffered a major depression but was already cured and therefore fit to work. On the other hand, the independent physicians stated that respondent's major depression persisted and constituted a disability. More importantly, while the former totally ignored the diagnosis of the Japanese doctor that respondent was also suffering from gastric ulcer, the latter addressed this. The independent physicians thus found that respondent was suffering from chronic gastritis and declared him unfit for work.

The bottomline is this: the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such a situation, we adopt the findings favorable to respondent.

The law looks tenderly on the laborer. Where the evidence may be reasonably interpreted in two divergent ways, one prejudicial and the other favorable to him, the balance must be tilted in his favor consistent with the principle of social justice.[29]

WHEREFORE, the petition is hereby *DENIED*. The November 22, 2004 decision and June 22, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 85197 affirming the May 27, 2002 decision of the National Conciliation Mediation

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[27] *Seagull Maritime Corporation v. Dee,* G.R. No. 165156, 22 April 2007, 520 SCRA 109.

[28] *Id.*

[29] In essence, this is similar to the equipoise rule in criminal law. See CIVIL CODE, Art. 1702. Labor legislation and contracts shall be construed in favor of the safety and decent living of the laborer.

Board in NCMB Case No. NCMB-NCR-CRN Case No. 06-007-03 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 168800. April 16, 2009]

NEW REGENT SOURCES, INC., *petitioner, vs.* **TEOFILO VICTOR TANJUATCO, JR., and VICENTE CUEVAS,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CVIL PROCEDURE; APPEALS; QUESTION OF FACT IN CASE AT BAR, NOT PROPER; DISTINGUISHED FROM QUESTION OF LAW. — In its petition, NRSI questions the trial court's dismissal of its complaint upon a demurrer to evidence and invites a *calibration of the evidence on record* to determine the sufficiency of the factual basis for the trial court's order. This factual analysis, however, would involve questions of fact which are improper in a petition for review under Rule 45 of the Rules of Court. It is well established that in an appeal by *certiorari*, only questions of law may be reviewed. A question of law exists when there is doubt or difference as to what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. There is a question of law when the issue does not call for an examination of the probative value of evidence presented, the truth or falsehood of facts being

[*] Also known as Vicente P. Cuevas III.

admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. Otherwise, there is a question of fact. Since it raises essentially questions of fact, the instant petition must be denied.

2. CIVIL LAW; LAND REGISTRATION; ACTION FOR RECONVEYANCE; REQUISITES TO WARRANT RECONVEYANCE OF LAND. — An action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner. In an action for reconveyance, the certificate of title is respected as incontrovertible. What is sought instead is the transfer of the property, specifically the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right. To warrant a reconveyance of the land, the following requisites must concur: (1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant; (2) the registration of the land in the name of the defendant was procured through fraud or other illegal means; (3) the property has not yet passed to an innocent purchaser for value; and (4) the action is filed after the certificate of title had already become final and incontrovertible but within four years from the discovery of the fraud, or not later than 10 years in the case of an implied trust.

3. ID.; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; RIGHT OF ACCESSION WITH RESPECT TO IMMOVABLE PROPERTY; REQUISITES OF ACCRETION. — Accretion as a mode of acquiring property under Article 457 of the Civil Code requires the concurrence of the following requisites: (1) that the deposition of soil or sediment be gradual and imperceptible; (2) that it be the result of the action of the waters of the river; and (3) that the land where accretion takes place is adjacent to the banks of rivers. Thus, it is not enough to be a riparian owner in order to enjoy the benefits of accretion. One who claims the right of accretion must show by preponderant evidence that he has met all the conditions provided by law.

4. REMEDIAL LAW; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; APPLICATION IN CASE AT BAR. — We note that Tanjuatco filed a demurrer to evidence before the RTC.

By its nature, a demurrer to evidence is filed after the plaintiff has completed the presentation of his evidence but before the defendant offers evidence in his defense. Thus, the Rules provide that if the defendant's motion is denied, he shall have the right to present evidence. However, if the defendant's motion is granted but on appeal the order of dismissal is reversed, he shall be deemed to have waived the right to present evidence. It is understandable, therefore, why the respondent was unable to formally offer in evidence the Order of the Director of Lands, or any evidence for that matter.

5. CIVIL LAW; LAND TITLES; PERSON DEALING WITH REGISTERED LAND MAY SAFELY RELY UPON THE CORRECTNESS OF THE CERTIFICATE OF TITLE; CASE AT BAR. — Petitioner introduced in evidence TCT Nos. T-369406 and T-369407 in the name of respondent Tanjuatco. These titles bear a certification that Tanjuatco's titles were derived from OCT No. 245 in the name of no less than the Republic of the Philippines. Hence, we cannot validly and fairly rule that in relying upon said title, Tanjuatco acted in bad faith. A person dealing with registered land may safely rely upon the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. This applies even more particularly when the seller happens to be the Republic, against which, no improper motive can be ascribed. The law, no doubt, considers Tanjuatco an innocent purchaser for value. An innocent purchaser for value is one who buys the property of another, without notice that some other person has a right or interest in such property and pays the full price for the same, at the time of such purchase or before he has notice of the claims or interest of some other person in the property.

APPEARANCES OF COUNSEL

Cortez & Associates for petitioner.
Law Firm Tanjuatco & Partners for respondents.

D E C I S I O N

QUISUMBING, *J.*:

Petitioner through counsel prays for the reversal of the Orders dated February 12, 2005[1] and July 1, 2005[2] of the Regional Trial Court (RTC) of Calamba City, Branch 37, in Civil Case No. 2662-98-C. The RTC had granted the demurrer to evidence filed by respondent Tanjuatco, and then denied petitioner's motion for reconsideration.

The facts, as culled from the records, are as follows:

Petitioner New Regent Sources, Inc. (NRSI) filed a Complaint[3] for Rescission/Declaration of Nullity of Contract, Reconveyance and Damages against respondent Tanjuatco and the Register of Deeds of Calamba before the RTC of Calamba, Laguna, Branch 37. NRSI alleged that in 1994, it authorized Vicente P. Cuevas III, its Chairman and President, to apply on its behalf, for the acquisition of two parcels of land by virtue of its right of accretion. Cuevas purportedly applied for the lots in his name by paying ₱82,400.38 to the Bureau of Lands. On January 2, 1995, Cuevas and his wife executed a Voting Trust Agreement[4] over their shares of stock in the corporation. Then, pending approval of the application with the Bureau of Lands, Cuevas assigned his right to Tanjuatco for the sum of ₱85,000.[5] On March 12, 1996, the Director of Lands released an Order,[6] which approved the transfer of rights from Cuevas to Tanjuatco. Transfer Certificates of Title Nos. T-369406[7] and T-369407[8] were then issued in the name of Tanjuatco.

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[1] *Rollo*, pp. 26-27. Penned by Judge Antonio T. Manzano.

[2] *Id.* at 28.

[3] Records, Vol. I, pp. 1-5.

[4] *Rollo*, pp. 31-33.

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

[6] Records, Vol. I, p. 41.

[7] *Id.* at 6.

[8] *Id.* at 7.

In his Answer with Counterclaim,[9] Tanjuatco advanced the affirmative defense that the complaint stated no cause of action against him. According to Tanjuatco, it was Cuevas who was alleged to have defrauded the corporation. He averred further that the complaint did not charge him with knowledge of the agreement between Cuevas and NRSI.

Upon Tanjuatco's motion, the trial court conducted a preliminary hearing on the affirmative defense, but denied the motion to dismiss, and ordered petitioner to amend its complaint and implead Cuevas as a defendant.[10]

Summons was served on respondent Cuevas through publication,[11] but he was later declared in default for failure to file an answer.[12]

After NRSI completed presenting evidence, Tanjuatco filed a Demurrer to Evidence,[13] which the RTC granted in an Order dated February 12, 2005. In dismissing NRSI's complaint,[14] the RTC cited the Order of the Director of Lands and certain insufficiencies in the allegations in the complaint. The trial court further held that Tanjuatco is an innocent purchaser for value.

NRSI moved for reconsideration, but it was denied by the trial court in an Order dated July 1, 2005, thus:

> WHEREFORE, the Motion for Reconsideration filed by the plaintiff on May 3, 2005 is DENIED for lack of merit.

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[9] *Id.* at 27-34.

[10] *Id.* at 101-102.

[11] *Id.* at 209-211.

[12] *Id.* at 221-222.

[13] *Id.* at 318-332.

[14] *Rollo*, p. 27.

The dispositive portion reads:

> WHEREFORE, the Motion To Dismiss by way of Demurrer To Evidence filed by defendant Tanjuatco is granted. The complaint for Rescission/ Declaration of Nullity of Contract, Reconveyance, and Damages filed by plaintiff New Regent Sources, Inc. is **DISMISSED**.
>
> SO ORDERED.

SO ORDERED.[15]

Hence, NRSI filed the instant petition for review on *certiorari*, raising the following issues:

I.

WHETHER OR NOT THE ALLEGED INSUFFICIENCY OF THE ALLEGATIONS IN THE COMPLAINT MAY BE USED AS A BASIS TO DISMISS THE SAME BY WAY OF A DEMURRER TO EVIDENCE;

II.

WHETHER OR NOT A COMPLAINT MAY BE DISMISSED ON DEMURRER TO EVIDENCE BASED ON A DOCUMENT NOT PROPERLY IDENTIFIED, MARKED AND OFFERED IN EVIDENCE.[16]

In a nutshell, the issue for our determination is whether the trial court erred in dismissing the case on demurrer to evidence.

NRSI argues that the supposed insufficiency of allegations in the complaint did not justify its dismissal on demurrer to evidence. It contends that a dismissal on demurrer to evidence should be grounded on insufficiency of evidence presented at trial. NRSI contends that the sufficiency of its allegations was affirmed when the trial court denied the motion to dismiss. It likewise asserts that the RTC erred in declaring Tanjuatco a buyer in good faith. It stressed that the Order of the Director of Lands, as the basis for such finding, was not formally offered in evidence. Hence, it should not have been considered by the trial court in accordance with Section 34,[17] Rule 132 of the Rules of Court.

Tanjuatco, for his part, maintains that NRSI failed to make a case for reconveyance against him. He insists that the complaint stated no cause of action, and the evidence presented established, rather than refuted, that he was an innocent purchaser. Tanjuatco

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[15] *Id.* at 28.

[16] *Id.* at 16.

[17] SEC. 34. *Offer of evidence.* "The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

adds that the RTC's denial of the motion to dismiss, and admission of evidence negated NRSI's claim that it relied on the complaint alone to decide the case. Lastly, Tanjuatco argues that the Order of the Director of Lands was a matter of judicial notice. Thus, under Section 1,[18] Rule 129 of the Rules of Court, there was no need to identify, mark, and offer it in evidence.

After serious consideration, we find the instant petition utterly without merit.

In its petition, NRSI questions the trial court's dismissal of its complaint upon a demurrer to evidence and invites a *calibration of the evidence on record* to determine the sufficiency of the factual basis for the trial court's order. This factual analysis, however, would involve questions of fact which are improper in a petition for review under Rule 45 of the Rules of Court. It is well established that in an appeal by *certiorari*, only questions of law may be reviewed.[19] A question of law exists when there is doubt or difference as to what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts.[20] There is a question of law when the issue does not call for an examination of the probative value of evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter.[21] Otherwise,

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[18] SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, *the official acts of the legislative, executive and judicial departments of the Philippines*, the laws of nature, the measure of time, and the geographical divisions. (Emphasis supplied.)

[19] *Bangko Sentral ng Pilipinas v. Santamaria*, G.R. No. 139885, January 13, 2003, 395 SCRA 84, 92.

[20] *Morales v. Skills International Company*, G.R. No. 149285, August 30, 2006, 500 SCRA 186, 194, citing *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, 438 SCRA 224, 230-231.

[21] *Roman Catholic Archbishop of Manila v. Court of Appeals*, G.R. No. 111324, July 5, 1996, 258 SCRA 186, 199.

there is a question of fact. Since it raises essentially questions of fact, the instant petition must be denied.

In any event, we find that based on the examination of the evidence at hand, we are in agreement that the trial court correctly dismissed NRSI's complaint on demurrer to evidence.

Petitioner filed a complaint for rescission/declaration of nullity of contract, reconveyance and damages against respondents. An action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner.[22] In an action for reconveyance, the certificate of title is respected as incontrovertible. What is sought instead is the transfer of the property, specifically the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right.[23]

To warrant a reconveyance of the land, the following requisites must concur: (1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant; (2) the registration of the land in the name of the defendant was procured through fraud[24] or other illegal means;[25] (3) the property has not yet passed to an innocent purchaser for value;[26] and (4) the action is filed after the certificate of title had already become final and incontrovertible[27] but within four years from the discovery of the fraud,[28] or not later than 10 years in the case of an

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[22] *Heirs of Maximo Sanjorjo v. Heirs of Manuel Y. Quijano*, G.R. No. 140457, January 19, 2005, 449 SCRA 15, 27.

[23] *Walstrom v. Mapa, Jr.*, G.R. No. 38387, January 29, 1990, 181 SCRA 431, 442.

[24] *Id.* at 440.

[25] *Heirs of Ambrocio Kionisala v. Heirs of Honorio Dacut*, G.R. No. 147379, February 27, 2002, 378 SCRA 206, 217.

[26] *Walstrom v. Mapa, Jr.*, *supra* at 440.

[27] A. NOBLEJAS AND E. NOBLEJAS, *REGISTRATION OF LAND TITLES AND DEEDS* 247 (2007 Revised ed.).

[28] *Balbin v. Medalla*, No. L-46410, October 30, 1981, 108 SCRA 666, 677.

implied trust.[29] Petitioner failed to show the presence of these requisites.

Primarily, NRSI anchors its claim over the lands subjects of this case on the right of accretion. It submitted in evidence, titles[30] to four parcels of land, which allegedly adjoin the lots in the name of Tanjuatco.

But it must be stressed that accretion as a mode of acquiring property under Article 457[31] of the Civil Code requires the concurrence of the following requisites: (1) that the deposition of soil or sediment be gradual and imperceptible; (2) that it be the result of the action of the waters of the river; and (3) that the land where accretion takes place is adjacent to the banks of rivers.[32] Thus, it is not enough to be a riparian owner in order to enjoy the benefits of accretion. One who claims the right of accretion must show by preponderant evidence that he has met all the conditions provided by law. Petitioner has notably failed in this regard as it did not offer any evidence to prove that it has satisfied the foregoing requisites.

Further, it is undisputed that Tanjuatco derived his title to the lands from Original Certificate of Title (OCT) No. 245 registered in the name of the Republic of the Philippines. Said parcels of land formed part of the Dried San Juan River Bed,[33] which under Article 502 (1)[34] of the Civil Code rightly pertains

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[29] *Heirs of Ambrocio Kionisala v. Heirs of Honorio Dacut*, *supra* at 219.

[30] Records, Vol. I, pp. 298-305. TCT No. T-312462, TCT No. T-312463, TCT No. T-312464, TCT No. T-312465.

[31] Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

[32] *Meneses v. Court of Appeals*, G.R. Nos. 82220, 82251 and 83059, July 14, 1995, 246 SCRA 162, 172.

[33] *Rollo*, pp. 29-30.

[34] Art. 502. The following are of public dominion:

(1) Rivers and their natural beds;

x x x x x x x x x

to the public dominion. The Certification[35] issued by Forester III Emiliano S. Leviste confirms that said lands were verified to be within the Alienable and Disposable Project No. 11-B of Calamba, Laguna per BFD LC Map No. 3004, certified and declared as such on September 28, 1981. Clearly, the Republic is the entity which had every right to transfer ownership thereof to respondent.

Next, petitioner sought to establish fraudulent registration of the land in the name of Tanjuatco. NRSI presented before the trial court a copy of the Voting Trust Agreement which the spouses Cuevas executed in favor of Pauline Co. However, nothing in said agreement indicates that NRSI empowered Cuevas to apply for the registration of the subject lots on its behalf.

Neither did petitioner adduce evidence to prove that Cuevas was its President and Chairman. Even assuming that Cuevas was the president of NRSI, his powers are confined only to those vested upon him by the board of directors or fixed in the by-laws.[36] In truth, petitioner could have easily presented its by-laws or a corporate resolution[37] to show Cuevas's authority to buy the lands on its behalf. But it did not.

Petitioner disagrees with the trial court's finding that Tanjuatco was a buyer in good faith. It contends that the March 12, 1996 Order of the Director of Lands which declared that the lots covered by TCT Nos. T-369406 and T-369407 were free from claims and conflicts when Cuevas assigned his rights thereon to Tanjuatco. But petitioner's claim is untenable because respondents did not formally offer said order in evidence. Lastly, petitioner makes an issue regarding the "below-fair market value" consideration which Tanjuatco paid Cuevas for the assignment of his rights to the lots. But it draws unconvincing conclusions therefrom that do not serve to persuade us of its claims.

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[35] Records, Vol. I, p. 35.

[36] H. DE LEON, *THE LAW ON PARTNERSHIPS AND PRIVATE CORPORATIONS* 281 (2001 ed.).

[37] BLACK'S LAW DICTIONARY 1311 (6th ed.).

Corporation resolution. — Formal documentation of action taken by board of directors of corporation.

We note that Tanjuatco filed a demurrer to evidence before the RTC. By its nature, a demurrer to evidence is filed after the plaintiff has completed the presentation of his evidence but before the defendant offers evidence in his defense. Thus, the Rules provide that if the defendant's motion is denied, he shall have the right to present evidence. However, if the defendant's motion is granted but on appeal the order of dismissal is reversed, he shall be deemed to have waived the right to present evidence.[38] It is understandable, therefore, why the respondent was unable to formally offer in evidence the Order of the Director of Lands, or any evidence for that matter.

More importantly, petitioner introduced in evidence TCT Nos. T-369406 and T-369407 in the name of respondent Tanjuatco. These titles bear a certification that Tanjuatco's titles were derived from OCT No. 245 in the name of no less than the Republic of the Philippines. Hence, we cannot validly and fairly rule that in relying upon said title, Tanjuatco acted in bad faith. A person dealing with registered land may safely rely upon the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property.[39] This applies even more particularly when the seller happens to be the Republic, against which, no improper motive can be ascribed. The law, no doubt, considers Tanjuatco an innocent purchaser for value. An innocent purchaser for value is one who buys the property of another, without notice that some other person has a right or interest in such property and pays the full price for the same, at the time of such purchase or before he has notice of the claims or interest of some other person in the property.[40]

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[38] SECTION 1. *Demurrer to evidence*. – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

[39] *Dela Cruz v. Dela Cruz*, G.R. No. 146222, January 15, 2004, 419 SCRA 648, 657.

[40] *Id.*

As regards the consideration which Tanjuatco paid Cuevas for the assignment of rights to the lands, suffice it to state that the assignment merely vested upon Tanjuatco all of Cuevas's intangible claims, rights and interests over the properties and not the properties themselves. At the time of the assignment, the lots were still the subjects of a pending sales application before the Bureau of Lands. For, it was not until May 24, 1996, that titles were issued in Tanjuatco's name. The assignment not being a sale of real property, it was not surprising that Cuevas demanded from Tanjuatco only ₱85,000 for the transfer of rights.

From all the foregoing, it is plain and apparent that NRSI failed to substantiate its claim of entitlement to ownership of the lands in Tanjuatco's name. The trial court, therefore, correctly dismissed petitioner's complaint for reconveyance.

WHEREFORE, the petition is *DENIED*. The Orders dated February 12, 2005 and July 1, 2005 of the Regional Trial Court of Calamba City, Branch 37, in Civil Case No. 2662-98-C are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170589. April 16, 2009]

OLYMPIO REVALDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; PLAIN VIEW DOCTRINE; CASE AT BAR. — There

is no question that the police officers went to the house of petitioner because of the information relayed by Sunit that petitioner had in his possession illegally cut lumber. When the police officers arrived at the house of petitioner, the lumber were lying around the vicinity of petitioner's house. The lumber were in plain view. Under the plain view doctrine, objects falling in "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. This Court had the opportunity to summarize the rules governing plain view searches in the case of *People v. Doria*, to wit: The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent. When asked whether he had the necessary permit to possess the lumber, petitioner failed to produce one. Petitioner merely replied that the lumber in his possession was intended for the repair of his house and for his furniture shop. There was thus probable cause for the police officers to confiscate the lumber. There was, therefore, no necessity for a search warrant.

2. POLITICAL LAW; ADMINISTRATIVE LAW; FORESTRY CODE; CUTTING, GATHERING, COLLECTING TIMBER OR OTHER FOREST PRODUCTS WITHOUT LICENSE; ELUCIDATED. — The seizure of the lumber from petitioner who did not have the required permit to possess the forest products cut is sanctioned by Section 68 of the Forestry Code which provides: Sec. 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License*. – Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority, or **possess timber or other forest products without the legal documents as required under existing forest laws and regulations,** shall be punished

with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. The Court shall further order the **confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.** There are two distinct and separate offenses punished under Section 68 of the Forestry Code, to wit: (1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations. As the Court held in *People v. Que,* in the first offense, one can raise as a defense the legality of the acts of cutting, gathering, collecting, or removing timber or other forest products by presenting the authorization issued by the DENR. In the second offense, however, it is immaterial whether the cutting, gathering, collecting and removal of the forest products are legal or not. Mere possession of forest products without the proper documents consummates the crime. Whether or not the lumber comes from a legal source is immaterial because the Forestry Code is a special law which considers mere possession of timber or other forest products without the proper documentation as *malum prohibitum. Dura lex sed lex*. The law may be harsh but that is the law.

3. ID.; ID.; ID.; ARREST; INSTITUTION OF CRIMINAL ACTIONS. — On whether the police officers had the authority to arrest petitioner, even without a warrant, Section 80 of the Forestry Code authorizes the forestry officer or employee of the DENR or any personnel of the PNP to arrest, even without a warrant, any person who has committed or is committing in his presence any of the offenses defined by the Forestry Code and to seize and confiscate the tools and equipment used in committing the offense or the forest products gathered or taken by the offender. Section 80 reads: Sec. 80. *Arrest; Institution of Criminal Actions*. - A forest officer or

employee of the Bureau or **any personnel of the Philippine Constabulary/Philippine National Police shall arrest even without warrant** any person who has committed or is committing in his presence any of the offenses defined in this chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. x x x

4. ID.; ID.; ID.; CUTTING, GATHERING, COLLECTING TIMBER OR OTHER FOREST PRODUCTS WITHOUT LICENSE; VIOLATION IS QUALIFIED THEFT WITH PENALTIES IMPOSED UNDER THE REVISED PENAL CODE; ABSENCE OF PROOF AS TO THE VALUE OF THE LUMBER, PROPER PENALTY THEREOF. — Violation of Section 68 of the Forestry Code is punished as Qualified Theft with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. The trial court applied Article 309(3), in relation to Article 310 of the Revised Penal Code, considering that the amount involved was ₱1,730.52. However, except for the amount stated in the Information, the prosecution did not present any proof as to the value of the lumber. What the prosecution presented were the Seizure Receipt and Confiscation Receipt stating the number of pieces of lumber, their species, dimensions and volumes, with "no pertinent supporting document." These do not suffice. As we have held in *Merida v. People,* to prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the Revised Penal Code, the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case. Accordingly, the prescribed penalty under Article 309(6) of the Revised Penal Code is *arresto mayor* in its minimum and medium periods. However, considering that violation of Section 68 of the Forestry Code is punished as qualified theft under Article 310 of the Revised Penal Code pursuant to the Forestry Code, the prescribed penalty shall be increased by two degrees, that is, to *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years. Taking into account the Indeterminate Sentence Law, the minimum term shall be taken from anywhere

within the range of four (4) months and one (1) day to two (2) years and four (4) months of *arresto mayor*, which is the penalty next lower to the prescribed penalty. We find it proper to impose upon petitioner, under the circumstances obtaining here, the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review by petitioner Olympio Revaldo (petitioner) seeking to reverse the Decision[1] dated 23 August 2004 of the Court of Appeals in CA-G.R. CR No. 22031 affirming the Decision[2] dated 5 September 1997 of the Regional Trial Court, Branch 25, Maasin, Southern Leyte (RTC-Branch 25), in Criminal Case No. 1652, finding petitioner guilty beyond reasonable doubt of illegal possession of lumber in violation of Section 68[3] of the Revised Forestry Code (Forestry Code).[4]

The Facts

Petitioner was charged with the offense of illegal possession of premium hardwood lumber in violation of Section 68 of the Forestry Code, in an Information[5] which reads:

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Elvi John S. Asuncion and Isaias P. Dicdican, concurring.

[2] Penned by Judge Leandro T. Loyao, Jr.

[3] Renumbered as Section 77 by Republic Act No. 7161.

[4] Presidential Decree No. 705, as amended by Presidential Decree Nos. 1559 and 1775.

[5] Records of Criminal Case No. 1653, p. 52.

That on or about the 17th day of June 1992, in the (M)unicipality of Maasin, (P)rovince of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, did then and there willfully, unlawfully and feloniously possess 96.14 board ft. of the following species of flat lumber:

1. Six (6) pcs. 1x10x7 Molave;
2. One (1) pc. 2x6x6 Molave;
3. Two (2) pcs. 2x4x6 Molave;
4. Two (2) pcs. 1x10x6 Narra;
5. Two (2) pcs. 2x8x7 Bajong;
6. One (1) pc. 1x6x6 Bajong;
7. Four (4) pcs. 1x6x6 Magkalipay; and
8. Three (3) pcs. 1x6x5 Magkalipay;

with a total value of ₱1,730.52, Philippine Currency, without any legal document as required under existing forest laws and regulations from proper government authorities, to the damage and prejudice of the government.

Upon arraignment, petitioner, assisted by counsel, pleaded not guilty. Trial ensued.

The prosecution presented SPO4 Constantino Maceda (Maceda), Sulpicio Saguing (Saguing), and SPO4 Daniel Paloma Lasala (Lasala) as witnesses.

Maceda, the person in charge of the operations section of the Philippine National Police (PNP) in Maasin, Southern Leyte, testified that on 18 June 1992, at around 11:00 in the morning, he went with Chief Alejandro Rojas (Rojas), SPO3 Melquiades Talisic (Talisic) and SPO3 Nicasio Sunit (Sunit) to the house of petitioner to verify the report of Sunit that petitioner had in his possession lumber without the necessary documents. They were not armed with a search warrant on that day. They confiscated 20 pieces of lumber of different varieties lying around the vicinity of the house of petitioner. Maceda asked petitioner who the owner of the lumber was and petitioner replied that he owned the lumber. Petitioner stated that he would use the lumber to repair his house and to make furniture for sale. Maceda also testified that the lumber were freshly cut. Maceda loaded

the lumber on the patrol jeep and brought them to the police station. For coordination purposes, Maceda informed the office of the Department of Environment and Natural Resources (DENR) of the confiscated lumber. The DENR entrusted to the police custody of the lumber.[6]

Saguing, Forester II, CENRO-DENR, Maasin, Southern Leyte, testified that he went to the office of the PNP in Maasin, Leyte to scale the confiscated lumber which were of different varieties. The total volume was 96.14 board feet belonging to the first group of hardwood lumber.[7]

Lasala, Responsible Supply Sergeant, Finance Sergeant and Evidence Custodian, PNP, Maasin, Southern Leyte, testified that he received the 20 pieces of assorted sizes and varieties of lumber from the Clerk of Court of the Municipal Trial Court, but only ten pieces remained because some were damaged due to lack of storage space.[8]

For the defense, petitioner presented Dionisio Candole (Candole), Apolonio Caalim (Caalim), and himself as witnesses.

Petitioner testified that he is a carpenter specializing in furniture making. He was in his house working on an ordered divider for a customer in the morning of 18 June 1992 when policemen arrived and inspected his lumber. Maceda, Sunit and Rojas entered his house while Talisic stayed outside. Petitioner admitted to the policemen that he had no permit to possess the lumber because those were only given to him by his uncle Felixberto Bug-os (Bug-os), his aunt Gliceria Bolo (Bolo), his mother-in-law Cecilia Tenio (Tenio). The seven pieces of "magkalipay" lumber were left over from a divider he made for his cousin Jose Epiz. He explained further that the lumber were intended for the repair of his dilapidated house.[9] The defense presented Caalim to corroborate the testimony of petitioner.[10]

[6] TSN, 10 February 1994, pp. 2-9.

[7] TSN, 23 February 1995, pp. 2-7.

[8] TSN, 17 October 1995, pp. 2-8.

[9] TSN, 19 March 1996, pp. 2-19.

[10] TSN, 21 January 1997, pp. 2-4.

Defense witness Candole testified that it was Bug-os who hired him to cut a "tugas" tree on his land, sawed it into lumber and delivered the same to petitioner who paid for the labor transporting the sawn lumber. Candole further testified that while they were on their way to Barangay Combado, Sunit stopped them but allowed the lumber to be brought to the house of petitioner.[11]

The Ruling of the Trial Court

The trial court stated that petitioner failed to present Bug-os, Bolo, and Tenio to attest to the fact that they sought prior DENR permission before cutting the trees and sawing them into lumber. The trial court further stated that the Forestry Code is a special law where criminal intent is not necessary. The Secretary of the DENR may issue a Special Private Land Timber Permit to landowners to cut, gather, collect or remove narra or other premium hardwood species found in private lands. Transportation of timber or other forest products without authority or without the legal documents required under forest rules and regulations is punishable under Section 68 of the Forestry Code. Petitioner did not present any document as required by law.

The RTC-Branch 25 rendered judgment on 5 September 1997 convicting petitioner of the offense charged and sentencing him as follows:

> WHEREFORE, judgment is rendered finding the accused OLYMPIO REVALDO GUILTY beyond reasonable doubt of the offense charged and, crediting him with one mitigating circumstance before applying the Indeterminate Sentence Law hereby SENTENCES him to an indeterminate imprisonment term of FOUR (4) YEARS and TWO (2) MONTHS of *PRISION CORRECCIONAL* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *PRISION MAYOR*, as maximum, and to pay the costs.
>
> The 21 pieces of flat lumber of different varieties, scaled at 96.14 board feet and valued at ₱1,730.52 are hereby ordered CONFISCATED and FORFEITED in favor of the government particularly the CENRO,

[11] TSN, 12 September 1996, pp. 2-15.

Maasin, Southern Leyte which shall sell the same at public auction and the proceeds turned over to the National Treasury.[12]

Petitioner appealed to the Court of Appeals.

The Ruling of the Court of Appeals

On 23 August 2004, the Court of Appeals affirmed the judgment of the trial court. The Court of Appeals ruled that motive or intention is immaterial for the reason that mere possession of the lumber without the legal documents gives rise to criminal liability.

Hence, the present petition.

The Court's Ruling

Petitioner contends that the warrantless search and seizure conducted by the police officers was illegal and thus the items seized should not have been admitted in evidence against him. Petitioner argues that the police officers were not armed with a search warrant when they went to his house to verify the report of Sunit that petitioner had in his possession lumber without the corresponding license. The police officers who conducted the search in the premises of petitioner acted on the basis only on the verbal order of the Chief of Police. Sunit had already informed the team of the name of petitioner and the location the day before they conducted the search. Petitioner argues that, with that information on hand, the police officers could have easily convinced a judge that there was probable cause to justify the issuance of a search warrant, but they did not. Because the search was illegal, all items recovered from petitioner during the illegal search were prohibited from being used as evidence against him. Petitioner therefore prays for his acquittal.

In its Comment, respondent People of the Philippines (respondent) contends that even without a search warrant, the personnel of the PNP can seize the forest products cut, gathered or taken by an offender pursuant to Section 80[13] of the Forestry Code.

[12] *Rollo*, pp. 23-24.

[13] Renumbered as Section 89 by Republic Act No. 7161.

There is no question that the police officers went to the house of petitioner because of the information relayed by Sunit that petitioner had in his possession illegally cut lumber. When the police officers arrived at the house of petitioner, the lumber were lying around the vicinity of petitioner's house. The lumber were in plain view. Under the plain view doctrine, objects falling in "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. This Court had the opportunity to summarize the rules governing plain view searches in the case of *People v. Doria*,[14] to wit:

> The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[15]

When asked whether he had the necessary permit to possess the lumber, petitioner failed to produce one. Petitioner merely replied that the lumber in his possession was intended for the repair of his house and for his furniture shop. There was thus probable cause for the police officers to confiscate the lumber. There was, therefore, no necessity for a search warrant.

The seizure of the lumber from petitioner who did not have the required permit to possess the forest products cut is sanctioned by Section 68 of the Forestry Code which provides:

> Sec. 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License*. – Any person who shall cut, gather,

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[14] 361 Phil. 595 (1999).

[15] *Id*. at 633-634.

collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority, or **possess timber or other forest products without the legal documents as required under existing forest laws and regulations**, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the **confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found**. (Emphasis supplied)

There are two distinct and separate offenses punished under Section 68 of the Forestry Code, to wit:

(1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[16]

As the Court held in *People v. Que,*[17] in the first offense, one can raise as a defense the legality of the acts of cutting, gathering, collecting, or removing timber or other forest products by presenting the authorization issued by the DENR. In the second offense, however, it is immaterial whether the cutting, gathering, collecting and removal of the forest products are legal or not. Mere possession of forest products without the proper documents consummates the crime. Whether or not the lumber comes from a legal source is immaterial because the Forestry Code

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[16] *Bon v. People*, 464 Phil. 125 (2004); *Lalican v. Hon. Vergara*, 342 Phil. 485 (1997); *Mustang Lumber, Inc. v. CA*, 327 Phil. 214 (1996).

[17] G.R. No. 120365, 17 December 1996, 265 SCRA 721.

is a special law which considers mere possession of timber or other forest products without the proper documentation as *malum prohibitum*.

On whether the police officers had the authority to arrest petitioner, even without a warrant, Section 80 of the Forestry Code authorizes the forestry officer or employee of the DENR or any personnel of the PNP to arrest, even without a warrant, any person who has committed or is committing in his presence any of the offenses defined by the Forestry Code and to seize and confiscate the tools and equipment used in committing the offense or the forest products gathered or taken by the offender. Section 80 reads:

> Sec. 80. *Arrest; Institution of Criminal Actions*. - A forest officer or employee of the Bureau or **any personnel of the Philippine Constabulary/Philippine National Police shall arrest even without warrant** any person who has committed or is committing in his presence any of the offenses defined in this chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. x x x (Emphasis supplied)

Petitioner was in possession of the lumber without the necessary documents when the police officers accosted him. In open court, petitioner categorically admitted the possession and ownership of the confiscated lumber as well as the fact that he did not have any legal documents therefor and that he merely intended to use the lumber for the repair of his dilapidated house. Mere possession of forest products without the proper documentation consummates the crime. *Dura lex sed lex.* The law may be harsh but that is the law.

On the penalty imposed by the lower courts, we deem it necessary to discuss the matter. Violation of Section 68 of the Forestry Code is punished as Qualified Theft with the penalties imposed under Articles 309 and 310 of the Revised Penal Code,[18] thus:

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[18] *People v. Dator*, 398 Phil. 109 (2000).

Art. 309. *Penalties*. - Any person guilty of theft shall be punished by:

1. The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.

2. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Art. 310. *Qualified theft*. - The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, x x x

The trial court applied Article 309(3), in relation to Article 310 of the Revised Penal Code, considering that the amount involved was ₱1,730.52. However, except for the amount stated in the Information, the prosecution did not present any proof as to the value of the lumber. What the prosecution presented were the Seizure Receipt[19] and Confiscation Receipt[20] stating the number of pieces of lumber, their species, dimensions and volumes, with "no pertinent supporting document." These do not suffice.

As we have held in *Merida v. People,*[21] to prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the Revised Penal Code, the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.

Accordingly, the prescribed penalty under Article 309(6) of the Revised Penal Code is *arresto mayor* in its minimum and medium periods. However, considering that violation of Section 68 of the Forestry Code is punished as qualified theft under Article 310 of the Revised Penal Code pursuant to the Forestry Code, the prescribed penalty shall be increased by two degrees,[22] that is, to *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years. Taking into account the Indeterminate Sentence Law, the minimum term shall be taken from anywhere within the range of four (4) months and one (1) day to two (2) years and four (4) months of *arresto mayor*, which is the penalty next lower to the prescribed penalty. We find it proper to impose

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[19] Exhibit "A", Folder of Exhibits, p. 10.

[20] Exhibit "1", Folder of Exhibits, p. 9.

[21] G.R. No. 158182, 12 June 2008, 554 SCRA 366.

[22] *People v. Temporado*, G.R. No. 173473, 17 December 2008; *Bon v. People*, 464 Phil. 125 (2004).

upon petitioner, under the circumstances obtaining here, the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

WHEREFORE, we *AFFIRM* the appealed Decision convicting petitioner for violation of Section 68 (now Section 77) of the Forestry Code, as amended, with *MODIFICATION* as regards the penalty in that petitioner Olympio Revaldo is sentenced to suffer the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170977. April 16, 2009]

JOSE C. DEL VALLE, JR. and ADOLFO C. ALEMANIA, *petitioners, vs.* **FRANCIS B. DY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES; ABSENCE OF APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW FROM THE ACTS OF RESPONDENT TRIBUNAL; EXCEPTION. — It is established that the Court of Appeals has jurisdiction to entertain *original* actions for *certiorari* under Rule 65 of the Rules of Court, including those in which the jurisdiction of any lower court is in issue. It bears

emphasis, however, as provided in the Rule itself, that one requisite to a petition for *certiorari* is that "there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law" from the acts of the respondent tribunal. In the instant case, the remedy of appeal from the order of the RTC dismissing the complaint for injunction and damages was available to respondent Dy and it was a plain, speedy and adequate remedy. Hence, following the general rule, the questioned petition for *certiorari* filed by respondent Dy before the Court of Appeals, was not proper. As an exception, the remedy of *certiorari* may be successfully invoked, both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, where the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy.

2. ID.; CRIMINAL PROCEDURE; NATURE OF ACTION AND JURISDICTION OF COURT DETERMINED BY THE ALLEGATIONS IN COMPLAINT AND CHARACTER OF RELIEF SOUGHT; CASE AT BAR. — It is axiomatic that what determines the nature of an action and hence, the jurisdiction of a court, are the allegations of the complaint and the character of the relief sought. This Court has held that: The rule is that, the nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. Although the complaint filed by Dy before the trial court was for injunction and damages, it does not only challenge the legality or propriety of the writ of execution, but also attacks the validity of the decision of the Labor Arbiter. The complaint was in effect a motion to quash the writ of execution of a decision and an action to annul the decision itself, both of which were rendered in an illegal dismissal case. It is thus a case properly within the jurisdiction of the labor arbiter and not the trial court, since the subject matter of Dy's complaint is an incident of a labor case.

3. ID.; JURISDICTION; REGULAR COURTS HAVE NO JURISDICTION TO ACT ON LABOR CASES, WHICH MUST BE ACTED UPON BY THE LABOR DEPARTMENT.— Jurisprudence abound confirming the rule that regular courts

have no jurisdiction to act on labor cases or various incidents arising therefrom, including the execution of decisions, awards or orders. Jurisdiction to try and adjudicate such cases pertains exclusively to the proper labor official concerned under the Department of Labor and Employment. To hold otherwise is to sanction split jurisdiction which is obnoxious to the orderly administration of justice. Even assuming that Dy is a stranger or third party to the labor case, jurisdiction over his claim still lies with the labor arbiter. Dy should have filed his third-party claim before the labor arbiter from whom the writ of execution originated before instituting a civil case. The NLRC's Manual on Execution of Judgment provides for the mechanism for third-party claimants to assert their claims over properties levied upon by the sheriff pursuant to an order or decision of the NLRC or labor arbiter.

APPEARANCES OF COUNSEL

Erlyn B. Baliwas for petitioners.
Dato Law Offices for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated June 17, 2005 and the Resolution[2] dated January 3, 2006 of the Court of Appeals in CA-G.R. SP No. 81536. The appellate court had set aside the Orders dated September 17, 2003,[3] October 2, 2003[4] and November 13, 2003[5] of the Regional Trial Court (RTC), Branch

[1] *Rollo*, pp. 29-39. Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Marina L. Buzon and Mario L. Guariña, III concurring.

[2] *Id.* at 41. Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guariña, III concurring.

[3] CA *rollo*, pp. 24-25. Penned by Presiding Judge Bienvenido A. Mapaye.

[4] *Id.* at 29.

[5] *Id.* at 50-51.

55 of Lucena City dismissing the complaint for injunction and damages filed by L.C. Big Mak Burger, Inc. and respondent Francis Dy against petitioners Labor Arbiter Jose C. Del Valle, Jr. and National Labor Relations Commission (NLRC) Sheriff Adolfo C. Alemania.

The instant petition stemmed from a complaint[6] for illegal dismissal and monetary benefits filed by Clea Deocariza in May 2001 against L.C. Big Mak Burger, Inc.[7] and its Human Resources Officer for Bicol, Teresa Israel.[8]

In said labor case, it appears that despite many opportunities given to L.C. Big Mak and Israel, the two did not file their position papers. Labor Arbiter Jose C. Del Valle, Jr. even had the notices and orders sent to L.C. Big Mak's head office in Lucena City, addressed to its owner, respondent Francis Dy,[9] when those sent to the Naga branch were returned. Still, they failed to comply.

On November 12, 2001, Labor Arbiter Del Valle rendered a Decision[10] in favor of Deocariza. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered against respondent, ordering the latter to reinstate complainant to her former position without loss of seniority right[s] and to pay complainant the total amount of FORTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY-SIX PESOS and 72/100 (₱48,756.72), representing the latter's backwages, salary differential pay, unpaid salary, overtime pay, night shift differential and cash bond, as computed above.
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> SO ORDERED.[11]

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[6] CA *rollo*, p. 180.

[7] Also referred to in the records as "Big Mac Burger, Inc."

[8] Also referred to in the records as "Tess Israel."

[9] Also referred to in the records as "Francisco Dy."

[10] CA *rollo*, pp. 87-90.

[11] *Id*. at 90.

A copy of the decision was sent by registered mail to Dy and Israel at L.C. Big Mak's Lucena City office. Based on the registry return receipt, it was received on November 22, 2001.[12]

Since no appeal was made, the decision became final and executory. Consequently, a Writ of Execution[13] was issued on December 17, 2001.

On February 18, 2002, L.C. Big Mak and Israel filed a Motion to Quash Writ of Execution.[14] They claimed that they were completely unaware of the decision and the writ of execution. They contended that the notices and orders requiring them to file a position paper were not made known to their officers in Lucena City. They further stated that had their legal department in Lucena City been informed of said orders, the requisite position paper would have been filed.

On April 4, 2002, Labor Arbiter Del Valle issued an Order[15] denying the Motion to Quash Writ of Execution. He ruled that L.C. Big Mak and Israel waived their opportunity to submit their position paper by their continued inaction on the lawful orders and notices sent to them. He further ruled that the judgment can now be executed as a matter of right, it being final and executory.

On April 24, 2003, acting on a motion for issuance of a writ of execution by Deocariza, Labor Arbiter Del Valle issued an Order[16] directing all parties to appear on May 12, 2003 for a pre-execution conference. However, only Deocariza attended the conference.

On May 13, 2003, Labor Arbiter Del Valle issued a Writ of Execution[17] directed to NLRC Sheriff Adolfo C. Alemania, the pertinent portion of which reads:

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[12] *Id*. at 197.

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

[14] *Id*. at 198-201.

[15] *Id*. at 202-204.

[16] *Rollo*, p. 86.

[17] *Id*. at 89-90.

NOW THEREFORE, you are hereby ordered to go to the premises of respondent BIG MA[K] BURGER, Incorporated/Tess [I]srael at Lucena City together with the complainant and let her be reinstated to her former position without loss of seniority right[s] and collect from said respondent the amount of ₱48,756.72, representing complainant's backwages, salary differential, unpaid salary, overtime pay, night shift and cash bond and to turn over the said amount to this Branch for further disposition.

In case you fail to collect the said amount in CASH from the respondent, you are hereby directed to cause the satisfaction of the same to be made out of movable goods or chattels in the possession of the respondent or any other person or entity holding in behalf of the respondent or in the absence thereof, from immovable property not exempt from execution.[18]

x x x x x x x x x

On June 16, 2003, Sheriff Alemania went to L.C. Big Mak's head office in Lucena City and levied upon 33 sacks of flour and three sacks of refined sugar.[19]

On July 11, 2003, L.C. Big Mak and Dy filed a complaint[20] for injunction and damages with the RTC of Lucena City. They claimed that the labor arbiter's decision is void on the grounds of lack of jurisdiction, grave abuse of discretion, violation of due process and denial of substantial justice. They questioned the order for Dy to reinstate Deocariza despite the fact that she is not his employee and despite her resignation and the release or quitclaim she executed. They alleged that Israel is a franchisee of L.C. Big Mak and Deocariza was one of her employees in the L.C. Big Mak Naga branch which negates the existence of an employer-employee relationship between Dy and Deocariza. They prayed that the properties levied upon be released.

On September 17, 2003, the trial court dismissed the complaint on the ground of lack of jurisdiction as it questions the propriety

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[18] *Id*. at 90.

[19] *Id*. at 91.

[20] CA *rollo*, pp. 9-16.

of actions taken by the labor tribunal.[21] Dy and L.C. Big Mak filed a motion for reconsideration,[22] but the same was treated as not filed for failure to include the requisite notice of hearing and explanation why service was not done personally, and for failure of their counsel to indicate his Roll Number on the motion.[23] Dy and L.C. Big Mak filed their motion for reconsideration after effecting the necessary corrections but said motion was denied for lack of merit.[24]

Dy, without including L.C. Big Mak as petitioner, then filed a petition for *certiorari* with the Court of Appeals asking that the orders of the RTC be set aside and the complaint be tried on the merits. He imputed grave abuse of discretion on the part of the RTC when it did not only dismiss the provisional remedy sought but also dismissed the main action for damages without a valid ground. The Court of Appeals granted the petition and disposed as follows:

> WHEREFORE, the petition for certiorari is *GRANTED*. The assailed orders of the trial court, dated 17 September 2003, 2 October 2003, and 13 November 2003, respectively, are hereby *SET ASIDE*. This case is remanded to the trial court for further proceedings.
>
> SO ORDERED.[25]

The appellate court found Dy a stranger to the labor case. It ruled that contrary to the trial court's stand, deciding Dy's complaint on the merits does not encroach upon the jurisdiction of the labor tribunal. It held that the power of the NLRC to execute its judgment extends only to properties unquestionably belonging to the judgment debtor. Thus, if the sheriff levies upon the assets of a third person in which the judgment debtor has no interest, then the sheriff is acting beyond the limits of his authority and is amenable to control and correction by a

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

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

[23] *Rollo,* p. 116.

[24] CA *rollo*, p. 29.

[25] *Rollo*, p. 38.

court of competent jurisdiction in a separate and independent action.

Labor Arbiter Del Valle and Sheriff Alemania filed a motion for reconsideration[26] which the Court of Appeals denied. Thus, they come before us raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, TENTH DIVISION, CORRECTLY APPLIED SECTION 4, RULE 65 OF THE RULES OF COURT IN GRANTING RESPONDENT'S BELATED PETITION FOR *CERTIORARI*.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, TENTH DIVISION, ERRED IN GRANTING THE PETITION FOR *CERTIORARI* AND NULLIFYING THE ORDERS OF THE REGIONAL TRIAL COURT DATED SEPTEMBER 17, OCTOBER 2 AND NOVEMBER 13, 2003 WHICH WERE ISSUED IN ACCORDANCE WITH EXISTING LAW AND APPLICABLE JURISPRUDENCE AND MERITS OF THE CASE THEREON.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, TENTH DIVISION EXCEEDED ITS JURISDICTION AND ERRED [WHEN IT DISREGARDED THE LAW,] DOCTRINES AND PRINCIPLES IN LAW PARTICULARLY ON: 1. APPEAL; 2. JURISDICTION OVER LABOR DISPUTES; 3. DETERMINATION OF JURISDICTION OVER THE SUBJECT MATTER AND NATURE OF THE ACTION; 4. THIRD PARTY CLAIM[;] AND 5. APPLICATION OF JURISPRUDENCE ON A PARTICULAR CASE WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION.[27]

Stated simply, the issues to be resolved are: (1) whether the Court of Appeals erred in giving due course to Dy's petition despite its procedural infirmities and (2) whether the trial court had jurisdiction over Dy's complaint for injunction and damages.

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[26] *Id*. at 273-284.

[27] *Id*. at 11.

Petitioners contend that the appellate court should not have given due course to Dy's petition since the proper remedy was appeal and not *certiorari*. And even if *certiorari* were the proper remedy, petitioners aver that the petition was still dismissible as it was filed beyond the 60-day period. They also contend that the trial court was correct in dismissing the complaint for lack of jurisdiction. They argue that "the complaint was actually in the nature of a Motion to Quash Writ of Execution and with respect to the acts of the labor tribunal, a case growing out of a labor dispute, as the acts complained of were incidents of the execution."[28]

Respondent Dy counters that the appellate court's decision "correctly addressed the evasion of the positive duty incumbent upon the trial court to decide [the complaint] according to its merits as the complaint for nullification of wrongful levy with damages was properly within its jurisdiction to resolve."[29]

We resolve to grant the instant petition.

It was erroneous for the Court of Appeals to have granted the petition and ordered the remand of the case to the trial court for further proceedings.

It is established that the Court of Appeals has jurisdiction to entertain *original* actions for *certiorari* under Rule 65 of the Rules of Court, including those in which the jurisdiction of any lower court is in issue.[30] It bears emphasis, however, as provided in the Rule itself, that one requisite to a petition for *certiorari* is that "there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law"[31] from the acts of the respondent tribunal. In the instant case, the remedy of appeal from the order of the RTC dismissing the complaint for injunction and damages was available to respondent Dy and it was a

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[28] *Id*. at 12-15.

[29] *Id*. at 176.

[30] See *Morales v. Court of Appeals*, G.R. No. 126623, December 12, 1997, 283 SCRA 211, 222-223.

[31] Section 1 of Rule 65 of the Rules of Court.

plain, speedy and adequate remedy. Hence, following the general rule, the questioned petition for *certiorari* filed by respondent Dy before the Court of Appeals, was not proper. As an exception, the remedy of *certiorari* may be successfully invoked, both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, where the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy.[32] In the instant case, however, as will be seen from the discussion below, the RTC acted within its jurisdiction in issuing its questioned orders.

It is axiomatic that what determines the nature of an action and hence, the jurisdiction of a court, are the allegations of the complaint and the character of the relief sought.[33] This Court has held that:

> The rule is that, the nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs.[34]

Although the complaint filed by Dy before the trial court was for injunction and damages, it does not only challenge the legality or propriety of the writ of execution, but also attacks the validity of the decision of the Labor Arbiter. The complaint was in effect a motion to quash the writ of execution of a decision and an action to annul the decision itself, both of which were rendered in an illegal dismissal case. It is thus a case properly within the jurisdiction of the labor arbiter and not the trial court, since the subject matter of Dy's complaint is an incident of a labor case.

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[32] *Crisostomo v. Endencia*, 66 Phil. 1, 8 (1938).

[33] *Allgemeine-Bau-Chemie Phils., Inc. v. Metropolitan Bank & Trust Co.*, G.R. No. 159296, February 10, 2006, 482 SCRA 247, 252-253.

[34] *Villamaria, Jr. v. Court of Appeals*, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 589.

Jurisprudence abound confirming the rule that regular courts have no jurisdiction to act on labor cases or various incidents arising therefrom, including the execution of decisions, awards or orders.[35] Jurisdiction to try and adjudicate such cases pertains exclusively to the proper labor official concerned under the Department of Labor and Employment. To hold otherwise is to sanction split jurisdiction which is obnoxious to the orderly administration of justice.[36]

In a desperate attempt to remove his complaint from the labor arbiter's jurisdiction, Dy claims that he is not a party to the illegal dismissal case. He alleges that Deocariza's employer is Israel, whom he claims is a mere franchisee of L.C. Big Mak. Dy argues that being a "stranger" to the case, the levying of his properties is a clear denial of substantial justice and due process. And to further make it appear that his complaint is separate and independent from the labor case, Dy, upon reaching the appellate stage, dropped L.C. Big Mak as co-petitioner and was already claiming that the 33 sacks of flour and three sacks of sugar are his personal properties.

These contentions, however, deserve no credit.

Dy failed to substantiate his allegation that Israel is a mere franchisee and that Israel is Deocariza's real employer. On the contrary, it was established that Israel is also just an employee of L.C. Big Mak because of an illegal dismissal complaint filed by Israel against L.C. Big Mak and a memorandum issued by the latter to Israel as one of its Human Resource Officers. Also, contrary to Dy's claims, he is not a stranger to the illegal dismissal case. He is a party in his capacity as owner of L.C. Big Mak, the employer sued in the illegal dismissal case.

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[35] *Deltaventures Resources, Inc. v. Cabato*, G.R. No. 118216, March 9, 2000, 327 SCRA 521, 529; *Tipait v. Reyes*, G.R. No. 70174, February 9, 1993, 218 SCRA 592, 595; *Associated Labor Unions (ALU-TUCP) v. Borromeo*, No. 75736, September 29, 1988, 166 SCRA 99, 102; *Pucan v. Bengzon*, No. 74236, November 27, 1987, 155 SCRA 692, 699.

[36] *Balais v. Velasco*, G.R. No. 118491, January 31, 1996, 252 SCRA 707, 721; *Associated Labor Unions (ALU-TUCP) v. Borromeo*, *id*.

Moreover, Dy cannot claim sole ownership of the properties levied upon by simply dropping L.C. Big Mak as petitioner. In his complaint filed before the RTC, he categorically admitted under oath that the levied properties belong to L.C. Big Mak and not to him. Thus, he is now estopped from contending otherwise.

Even assuming that Dy is a stranger or third party to the labor case, jurisdiction over his claim still lies with the labor arbiter. Dy should have filed his third-party claim before the labor arbiter from whom the writ of execution originated before instituting a civil case.[37] The NLRC's Manual on Execution of Judgment[38] provides for the mechanism for third-party claimants

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[37] *Deltaventures Resources, Inc. v. Cabato*, *supra* at 530.

[38] Resolution No. 02-02 (Series of 2002) – AMENDING CERTAIN PROVISIONS OF THE NLRC MANUAL ON EXECUTION OF JUDGMENT (SHERIFF'S MANUAL), signed on July 3, 2002.

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8. *Section 1, Rule VI is hereby amended to read as follows:*

SECTION 1. Proceedings. **SHOULD A THIRD PARTY CLAIM BE FILED DURING EXECUTION OF THE JUDGMENT AWARD, THE THIRD PARTY CLAIMANT** shall **EXECUTE** an affidavit **STATING** his title **TO PROPERTY** or possession thereof **WITH SUPPORTING EVIDENCE** and shall file the same with the sheriff and copies thereof served upon the Commission or Labor Arbiter who issued the writ and upon the prevailing party. Upon receipt of the third party claim, all proceedings, with respect to the execution of the property subject of the third party claim, shall automatically be suspended. The Commission or Labor Arbiter who issued the writ **MAY REQUIRE THE THIRD PARTY CLAIMANT TO ADDUCE ADDITIONAL EVIDENCE IN SUPPORT OF HIS THIRD PARTY CLAIM AND TO POST A CASH OR SURETY BOND EQUIVALENT TO THE AMOUNT OF HIS CLAIM AS PROVIDED FOR IN SECTION 6, RULE VI, OF THE NLRC RULES OF PROCEDURE, WITHOUT PREJUDICE TO THE POSTING BY THE PREVAILING PARTY OF A SUPERSEDEAS BOND IN AN AMOUNT EQUIVALENT TO THAT POSTED BY THE THIRD PARTY CLAIMANT**. The **PROPRIETY** of the **THIRD PARTY** claim **SHALL BE RESOLVED** within ten (10) working days from **SUBMISSION OF THE CLAIM FOR RESOLUTION**. The decision **OF** the Labor Arbiter is appealable to the Commission within ten (10) working days from notice **AND** the Commission shall resolve the appeal within the same period.

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to assert their claims over properties levied upon by the sheriff pursuant to an order or decision of the NLRC or labor arbiter.

WHEREFORE, the petition is *GRANTED*. The Decision dated June 17, 2005 and Resolution dated January 3, 2006 of the Court of Appeals in CA-G.R. SP No. 81536 are *REVERSED and SET ASIDE.* The Orders dated September 17, 2003, October 2, 2003 and November 13, 2003 of the Regional Trial Court, Branch 55 of Lucena City dismissing the complaint filed by L.C. Big Mak Burger, Inc. and respondent Francis Dy are hereby *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171253. April 16, 2009]

LAKEVIEW GOLF AND COUNTRY CLUB, INC., *petitioner, vs.* **LUZVIMIN SAMAHANG NAYON, ROLLING HILLS ASSOCIATION, SALOME A. CEDENO, SALVE B. WALAT, ISABEL L. SALMORIN, JOEL B. VALENCIA, ELISA D. DE MONTEVERDE, LUZ O. PANGILINAN, ELEN B. BEDURO, RAMONITO T. TALACO, LEON N. ESTROPEGON, ALBERTO G. PALOMAR, WILFREDO QUINONIZALA, ENRIQUE B. PALOJERO, PABLO N. DATAYLO, DOMINICA R. ZORILLA, LORENZO O. BENITEZ, RODRIGO O. PEÑARANDA, MANUEL P. FUENTES, GREGORIO L. CABRILLES, EMELINDA S. LOGRO, RICKY SALMORIN, ALEJANDRO B. CABANTOY, ESTRELLA V. ESPLAGO, ROSITA L. ALCANTARA, ANTONIO C. BALIDOY, LARRY B. TARAN, LEOPOLDO B. RAMOS, LOLITA T. ZAMORA, BENITO R. BITUIN, BERNARD A. BACOLOD, EVARISTO R. BITUIN, PRESTITUTO P. BALDELOBAR, DIONISIO T.**

DOMINGO, HILARIA T. CASAS, CELEDONIO C. PONCE, DANIEL MANA-AY, CRESENCIANO S. ALCANTARA, REMEDIOS S. ESCLETE, BERNALISA P. VALDEZ, FRUCTOSA T. TAVILLARZA, TEODORITA O. CASTILLO, ERNESTO O. BACOLOD, DONALDO F. TORRES, VICENTE ROMATO, FLORDELISA O. ABAO, JAIME V. CORDIAL, SR., DINA P. MANA-AY, LUCENA V. TINGSON, MAGDALENA PRESNIDO, PAZ B. MAOSABA, ISABEL CANARIA, HERMENIGILDA B. TARAN, RODELIO C. LONTOC, FLORA B. ROMERO, EUGENIO TABLANTE, JR., EUGENIO TABLANTE, SR., TEODORO C. DUMUNDON, MERLINDA S. AREVALO, CARIDAD A. CAMACHO, ALBERT B. BAYLOSIS, FRANCISCO DE LARA, SAYRE L. GOLPE, PRESENTACION T. ADRIANO, MATEO A. CORIA, LEONARDO A. MENDOZA, VALENTINO L. DACILLO, TOMAS A. BARBUCO, HARVIS B. BEDURO, TEODORO M. LARA, OBDULIA L. SALMORIN, ARTURO S. ANGELES, LORETO PANGANIBAN, MIGUELA L. CABATAY, JOSEFINA P. ROXAS, ANICETA L. BUDAJES, REYNALDO M. MUICO, CARIDAD M. RAQUEL, BENEDICTO S. BATILES, SR., LORETO B. ELSUGA, SOLEDAD C. MOLETA, ARNULFO D. CANARIA, IRENEO A. DISTO, FELIX T. MEMIJE, ROGELIO C. ARANA, ASELA R. CORDIAL, PRUDENCIO P. PENANO, ESPERANZA CALVENTAS, ALBERT B. TARAN, EDUARDO C. CARBONILLO, VIOLETA C. MALATE, LORETA P. FUENTES, JOSE U. DIESTA, ELIZABETH F. NUÑEZ, FRANCISCO D. ESPARTIN, CARMELITA S. BERNARDINO, ELVIRA M. ABAO, BENITO G. LARA, ESTRELLA V. ISUGA, DANIEL R. DE LUNA, ANGELITO S. PORTALES, ROSALIA P. DE LA CRUZ, MICHAEL L. SALMORIN, ELPIDIO P. DE LA CRUZ, PAQUITO INDENCIA, ISABEL BULALACAO, JESUS REMUTO, ISABEL D. CALICA, EMILIO GABRIEL, VICTORIA LAZAR, BIENVENIDO DIAZ, CELIA LLAMADO, DOMINADOR BORDA, ELISA ALCAZAR, NENITA DIAZ, ELENA LAYABAN, CRESENCIO LAYABAN and the HONORABLE COURT OF APPEALS, *respondents.*

SYLLABUS

1. REMEDIAL LAW; DEPARTMENT OF AGRARIAN REFORM (DAR); JURISDICTION; INCLUDES ALL MATTERS INVOLVING THE IMPLEMENTATION OF AGRARIAN

REFORM. — It is settled that jurisdiction over the subject matter is conferred by law. Section 50 of Republic Act No. 6657 and Section 17 of Executive Order No. 229 vests in the DAR the primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving the implementation of agrarian reform.

2. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) ON ADJUDICATION OF AGRARIAN REFORM CASES; PRIMARY AND EXCLUSIVE ORIGINAL AND APPELLATE JURISDICTION. — Through Executive Order No. 129-A, the President of the Philippines created the DARAB and authorized it to assume the powers and functions of the DAR pertaining to the adjudication of agrarian reform cases. The present case was filed on April 27, 1998 under the 1994 DARAB Rules of Procedure. Section 1, Rule II thereof enumerates the cases over which the DARAB has exclusive original jurisdiction: **SECTION 1. Primary and Exclusive Original and Appellate Jurisdiction** . . . (f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPS) which are registered with the Land Registration Authority; x x x Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CAR[L]) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

3. ID.; ID.; ID.; DAR SECRETARY, EXCLUSIVE JURISDICTION. — Section 2 of DAR Administrative Order No. 06-00 enumerates the cases over which the DAR Secretary has exclusive jurisdiction: SEC. 2. Cases Covered. — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following: (a) Classification and identification of landholdings for coverage under the Comprehensive Agrarian Reform Program (CARP), including protests or oppositions thereto and petitions for lifting of coverage; x x x (d) Issuance, recall or cancellation of Certificates of Land Transfer (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPS)

or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds; x x x .

4. ID.; ID.; ID.; ID.; ON THE ISSUANCE, RECALL OR CANCELLATION OF THE CERTIFICATES OF LAND OWNERSHIP AWARDS (CLOAs). — It is clear that prior to registration with the Register of Deeds, cases involving the issuance, recall or cancellation of CLOAs are within the jurisdiction of the DAR and that, corollarily, cases involving the issuance, correction or cancellation of CLOAs which have been registered with the Register of Deeds are within the jurisdiction of the DARAB.

5. ID.; ID.; ID.; ID.; ON MATTER OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) COVERAGE; CASE AT BAR. — Section 2 of DAR Administrative Order No. 06-00 also provides that the DAR Secretary has exclusive jurisdiction to classify and identify landholdings for coverage under the CARP, including protests or oppositions thereto and petitions for lifting of coverage. The matter of CARP coverage is strictly an administrative implementation of the CARP whose competence belongs to the DAR Secretary. Significantly, the DAR Secretary had already denied petitioner's protest and determined that the subject property was covered by the CARP. Such ruling was even affirmed by the Court of Appeals and this Court. Absent palpable error by these bodies, of which this Court finds none, their determination as to the coverage of the subject property under the CARP is controlling. Thus, petitioner cannot now invoke the jurisdiction of the DARAB to pass upon this issue under the guise of having the issued collective CLOA cancelled.

APPEARANCES OF COUNSEL

Santiago & Santiago Law Offices for petitioner.
Samuel M. Salas for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review of the Decision[1] dated March 9, 2004 and the Resolution[2] dated January 13, 2006, of the Court of Appeals in CA-G.R. SP No. 68645, affirming the Decision[3] dated January 17, 2001 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Cases Nos. 9974 to 9974-A-113. DARAB has held it had no jurisdiction to adjudicate regarding the coverage of the subject property under the Comprehensive Agrarian Reform Program (CARP) and declared as valid the collective Certificate of Land Ownership Award (CLOA) issued in favor of private respondents.

The petition stemmed from the following facts:

Petitioner was the registered owner of a 60-hectare parcel of land located in Barangay Kabilang-Baybay, General Mariano Alvarez, Cavite, as evidenced by Transfer Certificate of Title (TCT) No. T-11026.[4]

On July 6, 1991, the Municipal Agrarian Reform Officer (MARO) issued a Notice of Coverage[5] under the CARP of the subject property for acquisition and distribution to private respondents as farmer-beneficiaries. On March 17, 1992, the Department of Agrarian Reform (DAR) Regional Director for Region IV served a Notice of Acquisition[6] on petitioner.

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[1] *Rollo*, pp. 12-28. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Perlita J. Tria-Tirona and Rosalinda Asuncion Vicente concurring.

[2] *Id.* at 30-34. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Roberto A. Barrios and Rosalinda Asuncion Vicente concurring.

[3] Records, Vol. II, pp. 403-451.

[4] Records, Vol. I, pp. 8-9.

[5] *Id.* at 44.

[6] *Id.* at 45.

Petitioner protested the coverage on the grounds that the subject property is not agricultural having been projected as a golf course prior to 1988, that the development for its conversion and utilization has already been commenced, that it is generally mountainous with major portions having a slope of over 18% and minimal topsoil, and that it has no tenant or farmworker since the alleged farmer-beneficiaries are mere intruders who entered the subject property after the enactment of the Comprehensive Agrarian Reform Law in violation of Section 73 thereof.[7]

On April 26, 1993, the DAR Secretary denied petitioner's protest and directed the Provincial Agrarian Reform Officer (PARO) and the MARO to proceed with the acquisition of the subject property.[8] Petitioner moved for reconsideration but it was denied. Petitioner filed a petition for *certiorari* with the Court of Appeals which was dismissed for lack of merit.[9] Petitioner's petition for review with this Court was also denied.[10]

Meanwhile, the DAR issued on May 25, 1994 collective CLOA No. 00141945 in favor of private respondents. This was registered as TCT No. CLOA-1629 on May 30, 1994 by the Register of Deeds of Cavite.[11]

On May 15, 1998, petitioner filed with the Office of the Provincial Agrarian Reform Adjudicator (PARAD) a petition for cancellation of certificates of land ownership award and reconveyance of the subject property on the grounds that said property is generally mountainous and has an average slope of 22.78% based on the survey and evaluation dated March 1, 1994 by Certeza Surveying and Aerophoto Systems, Inc. Private respondents prayed for the dismissal of the petition on the grounds of *res judicata* and lack of cause of action.

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[7] *Rollo*, pp. 68-69. See also footnote no. 17, infra.

[8] CA *rollo*, pp. 310-318.

[9] *Id.* at 323-330.

[10] *Id.* at 331.

[11] *Id.* at 156-160.

On September 22, 1999, the PARAD declared as erroneous the coverage of the subject property under the CARP, thus:

> WHEREFORE, premises considered, Judgment is hereby collectively rendered:
>
> 1) Finding to be erroneous the coverage of Lot 2-B, Transfer Certificate of Title No. T-11026 under the CARP and the issuance of Transfer Certificate of Title No. CLOA-1629, CLOA No. 00141945 of the Register of Deeds for Cavite in favor [of] the herein [P]rivate Respondents, accordingly, finding the same to be null and void;
>
> 2) Directing the Public Respondent Register of Deeds to effect the cancellation of the subject CLOA and reinstate Transfer Certificate of Title No. T-11026 in the name of Petitioner Lakeview Golf & Country Club, Inc., further;
>
> 3) Directing the Land Bank of the Philippines, in a proper case, to reimburse such amount/s representing amortization payments to the [P]rivate [R]espondents and, finally;
>
> 4) Ordering the [P]rivate [R]espondents and [their] privies and/or all other persons acting for and in their behalf or under their authority to vacate and surrender their respective areas of tillage and/or occupancy in favor of Petitioner Lakeview or [its] duly authorized representative.
>
> No pronouncement as to other reliefs.[12]

Respondents appealed to the DARAB. On January 17, 2001, the DARAB ruled that it has no jurisdiction to adjudicate regarding the issue of the coverage of the subject property under the CARP, the same being within the exclusive prerogative of the DAR Secretary under Section 1, Rule II of the New DARAB Rules of Procedure.[13] It also declared as valid the CLOA issued in favor of private respondents due to petitioner's failure to overcome the presumption of regularity of official functions

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[12] *Id.* at 205-206.

[13] Records, Vol. II, p. 408.

by government employees and officials. The dispositive portion, reads:

> WHEREFORE, the assailed Decision dated September 22, 1999 is hereby **VACATED** and **SET ASIDE**. The petition of Lakeview is **DISMISSED**. The Transfer Certificate of Title issued pursuant to the Certificate of Land Ownership Award in favor of Luzvimin Samahang Nayon and Rolling Hills Association is declared valid and legal, done in accordance with the law and the applicable rules.
>
> SO ORDERED.[14]

Petitioner filed a petition for review with the Court of Appeals which was denied on March 9, 2004. The appellate court ruled that the DARAB has no jurisdiction to adjudicate regarding the issue of the coverage of the subject property under the CARP since there is no tenancy relationship between the parties. It cited the case of *Morta, Sr. v. Occidental*,[15] where the Court held that for the DARAB to have jurisdiction, there must exist a tenancy relation between the parties. In this case, petitioner never recognized private respondents as farmworkers and cultivators of the subject property. The appellate court also found that the matter of exemption from CARP coverage had already been resolved in the negative by the DAR. The appellate court held:

> WHEREFORE, premises considered, the petition is **DENIED** and the assailed Decision is **AFFIRMED *in toto***.
>
> SO ORDERED.[16]

In this petition, petitioner alleges that the appellate court erred:

I.

… IN FINDING THAT THE DARAB DOES NOT HAVE ANY JURISDICTION TO RULE ON THE ISSUE OF CARP COVERAGE OVER THE SUBJECT PROPERTY; AND

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[14] *Id.* at 403.

[15] G.R. No. 123417, June 10, 1999, 308 SCRA 167.

[16] *Rollo*, p. 27.

II.

… IN SUSTAINING THE DECISION OF THE DARAB DISMISSING THE CASE.[17]

Simply stated, the sole question to be resolved is: Does the DARAB have jurisdiction to adjudicate the issue regarding the coverage of the subject property under the CARP?

Petitioner avers that under Section 1,[18] Rule II of the DARAB 2003 Rules of Procedure, the DARAB has primary and exclusive original jurisdiction to determine and adjudicate cases involving the correction, partition, cancellation, secondary and subsequent issuances of CLOAs which are registered with the Land Registration Authority. On the other hand, under Section 3,[19]

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[17] *Id.* at 52.

[18] **SECTION 1.** Primary and Exclusive Original Jurisdiction. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

x x x x x x x x x

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x

[19] **SECTION 3. Agrarian Law Implementation Cases.**

The Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances, to wit:

x x x x x x x x x

3.4 Recall, or cancellation of provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall, or cancellation of EPs or CLOAs not yet registered with the Register of Deeds;

x x x x x x x x x

Rule II of the same Rules, the DAR has jurisdiction over the issuance, recall or cancellation of CLOAs not yet registered with the Land Registration Authority. Since the CLOA petitioner sought to cancel has already been registered with the Register of Deeds of Cavite on May 30, 1994, petitioner properly filed the petition for cancellation with the PARAD.

Private respondents counter that the DARAB 2003 Rules of Procedure was not yet in force at the time petitioner filed its petition for cancellation. At that time, the DAR still had primary jurisdiction to determine and adjudicate the coverage of the subject property under the CARP. They add that petitioner already protested the matter of CARP coverage with the DAR Secretary, the Court of Appeals and this Court which uniformly ruled against it. Such disposition should be deemed a final judgment on this issue.

The petition has no merit.

It is settled that jurisdiction over the subject matter is conferred by law.[20] Section 50[21] of Republic Act No. 6657[22] and Section 17[23] of Executive Order No. 229[24] vests in the DAR the primary

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[20] *Allied Domecq Phil., Inc. v. Villon*, G.R. No. 156264, September 30, 2004, 439 SCRA 667, 672; *Ceroferr Realty Corporation v. Court of Appeals*, G.R. No. 139539, February 5, 2002, 376 SCRA 144, 150.

[21] SEC. 50. *Quasi-Judicial Powers of the DAR*. – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

x x x x x x x x x

[22] 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, approved on June 10, 1988.

[23] SEC. 17. *Quasi-Judicial Powers of the DAR*. – The DAR is hereby vested with *quasi-judicial* powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving

and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving the implementation of agrarian reform.[25] Through Executive Order No. 129-A,[26] the President of the Philippines created the DARAB and authorized it to assume the powers and functions of the DAR pertaining to the adjudication of agrarian reform cases.[27]

The present case was filed on April 27, 1998 under the 1994 DARAB Rules of Procedure.[28] Section 1, Rule II thereof enumerates the cases over which the DARAB has exclusive original jurisdiction:

SECTION 1. Primary and Exclusive Original and Appellate Jurisdiction. …

x x x x x x x x x

(f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive

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implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).

x x x x x x x x x

[24] PROVIDING THE MECHANISMS FOR THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM, approved on July 22, 1987.

[25] *Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Dev't. Corp.*, G.R. No. 159089, May 3, 2006, 489 SCRA 80, 85.

[26] MODIFYING EXECUTIVE ORDER NO. 129 REORGANIZING AND STRENGTHENING THE DEPARTMENT OF AGRARIAN REFORM AND FOR OTHER PURPOSES, approved on July 26, 1987.

[27] *Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Dev't. Corp.*, *supra* at 85-86.

[28] THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) NEW RULES OF PROCEDURES, done and adopted on May 30, 1994.

Agrarian Reform Law (CAR[L]) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

x x x x x x x x x

On the other hand, Section 2 of DAR Administrative Order No. 06-00[29] enumerates the cases over which the DAR Secretary has exclusive jurisdiction:

SEC. 2. Cases Covered. — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following:

(a) Classification and identification of landholdings for coverage under the Comprehensive Agrarian Reform Program (CARP), including protests or oppositions thereto and petitions for lifting of coverage;

x x x x x x x x x

(d) Issuance, recall or cancellation of Certificates of Land Transfer (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;

x x x x x x x x x

From the foregoing, it is clear that prior to registration with the Register of Deeds, cases involving the issuance, recall or cancellation of CLOAs are within the jurisdiction of the DAR and that, corollarily, cases involving the issuance, correction or cancellation of CLOAs which have been registered with the Register of Deeds are within the jurisdiction of the DARAB.[30]

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[29] RULES OF PROCEDURE FOR AGRARIAN LAW IMPLEMENTATION (ALI) CASES, effective on August 30, 2000.

[30] *Padunan v. Department of Agrarian Reform Adjudication Board*, G.R. No. 132163, January 28, 2003, 396 SCRA 196, 206-207; See *Dao-ayan v. Department of Agrarian Reform Adjudication Board (DARAB)*, G.R. No. 172109, August 29, 2007, 531 SCRA 620, 628; *Heirs of Florencio Adolfo v. Cabral*, G.R. No. 164934, August 14, 2007, 530 SCRA 111, 120.

At first glance, in the present case, it would appear that jurisdiction lies with the DARAB. The petition before the PARAD sought the cancellation of private respondents' collective CLOA which had already been registered by the Register of Deeds of Cavite. However, the material averments of the petition invoking exemption from CARP coverage constrain us to have second look.

Noteworthy, the afore-cited Section 2 of DAR Administrative Order No. 06-00 also provides that the DAR Secretary has exclusive jurisdiction to classify and identify landholdings for coverage under the CARP, including protests or oppositions thereto and petitions for lifting of coverage.[31] The matter of CARP coverage is strictly an administrative implementation of the CARP whose competence belongs to the DAR Secretary.

Significantly, the DAR Secretary had already denied petitioner's protest and determined that the subject property was covered by the CARP. Such ruling was even affirmed by the Court of Appeals and this Court. Absent palpable error by these bodies, of which this Court finds none, their determination as to the coverage of the subject property under the CARP is controlling.[32] Thus, petitioner cannot now invoke the jurisdiction of the DARAB to pass upon this issue under the guise of having the issued collective CLOA cancelled.

WHEREFORE, finding no reversible error committed by the Court of Appeals, the instant petition is *DENIED* for lack of merit. The Decision dated March 9, 2004 and Resolution dated January 13, 2006 of the Court of Appeals in CA-G.R. SP No. 68645 are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

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

[31] *Sta. Rosa Realty Development Corporation v. Amante*, G.R. Nos. 112526 & 118838, March 16, 2005, 453 SCRA 432, 473; See *Nicanor T. Santos Development Corporation v. Secretary, Department of Agrarian Reform*, G.R. No. 159654, February 28, 2006, 483 SCRA 569, 578-579.

[32] See *Aninao v. Asturias Chemical Industries, Inc.*, G.R. No. 160420, July 28, 2005, 464 SCRA 526, 540.

FIRST DIVISION

[G.R. No. 171735. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALEJO OBLIGADO *y* MAGDARAOG,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES. — For the mitigating circumstance of voluntary surrender to be appreciated, the defense must prove that: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority; (c) the surrender was spontaneous and voluntary.

2. ID.; MURDER; DAMAGES; CIVIL INDEMNITY *EX DELICTO*. — With respect to the award of damages, to conform with recent jurisprudence, the appellant is ordered to pay ₱75,000 as civil indemnity *ex delicto*.

3. ID.; ID.; ID.; INDEMNITY FOR LOSS OF EARNING CAPACITY; NOT PROPER IN THE ABSENCE OF EVIDENCE THEREOF. — Both the RTC and CA did not award indemnity for loss of earning capacity despite the testimony of the victim's widow that he earned ₱5,000 per month as a driver. Such indemnity is not awarded in the absence of documentary evidence except where the victim was either self-employed or was a daily wage worker earning less than the minimum wage under current labor laws. Since it was neither alleged nor proved that the victim was either self-employed or was a daily wage worker, indemnity for loss of earning cannot be awarded to the heirs of the victim.

4. ID.; ID.; ID.; ACTUAL DAMAGES; TEMPERATE DAMAGES OF ₱25,000 AWARDED IN LIEU OF ACTUAL DAMAGES FOR FUNERAL EXPENDITURES. — Settled is the rule that only receipted expenses can be the basis of actual damages arising from funeral expenditures. All the prosecution presented was a receipt from the funeral parlor amounting to ₱15,000. Since the receipted expenses of the victim's family was less than ₱25,000, temperate damages in the said amount can be awarded in lieu of actual damages. Accordingly, the heirs of the victim

are not entitled to actual damages but to temperate damages in the amount of ₱25,000.

5. ID.; ID.; ID.; MORAL DAMAGES MANDATORY IN MURDER CASES; EXEMPLARY DAMAGES JUSTIFIED FOR QUALIFYING CIRCUMSTANCE OF TREACHERY. — Inasmuch as moral damages are mandatory in cases of murder (without need to allege and prove such damages), appellant is likewise ordered to indemnify the heirs of the victim ₱50,000. Since the killing of the victim was attended by treachery, his heirs are entitled to exemplary damages in the amount of ₱25,000.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

Appellant Alejo Obligado *y* Magdaraog was charged with murder in the Regional Trial Court (RTC) of Iriga, Branch 35[1] under the following Information:

That on or about 7:45 [p.m.] of March 12, 2000, in Barangay de la Fe, Buhi, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, [appellant] did then and there, willfully, unlawfully and feloniously, with intent to kill and with treachery, to [e]nsure execution, attack, assault and use personal violence upon one FELIX OLIVEROS *y* RAÑADA, that is—while armed with a bolo and coming from behind the victim, who was then unaware and defenseless of the impending attack, [appellant] first held tightly the victim's hair and immediately thereafter, suddenly, unexpectedly slashed the victim's neck with his bolo, causing [his] death, to the damage and prejudice of [his] heirs.

CONTRARY TO LAW.[2]

Appellant pleaded not guilty upon arraignment.

[1] Docketed as Crim. Case No. IR-5302.

[2] Information dated June 22, 2000. CA *rollo,* p. 6.

During trial, the victim's cousin and prosecution eye-witness Roberto Bagaporo testified that he and the victim along with several others[3] were having a drinking spree in front of his residence in the evening of March 12, 2000. They were later joined by appellant.

As Bagaporo prepared the videoke machine, he heard the victim call out, "*Pinsan!*" (Cousin!) He then turned around and saw appellant standing behind the victim. Appellant grabbed the victim's hair with his left hand and, with his right, pulled out a bolo from underneath his shirt and slashed the victim's neck. He then pushed the victim (who fell face down on the pavement) and walked away.

Senior Police Officer (SPO)4 Jimmy Jose of the Philippine National Police (PNP) Buhi station testified that, around 8:20 p.m. on March 12, 2000, an unidentified *barangay kagawad* reported a hacking incident in Barangay de la Fe. He, along with several other police officers, immediately went to the area and found the victim lying face-down in front of Bagaporo's house.

Dr. Breandovin Saez, municipal health officer of Buhi, testified that he conducted a post-mortem examination of the victim. The victim suffered two incised wounds, one on his right cheek and another on his neck area (extending from the left anterior neck to the right posterior neck). Dr. Saez said that the second wound was fatal because it was deep enough to cut the carotid artery and cause massive hemorrhage. Furthermore, based on the size and position of the wound, he opined that the assailant intentionally slashed the victim's neck from behind using a small bolo with a length of not more than one foot.

Lastly, the victim's widow, Gloria Oliveros testified that her husband earned at least ₱5,000 per month as a driver. She also presented a receipt from the funeral parlor amounting to ₱15,000 and an itemized list of expenses incurred during the wake amounting to ₱12,000.

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[3] They were Juan Narra, Jr., Henry Narra, Joevelyn Narra, Felix Narte, Nestor Bagaporo and Antonio Zaballa.

For his defense, appellant asserted that he accidentally killed the victim. While they were drinking, the victim approached and confided to him that he had a problem but did not say what his problem was. Appellant gave the victim a drink. To his surprise, the victim allegedly pulled out his bolo from its scabbard. Afraid of what could happen, appellant tried to wrest the bolo but the victim resisted. It was while grappling for possession of the bolo that the victim was fatally slashed in the neck.

Apolinario Manaog corroborated appellant's testimony. He basically stated that it was the victim who wielded the bolo and that he (the victim) and appellant wrestled for its possession.

The defense also presented SPO4 David Sarto, police community officer of the PNP Buhi station. According to SPO4 Sarto, he and his fellow police officers were ordered to arrest appellant on March 13, 2000. They met appellant while traversing the lone footpath leading to his residence. Appellant surrendered his person and the bolo.

Based on the size and nature of the victim's wounds, the RTC concluded that the killing was intentional. Moreover, because appellant slashed the victim's neck from behind, the latter had no opportunity to defend himself. Hence, the trial court appreciated the qualifying circumstance of treachery. In a decision dated February 28, 2001, the RTC found appellant guilty beyond reasonable doubt of the crime of murder: [4]

> WHEREFORE, finding [appellant] ALEJO OBLIGADO *y* MAGDARAOG guilty of murder beyond reasonable doubt as defined and penalized in Article 248 of the Revised Penal Code, he is sentenced to suffer the penalty of *reclusion perpetua* and to pay indemnity in the amount of ₱50,000; actual damages of ₱27,000; moral and exemplary damages of ₱50,000 and to pay the cost of suit.

On intermediate appellate review,[5] the Court of Appeals (CA) affirmed the guilt of the appellant but modified the civil liabilities imposed by the RTC. Because SPO4 Sarto testified that appellant

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[4] Penned by Presiding Judge Alfredo D. Agawa. CA *rollo,* pp. 16-24.

[5] Docketed as CA-G.R. No. CR-H.C. No. 01608.

intimated a desire to surrender, the appellate court appreciated the mitigating circumstance of voluntary surrender. Thus, it deleted the award of exemplary damages and instead ordered appellant to pay moral damages in the amount of ₱50,000.[6]

We affirm appellant's guilt.

The evidence of the prosecution established beyond reasonable doubt that the appellant intended to kill (and in fact killed) the victim and that he consciously adopted a design which deprived the victim of any opportunity to defend himself, or to retaliate. However, the mitigating circumstance of voluntary surrender should not have been considered.

For the mitigating circumstance of voluntary surrender to be appreciated, the defense must prove that:

(a) the offender had not been actually arrested;

(b) the offender surrendered himself to a person in authority;

(c) the surrender was spontaneous and voluntary.[7]

In this case, SPO4 Sarto testified that appellant's residence could be accessed only through a footpath where they met appellant. Inasmuch as he was intercepted by the arresting officers there, appellant had no means of evading arrest. His surrender therefore was neither voluntary nor spontaneous. On the contrary, the aforementioned circumstances revealed that he had no option but to yield to the authorities.

With respect to the award of damages, to conform with recent jurisprudence, the appellant is ordered to pay ₱75,000 as civil indemnity *ex delicto*.[8]

Both the RTC and CA did not award indemnity for loss of earning capacity despite the testimony of the victim's widow

[6] Decision penned by Associate Justice Ruben T. Reyes (now a retired member of this Court) and concurred in by Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman of the Fourth Division of the Court of Appeals. Dated December 20, 2005. *Rollo*, pp. 3-27.

[7] *People v. Oco,* 458 Phil. 815, 851 (2003).

[8] *People v. Malolot,* G.R. No. 174063, 14 March 2008.

that he earned ₱5,000 per month as a driver. Such indemnity is not awarded in the absence of documentary evidence except where the victim was either self-employed or was a daily wage worker earning less than the minimum wage under current labor laws.[9] Since it was neither alleged nor proved that the victim was either self-employed or was a daily wage worker, indemnity for loss of earning cannot be awarded to the heirs of the victim.

Settled is the rule that only receipted expenses can be the basis of actual damages arising from funeral expenditures.[10] All the prosecution presented was a receipt from the funeral parlor amounting to ₱15,000. Since the receipted expenses of the victim's family was less than ₱25,000, temperate damages in the said amount can be awarded in lieu of actual damages.[11] Accordingly, the heirs of the victim are not entitled to actual damages but to temperate damages in the amount of ₱25,000.

Moreover, inasmuch as moral damages are mandatory in cases of murder (without need to allege and prove such damages), appellant is likewise ordered to indemnify the heirs of the victim ₱50,000.[12]

Lastly, since the killing of the victim was attended by treachery, his heirs are entitled to exemplary damages in the amount of ₱25,000.[13]

WHEREFORE, the December 20, 2005 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01608 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Alejo Obligado *y* Magdaraog is found guilty of murder as defined in Article 248 of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered

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[9] *People v. Oco, supra* note 7 at 855.

[10] *People v. Tio,* 404 Phil. 936, 949 (2001).

[11] *People v. Belonio,* G.R. No. 148695, 27 May 2004, 429 SCRA 579, 596. (citations omitted)

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

[13] *People v. Garin,* G.R. No. 139069, 17 June 2004, 432 SCRA 394, 414.

to indemnify the heirs of the victim Felix Oliveros *y* Rañada ₱75,000 as civil indemnity *ex delicto,* ₱25,000 as temperate damages, ₱50,000 as moral damages and ₱25,000 as exemplary damages.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 172123. April 16, 2009]

MACARIOLA S. BARTOLO and VIOLENDA B. SUCRO, *petitioners, vs.* **THE HONORABLE SANDIGANBAYAN, SECOND DIVISION, THE HONORABLE SECRETARY HERMOGENES EBDANE OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS ("DPWH" FOR BREVITY), THE OFFICE OF THE SPECIAL PROSECUTOR ("OSP" FOR BREVITY), AND ANTONIO BALTAZAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; NOT COMMITTED BY THE SANDIGANBAYAN IN GRANTING THE MOTION OF THE OFFICE OF THE SPECIAL PROSECUTOR (OSP) TO SUSPEND *PENDENTE LITE* THE PETITIONERS AND THEIR CO-ACCUSED IN CASE OF FALSIFICATION OF PUBLIC DOCUMENTS. — x x x After a careful study of the matter at hand, we find that the Sandiganbayan did not commit grave abuse of discretion in ordering the suspension *pendente lite*

of the petitioners and their co-accused. it is undeniable that the allegation of falsification of the three public documents by making it appear that the flood control project was 100% complete constitutes fraud upon public funds. This is in light of the uncontroverted allegation of the OSP that it was on the basis of such false representation that the government was defrauded or suffered loss because it paid Toyo-Ebara Joint Venture ₱1,499,111,805.63, the full amount corresponding to the project despite the non-construction of the 320-m parapet wall on the right bank of Estero De Sunog Apog.

2. CRIMINAL LAW; FALSIFICATION BY PUBLIC OFFICER; MAKING UNTRUTHFUL STATEMENTS IN A "NARRATION OF FACTS"; CERTIFICATION IN THE STATEMENT OF TIME ELAPSED AND WORK ACCOMPLISHED, APPRECIATED AS SUCH. — Petitioners' argument that their certification in the Statement of Time Elapsed and Work Accomplished does not constitute a narration of facts as contemplated under Article 171(4) of the Revised Penal Code since the said statement merely consisted of a table of figures and numbers is also without merit. This is because a narration of facts is merely an account or description of the particulars of an event or occurrence. Hence, the use of words or figures or numbers or any combination of two or three of said things, as long as it describes an event or occurrence is sufficient to make a "narration of facts" as defined under Article 171(4) of the Revised Penal Code. In this case, it is evident that the questioned statement qualifies as a "narration of facts" as defined under Article 171(4) of the Revised Penal Code because a reading thereof reveals that not only figures and numbers, as asserted by the petitioners, but also words were used therein giving an account of the status of the flood control project.

APPEARANCES OF COUNSEL

Tomas Carmelo T. Araneta for petitioners.

D E C I S I O N

QUISUMBING, *J.*:

The petition for *certiorari* assails the Resolution[1] dated October 12, 2005 of the Sandiganbayan, granting the motion of the Office of the Special Prosecutor (OSP) to suspend *pendente lite* the petitioners and their co-accused in Criminal Case No. 27911, and its Resolution[2] dated March 2, 2006 denying the petitioners' motion for reconsideration.

The antecedent facts are as follows:

On November 13, 2003, an Information[3] was filed against the petitioners and their co-accused for falsification of public documents, defined and penalized under Article 171(4)[4] of the Revised Penal Code. The Information alleged:

That during the year 1998, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused NONITO FANO *y* FAMARIN, a high ranking public officer, being the Project Director with Salary Grade 29 of the Project Management Office (PMO) of the Department of

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[1] *Rollo*, pp. 23-26. Penned by Associate Justice Edilberto G. Sandoval, with Associate Justices Francisco H. Villaruz, Jr. and Rodolfo A. Ponferrada (sitting as Special Member as per Administrative Order No. 19-2005 dated February 23, 2005) concurring.

[2] *Id.* at 31. Approved by Associate Justice Edilberto G. Sandoval, with Associate Justices Francisco H. Villaruz, Jr. and Alexander G. Gesmundo (sitting as Special Member as per Administrative Order No. 14-2006 dated February 1, 2006) concurring.

[3] Records, Vol. I, pp. 1-4.

[4] **ART. 171.** *Falsification by public officer, employee, or notary or ecclesiastical 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:

x x x x x x x x x

4. Making untruthful statements in a narration of facts;

x x x x x x x x x

Public Works and Highways (DPWH); MACARIOLA BARTOLO *y* SUBARDIAGA, being the Project Manager II of PMO; VIOLENDA B. SUCRO, being the Engineer V of PMO; NORBERTO GALVE *y* SONEJA, being the Engineer IV of [the] Bureau of Research and Standard (BRS); CRISPIN REAL *y* REDOQUE, being the Engineer III of BRS; ROMEO LACORTE *y* LIAC, being the Engineer III of [the] Bureau of Construction; LEONARDO LINGAN *y* LLENTADA, being the Engineer III of [the] Bureau of Design; ROEL BLANCAS *y* BAUTISTA, being the Engineer III of [the] Bureau of Maintenance, LOURDES ANINIPOT *y* FLORANDA, being the Engineer III, Bureau of Maintenance, all-low ranking public officers and all of whom are employed with the Department of Public Works and Highways (DPWH), committing the offense in relation to their office and taking advantage of the same, conspiring, confederating and mutually helping one another, together with accused SHUICHI MORITA, a private individual, did then and there wilfully, unlawfully and feloniously falsify the following public documents which they prepared, checked, verified certified correct and accepted in discharge of their respective duties and official functions, namely: Statement of Time Elapsed and Work Accomplished, Inspection Report for Final Acceptance and Certificate of Acceptance relative to the Metro Manila Flood Control Project II, Package A in the amount of One Billion Four Hundred Ninety-Nine Million One Hundred Eleven Thousand Eight Hundred Five Pesos and [S]ixty [T]hree [C]entavos (₱1,499,111,805.63) intended for the construction of [the] Vitas Pumping Station and Balut Pumping Station and Improvement of Estero de Vitas, Pampanga-Earnshaw Drainage Main, Estero de Sunog Apog, Estero de Maypajo and Buendia Drainage Main, **by making it appear in the said documents that the project is one hundred percent (100%) complete when, in truth and in fact, and as the above-named accused knew well, the project was not fully completed considering that there is an unaccomplished construction of the parapet wall with a length of 320 lineal meters on the right bank of Estero de Sunog Apog** from Pastor Street to Paulino Street, Balut, Tondo, Manila, which they failed to disclose despite legal obligation to do so, thereby perverting the truth to the damage and prejudice of the public interest.

CONTRARY TO LAW.[5] (Emphasis supplied.)

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[5] Records, Vol. I, pp. 2-3.

During their arraignment, the petitioners and their co-accused pleaded not guilty to the offense charged.[6] Thereafter, pre-trial and trial of the case ensued.

During the trial of the case, the OSP moved for the suspension *pendente lite* of the petitioners and their co-accused in accordance with Section 13 of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.[7]

In its Resolution dated October 12, 2005, the Sandiganbayan granted the motion and accordingly ordered the suspension *pendente lite* of the petitioners and their co-accused for 90 days.

The petitioners moved for reconsideration, but it was denied by the Sandiganbayan in its Resolution dated March 2, 2006.

Hence, this petition based on this lone assigned error:

THE SANDIGANBAYAN, SECOND DIVISION, ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE RESOLUTION DATED [OCTOBER 12, 2005] DIRECTING THE SUSPENSION *PENDENTE LITE* OF THE PETITIONERS FOR NINETY (90) DAYS AND THE RESOLUTION DATED MARCH 2, 2006 WHICH DENIED PETITIONERS' URGENT MOTION FOR RECONSIDERATION.[8]

Simply stated, the issue is, did the Sandiganbayan commit grave abuse of discretion in ordering the suspension *pendente lite* of petitioners?

Petitioners primarily argue that the assailed resolutions were erroneously issued because the offense of falsification of public documents does not fall within the purview of Section 13 of Rep. Act No. 3019, which reads:

SEC. 13. *Suspension and loss of benefits.*— Any incumbent public officer against whom any criminal prosecution **under a valid**

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[6] *Rollo,* pp. 230-231; Records, Vol. I, pp. 460-470.

[7] Approved on August 17, 1960.

[8] *Rollo*, p. 11.

information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government. (Emphasis supplied.)

To support their aforesaid submission, the petitioners point out that the offense of falsification of public documents falls under Title Four,[9] Book II of the Revised Penal Code and not under Title Seven,[10] Book II thereof. They also argue that the offense of falsification of public documents does not amount to fraud upon government or public funds.[11]

The OSP counter that Section 13 of Rep. Act No. 3019 extends to **any** offense involving fraud upon the government or public funds or property, and is not merely limited to the offenses under Title Seven, Book II of the Revised Penal Code. Moreover, it insisted that falsification falls within the general definition of fraud, considering that it involved a false representation of a fact, and hence within the ambit of Section 13, Rep. Act No. 3019.[12]

After a careful study of the matter at hand, we find that the Sandiganbayan did not commit grave abuse of discretion in ordering the suspension *pendente lite* of the petitioners and their co-accused.

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[9] CRIMES AGAINST PUBLIC INTEREST.

[10] CRIMES COMMITTED BY PUBLIC OFFICERS.

[11] *Rollo*, pp. 12-14.

[12] *Id.* at 259-260.

The contentions raised by the petitioners are nothing new, considering that the same had already been resolved in the case of *Bustillo v. Sandiganbayan*.[13] In that case, we held that "the term *fraud* as used in Section 13 of Rep. Act No. 3019 is understood in its generic sense, which is, referring to *an instance or an act of trickery or deceit especially when involving misrepresentation*."[14] In Merriam Webster's Dictionary of Law, *fraud* had been defined "*as any act, expression, omission, or concealment calculated to deceive another to his or her disadvantage; or specifically, a misrepresentation or concealment with reference to some fact material to a transaction that is made with knowledge of its falsity or in reckless disregard of its truth or falsity and with the intent to deceive another and that is reasonably relied on by the other who is injured thereby*."[15] We thus ruled in the afore-cited case that falsification of municipal vouchers, although penalized under Title Four and not Title Seven, Book II of the Revised Penal Code, constitutes fraud upon public funds, and accordingly upheld the suspension *pendente lite* of the petitioner therein pursuant to Section 13 of Rep. Act No. 3019.[16]

In the present petition, it is undeniable that the allegation of falsification of the three public documents by making it appear that the flood control project was 100% complete constitutes fraud upon public funds. This is in light of the uncontroverted allegation of the OSP that it was on the basis of such false representation that the government was defrauded or suffered loss because it paid Toyo-Ebara Joint Venture ₱1,499,111,805.63, the full amount corresponding to the project despite the non-construction of the 320-m parapet wall on the right bank of Estero De Sunog Apog.[17]

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[13] G.R. No. 146217, April 7, 2006, 486 SCRA 545.

[14] *Id.* at 553.

[15] Merriam Webster's Dictionary of Law, p. 203 (1996).

[16] *Bustillo v. Sandiganbayan*, *supra* note 13, at 553-554.

[17] *Rollo*, pp. 261-262.

Petitioners' argument that their certification in the Statement of Time Elapsed and Work Accomplished[18] does not constitute a narration of facts as contemplated under Article 171(4) of the Revised Penal Code since the said statement merely consisted of a table of figures and numbers[19] is also without merit. This is because a narration of facts is merely an account or description of the particulars of an event or occurrence. Hence, the use of words or figures or numbers or any combination of two or three of said things, as long as it describes an event or occurrence is sufficient to make a "narration of facts" as defined under Article 171(4) of the Revised Penal Code. In this case, it is evident that the questioned statement qualifies as a "narration of facts" as defined under Article 171(4) of the Revised Penal Code because a reading thereof reveals that not only figures and numbers, as asserted by the petitioners, but also words[20] were used therein giving an account of the status of the flood control project.

Finally, petitioners' argument that they have not falsified any public document because the 320-m parapet wall was deleted from the project by Change Order No. 1[21] is not a proper question for us to resolve in this petition, considering that it would require us to make a crucial finding of fact, and to pass upon the merits of the pending criminal case against the petitioners and their co-accused before the Sandiganbayan.

WHEREFORE, the petition is *DISMISSED*. The Resolutions of the Sandiganbayan dated October 12, 2005 and March 2, 2006 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[18] *Id.* at 43.

[19] *Id.* at 12.

[20] *Id.* at 139.

[21] *Id.*

SECOND DIVISION

[G.R. No. 172601. April 16, 2009]

AILEEN G. HERIDA, *petitioner, vs.* **F & C PAWNSHOP and JEWELRY STORE/MARCELINO FLORETE, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW MAY BE RAISED; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — Hornbook is the rule that in a petition for review, only errors of law may be raised. Furthermore, factual findings of administrative agencies that are affirmed by the Court of Appeals are conclusive on the parties and not reviewable by this Court. This is so because of the specialized knowledge and expertise gained by these quasi-judicial agencies from presiding over matters falling within their jurisdiction. So long as these factual findings are supported by substantial evidence, this Court will not disturb the same.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE TO TRANSFER EMPLOYEES, RECOGNIZED. — Jurisprudence recognizes the exercise of management prerogative to transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.

3. ID.; ID.; ID.; VALIDITY OF TRANSFER; CASE AT BAR. — To determine the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal. As respondents creditably explained,

and as admitted by petitioner herself, respondents have standing policies that an employee must be single at the time of employment and must be willing to be assigned to any of its branches in the country. Petitioner's contention that upon getting married, she no longer bound herself to be assigned to any of respondents' branches in the country is preposterous. Just because an employee gets married does not mean she can already renege on a commitment she willingly made at the time of her employment particularly if such commitment does not appear to be unreasonable, inconvenient, or prejudicial to her. Respondents claimed that travel time from the Bacolod City Branch to the Iloilo City Branch will only take about an hour by boat and that they were even willing to defray petitioner's transportation and lodging expenses. Petitioner never disputed these matters. There is no showing either that petitioner's transfer was only being used by respondents to camouflage a sinister scheme of management to rid itself of an undesirable worker in the person of petitioner.

4. ID.; ID.; ID.; OBJECTION THEREON GROUNDED ON PERSONAL INCONVENIENCE, NOT VALID. — We have long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer. Such being the case, petitioner cannot adamantly refuse to abide by the order of transfer without exposing herself to the risk of being dismissed. Hence, her dismissal was for just cause in accordance with Article 282(a) of the Labor Code. Consequently, petitioner is not entitled to reinstatement or separation pay and backwages.

APPEARANCES OF COUNSEL

Ortiz Sedonio Bonghanoy Sazon & Associates for petitioner.
Amego & Associates Law Office for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Petitioner seeks the reversal of the Decision[1] dated September 16, 2005 and the Resolution[2] dated April 21, 2006 of the Court of Appeals in CA-G.R. SP No. 82553 which affirmed the Resolution[3] dated October 23, 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000177-2000.

The antecedent facts of the case are as follows:

Petitioner Aileen G. Herida was an employee of respondent F & C Pawnshop and Jewelry Store owned by respondent Marcelino Florete, Jr. She was hired as a sales clerk and eventually promoted as an appraiser in the Bacolod City Branch.

On August 1, 1998, management issued an office memorandum[4] directing petitioner to report to the Guanco Branch in Iloilo City. As petitioner refused to follow the directive, she was preventively suspended from work on August 10, 1998 for a period of 15 days effective August 7, 1998. She was also directed to report to her new assignment on August 24, 1998.[5]

On August 10, 1998, petitioner filed a complaint[6] for illegal dismissal, underpayment of wages, non-payment of separation pay, 13th month pay, as well as for payment of moral and exemplary damages and attorney's fees.

On August 26, 1998, management informed petitioner that it will conduct an investigation on September 7, 1998[7] which

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[1] *Rollo*, pp. 25-31. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas concurring.

[2] *Id.* at 34-35.

[3] CA *rollo*, pp. 52-53.

[4] *Id.* at 72.

[5] *Id.* at 73.

[6] *Id.* at 55.

[7] *Id.* at 74. Annex "C".

petitioner failed to attend. In a letter dated September 7, 1998, management terminated her services on the grounds of willful disobedience, insubordination and abandonment of work as well as gross violation of company policy.[8]

In a Decision[9] dated July 19, 1999 in RAB Case No. 06-08-10525-98, the Labor Arbiter dismissed petitioner's complaint for lack of merit. The Labor Arbiter ruled that petitioner was not dismissed from her job and that she deliberately refused to obey management's directive for her to report to the Iloilo City Branch. The Labor Arbiter noted that petitioner filed the complaint as a retaliatory act to secure an award of separation pay.

On September 20, 2001, the NLRC affirmed the Labor Arbiter's finding that there was no illegal dismissal. However, due to petitioner's long service with respondents, the NLRC awarded her separation pay as well as service incentive leave pay. The decretal portion of the decision reads:

> WHEREFORE, the assailed decision is **SET ASIDE** and a new one **ENTERED** declaring that there was no illegal dismissal. Conformably with the preceding discussion however, complainant is entitled to separation pay computed on the basis of her one-half month salary per year of service for nine (9) years, or the amount of SEVENTEEN THOUSAND ONE HUNDRED PESOS (₱17,100.00).
>
> Complainant is likewise entitled to service incentive leave pay for a total of fifteen (15) days, or the amount of TWO THOUSAND ONE HUNDRED NINETY PESOS (₱2,190.00).
>
> No pronouncements as to damages and attorney's fees.
>
> SO ORDERED.[10]

Both petitioner and respondents moved for reconsideration. On October 23, 2003, the NLRC issued a resolution partially reconsidering its decision, in this wise:

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[8] *Id.* at 74. Annex "D".

[9] *Id.* at 14-18.

[10] *Id.* at 41-42.

WHEREFORE, we reconsider Our Decision of September 20, 2001 by declaring that there was no illegal dismissal; affirming Our award for separation pay, and deleting Our award for service incentive leave pay.

SO ORDERED.[11]

Aggrieved, petitioner filed a petition for *certiorari* with the Court of Appeals. In dismissing the petition, the appellate court upheld management's prerogative to transfer an employee from one office to another within the business establishment provided there is no demotion in rank or diminution in salary, benefits and other privileges. It ruled that as long as management's exercise of such prerogative is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of the employee under the laws or valid agreements, such exercise will be upheld. The appellate court noted that there was no proof that respondents were motivated by bad faith in transferring petitioner. Petitioner never alleged anything that would defeat her rights as an employee by reason of the transfer. Hence, her transfer cannot be deemed a constructive dismissal since it is not unreasonable, discriminatory nor attended by a demotion in rank or diminution in pay. Petitioner's refusal to obey the transfer therefore constituted willful disobedience of a lawful order of her employer which was a just cause for her dismissal. Thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the petition filed in this case and **AFFIRMING** the Resolution dated October 23, 2003 of the public respondent NLRC in NLRC Case No. V-000177-2000.

SO ORDERED.[12]

In this petition before us, petitioner alleges that the Court of Appeals erred in:

I.

… HOLDING THAT THERE WAS NO ILLEGAL SUSPENSION AND DISMISSAL.

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[11] *Id.* at 53.

[12] *Rollo*, p. 30.

II.

… HOLDING THAT PETITIONER'S TRANSFER FROM BACOLOD CITY TO ILOILO CITY WAS A MANAGEMENT PREROGATIVE AND THAT IT WAS A PROMOTION.

III.

… NOT GRANTING THE RELIEF FOR REINSTATEMENT, BACKWAGES, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[13]

The basic issue to be resolved is whether petitioner's transfer from the Bacolod City Branch to the Iloilo City Branch was valid.

Petitioner contends that her transfer was never discussed by the parties at the start of her employment. Thus, it should only be done with her consent. She adds that the transfer was unnecessary, inconvenient and prejudicial.

Respondents counter that petitioner's transfer was made in good faith and in compliance with management's policy to reshuffle or transfer its employees. They also argue that petitioner will be given transportation and lodging allowance, hence, she will not incur any additional expense.

As it is, the question raised in this recourse is basically one of fact. Hornbook is the rule that in a petition for review, only errors of law may be raised.[14] Furthermore, factual findings of administrative agencies that are affirmed by the Court of Appeals are conclusive on the parties and not reviewable by this Court. This is so because of the specialized knowledge and expertise gained by these quasi-judicial agencies from presiding over matters falling within their jurisdiction. So long as these factual findings are supported by substantial evidence, this Court will not disturb the same.[15]

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[13] *Id.* at 14.

[14] *Aquino v. Court of Appeals*, G.R. No. 149404, September 15, 2006, 502 SCRA 76, 84-85.

[15] *Morales v. Skills International Company*, G.R. No. 149285, August 30, 2006, 500 SCRA 186, 195.

In this case, the Labor Arbiter, the NLRC, and the Court of Appeals were unanimous in their factual conclusions that petitioner's transfer from the Bacolod City Branch to the Iloilo City Branch was valid and that she was not illegally dismissed. We sustain such findings.

Jurisprudence recognizes the exercise of management prerogative to transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[16]

To determine the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.[17]

As respondents creditably explained, and as admitted by petitioner herself, respondents have standing policies that an employee must be single at the time of employment and must be willing to be assigned to any of its branches in the country. Petitioner's contention that upon getting married, she no longer bound herself to be assigned to any of respondents' branches in the country is preposterous. Just because an employee gets married does not mean she can already renege on a commitment she willingly made at the time of her employment particularly if such commitment does not appear to be unreasonable, inconvenient, or prejudicial to her. Respondents claimed that

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[16] *Philippine Industrial Security Agency Corporation v. Aguinaldo*, G.R. No. 149974, June 15, 2005, 460 SCRA 229, 239; *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 765-766.

[17] *Floren Hotel v. National Labor Relations Commission*, G.R. No. 155264, May 6, 2005, 458 SCRA 128, 145; *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, G.R. No. 118045, January 2, 1997, 266 SCRA 97, 109.

travel time from the Bacolod City Branch to the Iloilo City Branch will only take about an hour by boat and that they were even willing to defray petitioner's transportation and lodging expenses. Petitioner never disputed these matters. There is no showing either that petitioner's transfer was only being used by respondents to camouflage a sinister scheme of management to rid itself of an undesirable worker in the person of petitioner.[18]

We have long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer.[19] Such being the case, petitioner cannot adamantly refuse to abide by the order of transfer without exposing herself to the risk of being dismissed. Hence, her dismissal was for just cause in accordance with Article 282(a)[20] of the Labor Code. Consequently, petitioner is not entitled to reinstatement or separation pay and backwages.[21]

WHEREFORE, the petition is *DENIED*. The Decision dated September 16, 2005 and the Resolution dated April 21, 2006 of the Court of Appeals in CA-G.R. SP No. 82553 which affirmed the Resolution dated October 23, 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000177-2000, are *AFFIRMED with the MODIFICATION* that the award of separation pay is deleted.

SO ORDERED.

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

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[18] *Homeowners Savings and Loan Association, Inc. v. NLRC*, G.R. No. 97067, September 26, 1996, 262 SCRA 406, 420.

[19] *Mercury Drug Corporation v. Domingo*, G.R. No. 143998, April 29, 2005, 457 SCRA 578, 592.

[20] **ART. 282. Termination by employer.**— An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

x x x x x x x x x

[21] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, June 27, 2006, 493 SCRA 195, 213.

SPECIAL THIRD DIVISION

[G.R. No. 172602. April 16, 2009]

HENRY T. GO, *petitioner, vs.* **THE FIFTH DIVISION, SANDIGANBAYAN and THE OFFICE OF THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); ELEMENTS; ALLEGATION OF CONSPIRACY WITH A PRIVATE PERSON; SUFFICIENCY THEREOF. — To be indicted of the offense under Section 3(g) of R.A. No. 3019, the following elements must be present: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government. *However*, if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is "to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto." Pursuant to our ruling in *Estrada v. Sandiganbayan*, said allegation of conspiracy is sufficient, thus: The requirements on sufficiency of allegations are different 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. x x x [I]t is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, *etc*; or (2) by allegation of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

2. ID.; ID.; ID.; ID.; DISMISSAL OF CASE AGAINST ACCUSED PUBLIC OFFICER MEANS DISMISSAL OF CASE AGAINST CONSPIRING PRIVATE PERSON. — In the instant case, the Information charges Vicente C. Rivera, Jr., then Secretary of the Department of Transportation and Communications, with committing the offense under Section 3(g) of R.A. No. 3019 "in conspiracy with accused HENRY T. GO, Chairman and President of Philippine International Air Terminals, Co., Inc. (PIATCO) x x x." However, we note that in the Decision of the Sandiganbayan dated March 18, 2008, Vicente C. Rivera, Jr. was acquitted and the case against him dismissed. From the said Decision, the Office of the Special Prosecutor filed a Petition for *Certiorari* before this Court which was docketed as G.R. No. 185045 and captioned as *People v. Sandiganbayan and Rivera.* However, on December 3, 2008, the Court dismissed the petition. The said December 3, 2008 Resolution became final and executory and was recorded in the Book of Entries of Judgments on February 13, 2009. Based on the foregoing, it follows as a matter of course that the instant case against herein petitioner Henry T. Go should likewise be dismissed. The acquittal of Rivera means that there was no public officer who allegedly violated Section 3(g) of R.A. No. 3019. There being no public officer, it follows that a private individual such as herein petitioner Go could not be said to have conspired with such public officer. The basis for a finding of conspiracy against petitioner and Rivera has been removed; consequently, the case against Henry T. Go should likewise be dismissed.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

In its *Motion for Reconsideration*, respondent Office of the Special Prosecutor argues, citing *Meneses v. People,*[1]

[1] G.R. Nos. 71651 and 71728, August 27, 1987, 153 SCRA 303.

Balmadrid v. Sandiganbayan,[2] *Domingo v. Sandiganbayan,*[3] and *Singian v. Sandiganbayan,*[4] that private persons when conspiring with public officers may be held liable for violation of Section 3(g) of Republic Act (R.A.) No. 3019.

The arguments presented by the Office of the Special Prosecutor convinced us to take a second look at the case. We maintain that to be indicted of the offense under Section 3(g) of R.A. No. 3019, the following elements must be present: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government. *However*, if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is "to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto."

In the instant case, the Information charges Vicente C. Rivera, Jr., then Secretary of the Department of Transportation and Communications, with committing the offense under Section 3(g) of R.A. No. 3019 "in conspiracy with accused HENRY T. GO, Chairman and President of Philippine International Air Terminals, Co., Inc. (PIATCO) x x x."

Pursuant to our ruling in *Estrada v. Sandiganbayan,*[5] said allegation of conspiracy is sufficient, thus:

> The requirements on sufficiency of allegations are different 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. x x x

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[2] G.R. No. 58237, March 22, 1991, 195 SCRA 497.

[3] G.R. No. 149175, October 25, 2005, 474 SCRA 203.

[4] G.R. Nos. 160577-94, December 16, 2005, 478 SCRA 348.

[5] G.R. No. 148965, February 26, 2002, 377 SCRA 538.

x x x x x x x x x

[I]t is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, *etc*; or (2) by allegation of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[6]

Thus, the allegation in the Information that accused Rivera "in conspiracy with accused HENRY T. GO" committed the alleged acts in violation of Section 3(g) of R.A. No. 3019, is sufficient in form and substance. Consequently, petitioner Go was validly charged with violation of Section 3(g) when he allegedly conspired with accused Rivera.

However, we note that in the Decision of the Sandiganbayan dated March 18, 2008, Vicente C. Rivera, Jr. was acquitted and the case against him dismissed. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, accused Vicente C. Rivera, Jr.'s "Motion to Dismiss by way of Demurrer to Evidence," dated September 8, 2007, is hereby GRANTED. Criminal Case No. 28092 for violation of Section 3(g) of Republic Act No. 3019, is ordered DISMISSED and accused VICENTE C. RIVERA, JR., is hereby ACQUITTED of the offense charged.

The cash bond posted by the accused to secure his provisional liberty is hereby ordered returned to him, subject to the usual accounting and auditing procedures.

The Hold Departure Order issued by this Court against the accused dated February 15, 2005, is lifted and set aside.

There can be no pronouncement as to civil liability as the facts from which the same might arise were not proven in the case at bar.

SO ORDERED.

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[6] *Id*. at 563, 565.

From the said Decision, the Office of the Special Prosecutor filed a Petition for *Certiorari* before this Court which was docketed as G.R. No. 185045 and captioned as *People v. Sandiganbayan and Rivera*. However, on December 3, 2008, the Court dismissed the petition, *viz*:

> The Court resolves to *DISMISS* the petition for *certiorari* of the Decision and Resolution dated 18 March 2008 and 16 September 2008, respectively, of the Sandiganbayan in Criminal Case No. 28092 for failure of the petitioner to sufficiently show that any grave abuse of discretion was committed by the Sandiganbayan in rendering the challenged decision and resolution which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.

The said December 3, 2008 Resolution became final and executory and was recorded in the Book of Entries of Judgments on February 13, 2009.

Based on the foregoing, it follows as a matter of course that the instant case against herein petitioner Henry T. Go should likewise be dismissed. The acquittal of Rivera means that there was no public officer who allegedly violated Section 3(g) of R.A. No. 3019. There being no public officer, it follows that a private individual such as herein petitioner Go could not be said to have conspired with such public officer. The basis for a finding of conspiracy against petitioner and Rivera has been removed; consequently, the case against Henry T. Go should likewise be dismissed.

WHEREFORE, the *Motion for Reconsideration (of the Resolution dated September 3, 2007)* filed by the Office of the Special Prosecutor is *DENIED* subject to the qualification discussed in the body of the decision. *The Prayer to Refer Case to the Supreme Court En Banc* is likewise *DENIED*. The *Comment/Opposition* filed by petitioner Go to the said *Motion for Reconsideration (of the Resolution dated September 3, 2007) With Prayer to Refer Case to the Supreme Court En Banc* as well as the *Manifestation and Motion* are *NOTED*. The Sandiganbayan is hereby *DIRECTED* to *DISMISS* Criminal Case No. 28092 against petitioner Henry T. Go.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Velasco, Jr., and *Brion, JJ.,* concur.

SPECIAL SECOND DIVISION

[G.R. No. 172607. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUFINO UMANITO,** *appellant.*

SYLLABUS

REMEDIAL LAW; NEW RULES ON DNA EVIDENCE; APPLICATION OF THE RULE FOR THE FIRST TIME IN RAPE IN CASE AT BAR; RESULT MANIFESTED THAT ACCUSED IS THE FATHER OF RAPE VICTIM'S CHILD. — The instant case involved a charge of rape. The accused Rufino Umanito (Umanito) was found by the Regional Trial Court (RTC) of Bauang, La Union, Branch 67 guilty beyond reasonable doubt of the crime of rape. Umanito was sentenced to suffer the penalty of *reclusion perpetua* and ordered to indemnify the private complainant in the sum of ₱50,000.00. On appeal, the Court of Appeals offered the judgment of the trial court. Umanito appealed the decision of the appellate court to this court. In its 2007 Resolution, the Court acknowledged "many incongruent assertions of the prosecution and the defense." At the same time, the alleged 1989 rape of the private complainant, AAA, had resulted in her pregnancy and the birth of a child, a girl hereinafter identified as "BBB." In view of that fact, a well as the defense of alibi raised by Umanito, the Court deemed uncovering of whether or not Umanito is the father of BBB greatly determinative of the resolution of the appeal. Thus, this Court resolved, for the very first time, to apply the then recently promulgated New Rules on DNA Evidence (DNA Rules). We remanded the case to the RTC for reception of DNA

evidence in accordance with the terms of said Resolution. The RTC of Bauang, La Union, Branch 67, presided by Judge Ferdinand A. Fe, then set the case for hearing on 27 November 2007 to ascertain the feasibility of DNA testing with due regard to the standards set in Sections 4(a), (b), (c), and (e) of the DNA Rules. Both AAA and BBB (now 17 years old) testified during the hearing. They also manifested their willingness to undergo DNA examination to determine whether Umanito is the father of BBB. x x x Umanito's defense of alibi, together with his specific assertion that while he had courted AAA they were not sweethearts, lead to a general theory on his part that he did not engage in sexual relations with the complainant. The DNA testing has evinced a contrary conclusion, and that as testified to by AAA, Umanito had fathered the child she gave birth to on 5 April 1990, nine months after the day she said she was raped by Umanito. Umanito filed a Motion to Withdraw Appeal dated 16 February 2009. By filing such motion, Umanito is deemed to have acceded to the rulings of the RTC and the Court of Appeals finding him guilty of the crime of rape. Given that the results of the Court-ordered DNA testing conforms with the conclusions of the lower courts, and that no cause is presented for us to deviate from the penalties imposed below, the Court sees no reason to deny Umanito's Motion to Withdraw Appeal. Consequently, the assailed Decision of the Court of Appeals is deemed final.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

TINGA, *J.*:

In our Resolution dated 26 October 2007, this Court resolved, for the very first time, to apply the then recently promulgated New Rules on DNA Evidence (DNA Rules)[1] in a case pending before us – this case. We remanded the case to the RTC for

[1] A.M. No. 06-11-5-SC, 15 October 2007.

reception of DNA evidence in accordance with the terms of said Resolution, and in light of the fact that the impending exercise would be the first application of the procedure, directed Deputy Court Administrator Reuben Dela Cruz to: (a) monitor the manner in which the court *a quo* carries out the DNA Rules; and (b) assess and submit periodic reports on the implementation of the DNA Rules in the case to the Court.

To recall, the instant case involved a charge of rape. The accused Rufino Umanito (Umanito) was found by the Regional Trial Court (RTC) of Bauang, La Union, Branch 67 guilty beyond reasonable doubt of the crime of rape. Umanito was sentenced to suffer the penalty of *reclusion perpetua* and ordered to indemnify the private complainant in the sum of ₱50,000.00. On appeal, the Court of Appeals offered the judgment of the trial court. Umanito appealed the decision of the appellate court to this court.

In its 2007 Resolution, the Court acknowledged "many incongruent assertions of the prosecution and the defense."[2] At the same time, the alleged 1989 rape of the private complainant, AAA, had resulted in her pregnancy and the birth of a child, a girl hereinafter identified as "BBB." In view of that fact, as well as the defense of alibi raised by Umanito, the Court deemed uncovering of whether or not Umanito is the father of BBB greatly determinative of the resolution of the appeal. The Court then observed:

> x x x With the advance in genetics and the availability of new technology, it can now be determined with reasonable certainty whether appellant is the father of AAA's child. If he is not, his acquittal may be ordained. We have pronounced that if it can be conclusively

[2] *Rollo,* p. 28. "Among the many incongruent assertions of the prosecution and the defense, the disharmony on a certain point stands out. Appellant, on one hand, testified that although he had courted AAA, they were not sweethearts. Therefore, this testimony largely discounts the possibility of consensual coitus between him and AAA. On the other, AAA made contradictory allegations at the preliminary investigation and on the witness stand with respect to the nature of her relationship with appellant. First, she claimed that she met appellant only on the day of the purported rape; later, she stated that they were actually friends; and still later, she admitted that they were close."

determined that the accused did not sire the alleged victim's child, this may cast the shadow of reasonable doubt and allow his acquittal on this basis. If he is found not to be the father, the finding will at least weigh heavily in the ultimate decision in this case. Thus, we are directing appellant, AAA and her child to submit themselves to deoxyribonucleic acid (DNA) testing under the aegis of the New Rule on DNA Evidence (the Rules), which took effect on 15 October 2007, subject to guidelines prescribed herein.[3]

The RTC of Bauang, La Union, Branch 67, presided by Judge Ferdinand A. Fe, upon receiving the Resolution of the Court on 9 November 2007, set the case for hearing on 27 November 2007[4] to ascertain the feasibility of DNA testing with due regard to the standards set in Sections 4(a), (b), (c), and (e) of the DNA Rules. Both AAA and BBB (now 17 years old) testified during the hearing. They also manifested their willingness to undergo DNA examination to determine whether Umanito is the father of BBB.[5]

A hearing was conducted on 5 December 2007, where the public prosecutor and the counsel for Umanito manifested their concurrence to the selection of the National Bureau of Investigation (NBI) as the institution that would conduct the DNA testing. The RTC issued an Order on even date directing that biological samples be taken from AAA, BBB and Umanito on 9 January 2008 at the courtroom. The Order likewise enjoined the NBI as follows:

In order to protect the integrity of the biological samples, the [NBI] is enjoined to strictly follow the measures laid down by the Honorable Supreme Court in the instant case to wit:

> Moreover, the court *a quo* must ensure that the proper chain of custody in the handling of the samples submitted by the parties is adequately borne in the records, *i.e.*; that the samples are collected by a neutral third party; that the tested parties are appropriately identified at their sample collection appointments; that the samples are protected with tamper tape

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

[4] Through an Order dated 14 November 2007. See *id.* at 77.

[5] *Id.* at 89, 94.

> at the collection site; that all persons in possession thereof at each stage of testing thoroughly inspected the samples for tampering and explained his role in the custody of the samples and the acts he performed in relation thereto.
>
> The DNA test result shall be simultaneously disclosed to the parties in Court. The [NBI] is, therefore, enjoined not to disclose to the parties in advance the DNA test results.
>
> The [NBI] is further enjoined to observe the confidentiality of the DNA profiles and all results or other information obtained from DNA testing and is hereby ordered to preserve the evidence until such time as the accused has been acquitted or served his sentence.[6]

Present at the hearing held on 9 January 2008 were AAA, BBB, counsel for Umanito, and two representatives from the NBI. The RTC had previously received a letter from the Officer-in-Charge of the New Bilibid Prisons informing the trial court that Umanito would not be able to attend the hearing without an authority coming from the Supreme Court.[7] The parties manifested in court their willingness to the taking of the DNA sample from the accused at his detention center at the New Bilibid Prisons on 8 February 2008.[8] The prosecution then presented on the witness stand NBI forensic chemist Mary Ann Aranas, who testified on her qualifications as an expert witness in the field of DNA testing. No objections were posed to her qualifications by the defense. Aranas was accompanied by a laboratory technician of the NBI DNA laboratory who was to assist in the extraction of DNA.

DNA samples were thus extracted from AAA and BBB in the presence of Judge Fe, the prosecutor, the counsel for the defense, and DCA De la Cruz. On 8 February 2008, DNA samples were extracted from Umanito at the New Bilibid Prisons by NBI chemist Aranas, as witnessed by Judge Fe, the prosecutor,

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[6] *Id.* at 97-98.

[7] Judge Fe had sought permission from the Supreme Court to allow the accused to attend the 9 January 2008 hearing at the Bauang RTC, but it appeared that the letter did not reach the Court in time, owing to the Christmas holidays. See *id.* at 102.

[8] *Id.* at 99-100.

the defense counsel, DCA De la Cruz, and other personnel of the Court and the New Bilibid Prisons.[9]

The RTC ordered the NBI to submit the result of the DNA examination within thirty (30) days after the extraction of biological samples of Umanito, and directed its duly authorized representatives to attend a hearing on the admissibility of such DNA evidence scheduled for 10 March 2008. The events of the 28 March 2008 hearing, as well as the subsequent hearing on 29 April 2008, were recounted in the Report dated 19 May 2008 submitted by Judge Fe. We quote therefrom with approval:

> 2. That as previously scheduled in the order of the trial court on 09 January 2008, the case was set for hearing on the admissibility of the result of the DNA testing.
>
> At the hearing, Provincial Prosecutor Maria Nenita A. Opiana, presented Mary Ann T. Aranas, a Forensic Chemist of the National Bureau of Investigation who testified on the examination she conducted, outlining the procedure she adopted and the result thereof. She further declared that using the Powerplex 16 System, Deoxyribonuncleic acid analysis on the Buccal Swabs and Blood stained on FTA paper taken from [AAA], [BBB], and Rufino Umanito *y* Millares, to determine whether or not Rufino Umanito *y* Millares is the biological father of [BBB], showed that there is a Complete Match in all of the fifteen (15) loci tested between the alleles of Rufino Umanito *y* Milalres and [BBB]; That based on the above findings, there is a 99.9999% probability of paternity that Rufino Umanito *y* Millares is the biological father of [BBB] (Exhibits "A" and series and "B" and series).
>
> After the cross-examination of the witness by the defense counsel, the Public Prosecutor offered in evidence Exhibits "A" and sub-markings, referring to the Report of the Chemistry Division of the National Bureau of Investigation, Manila on the DNA analysis to determine whether or not Rufino Umanito *y* Millares is the biological father of [BBB] and Exhibit "B" and sub-markings, referring to the enlarged version of the table of Exhibit "A", to establish that on the DNA examination conducted on [AAA], [BBB] and the accused Rufino Umanito for the purpose of establishing paternity, the result is 99.9999% probable. Highly probable.

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[9] *Id.* at 130-131.

The defense did not interpose any objection, hence, the exhibits were admitted.

1. That considering that under Section 9, A.M. No. 06-11-5-SC, if the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity, the instant case was set for reception of evidence for the accused on April 29, 2008 to controvert the presumption that he is the biological father of [BBB].

During the hearing on April 29, 2008, the accused who was in court manifested through his counsel that he will not present evidence to dispute the findings of the Forensic Chemistry Division of the National Bureau of Investigation.

The DNA samples were collected by the forensic chemist of the National Bureau of Investigation whose qualifications as an expert was properly established adopting the following procedure:

a) The subject sources were asked to gargle and to fill out the reference sample form. Thereafter, the chemists informed them that buccal swabs will be taken from their mouth and five (5) droplets of blood will also be taken from the ring finger of their inactive hand;

b) Pictures of the subject sources were taken by the NBI Chemist;

c) Buccal swabs were taken from the subject sources three (3) times;

d) Subject sources were made to sign three (3) pieces of paper to serve as label of the three buccal swabs placed inside two (2) separate envelopes that bear their names;

e) Blood samples were taken from the ring finger of the left hand of the subject sources;

f) Subject sources were made to sign the FTA card of their blood samples.

The buccal swabs and the FTA cards were placed in a brown envelope for air drying for at least one hour.

g) Finger prints of the subject sources were taken for additional identification;

h) The subject sources were made to sign their finger prints.

i) Atty. Ramon J. Gomez, Deputy Court Administrator Reuben dela Cruz and Prosecutor Maria Nenita A. Oplana, in that order, were made to sign as witnesses to the reference sample forms and the finger prints of the subject sources.

j) After one hour of air drying, the Buccal Swabs and the FTA papers were placed inside a white envelope and sealed with a tape by the NBI Chemists;

k) The witnesses, Atty. Ramon J. Gomez, Deputy Court Administrator Reuben dela Cruz, Prosecutor Maria Nenita A. Opiana including the NBI Chemist, affixed their signatures on the sealed white envelope;

l) The subjects sources were made to sign and affix their finger prints on the sealed white envelope;

m) The chemists affixed their signatures on the sealed envelope and placed it in a separate brown envelope;

n) The subjects sources were made to affix their finger prints on their identification places and reference forms.

The same procedure was adopted by the Forensic Chemists of the NBI in the taking of DNA samples from the accused, Rufino Umanito at the New Bilibid Prison in the afternoon of February 8, 2008.

Mary Ann Aranas, the expert witness testified that at the NBI the sealed envelope was presented to Ms. Demelen dela Cruz, the supervisor of the Forensic Chemistry Division to witness that the envelope containing the DNA specimens was sealed as it reached the NBI. Photographs of the envelope in sealed form were taken prior to the conduct of examination.

With the procedure adopted by the Forensic Chemist of the NBI, who is an expert and whose integrity and dedication to her work is beyond reproach the manner how the biological samples were collected, how they were handled and the chain of custody thereof were properly established the court is convinced that there is no possibility of contamination of the DNA samples taken from the parties.

At the Forensic Laboratory of the National Bureau of Investigation, the envelopes containing the DNA samples were opened and the specimens were subjected to sampling, extraction, amplification and

analysis. Duplicate analysis were made. The Forensic Chemist, Mary Ann Aranas caused the examination of the blood samples and the buccal swabs were separately processed by Mrs. Demelen dela Cruz.

In order to arrive at a DNA profile, the forensic chemists adopted the following procedure: (1) Sampling which is the cutting of a portion from the media (swabs and FTA paper); (2) then subjected the cut portions for extraction to release the DNA; (3) After the DNA was released into the solution, it was further processed using the formarine chain reaction to amplify the DNA samples for analysis of using the Powerplex 16 System, which allows the analysis of 16 portions of the DNA samples. The Powerplex 16 System are reagent kits for forensic purposes; (3) After the target, DNA is multiplied, the amplified products are analyzed using the genetic analyzer. The Powerplex 16 System has 16 markers at the same time. It is highly reliable as it has already been validated for forensic use. It has also another function which is to determine the gender of the DNA being examined.

Mary Ann Aranas, the Forensic Chemist, in her testimony explained that the DNA found in all cells of a human being come in pairs except the mature red blood cells. These cells are rolled up into minute bodies called "chromosomes," which contain the DNA of a person. A human has 23 pairs of chromosomes. For each pair of chromosome, one was found to have originated from the mother, the other must have came from the father. Using the Powerplex 16 System Results, the variable portions of the DNA called "loci," which were used as the basis for DNA analysis or typing showed the following: under "loci" D3S1358, the genotype of the locus of [AAA] is 15, 16, the genotype of [BBB] is 15, 16, one of the pair of alleles must have originated and the others from the father. The color for the allele of the mother is red while the father is blue. On matching the allele which came from the mother was first determined [AAA], has alleles of 15 or 16 but in the geno type of [BBB], 15 was colored blue because that is the only allele which contain the genotype of the accused Rufino Umanito, the 16 originated from the mother, [AAA]. In this marker [BBB] has a genotype of 15, 16, 16 is from the mother and 15 is from the father.

The whole process involved the determination which of those alleles originated from the mother and the rest would entail looking on the genotype or the profile of the father to determine if they matched with those of the child.

In the analysis of the 16 loci by the Forensic Chemists, amel on the 13th row was not included because this is the marker that determines the gender of the source of the loci. The pair XX represents a female and XY for a male. Rufino Umanito has XY amel and [BBB] and [AAA] have XX amel. For matching paternity purposes only 15 loci were examined. Of the 15 loci, there was a complete match between the alleles of the loci of [BBB] and Rufino (Exhibits "A" and "B").

To ensure reliable results, the Standard Operating Procedure of the Forensic Chemistry Division of the NBI in paternity cases is to use buccal swabs taken from the parties and blood as a back up source.

The said Standard Operating Procedure was adopted in the instant case.

As earlier mentioned, DNA samples consisted of buccal swabs and blood samples taken from the parties by the forensic chemists who adopted reliable techniques and procedure in collecting and handling them to avoid contamination. The method that was used to secure the samples were safe and reliable. The samples were taken and handled by an expert, whose qualifications, integrity and dedication to her work is unquestionable, hence, the possibility of substitution or manipulation is very remote.

The procedure adopted by the DNA section, Forensic Chemistry Division of the National Bureau of Investigation in analyzing the samples was in accordance with the standards used in modern technology. The comparative analysis of DNA prints of the accused Rufino Umanito and his alleged child is a simple process called parentage analysis which was made easier with the use of a DNA machine called Genetic Analyzer. To ensure a reliable result, the NBI secured two (2) DNA types of samples from the parties, the buccal swabs as primary source and blood as secondary source. Both sources were separately processed and examined and thereafter a comparative analysis was conducted which yielded the same result.

The National Bureau of Investigation DNA Section, Forensic Division is an accredited DNA testing laboratory in the country which maintains a multimillion DNA analysis equipment for its scientific criminal investigation unit. It is manned by qualified laboratory chemists and technicians who are experts in the field, like Mary Ann Aranas, the expert witness in the instant case, who is a licensed chemists, has undergone training on the aspects of Forensic Chemistry

fro (sic) two (2) years before she was hired as forensic chemists of the NBI and has been continuously attending training seminars, and workshops which are field related and who has handled more than 200 cases involving DNA extraction or collection or profiling.

The accused did not object to the admission of Exhibits "A" and "B" inclusive of their sub-markings. He did not also present evidence to controvert the results of the DNA analysis.

Section 6. A.M. No. 06-11-5-SC provides that: "If the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity.

DNA analysis conducted by the National Bureau of Investigation Forensic Division on the buccal swabs and blood stained on FTA paper taken from [AAA], [BBB] and Rufino Umanito *y* MillAres for DNA analysis to determine whether or not Rufino Umanito *y* Millares is the biological father of [BBB] gave the following result:

"FINDINGS: Deoxyribonuncleic acid analysis using the Powerplex 16 System conducted on the above-mentioned, specimens gave the following profiles;

x x x	x x x	x x x
x x x	x x x	x x x

There is a COMPLETE MATCH in all the fifteen (15) loci tested between the alleles of Rufino Umanito *y* Millares and [BBB].

REMARKS: Based on the above findings, there is a 99.9999% Probability of Paternity that Rufino Umanito *y* Millares is the biological Father of [BBB]"

Disputable presumptions are satisfactory if uncontradicted but may be contradicted and overcome by other evidence (Rule 131, Section 3, Rules of Court).

The disputable presumption that was established as a result of the DNA testing was not contradicted and overcome by other evidence considering that the accused did not object to the admission of the results of the DNA testing (Exhibits "A" and "B" inclusive of sub-markings) nor presented evidence to rebut the same.

WHEREFORE, premises considered, the trial court rules that based on the result of the DNA analysis conducted by the National Bureau of Investigation, Forensic Division, RUFINO UMANITO *y* MILLARES is the biological father of [BBB].[10]

Umanito's defense of alibi, together with his specific assertion that while he had courted AAA they were not sweethearts, lead to a general theory on his part that he did not engage in sexual relations with the complainant. The DNA testing has evinced a contrary conclusion, and that as testified to by AAA, Umanito had fathered the child she gave birth to on 5 April 1990, nine months after the day she said she was raped by Umanito.

Still, Umanito filed a Motion to Withdraw Appeal dated 16 February 2009. By filing such motion, Umanito is deemed to have acceded to the rulings of the RTC and the Court of Appeals finding him guilty of the crime of rape, and sentencing him to suffer the penalty of *reclusion perpetua* and the indemnification of the private complainant in the sum of ₱50,000.00. Given that the results of the Court-ordered DNA testing conforms with the conclusions of the lower courts, and that no cause is presented for us to deviate from the penalties imposed below, the Court sees no reason to deny Umanito's Motion to Withdraw Appeal. Consequently, the assailed Decision of the Court of Appeals dated 15 February 2006 would otherwise be deemed final if the appeal is not withdrawn.

WHEREFORE, the Motion to Withdraw Appeal dated 16 February 2009 is *GRANTED*. The instant case is now *CLOSED* and *TERMINATED*.

SO ORDERED.

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

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[10] *Id.* at 131-136.

SECOND DIVISION

[G.R. No. 172671. April 16, 2009]

MARISSA R. UNCHUAN, *petitioner, vs.* **ANTONIO J.P. LOZADA, ANITA LOZADA and THE REGISTER OF DEEDS OF CEBU CITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; DECISIONS RENDERED MUST EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND LAW ON WHICH IT IS BASED; COMPLIANCE IN CASE AT BAR.— Faithful adherence to Section 14, Article VIII of the 1987 Constitution is indisputably a paramount component of due process and fair play. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. In the assailed Decision, the Court of Appeals reiterates the rule that a notarized and authenticated deed of sale enjoys the presumption of regularity, and is admissible without further proof of due execution. On the basis thereof, it declared Antonio a buyer in good faith and for value, despite petitioner's contention that the sale violates public policy. While it is a part of the right of appellant to urge that the decision should directly meet the issues presented for resolution, mere failure by the appellate court to specify in its decision all contentious issues raised by the appellant and the reasons for refusing to believe appellant's contentions is not sufficient to hold the appellate court's decision contrary to the requirements of the law and the Constitution. So long as the decision of the Court of Appeals contains the necessary findings of facts to warrant its conclusions, we cannot declare said court in error if it withheld "any specific findings of fact with respect to the evidence for the defense." We will abide by the legal presumption that official duty has been regularly performed, and all matters within an issue in a case were laid down before the court and were passed upon by it.

2. ID.; R.A. NO. 7042; CORPORATION CONSIDERED AS PHILIPPINE NATIONAL MAY ACQUIRE DISPOSABLE

LANDS IN THE PHILIPPINES.— Under Republic Act No. 7042, particularly Section 3, a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines, is considered a Philippine National. As such, the corporation may acquire disposable lands in the Philippines.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY APPELLATE COURT, RESPECTED. — Petitioner calls on the Court to ascertain Peregrina's physical ability to execute the Deed of Sale on March 11, 1994. This essentially necessitates a calibration of facts, which is not the function of this Court. Nevertheless, we have sifted through the Decisions of the RTC and the Court of Appeals but found no reason to overturn their factual findings. Both the trial court and appellate court noted the lack of substantial evidence to establish total impossibility for Peregrina to execute the Deed of Sale.

4. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; PERSONS WHO MAY GIVE OR RECEIVE A DONATION; VALIDITY OF DONATION OF AN IMMOVABLE PROPERTY. — As to the validity of the donation, the provision of Article 749 of the Civil Code is in point: ART. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy. The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor. If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments. When the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable.

5. ID.; ID.; ID.; ID.; ID.; NOTARIZATION OF THE DEED OF DONATION; FAULTY IN CASE AT BAR BUT INADMISSIBLE IN EVIDENCE; REASON. — Here, the Deed of Donation does not appear to be duly notarized. In page three of the deed, the stamped name of Cresencio Tomakin appears above the words Notary Public until December 31, 1983 but below it were the typewritten words Notary Public until December 31, 1987.

A closer examination of the document further reveals that the number *7* in *1987* and *Series of 1987* were merely superimposed. This was confirmed by petitioner's nephew Richard Unchuan who testified that he saw petitioner's husband write 7 over 1983 to make it appear that the deed was notarized in 1987. Moreover, a Certification from Clerk of Court Jeoffrey S. Joaquino of the Notarial Records Division disclosed that the Deed of Donation purportedly identified in Book No. 4, Document No. 48, and Page No. 35 Series of 1987 was not reported and filed with said office. Pertinent to this, the Rules require a party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, to account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall, as in this case, not be admissible in evidence.

6. REMEDIAL LAW; EVIDENCE; HEARSAY EVIDENCE; EXCLUSION THEREOF; ADMISSIONS OF A PARTY NOT COVERED THEREIN; EFFECT OF VIDEOTAPED STATEMENT IN CASE AT BAR. — Petitioner faults the appellate court for not excluding the videotaped statement of Anita as hearsay evidence. Evidence is *hearsay* when its probative force depends, in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to be produced. There are three reasons for excluding hearsay evidence: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath. It is a hornbook doctrine that an affidavit is merely hearsay evidence where its maker did not take the witness stand. Verily, the sworn statement of Anita was of this kind because she did not appear in court to affirm her averments therein. Yet, a more circumspect examination of our rules of exclusion will show that they do not cover admissions of a party; the videotaped statement of Anita appears to belong to this class. Section 26 of Rule 130 provides that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him. It has long been settled that these admissions are admissible even if they are hearsay. Indeed, there is a vital distinction between

admissions against interest and declaration against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. Declaration against interest are those made by a person who is neither a party nor in privity with a party to the suit, are secondary evidence and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness. Thus, a man's acts, conduct, and declaration, *wherever made*, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not. However, as a further qualification, object evidence, such as the videotape in this case, must be authenticated by a special testimony showing that it was a faithful reproduction. Lacking this, we are constrained to exclude as evidence the videotaped statement of Anita. Even so, this does not detract from our conclusion concerning petitioner's failure to prove, by preponderant evidence, any right to the lands subject of this case.

7. CIVIL LAW; DAMAGES; MORAL DAMAGES; PROPRIETY THEREOF. — Moral damages cannot be awarded in the absence of a wrongful act or omission or fraud or bad faith. When the action is filed in good faith there should be no penalty on the right to litigate. One may have erred, but error alone is not a ground for moral damages. The award of moral damages must be solidly anchored on a definite showing that respondents actually experienced emotional and mental sufferings. Mere allegations do not suffice; they must be substantiated by clear and convincing proof. As exemplary damages can be awarded only after the claimant has shown entitlement to moral damages, neither can it be granted in this case.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
Jo and Pintor Law Offices for respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review are the Decision[1] dated February 23, 2006 and Resolution[2] dated April 12, 2006 of the Court of Appeals in CA-G.R. CV. No. 73829. The appellate court had affirmed with modification the Order[3] of the Regional Trial Court (RTC) of Cebu City, Branch 10 reinstating its Decision[4] dated June 9, 1997.

The facts of the case are as follows:

Sisters Anita Lozada Slaughter and Peregrina Lozada Saribay were the registered co-owners of Lot Nos. 898-A-3 and 898-A-4 covered by Transfer Certificates of Title (TCT) Nos. 53258[5] and 53257[6] in Cebu City.

The sisters, who were based in the United States, sold the lots to their nephew Antonio J.P. Lozada (Antonio) under a Deed of Sale[7] dated March 11, 1994. Armed with a Special Power of Attorney[8] from Anita, Peregrina went to the house of their brother, Dr. Antonio Lozada (Dr. Lozada), located at 4356 Faculty Avenue, Long Beach California.[9] Dr. Lozada agreed to advance the purchase price of US$367,000 or ₱10,000,000 for Antonio, his nephew. The Deed of Sale was later notarized

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[1] *Rollo*, pp. 35-51. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr. concurring.

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

[3] *Id.* at 173-176. Dated July 6, 2000. Penned by Judge Soliver C. Peras.

[4] *Id.* at 95-155. Penned by Judge Leonardo B. Cañares.

[5] Records, Vol. I, pp. 355-358.

[6] *Id.* at 351-354.

[7] *Id.* at 347-350.

[8] Records, Vol. II, pp. 187-188.

[9] TSN, August 19, 1996, p. 8.

and authenticated at the Philippine Consul's Office. Dr. Lozada then forwarded the deed, special power of attorney, and owners' copies of the titles to Antonio in the Philippines. Upon receipt of said documents, the latter recorded the sale with the Register of Deeds of Cebu. Accordingly, TCT Nos. 128322[10] and 128323[11] were issued in the name of Antonio Lozada.

Pending registration of the deed, petitioner Marissa R. Unchuan caused the annotation of an adverse claim on the lots. Marissa claimed that Anita donated an undivided share in the lots to her under an unregistered Deed of Donation[12] dated February 4, 1987.

Antonio and Anita brought a case against Marissa for quieting of title with application for preliminary injunction and restraining order. Marissa for her part, filed an action to declare the Deed of Sale void and to cancel TCT Nos. 128322 and 128323. On motion, the cases were consolidated and tried jointly.

At the trial, respondents presented a notarized and duly authenticated sworn statement, and a videotape where Anita denied having donated land in favor of Marissa. Dr. Lozada testified that he agreed to advance payment for Antonio in preparation for their plan to form a corporation. The lots are to be eventually infused in the capitalization of Damasa Corporation, where he and Antonio are to have 40% and 60% stake, respectively. Meanwhile, Lourdes G. Vicencio, a witness for respondents confirmed that she had been renting the ground floor of Anita's house since 1983, and tendering rentals to Antonio.

For her part, Marissa testified that she accompanied Anita to the office of Atty. Cresencio Tomakin for the signing of the Deed of Donation. She allegedly kept it in a safety deposit box but continued to funnel monthly rentals to Peregrina's account.

A witness for petitioner, one Dr. Cecilia Fuentes, testified on Peregrina's medical records. According to her interpretation

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[10] Records, Vol. I, p. 278.

[11] *Id.* at 279.

[12] *Id.* at 344-346.

of said records, it was physically impossible for Peregrina to have signed the Deed of Sale on March 11, 1994, when she was reported to be suffering from edema. Peregrina died on April 4, 1994.

In a Decision dated June 9, 1997, RTC Judge Leonardo B. Cañares disposed of the consolidated cases as follows:

> WHEREFORE, judgment is hereby rendered in Civil Case No. CEB-16145, to wit:
>
> 1. Plaintiff Antonio J.P. Lozada is declared the absolute owner of the properties in question;
>
> 2. The Deed of Donation (Exh. "9") is declared null and void, and Defendant Marissa R. Unchuan is directed to surrender the original thereof to the Court for cancellation;
>
> 3. The Register of Deeds of Cebu City is ordered to cancel the annotations of the Affidavit of Adverse Claim of defendant Marissa R. Unchuan on TCT Nos. 53257 and 53258 and on such all other certificates of title issued in lieu of the aforementioned certificates of title;
>
> 4. Defendant Marissa R. Unchuan is ordered to pay Antonio J.P. Lozada and Anita Lozada Slaughter the sum of ₱100,000.00 as moral damages; exemplary damages of ₱50,000.00; ₱50,000.00 for litigation expenses and attorney's fees of ₱50,000.00; and
>
> 5. The counterclaims of defendant Marissa R. Unchuan [are] DISMISSED.
>
> In Civil Case No. CEB-16159, the complaint is hereby DISMISSED.
>
> In both cases, Marissa R. Unchuan is ordered to pay the costs of suit.
>
> SO ORDERED.[13]

On motion for reconsideration by petitioner, the RTC of Cebu City, Branch 10, with Hon. Jesus S. dela Peña as Acting Judge, issued an Order[14] dated April 5, 1999. Said order declared the Deed of Sale void, ordered the cancellation of the new TCTs

[13] *Rollo*, pp. 154-155.

[14] *Id.* at 156-172.

in Antonio's name, and directed Antonio to pay Marissa ₱200,000 as moral damages, ₱100,000 as exemplary damages, ₱100,000 attorney's fees and ₱50,000 for expenses of litigation. The trial court also declared the Deed of Donation in favor of Marissa valid. The RTC gave credence to the medical records of Peregrina.

Respondents moved for reconsideration. On July 6, 2000, now with Hon. Soliver C. Peras, as Presiding Judge, the RTC of Cebu City, Branch 10, reinstated the Decision dated June 9, 1997, but with the modification that the award of damages, litigation expenses and attorney's fees were disallowed.

Petitioner appealed to the Court of Appeals. On February 23, 2006 the appellate court affirmed with modification the July 6, 2000 Order of the RTC. It, however, restored the award of ₱50,000 attorney's fees and ₱50,000 litigation expenses to respondents.

Thus, the instant petition which raises the following issues:

I.

WHETHER THE COURT OF APPEALS ERRED AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS WHEN IT FAILED TO RESOLVE PETITIONER'S THIRD ASSIGNED ERROR.

II.

WHETHER THE HONORABLE SUPREME COURT MAY AND SHOULD REVIEW THE CONFLICTING FACTUAL FINDINGS OF THE HONORABLE REGIONAL TRIAL COURT IN ITS OWN DECISION AND RESOLUTIONS ON THE MOTIONS FOR RECONSIDERATION, AND THAT OF THE HONORABLE COURT OF APPEALS.

III.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CASE IS BARRED BY LACHES.

IV.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF DONATION EXECUTED IN FAVOR OF PETITIONER IS VOID.

V.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT ANITA LOZADA'S VIDEOTAPED STATEMENT IS HEARSAY.[15]

Simply stated, the issues in this appeal are: (1) Whether the Court of Appeals erred in upholding the Decision of the RTC which declared Antonio J.P. Lozada the absolute owner of the questioned properties; (2) Whether the Court of Appeals violated petitioner's right to due process; and (3) Whether petitioner's case is barred by laches.

Petitioner contends that the appellate court violated her right to due process when it did not rule on the validity of the sale between the sisters Lozada and their nephew, Antonio. Marissa finds it anomalous that Dr. Lozada, an American citizen, had paid the lots for Antonio. Thus, she accuses the latter of being a mere dummy of the former. Petitioner begs the Court to review the conflicting factual findings of the trial and appellate courts on Peregrina's medical condition on March 11, 1994 and Dr. Lozada's financial capacity to advance payment for Antonio. Likewise, petitioner assails the ruling of the Court of Appeals which nullified the donation in her favor and declared her case barred by laches. Petitioner finally challenges the admissibility of the videotaped statement of Anita who was not presented as a witness.

On their part, respondents pray for the dismissal of the petition for petitioner's failure to furnish the Register of Deeds of Cebu City with a copy thereof in violation of Sections 3[16] and 4,[17]

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[15] *Id.* at 235-236.

[16] SEC. 3. *Docket and other lawful fees; proof of service of petition.*— Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition. *Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.* (Emphasis supplied.)

[17] SEC. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated

Rule 45 of the Rules. In addition, they aver that Peregrina's unauthenticated medical records were merely falsified to make it appear that she was confined in the hospital on the day of the sale. Further, respondents question the credibility of Dr. Fuentes who was neither presented in court as an expert witness[18] nor professionally involved in Peregrina's medical care.

Further, respondents impugn the validity of the Deed of Donation in favor of Marissa. They assert that the Court of Appeals did not violate petitioner's right to due process inasmuch as it resolved collectively all the factual and legal issues on the validity of the sale.

Faithful adherence to Section 14,[19] Article VIII of the 1987 Constitution is indisputably a paramount component of due process and fair play. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court.[20]

In the assailed Decision, the Court of Appeals reiterates the rule that a notarized and authenticated deed of sale enjoys the

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as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[18] TSN, April 25, 1996, p. 6.

[19] SEC. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

[20] *Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 219.

presumption of regularity, and is admissible without further proof of due execution. On the basis thereof, it declared Antonio a buyer in good faith and for value, despite petitioner's contention that the sale violates public policy. While it is a part of the right of appellant to urge that the decision should directly meet the issues presented for resolution,[21] mere failure by the appellate court to specify in its decision all contentious issues raised by the appellant and the reasons for refusing to believe appellant's contentions is not sufficient to hold the appellate court's decision contrary to the requirements of the law[22] and the Constitution.[23] So long as the decision of the Court of Appeals contains the necessary findings of facts to warrant its conclusions, we cannot declare said court in error if it withheld "any specific findings of fact with respect to the evidence for the defense."[24] We will abide by the legal presumption that official duty has been regularly performed,[25] and all matters within an issue in a case were laid down before the court and were passed upon by it.[26]

In this case, we find nothing to show that the sale between the sisters Lozada and their nephew Antonio violated the public policy prohibiting aliens from owning lands in the Philippines. Even as Dr. Lozada advanced the money for the payment of Antonio's share, at no point were the lots registered in Dr. Lozada's name. Nor was it contemplated that the lots be under his control for they are actually to be included as capital of Damasa Corporation. According to their agreement, Antonio

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[21] *Id.* at 218.

[22] RULES OF COURT, Rule 36, Sec. 1

SECTION 1. *Rendition of judgments and final orders.*—A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.

[23] J. G. BERNAS, *CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT NOTES AND CASES PART I* 632 (3rd ed., 2005).

[24] *Id.*

[25] RULES OF COURT, Rule 131, Sec.3, par. (m).

[26] RULES OF COURT, Rule 131, Sec.3, par. (o).

and Dr. Lozada are to hold 60% and 40% of the shares in said corporation, respectively. Under Republic Act No. 7042,[27] particularly Section 3,[28] a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines, is considered a Philippine National. As such, the corporation may acquire disposable lands in the Philippines. Neither did petitioner present proof to belie Antonio's capacity to pay for the lots subjects of this case.

Petitioner, likewise, calls on the Court to ascertain Peregrina's physical ability to execute the Deed of Sale on March 11, 1994. This essentially necessitates a calibration of facts, which is not the function of this Court.[29] Nevertheless, we have sifted through the Decisions of the RTC and the Court of Appeals but found no reason to overturn their factual findings. Both the trial court and appellate court noted the lack of substantial evidence to establish total impossibility for Peregrina to execute the Deed of Sale.

In support of its contentions, petitioner submits a copy of Peregrina's medical records to show that she was confined at the Martin Luther Hospital from February 27, 1994 until she died on April 4, 1994. However, a Certification[30] from Randy E. Rice, Manager for the Health Information Management of the hospital undermines the authenticity of said medical records.

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[27] AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES, approved on June 13, 1991.

[28] SEC. 3. *Definitions*.—As used in this Act:

(a) the term "Philippine National" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines….

[29] *Twin Towers Condominium Corporation v. Court of Appeals*, G.R. No. 123552, February 27, 2003, 398 SCRA 203, 222.

[30] Records, Vol. II, pp. 375-376.

In the certification, Rice denied having certified or having mailed copies of Peregrina's medical records to the Philippines. As a rule, a document to be admissible in evidence, should be previously authenticated, that is, its due execution or genuineness should be first shown.[31] Accordingly, the unauthenticated medical records were excluded from the evidence. Even assuming that Peregrina was confined in the cited hospital, the Deed of Sale was executed on March 11, 1994, a month before Peregrina reportedly succumbed to Hepato Renal Failure caused by Septicemia due to Myflodysplastic Syndrome.[32] Nothing in the records appears to show that Peregrina was so incapacitated as to prevent her from executing the Deed of Sale. Quite the contrary, the records reveal that close to the date of the sale, specifically on March 9, 1994, Peregrina was even able to issue checks[33] to pay for her attorney's professional fees and her own hospital bills. At no point in the course of the trial did petitioner dispute this revelation.

Now, as to the validity of the donation, the provision of Article 749 of the Civil Code is in point:

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

When the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and

[31] S. A.F. APOSTOL, *ESSENTIALS OF EVIDENCE* 438 (1991).

[32] Records, Vol. II, p. 320.

[33] *Id.* at 238-241.

[34] CIVIL CODE, Art. 1356.

indispensable.[34] Here, the Deed of Donation does not appear to be duly notarized. In page three of the deed, the stamped name of Cresencio Tomakin appears above the words Notary Public until December 31, 1983 but below it were the typewritten words Notary Public until December 31, 1987. A closer examination of the document further reveals that the number 7 in 1987 and Series of 1987 were merely superimposed.[35] This was confirmed by petitioner's nephew Richard Unchuan who testified that he saw petitioner's husband write 7 over 1983 to make it appear that the deed was notarized in 1987. Moreover, a Certification[36] from Clerk of Court Jeoffrey S. Joaquino of the Notarial Records Division disclosed that the Deed of Donation purportedly identified in Book No. 4, Document No. 48, and Page No. 35 Series of 1987 was not reported and filed with said office. Pertinent to this, the Rules require a party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, to account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall, as in this case, not be admissible in evidence.[37]

Remarkably, the lands described in the Deed of Donation are covered by TCT Nos. 73645[38] and 73646,[39] both of which had been previously cancelled by an Order[40] dated April 8, 1981 in LRC Record No. 5988. We find it equally puzzling that on August 10, 1987, or six months after Anita supposedly donated her undivided share in the lots to petitioner, the Unchuan Development Corporation, which was represented by petitioner's

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[35] Records, Vol. II, p. 357.

[36] *Id.* at 248.

[37] RULES OF COURT, Rule 132, Sec. 31.

[38] Records, Vol. I, p. 295.

[39] *Id.* at 296.

[40] *Id.* at 408-418.

husband, filed suit to compel the Lozada sisters to surrender their titles by virtue of a sale. The sum of all the circumstances in this case calls for no other conclusion than that the Deed of Donation allegedly in favor of petitioner is void. Having said that, we deem it unnecessary to rule on the issue of laches as the execution of the deed created no right from which to reckon delay in making any claim of rights under the instrument.

Finally, we note that petitioner faults the appellate court for not excluding the videotaped statement of Anita as hearsay evidence. Evidence is *hearsay* when its probative force depends, in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to be produced. There are three reasons for excluding hearsay evidence: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath.[41] It is a hornbook doctrine that an affidavit is merely hearsay evidence where its maker did not take the witness stand.[42] Verily, the sworn statement of Anita was of this kind because she did not appear in court to affirm her averments therein. Yet, a more circumspect examination of our rules of exclusion will show that they do not cover admissions of a party;[43] the videotaped statement of Anita appears to belong to this class. Section 26 of Rule 130 provides that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him. It has long been settled that these admissions are admissible even if they are hearsay.[44] Indeed, there is a vital distinction between admissions against interest and declaration against interest. Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. Declaration against interest are those made by a person who

[41] *Estrada v. Desierto*, G.R. Nos. 146710-15 & 146738, April 3, 2001, 356 SCRA 108, 128.

[42] *People v. Quidato, Jr.*, G.R. No. 117401, October 1, 1998, 297 SCRA 1, 8.

[43] *Estrada v. Desierto*, *supra* at 131.

[44] *Id.*

is neither a party nor in privity with a party to the suit, are secondary evidence and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness.[45] Thus, a man's acts, conduct, and declaration, *wherever made*, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not.[46] However, as a further qualification, object evidence, such as the videotape in this case, must be authenticated by a special testimony showing that it was a faithful reproduction.[47] Lacking this, we are constrained to exclude as evidence the videotaped statement of Anita. Even so, this does not detract from our conclusion concerning petitioner's failure to prove, by preponderant evidence, any right to the lands subject of this case.

Anent the award of moral damages in favor of respondents, we find no factual and legal basis therefor. Moral damages cannot be awarded in the absence of a wrongful act or omission or fraud or bad faith. When the action is filed in good faith there should be no penalty on the right to litigate. One may have erred, but error alone is not a ground for moral damages.[48] The award of moral damages must be solidly anchored on a definite showing that respondents actually experienced emotional and mental sufferings. Mere allegations do not suffice; they must be substantiated by clear and convincing proof.[49] As exemplary damages can be awarded only after the claimant has shown entitlement to moral damages,[50] neither can it be granted in this case.

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[45] II F. D. REGALADO, *REMEDIAL LAW COMPENDIUM* 491 (6th Revised ed. 1989).

[46] *United States v. Ching Po*, 23 Phil. 578, 583 (1912).

[47] S. A.F. APOSTOL, *ESSENTIALS OF EVIDENCE* 63 (1991).

[48] *Filinvest Credit Corporation v. Mendez*, No. 66419, July 31, 1987, 152 SCRA 593, 601.

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

[50] *Id.* at 257.

WHEREFORE, the instant petition is *DENIED*. The Decision dated February 23, 2006, and Resolution dated April 12, 2006 of the Court of Appeals in CA-G.R. CV. No. 73829 are *AFFIRMED with MODIFICATION*. The awards of moral damages and exemplary damages in favor of respondents are deleted. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172854. April 16, 2009]

ADAM B. GARCIA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), LEGAZPI OIL COMPANY, INC., ROMEO F. MERCADO and GUS ZULUAGA,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; GROUNDS; LOSS OF TRUST AND CONFIDENCE; ELUCIDATED. — Loss of trust and confidence, as a valid ground for dismissal, must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer. A condemnation of dishonesty and disloyalty cannot arise from suspicion spawned by speculative inferences. Loss of confidence must not be

indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.

APPEARANCES OF COUNSEL

Bernabe Law Office for petitioner.
The Solicitor General for public respondent.
Delos Reyes Bonifacio Delos Reyes for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review are the Decision[1] dated February 27, 2006 and the Resolution[2] dated May 16, 2006, of the Court of Appeals in CA-G.R. SP No. 51307. The appellate court had affirmed the Decision[3] dated April 29, 1998, of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 0101471-96, which had earlier reversed the Decision[4] dated January 24, 1996, of the Labor Arbiter in RAB V Case No. 02-00018-95.

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[1] *Rollo*, pp. 35-54. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa concurring.

[2] *Id.* at 59A. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Aurora Santiago-Lagman concurring.

[3] Records, Vol. 3, pp. 596-623.

[4] Records, Vol. 2, pp. 418-440.

The pertinent facts[5] are as follows:

Petitioner Adam B. Garcia was employed as Production Maintenance Foreman by respondent Legazpi Oil Company, Inc. (Legazpi Oil) from April 15, 1991 to February 10, 1995.

In December 1992, respondent Romeo F. Mercado, the Plant Operations Manager, instructed Garcia to look for a road grader to clear and level the plant road network in preparation for the arrival of certain plant visitors. Garcia failed to secure one because no road grader was available then.

A week later, Mercado reminded Garcia about the road grader. Garcia went to the Area Equipment Services of the Department of Public Works and Highways (DPWH) in Albay. He was able to talk to Engineer Antonio S. Abo, the Fleet-in-Charge, who advised him to come back as there was no available unit yet.

Mercado further pressed Garcia to follow up the request with the DPWH. This time, Regional Equipment Engineer Bienvenido Bogayong allowed the use of the newly-rehabilitated road grader by way of operational test provided that Legazpi Oil would shoulder fuel consumption and repairs as may be necessary, including materials, equipment and labor cost, as well as the wages of the operator and the helper.

Oscar A. de la Torre, a DPWH employee, hired Jesus T. Torregoza, a retired DPWH employee, to drive the road grader to Legazpi Oil. Upon their arrival, Garcia and Mercado met them. Engr. Abo then informed Mercado of the aforesaid condition to which Mercado agreed. Thereafter, Mercado orally instructed Garcia to extend the necessary assistance to the DPWH personnel and the needs of the road grader.

In the course of its operation, the road grader broke down several times. Garcia instructed Roly B. Balanta, Legazpi Oil's Production Maintenance Crew, to make the repairs using spare parts brought by the DPWH personnel except for one bolt piece taken from Legazpi Oil's stockroom.

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[5] See *Garcia v. National Labor Relations Commission*, G.R. No. 147427, February 7, 2005, 450 SCRA 535.

Since Engr. Abo and de la Torre were not authorized to rent out government property for private use, they agreed with Mercado to make it appear to Legazpi Oil that it was Torregoza who rented out the road grader. Thereafter, billings for the use of the road grader were prepared and approved by Mercado. Legazpi Oil then issued a check amounting to ₱37,373.32 in the name of Torregoza. Torregoza endorsed the check to Garcia, who, encashed it. Garcia gave the full amount to Engr. Abo who, in turn, gave him ₱1,300.00 to pay the accumulated food consumption of the DPWH personnel at the canteen.

Later, Legazpi Oil used the road grader again. It issued another check amounting to ₱5,541.45 in the name of Torregoza. Again, Torregoza endorsed the check to Garcia, who, encashed it. De la Torre gave Torregoza ₱2,000.00. Engr. Abo gave the balance of both checks to Engr. Bogayong as payment for the steering booster used in repairing the road grader.

On November 25, 1994, Torregoza filed a complaint-affidavit against Garcia with Legazpi Oil. He claimed that Garcia made him endorse the ₱37,373.32 check and gave him only ₱2,000.00. He further averred that when he tried to claim the ₱5,541.45 check, Legazpi Oil's cashier refused to give it to him unless Garcia was around, upon the latter's instruction.

In a Memorandum[6] dated December 7, 1994, Mercado required Garcia to explain within 24 hours why he should not be penalized for the following alleged infractions:

a.) CATEGORY NO. 4, Item No. 8

Offering or accepting directly/indirectly anything of value in exchange for a job, business transactions or any favor in connection with the work, for personal gain or profit.

b.) CATEGORY NO. 4, Item No. 19, Letter (e) Breach of Trust and Confidence

Any act of dishonesty with the intention to defraud company.

Garcia admitted encashing the checks. However, he claimed that he did so only upon Torregoza's request, and that he gave

[6] Records, Vol. 1, p. 16.

the proceeds thereof to Engr. Abo, less the amount of ₱1,300.00 which he paid to the canteen. He insisted that since it was against the policy of the Bureau of Equipment of the DPWH to engage in private business, Engr. Abo designated Torregoza, a retired DPWH employee, to sign the necessary papers in his behalf and to collect the amounts due for the use of the road grader and the wages of the workers. He claimed that Mercado had agreed to the arrangement. Garcia insisted that he did not retain a single centavo from the proceeds of the checks. He then requested Mercado to invite all persons involved for an investigation.[7]

On December 28, 1994, Mercado placed Garcia under preventive suspension for 30 working days without pay effective December 29, 1994. In the meantime, Mercado submitted to the Personnel and Administrative Manager his findings and recommendation on Garcia's alleged infractions.

In a Letter[8] dated February 3, 1995, Garcia was required to explain within 48 hours his alleged unauthorized use of company personnel, equipment, and materials in the repair of the road grader. He was also placed on forced leave with pay for five working days beginning February 4, 1995. The letter reads in part:

> In the course of our investigation on the case of the Road Grader that was leased to us, it was disclosed that when the Grader broke down you caused the same to be repaired using company personnel, equipment and materials without prior approval by the management. This is a violation of our rules and your act, favored our contractor without the corresponding payment to the company for manpower, equipment, and materials used for the said repair. Attached is a copy of the affidavit of our employee pertaining to that incident.
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> x x x x x x x x x

Garcia explained that he did not seek Mercado's permission before making the repairs because of the latter's instruction to assist the DPWH personnel in the course of their work. He

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

[8] *Id.* at 22.

maintained that Mercado knew about the repairs because he was aware of the condition of the road grader and even saw Balanta doing the repairs. He then reiterated his request to invite the DPWH personnel to clear up everything.[9]

In a Memorandum[10] dated February 10, 1995, Garcia was dismissed due to dishonesty and loss of trust and confidence.

Garcia filed a complaint for illegal suspension, illegal dismissal, and other labor standard violations against Legazpi Oil, Mercado, and Gus Zuluaga.

On January 24, 1996, the Labor Arbiter ruled in favor of Garcia. The Labor Arbiter gave credence and full probative weight to the affidavits and testimonies of Garcia,[11] Engr. Abo,[12] and de la Torre.[13] He declared that Garcia was dismissed without just cause and due process. The Labor Arbiter also pronounced that in encashing the two checks, Garcia merely accommodated Torregoza and did not profit from him. Moreover, Torregoza admitted that he received P2,000.00 from de la Torre and not from Garcia. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding respondent Legazpi Oil Co./Romeo Mercado, manager, guilty of illegal dismissal and thereby directing said respondent to reinstate complainant to his former position without loss of seniority rights plus all other benefits, privileges and emoluments he may have been entitled to at the time of his termination from his employment and to pay him full backwages subject to deduction of his earnings elsewhere, reckoned with from the time his compensation was withheld on December 29, 1994 up to the time of actual reinstatement which to date amounted [to] ₱127,710.88 together with the certificate to the effect that complainant was actually reinstated.

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[9] *Id.* at 24.

[10] *Rollo*, p. 14.

[11] Records, Vol. 1, pp. 33-35; 92-108.

[12] *Id.* at 47-48; 119-127.

[13] *Id.* at 43-44; 133-148.

Respondent is further ordered to pay complainant moral and exemplary damages in the total amount of ₱10,000.00 plus 10% attorney's fees of the [total] award.

That the aggregate amount of ₱151,481.97 together with the certificate to the effect that complainant was actually reinstated be coursed thru this Branch within ten (10) days from receipt hereof for proper disposition.

Other claims and charges are hereby dismissed for lack of merit.

SO ORDERED.[14]

On appeal, the NLRC set aside the decision of the Labor Arbiter and dismissed the complaint for lack of merit. It did not give credence to Garcia's claims, as well as the affidavits and testimonies of Engr. Abo and de la Torre. The NLRC ruled that Garcia's claim that he gave the proceeds of the checks to Engr. Abo was belied by Engr. Abo who averred that it was Engr. Bogayong who received the said proceeds. It added that Engr. Abo's affidavit and testimony were not worthy of belief because while he alleged in his affidavit that Garcia talked to him about the road grader in December 1992, he claimed during cross-examination that Garcia conferred with him in January 1992.

However, while the NLRC found that Garcia was dismissed for just cause, it ruled that:

[W]e cannot subscribe to the manner the dismissal was effected. While the Complainant was given the chance to submit his explanation regarding his alleged violation of company rules, we are not ready to concede to the respondent's position that his right of due process was accorded to him to its fullest. Hence, in this regard, by virtue of this violation, complainant should be awarded an indemnity pay equivalent to his one (1) month salary in accordance with existing jurisprudence. [Citations omitted.][15]

Garcia filed a petition for certiorari before this Court. Pursuant to A.M. No. 99-2-01-SC[16] dated February 9, 1999, we remanded

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[14] Records, Vol. 2, pp. 439-440.

[15] Records, Vol. 3, pp. 621-622.

[16] IN RE: DISMISSAL OF SPECIAL CIVIL ACTIONS IN NLRC CASES.

the case to the Court of Appeals. The appellate court dismissed the petition on the ground that it only raised questions of fact. It also denied Garcia's motion for reconsideration.

On appeal, we remanded the case again to the Court of Appeals for further proceedings.[17]

On February 27, 2006, the appellate court denied the petition. It found Garcia's encashment of the checks in favor of Torregoza dubious. There was no need for Torregoza to endorse the checks to Garcia for encashment and for Garcia to turn over the proceeds to Engr. Abo since Torregoza could have simply endorsed the checks to any of the DPWH personnel with whom he had transacted. Garcia held a position of trust and confidence and his encashment of the checks resulted in Legazpi Oil's loss of confidence in him. The appellate court also ruled that Garcia was afforded due process prior to his dismissal. He was apprised of his infractions and given the opportunity to answer the charges against him through the submission of his written explanations. The fact that no further investigation was conducted is of no moment since due process does not require a trial-type proceeding similar to those in the courts. Thus, the appellate court ordered:

> WHEREFORE, finding that public respondent NLRC did not act with grave abuse of discretion, the instant petition is hereby **DENIED** and is accordingly **DISMISSED.**
>
> SO ORDERED.[18]

Reconsideration having been denied, petitioner now comes before us, alleging that the appellate court erred:

> I.
>
> … IN DISMISSING THE PETITION AND IN NOT REINSTATING THE DECISION DATED JANUARY 24, 1996 RENDERED BY THE EXECUTIVE LABOR ARBITER [THERE BEING] LACK OF DUE PROCESS IN THE TERMINATION OF EMPLOYMENT OF PETITIONER.[19]

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[17] *Garcia v. National Labor Relations Commission*, *supra* note 5, at 549.

[18] *Rollo*, p. 54.

[19] *Id.* at 19-20.

II.

… IN DISMISSING THE PETITION AND IN NOT REINSTATING THE DECISION DATED JANUARY 24, 1996 RENDERED BY THE [EXECUTIVE] LABOR ARBITER [THERE BEING] NO JUST CAUSE FOR THE TERMINATION OF EMPLOYMENT OF PETITIONER.[20]

The issues for resolution are: (1) Was the petitioner validly dismissed due to dishonesty and loss of trust and confidence? and (2) Was petitioner afforded due process?

The petition is meritorious.

Records show that Legazpi Oil dismissed petitioner on the ground of dishonesty and loss of trust and confidence due to the following alleged infractions: (1) encashment of two checks in the name of Torregoza; and (2) unauthorized use of company personnel, equipment, and materials in the repair of the road grader.

On the *first* ground, it appears that petitioner merely accommodated Torregoza's request. While we see no reason why Torregoza would rather have petitioner encash the checks, it has been duly proven that petitioner turned over the proceeds thereof to Engr. Abo. From the first check of ₱37,373.32, Engr. Abo gave petitioner only ₱1,300.00 to pay the accumulated food consumption of the DPWH personnel at the canteen.[21] From the second check of ₱5,541.45, de la Torre gave Torregoza ₱2,000.00.[22] Engr. Abo gave the balance of both checks to Engr. Bogayong as payment for the steering booster used in repairing the road grader.[23]

Contrary to Torregoza's claim, it was actually de la Torre and not petitioner who gave him ₱2,000.00.[24] Moreover, his

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[20] *Id.* at 24.

[21] Records, Vol. 1, pp. 47-48.

[22] *Id.* at 43; Records, Vol. 2, p. 429.

[23] *Id.* at 47-48.

[24] *Id.* at 43; Records, Vol. 2, pp. 429.

allegation that petitioner instructed the cashier to withhold the release of the second check to him unless petitioner was around, remained unsubstantiated. The cashier was never called to testify during the company investigation or the clarificatory hearings by the Labor Arbiter. Likewise, contrary to what Legazpi Oil has insinuated, petitioner never profited from the encashment of the checks since its full amount has been completely accounted for. Indeed, petitioner merely followed Mercado's oral instruction to extend the necessary assistance to the DPWH personnel.[25]

On the second ground, it seems that Mercado knew that the use of the road grader was subject to the condition that Legazpi Oil would shoulder fuel consumption and repairs as may be necessary, including materials, equipment and labor cost, as well as the wages of the operator and the helper. Mercado admitted that he met Engr. Abo when the road grader was delivered to Legazpi Oil and that Engr. Abo informed him of the condition, to which he agreed.[26]

It is also clear that Mercado was aware when the road grader broke down since he saw Balanta doing the repairs.[27] Had he found petitioner's omission to seek his permission before making the repairs against company policy, he could have called petitioner's attention right there and then. It could only be concluded that petitioner was duly authorized to make use of company personnel, equipment, and materials as a result of Mercado's prior oral instruction to petitioner to extend the necessary assistance to the needs of the road grader.[28] No less noteworthy, it was Manager Mercado who goaded Garcia to find a road grader for the use of the company, even to the extent of requesting DPWH, which admittedly is prohibited from renting out government property for private use. Garcia had no option but to follow Mercado's orders.

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[25] Records, Vol. 2, pp. 430-431.

[26] *Id.* at 427.

[27] Records, Vol. 1, p. 24.

[28] Records, Vol. 2, pp. 430-431.

Loss of trust and confidence, as a valid ground for dismissal, must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[29] Elsewise stated, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer.[30] A condemnation of dishonesty and disloyalty cannot arise from suspicion spawned by speculative inferences.[31]

Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. Loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody handling or care and protection of the property and assets of the employer. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.[32]

In this case, we do not find the evidence sufficient to hold that petitioner's actuations amounted to a willful breach of trust. Petitioner acted only based on Manager Mercado's oral instruction and we do not see how it could be construed as a breach of trust.

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[29] *Cruz, Jr. v. Court of Appeals*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654-655; *Surigao del Norte Electric Cooperative v. NLRC*, G.R. No. 125212, June 28, 1999, 309 SCRA 233, 248.

[30] *Cruz, Jr. v. Court of Appeals*, *supra* at 655; *P.J. Lhuillier, Inc. v. National Labor Relations Commission*, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798-799; *Surigao del Norte Electric Cooperative v. NLRC*, *supra* at 248-249.

[31] *Metro Eye Security, Inc. v. Salsona*, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 388.

[32] *Sulpicio Lines, Inc. v. Gulde*, G.R. No. 149930, February 22, 2002, 377 SCRA 525, 529.

It is also significant to note that in the memorandum of termination, the other ground for petitioner's dismissal was dishonesty. Again, there is no evidence establishing the basis for this ground. The specific acts which constitute this ground were not even alleged by Legazpi Oil. On the contrary, petitioner has been candid in admitting that he indeed encashed the checks and allowed the repairs of the road grader.

All told, the circumstances surrounding the case all militate against the validity of petitioner's dismissal. We need not discuss further the matter of due process.

WHEREFORE, the instant petition is *GRANTED*. The Decision dated February 27, 2006 and the Resolution dated May 16, 2006 of the Court of Appeals in CA-G.R. SP No. 51307 are *REVERSED*.

Let this case be remanded to the Labor Arbiter for the proper computation of petitioner's monetary benefits in accordance with Article 279[33] of the Labor Code of the Philippines.

Costs against private respondent company.

SO ORDERED.

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

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[33] **ART. 279. Security of Tenure.** — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

THIRD DIVISION

[G.R. No. 173115. April 16, 2009]

ATTY. VIRGILIO R. GARCIA, *petitioner, vs.* **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. and ATTY. SALVADOR C. HIZON,** *respondents.*

[G.R. Nos. 173163-64. April 16, 2009]

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. and ATTY. SALVADOR C. HIZON, *petitioners, vs.* **ATTY. VIRGILIO R. GARCIA,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; CORPORATE OFFICER'S REMOVAL, ALWAYS AN INTRA-CORPORATE CONTROVERSY, WITHIN THE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION (SEC). — The Supreme Court, in a long line of cases, has decreed that **a corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy,** over which the Securites and Exchange Commission [SEC] (now the Regional Trial Court) has original and exclusive jurisdiction.

2. ID.; ID.; INTRA-CORPORATE CONTROVERSY; ELUCIDATED.— We have ruled that an intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as the former's franchise, permit or license to operate is concerned; (3) **between the corporation,** partnership or association **and its** stockholders, partners, members or **officers;** and (4) among the stockholders, partners or associates themselves. In *Lozon v. National Labor Relations Commission,* we declared that Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving intra-corporate and partnership relations between or among the corporation, officers

and stockholders and partners, including their elections or appointments x x x.

3. REMEDIAL LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; REMOVAL OF CORPORATE OFFICERS; CORPORATE OFFICERS, ELUCIDATED. — Before a dismissal or removal could properly fall within the jurisdiction of the SEC, it has to be first established that the person removed or dismissed was a corporate officer. "Corporate officers" in the context of Presidential Decree No. 902-A are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws.

4. ID.; ID.; ID.; ID.; ID.; CASE AT BAR. — Atty. Garcia tries to deny he is an officer of ETPI. Not being a corporate officer, he argues that the Labor Arbiter has jurisdiction over the case. One of the corporate officers provided for in the by-laws of ETPI is the Vice-President. It can be gathered from Atty. Garcia's complaint-affidavit that he was Vice-President for Business Support Services and Human Resource Departments of ETPI when his employment was terminated effective 16 April 2000. It is therefore clear from the by-laws and from Atty. Garcia himself that he is a corporate officer. One who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee. Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.

APPEARANCES OF COUNSEL

Virgilio R. Garcia for and in his behalf.

Villarza & Angangco Law Offices for Easteran Telecommunications Philippines, Inc. and Atty. Salvador Hizon.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us *via* consolidated petitions for *certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 88887 and No. 89066 dated 24 March 2006, which dismissed the petitions for *certiorari* questioning the Decision[2] of the National Labor Relations Commission (NLRC) dated 21 March 2003, docketed as NLRC NCR CA No. 028901-01. The NLRC reversed the decision of the Labor Arbiter dated 30 September 2002, finding the preventive suspension and dismissal of Atty. Virgilio R. Garcia illegal, and dismissed the case for lack of jurisdiction.

The facts are not disputed.

Atty. Virgilio R. Garcia was the Vice President and Head of Business Support Services and Human Resource Departments of the Eastern Telecommunications Philippines, Inc. (ETPI).

ETPI is a corporation duly organized and existing under the laws of the Republic of the Philippines.

Atty. Salvador C. Hizon is the President/Chief Executive Officer of ETPI.

On 16 January 2000, Atty. Garcia was placed under preventive suspension based on three complaints for sexual harassment filed by Atty. Maria Larrie Alinsunurin, former manager of ETPI's Office of the Legal Counsel; Ms. Emma Valeros-Cruz, Assistant Vice President of ETPI and former secretary of Atty. Garcia; and Dr. Mercedita M. Macalintal, medical retainer/company physician of ETPI. In response to

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Lucas P. Bersamin and Magdangal M. de Leon, concurring; *rollo* (G.R. No. 173115), pp. 169-192.

[2] Penned by Associate Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Associate Commissioner Victoriano R. Calaycay, concurring; *rollo* (G.R. No. 173115), pp. 158-167.

the complaints, the Human Resources Department constituted a Committee on Decorum to investigate the complaints. By reason of said complaints, Atty. Garcia was placed in preventive suspension. The committee conducted an investigation where Atty. Garcia was given copies of affidavits of the witnesses against him and a chance to defend himself and to submit affidavits of his witnesses. The Committee submitted a report which recommended his dismissal.[3] In a letter dated 14 April 2000, Atty. Hizon advised Atty. Garcia that his employment with ETPI was, per recommendation of the Committee, terminated effective 16 April 2000.

A *complaint-affidavit for illegal dismissal* with prayer for full backwages[4] and recovery of moral and exemplary damages was *filed on 11 July 2000* by Atty. Virgilio R. Garcia against ETPI and Atty. Salvador C. Hizon.[5] The case, docketed as NLRC NCR-30-07-02787-00, was assigned to Labor Arbiter Patricio P. Libo-on. The parties submitted their respective position papers,[6] reply position papers[7] and rejoinders.[8] Per agreement of the parties, ETPI and Atty. Hizon filed a sur-rejoinder on 6 March 2001.[9] Atty. Garcia manifested that he was no longer submitting a sur-rejoinder and was submitting the case for resolution.

On 15 April 2001, Atty. Garcia filed a Motion to Inhibit, praying that Labor Arbiter Libo-on inhibit himself from further proceeding with the case, on the ground that he was a fraternity brother of Atty. Hizon.[10] Atty. Garcia thereafter filed a second

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[3] Records, Vol. 1, pp. 320-347.

[4] Reinstatement was not prayed for in the Complaint-Affidavit. The same was asked for only in the Position Paper.

[5] Records, Vol. 1, pp. 2-5.

[6] *Id.* at 31-45, 61-129

[7] *Id.* at 440-445, 467-497.

[8] *Id.* at 504-529. 530-535.

[9] *Id.* at 536-549.

[10] *Id.* at 564-565.

Motion to Inhibit[11] on 10 May 2001. ETPI and Atty. Hizon opposed said motion, arguing that the reason on which it was grounded was not one of those provided by law.[12] In an Order dated 13 June 2001, said motions were denied.[13] Atty. Garcia appealed said order before the NLRC via a Memorandum on Appeal dated 4 July 2001,[14] to which ETPI and Atty. Hizon filed an Answer.[15]

The NLRC, in its decision dated 20 December 2001, set aside the order of Labor Arbiter Libo-on and ordered the re-raffling of the case.[16] ETPI and Atty. Hizon moved for the reconsideration[17] of the decision, but the same was denied.[18] Consequently, the case was re-raffled to Labor Arbiter Ramon Valentin C. Reyes.[19]

The parties were directed to submit their respective memoranda.[20] Atty. Garcia filed his memorandum[21] on 9 July 2002 while ETPI and Atty. Hizon submitted their memorandum[22] on 22 July 2002. On 16 August 2002, with leave of court, ETPI and Atty. Hizon *filed a Reply Memorandum, raising for the first time the issue of lack of jurisdiction*.

In his **decision dated 30 September 2002**, Labor Arbiter Reyes found the preventive suspension and subsequent dismissal

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[11] *Id.* at 577.

[12] *Id.* at 558-563.

[13] *Id.* at 579-582.

[14] *Id.* at 585-590.

[15] Records, Vol. 2, pp. 5-17.

[16] Records, Vol. 1, pp. 592-601.

[17] *Id.* at 603-616.

[18] *Id.* at 620-621.

[19] *Id.* at 623.

[20] *Id.* at 625.

[21] Records, Vol. 3, pp. 1-48.

[22] *Id.* at 49-56.

of Atty. Garcia illegal. The dispositive portion of the decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered, finding the preventive suspension and the dismissal illegal and ordering the respondents to:
>
> 1. Reinstate complainant to his former position without loss of seniority rights and other benefits appurtenant to the position that complainant received prior to the illegal dismissal;
>
> 2. Pay complainant his backwages which for purpose of appeal is computed to the amount of ₱4,200,000.00 (₱150,000 x 28);
>
> 3. Pay complainant Moral damages in the amount of ₱1,000,000.00 and Exemplary damages in the amount of ₱500,000.00.[23]

On 14 November 2002, Atty. Garcia filed an *Ex-Parte* Motion for the Issuance of a Writ of Execution.[24] On 20 November 2002, Labor Arbiter Reyes issued a Writ of Execution insofar as the reinstatement aspect of the decision was concerned.[25] ETPI and Atty. Hizon filed a Very Urgent Motion to Lift/Quash Writ of Execution on 28 November 2002.[26] Per Sheriff's Return on the Writ of Execution, said writ remained unsatisfied because ETPI and Atty. Hizon refused to reinstate Atty. Garcia to his former position.[27]

On 29 November 2002, Atty. Garcia filed an *Ex-Parte* Motion for the Issuance of an *Alias* Writ of Execution praying that said writ be issued ordering the sheriff to enforce the decision by garnishing the amount of ₱450,000.00 representing his monthly salaries for two months and 13th month pay from any of ETPI's bank accounts.[28] Atty. Garcia manifested that he was no longer filing any responsive pleading to the Very Urgent Motion to

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[23] *Rollo* (G.R. No. 173115), p. 157.

[24] Records, Vol. 4, pp. 1-3.

[25] *Id.* at 8-9.

[26] *Id.* at 10-19.

[27] *Id.* at 7.

[28] *Id.* at 32-34.

Lift/Quash Writ of Execution because the Labor Arbiter lost jurisdiction over the case when an appeal had been perfected.[29] In an Order dated 10 December 2002, Labor Arbiter Reyes denied the Very Urgent Motion to Lift/Quash Writ of Execution, explaining that it still had jurisdiction over the reinstatement aspect of the decision, notwithstanding the appeal taken, and that the grounds relied upon for the lifting or quashing of the writ were not valid grounds.[30] Labor Arbiter Reyes subsequently issued a 1st *Alias* Writ of Execution dated 11 December 2002 ordering the sheriff to proceed to the premises of ETPI to reinstate Atty. Garcia and/or garnish the amounts prayed for.[31] Per Sheriff's Return dated 17 January 2003, the 1st *Alias* Writ of Execution was satisfied with the amount of ₱450,000.00 being released for proper disposition to Atty. Garcia.[32]

ETPI and Atty. Hizon appealed the decision to the NLRC, filing a Notice of Appeal and Memorandum of Appeal,[33] which appeal was opposed by Atty. Garcia.[34] The appeal was docketed as NLRC NCR CA Case No. 028901-01. ETPI and Atty. Hizon filed a Supplemental Appeal Memorandum dated 23 January 2003 (With Very Urgent Motion for Issuance of Temporary Restraining Order).[35] In a Manifestation *ad Cautelam* dated 28 January 2003, without waiving their right to continue to question the jurisdiction of the Labor Arbiter, they informed the Labor Arbiter that they had filed a Supplemental Appeal Memorandum before the NLRC and asked that all processes relating to the implementation of the reinstatement order be held in abeyance so as not to render moot the reliefs prayed for in said Supplemental Appeal Memorandum.[36] They likewise

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[29] *Id.* at 35-36.

[30] *Id.* at 49-52.

[31] *Id.* at 52Q-52R.

[32] *Id.* at 61.

[33] Records, Vol. 3, pp. 142-242.

[34] *Id.* at 315-369.

[35] *Id.* at 370-387.

[36] Records, Vol. 4, pp. 64-66.

filed on 31 January 2003 a Very Urgent Motion to Lift/Quash Order of Garnishment *ad Cautelam,* praying that the notice of garnishment on ETPI's bank account with Metrobank, Dela Costa Branch, or with other banks with which ETPI maintained an account and which received said notice of garnishment be immediately lifted/quashed.[37] On 12 February 2003, Atty. Garcia filed his Opposition to said Supplemental Appeal Memorandum.[38]

On 3 February 2003, Atty. Garcia filed an *Ex-Parte* Motion for the Issuance of a 2nd *Alias* Writ of Execution.[39] In an Order dated 5 February 2003, Labor Arbiter Reyes lifted the notice of garnishment on ETPI's bank account with Metrobank, Dela Costa Branch.[40] On 10 February 2003, Labor Arbiter Reyes issued a 2nd Writ of Execution.[41]

In a Manifestation *ad Cautelam*[42] dated 10 February 2003, ETPI and Atty. Hizon said that they filed with the NLRC on 7 February 2003 an Urgent Petition (for Preliminary Injunction With Issuance of Temporary Restraining Order)[43] which prayed, *inter alia*, for the issuance of a temporary restraining order to restrain the execution pending appeal of the order of reinstatement and to enjoin the Labor Arbiter from issuing writs of execution or other processes implementing the decision dated 30 September 2002. They added that they also filed on 7 February 2003 a Notice to Withdraw[44] their Supplemental Appeal Memorandum dated 23 January 2003.

ETPI and Atty. Hizon, without waiving their right to continue to question the jurisdiction of the Labor Arbiter over the case, filed on 18 February 2003 a Motion to Inhibit, seeking the

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[37] *Id.* at 98-102.

[38] Records, Vol. 3, pp. 414-418.

[39] Records, Vol. 4, pp. 144-146.

[40] *Id.* at 244.

[41] *Id.* at 244-A.

[42] Records, Vol. 4, pp. 160-163.

[43] *Id.* at 164-182.

[44] Records, Vol. 3, pp. 401-405.

inhibition of Labor Arbiter Reyes for allegedly evident partiality in favor of the complainant in issuing writs of execution in connection with the order of reinstatement contained in his decision dated 30 September 2002, despite the pendency of an Urgent Petition (for Preliminary Injunction With Prayer for the Issuance of Temporary Restraining Order) with the NLRC, which sought the restraining of the execution pending appeal of the order of reinstatement.[45] The petition for injunction was docketed as NLRC NCR IC No. 0001193-02. Atty. Garcia filed an opposition,[46] to which ETPI and Atty. Hizon filed a reply.[47] Said motion to inhibit was subsequently granted by Labor Arbiter Reyes.[48] The case was re-raffled to Labor Arbiter Elias H. Salinas.[49]

In an Order dated 26 February 2003, the NLRC, in NLRC NCR IC No. 0001193-02, issued a temporary restraining order (TRO) enjoining Labor Arbiter Reyes from executing pending appeal the order of reinstatement contained in his decision dated 30 September 2002, and from issuing similar writs of execution pending resolution of the petition for preliminary injunction. It directed ETPI and Atty. Hizon to post a bond in the amount of ₱30,000.00 to answer for any damage which Atty. Garcia may suffer by reason of the issuance of the TRO.[50]

On **21 March 2003**, the NLRC rendered its decision in NLRC NCR CA Case No. 028901-01 **reversing the decision of Labor Arbiter** Reyes and **dismissing the case for lack of jurisdiction**. The decretal portion of the decision reads:

WHEREFORE, the decision appealed from is REVERSED, and the instant case DISMISSED for lack of jurisdiction.[51]

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[45] *Id.* at 421-427.

[46] Records, Vol. 4, p. 269.

[47] *Id.* at 270-274.

[48] *Id.* at 275-277.

[49] *Id.* at 284.

[50] *Id.* at 256-258.

[51] *Rollo* (G.R. No. 173115), p. 166.

The Commission ruled that the dismissal of Atty. Garcia, being ETPI's Vice President, partook of the nature of an intra-corporate dispute cognizable by Regional Trial Courts and not by Labor Arbiters. It added that ETPI and Atty. Hizon were not barred by estoppel from challenging the jurisdiction of the Labor Arbiter over the instant case.

Atty. Garcia moved for the reconsideration[52] of the decision, which ETPI and Atty. Hizon opposed.[53] In a resolution dated 16 December 2003, the motion for reconsideration was denied for lack of merit.[54]

On 26 March 2003, Atty. Garcia filed a Motion to Inhibit, requesting Associate Commissioner Angelita A. Gacutan to inhibit herself from further participating in the deliberation and resolution of the case for manifest bias and partiality in favor of ETPI and Atty. Hizon. The motion was later withdrawn.[55]

On 3 April 2003, the NLRC made permanent the TRO it issued pursuant to its ruling in NLRC NCR CA Case No. 028901-01, that since the Labor Arbiter had no jurisdiction over the case, the decision of the Labor Arbiter dated 30 September 2002 was void.[56]

On 6 March 2004, the resolution dated 16 December 2003 became final and executory. Consequently, on 14 June 2004, an entry of judgment was made recording said resolution in the Book of Entries of Judgments.[57]

On 18 June 2004, ETPI and Atty. Hizon filed a Motion to Discharge and/or Release the Appeal Bond[58] in the amount of ₱5,700,000.00 that they had posted. [59]

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[52] Records, Vol. 3, pp. 480-486.

[53] *Id.* at 501-513.

[54] *Id.* at 584-585.

[55] Records, Vol. 4, pp. 331-332.

[56] *Id.* at 328-330.

[57] Records, Vol. 3, p. 588.

[58] *Id.* at 590-593.

[59] Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002; records, Vol. 3, p. 268.

On 9 July 2004, Atty. Garcia filed a Motion to Set Aside Finality of Judgment With Opposition to Motion to Discharge Appeal Bond,[60] claiming that he did not receive the resolution dated 16 December 2003 of the NLRC, the same having been sent to his former address at 9 Isidora St., Don Antonio Heights, Diliman, Quezon City, and not to his new address at 4 Pele St., Filinvest 2, Batasan Hills, Quezon City, where he had been receiving all pleadings, Resolutions, Orders and Decisions pertaining to the instant case since April 2001. On 19 July 2004, ETPI and Atty. Hizon filed their opposition thereto. On 23 August 2004, the NLRC, admitting that it missent the resolution dated 16 December 2003 denying Atty. Garcia's motion for reconsideration, issued an order *granting the motion*. It recalled and set aside the Entry of Judgment dated 14 June 2004 and denied the Motion to Discharge and/or Release the Appeal Bond.[61]

In its Motion for Reconsideration dated 17 September 2004, ETPI and Atty. Hizon argued that the NLRC correctly sent the resolution of 16 December 2003 to counsel's allegedly old address, considering that same was counsel's address of record, there being no formal notice filed with the NLRC informing it of a change of address. They contended that the aforesaid resolution had become final and executory, and that Atty. Garcia should bear the consequences of his inequitable conduct and/or gross negligence.[62] On 10 January 2005, the NLRC denied the motion for reconsideration.[63]

On 14 March 2005, Atty. Garcia appealed to the Court of Appeals *via* a Petition for *Certiorari*. It prayed that the Decision dated 21 March 2003 and resolution dated 16 December 2003 of the NLRC be annulled and set aside, and that the decision of the Labor Arbiter dated 30 September 2002 be reinstated.[64] The appeal was docketed as CA-G.R. SP No. 88887.

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[60] Records, Vol. 3, pp. 612-615.

[61] *Id.* at 622-624.

[62] *Id.* at 756-768.

[63] *Id.* at 769-771.

[64] CA *rollo* (CA-G.R. SP No. 88887), pp. 2-81.

On 28 March 2005, ETPI and Atty. Hizon likewise filed a Petition for *Certiorari* asking that the Orders dated 23 August 2004 and 10 January 2005 of the NLRC be set aside; that its resolution dated 16 December 2003 be declared final and executory; and that the NLRC be directed to discharge and/or release Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002 posted by them.[65] The appeal was docketed as CA-G.R. SP No. 89066.

Upon motion of Atty. Garcia, the two petitions for *certiorari* were consolidated.[66]

On 24 March 2006, the assailed decision of the Court of Appeals was rendered, the dispositive portion reading:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the consolidated petitions are hereby DISMISSED for lack of merit. Without costs in both instances.[67]

The appellate court, on ETPI and Atty. Hizon's argument that Atty. Garcia's petition for *certiorari* was filed out of time, ruled that the NLRC did not commit grave abuse of discretion in liberally applying the rules regarding changes in the address of counsel. It likewise ruled that Atty. Garcia, being the Vice President for Business Support Services and Human Resource Departments of ETPI, was a corporate officer at the time he was removed. Being a corporate officer, his removal was a corporate act and/or an intra-corporate controversy, the jurisdiction of which rested with the Securities and Exchange Commission (now with the Regional Trial Court), and not the Labor Arbiter and the NLRC. It added that ETPI and Atty. Hizon were not estopped from questioning the jurisdiction of the Labor Arbiter before the NLRC on appeal, inasmuch as said issue was seasonably raised by ETPI and Atty. Hizon in their reply memorandum before the Labor Arbiter.

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[65] CA *rollo* (CA-G.R. SP No. 89066), pp. 1-50.

[66] *Id.* at 590 and 698.

[67] *Rollo* (G.R. No. 173115), p. 74.

On 18 April 2006, Atty. Garcia filed his Motion for Reconsideration.[68] On 20 April 2006, ETPI and Atty. Hizon filed a Motion for Partial Reconsideration.[69] The parties filed their respective comments thereon.[70] On 14 June 2006, the Court of Appeals denied the motions for reconsideration.[71]

Atty. Garcia is now before us *via* a Petition for Review, which he filed on 3 August 2006.[72] The petition was docketed as G.R. No. 173115. On 8 August 2006, he filed an Amended Petition for Review.[73] He prays that the decision of the NLRC dated 21 March 2003 and its resolution dated 16 December 2003, and the decision of the Court of Appeals dated 24 March 2006 and its resolution dated 14 June 2006, be reconsidered and set aside and that the decision of the Labor Arbiter dated 30 September 2002 be affirmed and reinstated.

ETPI and Atty. Hizon are also before us by way of a Petition for *Certiorari*.[74] The petition which was filed on 6 July 2006 was docketed as G.R. Nos. 173163-64.

In our resolution dated 30 August 2006, G.R. Nos. 173163-64 were consolidated with G.R. No. 173115, and the parties were required to comment on the petitions within ten days from notice.[75] Atty. Garcia filed his comment on 13 November 2006,[76] while ETPI and Atty. Hizon filed theirs on 29 November 2006.[77]

On 15 January 2007, we noted the comments filed by the parties and required them to file their Replies to said comments.[78]

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[68] CA *rollo* (CA-G.R. SP No. 88887), pp. 1124-1136.

[69] *Id.* at 1142-1159.

[70] *Id.* at 1166-1172; 1173-1190.

[71] *Id.* at 1192-1193.

[72] *Rollo* (G.R. No. 173115), pp. 7-16.

[73] *Id.* at 124-134.

[74] *Rollo* (G.R. No. 173163-64), pp. 7-16.

[75] *Rollo* (G.R. No. 173115), p. 244.

[76] *Id.* at 246-253.

[77] *Id.* at 257-288.

[78] *Id.* at 289.

ETPI and Atty. Hizon[79] filed their Reply on 26 February 2007, with Atty. Garcia filing his on 2 March 2007.[80]

On 26 March 2007, we gave due course to the petitions and required the parties to submit the respective memoranda within 30 days from notice.[81] Atty. Garcia submitted his Memorandum[82] on 12 June 2007 and ETPI and Atty. Hizon filed theirs on 13 July 2007.[83] With leave of court, ETPI and Atty. Hizon filed a reply memorandum.[84]

Atty. Garcia raises the lone issue:

WHETHER THE QUESTION OF LEGALITY OR ILLEGALITY OF THE REMOVAL OR TERMINATION OF EMPLOYMENT OF AN OFFICER OF A CORPORATION IS AN INTRA-CORPORATE CONTROVERSY THAT FALLS UNDER THE ORIGINAL EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURTS?[85]

ETPI and Atty. Hizon argue that the Court of Appeals, in ruling that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its order dated 23 August 2004 and its resolution dated 10 January 2005, committed grave reversible error and decided questions of substance in a way not in accordance with law and applicable decisions of the Honorable Court, and departed from the accepted and usual course of judicial proceedings, necessitating the Honorable Court's exercise of its power of supervision.

I

THE RESOLUTION DATED 16 DECEMBER 2003 ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION (SECOND

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[79] *Id.* at 290-305.

[80] *Id.* at 306-311.

[81] *Id.* at 312-313.

[82] *Id.* at 314-335.

[83] *Id.* at 336-398.

[84] *Id.* at 403-435, 436.

[85] *Id.* at 129.

DIVISION) HAS ALREADY BECOME FINAL AND EXECUTORY AND HAS VESTED UPON PETITIONERS ETPI, *ET AL*. A RIGHT RECOGNIZED AND PROTECTED UNDER THE LAW CONSIDERING THAT:

A. RESPONDENT'S COPY OF SAID RESOLUTION WAS PROPERLY SENT TO HIS ADDRESS OF RECORD, AT THE LATEST ON 15 JANUARY 2004, IN ACCORDANCE WITH WELL ESTABLISHED JURISPRUDENCE. HENCE, RESPONDENT GARCIA HAD ONLY UNTIL 15 MARCH 2004 WITHIN WHICH TO FILE HIS PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS. RESPONDENT GARCIA FAILED TO FILE HIS PETITION FOR *CERTIORARI* BY SAID DATE.

B. NOTWITHSTANDING THE FOREGOING, RESPONDENT GARCIA HAD ACTUAL NOTICE OF THE ISSUANCE OF THE SAME AS OF 24 JUNE 2004. HENCE RESPONDENT GARCIA HAD ONLY UNTIL 23 AUGUST 2004 WITHIN WHICH TO FILE HIS PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS. RESPONDENT GARCIA FAILED TO FILE HIS PETITION FOR *CERTIORARI* BY SAID DATE.

C. EVEN IF THE DATE OF RECEIPT IS RECKONED FROM 15 SEPTEMBER 2005, THE DATE RESPONDENT GARCIA ADMITTED IN HIS PETITION FOR *CERTIORARI* TO BE THE DATE OF HIS RECEIPT OF THE COPY OF THE RESOLUTION DATED 16 DECEMBER 2003 AT HIS ALLEGED NEW ADDRESS, RESPONDENT GARCIA HAD ONLY UNTIL 15 NOVEMBER 2005 TO FILE HIS PETITION FOR *CERTIORARI* DATED 11 MARCH 2005. RESPONDENT GARCIA FAILED TO FILE HIS PETITION FOR *CERTIORARI* BY SAID DATE.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S LIBERAL APPLICATION OF RULES CONSIDERING THAT A LIBERAL APPLICATION OF RULES CANNOT BE USED TO DEPRIVE A RIGHT THAT HAS ALREADY *IPSO FACTO* VESTED ON PETITIONERS ETPI, *ET AL*.

III

THE COURT OF APPEALS ERRED IN RULING THAT THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING ITS ORDER DATED 23 AUGUST 2004 AND RESOLUTION DATED 10 JANUARY 2005 CONSIDERING THAT RESPONDENT GARCIA MAY NOT ASSAIL THE FINALITY OF RESOLUTION DATED 16 DECEMBER 2003 THROUGH A MERE MOTION.

IV

THE COURT OF APPEALS ERRED IN FAILING TO RULE ON PETITIONERS' COUNTER-MOTION TO CITE RESPONDENT GARCIA IN CONTEMPT OF COURT DESPITE ITS PREVIOUS RESOLUTION DATED 30 MAY 2005 STATING THAT IT SHALL ADDRESS THE SAME IN THE DECISION ON THE MERITS OF THE CASE.[86]

The issue raised by Atty. Garcia – whether the termination or removal of an officer of a corporation is an intra-corporate controversy that falls under the original exclusive jurisdiction of the regional trial courts – is not novel. The Supreme Court, in a long line of cases, has decreed that **a corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy,** over which the Securities and Exchange Commission [SEC] (now the Regional Trial Court)[87] has original and exclusive jurisdiction.[88]

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[86] *Rollo* (G.R. No. 173163-64), pp. 42-44.

[87] Under Republic Act No. 8799, otherwise known as "The Securities Regulation Code" which took effect on August 8, 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of P.D. No. 902-A has been transferred to the courts of general jurisdiction, or the appropriate RTC. Pursuant thereto, the Supreme Court issued a Resolution dated November 21, 2000 in A.M. No. 00-11-03-SC designating certain branches of the RTC to try and decide cases enumerated in Section 5 of P.D. No. 902-A. On March 13, 2001, the Supreme Court approved the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799 which took effect on April 1, 2001. (*Yujuico v. Quiambao*, G.R. No. 168639, 29 January 2007, 513 SCRA 243, 255-256).

[88] *Union Motors Corporation v. National Labor Relations Commission*, 373 Phil. 310, 319 (1999); *Tabang v. National Labor Relations Commission*,

We have ruled that an intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as the former's franchise, permit or license to operate is concerned; (3) ***between the corporation***, partnership or association ***and its*** stockholders, partners, members or ***officers***; and (4) among the stockholders, partners or associates themselves.[89] In *Lozon v. National Labor Relations Commission*,[90] we declared that Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments x x x.

Before a dismissal or removal could properly fall within the jurisdiction of the SEC, it has to be first established that the person removed or dismissed was a corporate officer.[91] "Corporate officers" in the context of Presidential Decree No. 902-A[92] are those officers of the corporation who are given that character

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334 Phil. 424, 428 (1997); *De Rossi v. National Labor Relations Commission*, 373 Phil. 17, 24 (1999); *Ongkingco v. National Labor Relations Commission*, 337 Phil. 299, 304-305 (1997); *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, 15 December 2005, 478 SCRA 102, 109; *Espino v. National Labor Relations Commission*, 310 Phil. 60, 70-71 (1995); *Lozon v. National Labor Relations Commission*, 310 Phil. 1, 9 (1995); *Cagayan de Oro Coliseum, Inc. v. Office of the MOLE*, G.R. No. 71589, 17 December 1990, 192 SCRA 315, 318; *Dy v. National Labor Relations Commission*, 229 Phil. 234, 244 (1986); *Philippine School of Business Administration v. Leano*, 212 Phil. 716, 721 (1984).

[89] *Yujuico v. Quiambao*, *supra* note 87; *Embassy Farms, Inc. v. Court of Appeals*, G.R. No. 80682, 13 August 1990, 188 SCRA 492, 499; *Union Glass & Container Corporation v. Securities and Exchange Commission*, 211 Phil. 222, 230-231 (1983); *Mainland Construction Co., Inc. v. Movilla*, G.R. No. 118088, 23 November 1995, 250 SCRA 290, 294.

[90] *Supra* note 88 at 8.

[91] *Easycall Communications Phils., Inc. v. King*, *supra* note 88 at 109.

[92] The Revised Securities Act.

by the Corporation Code or by the corporation's by-laws.[93] There are three specific officers whom a corporation must have under Section 25 of the Corporation Code.[94] These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws.

In the case before us, the by-laws of ETPI provide:

ARTICLE V
Officers

Section 1. *Number.* – The officers of the Company shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Treasurer, a Secretary, an Assistant Secretary, and such other officers as may be from time to time be elected or appointed by the Board of Directors. One person may hold any two compatible offices.[95]

Atty. Garcia tries to deny he is an officer of ETPI. Not being a corporate officer, he argues that the Labor Arbiter has jurisdiction over the case. One of the corporate officers provided for in the by-laws of ETPI is the Vice-President. It can be gathered from Atty. Garcia's complaint-affidavit that he was Vice President for Business Support Services and Human Resource Departments of ETPI when his employment was terminated effective 16 April 2000. It is therefore clear from the by-laws and from Atty. Garcia himself that he is a corporate officer. One who is included in the by-laws of a corporation in its roster of corporate

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[93] *Easycall Communications Phils., Inc. v. King*, *supra* note 88.

[94] Sec. 25. *Corporate officers, quorum.* – Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

[95] *Rollo* (G.R. No. 173115), pp. 184-185.

officers is an officer of said corporation and not a mere employee.[96] Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.

We agree with both the NLRC and the Court of Appeals that Atty. Garcia's ouster as Vice-President, who is a corporate officer of ETPI, partakes of the nature of an intra-corporate controversy, jurisdiction over which is vested in the SEC (now the RTC). The Labor Arbiter thus erred in assuming jurisdiction over the case filed by Atty. Garcia, because he had no jurisdiction over the subject matter of the controversy.

Having ruled which body has jurisdiction over the instant case, we find it unnecessary, due to mootness, to further discuss and rule on the issues raised by ETPI and Atty. Hizon regarding the NLRC order dated 23 August 2004 granting Atty. Garcia's Motion to Set Aside Finality of Judgment with Opposition to Motion to Discharge Appeal Bond, and its resolution dated 10 January 2005 denying their motion for reconsideration thereon. The decision of the Labor Arbiter, who had jurisdiction over the case, was properly dismissed by the NLRC. Consequently, Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002, posted by ETPI as a requirement for the filing of an appeal before the NLRC, is ordered discharged.

WHEREFORE, premises considered, the petition for *certiorari* of Atty. Garcia in G.R. No. 173115 is hereby *DENIED*. The petition for review on *certiorari* of ETPI and Atty. Hizon in G.R. Nos. 173163-64 is *PARTIALLY GRANTED* insofar as the discharge of Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002 is concerned. This ruling is without prejudice to Atty. Garcia's taking recourse to and seeking relief through the appropriate remedy in the proper forum.

SO ORDERED.

Yñares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Peralta, JJ.,* concur.

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[96] *Union Motors Corporation v. National Labor Relations Commission*, *supra* note 88.

SECOND DIVISION

[G.R. No. 173807. April 16, 2009]

JAIME U. GOSIACO, *petitioner, vs.* **LETICIA CHING and EDWIN CASTA,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; (B.P. BLG. 22) BOUNCING CHECKS LAW; ELUCIDATED. — B.P. Blg. 22 is popularly known as the Bouncing Checks Law. Section 1 of B.P. Blg. 22 provides: x x x Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act. B.P. Blg. 22 was enacted to address the rampant issuance of bouncing checks as payment for pre-existing obligations. The circulation of bouncing checks adversely affected confidence in trade and commerce. The State criminalized such practice because it was deemed injurious to public interests and was found to be pernicious and inimical to public welfare. B.P. Blg. 22 punishes the act of making and issuing bouncing checks. It is the act itself of issuing the checks which is considered *malum prohibitum.* The law is an offense against public order and not an offense against property. It penalizes the issuance of a check without regard to its purpose. It covers all types of checks. Even checks that were issued as a form of deposit or guarantee were held to be within the ambit of B.P. Blg. 22.

2. ID.; ID.; CORPORATE OFFICER ISSUING WORTHLESS CHECK IN THE CORPORATE NAME, MAY BE HELD PERSONALLY LIABLE. — When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act. As we held in *Llamado v. Court of Appeals:* Petitioner's argument that he

should not be held personally liable for the amount of the check because it was a check of the Pan Asia Finance Corporation and he signed the same in his capacity as Treasurer of the corporation, is also untenable. The third paragraph of Section 1 of BP Blg. 22 states: "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act."

3. ID.; ID.; ID.; CORPORATE OFFICER WHO ISSUES A BOUNCING CORPORATE CHECK IS HELD CIVILLY LIABLE WHEN CONVICTED; EXCEPTION. — The general rule is that a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted. In the recent case of *Bautista v. Auto Plus Traders Inc.,* the Court ruled decisively that the civil liability of a corporate officer in a B.P. Blg. 22 case is extinguished with the criminal liability. We are not inclined through this case to revisit so recent a precedent, and the rule of *stare decisis* precludes us to discharge Ching of any civil liability arising from the B.P. Blg. 22 case against her, on account of her acquittal in the criminal charge.

4. ID.; ID.; JURIDICAL PERSON MAY NOT BE IMPLEADED IN THE PROSECUTION FOR VIOLATION OF B.P. BLG. 22; ELABORATED.— We are unable to agree with petitioner that he is entitled to implead ASB in the B.P. Blg. 22 case, or any other corporation for that matter, even if the Rules require the joint trial of both the criminal and civil liability. A basic maxim in statutory construction is that the interpretation of penal laws is strictly construed against the State and liberally construed against the accused. Nowhere in B.P. 22 is it provided that a juridical person may be impleaded as an accused or defendant in the prosecution for violations of that law, even in the litigation of the civil aspect thereof. Nonetheless, the substantive right of a creditor to recover due and demandable obligations against a debtor-corporation cannot be denied or diminished by a rule of procedure. Technically, nothing in Section 1(b) of Rule 11 prohibits the reservation of a separate civil action against the juridical person on whose behalf the check was issued. What the rules prohibit is the reservation of a separate civil action against the natural person charged with violating B.P. Blg. 22, including such corporate officer who had signed the bounced check.

5. ID.; ID.; ID.; CIVIL LIABILITY OF THE SIGNER OF THE CHECK IN BEHALF OF THE CORPORATION AND CIVIL LIABILITY OF THE CORPORATION ITSELF, DISCUSSED. — In theory the B.P. Blg. 22 criminal liability of the person who issued the bouncing check in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. B.P. Blg. 22 itself fused this criminal liability of the signer of the check in behalf of the corporation with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability not from the corporation, but from the person who signed the check in its behalf. Prior to the amendments to our rules on criminal procedure, it though clearly was permissible to pursue the criminal liability against the signatory, while going after the corporation itself for the civil liability. However, with the insistence under the amended rules that the civil and criminal liability attaching to the bounced check be pursued jointly, the previous option to directly pursue the civil liability against the person who incurred the civil obligation-the corporation itself-is no longer that clear. In theory, the implied institution of the civil case into the criminal case for B.P. Blg. 22 should not affect the civil liability of the corporation for the same check, since such implied institution concerns the civil liability of the signatory, and not of the corporation. Let us pursue this point further. B.P. Blg. 22 imposes a distinct civil liability on the signatory of the check which is distinct from the civil liability of the corporation for the amount represented from the check. **The civil liability attaching to the signatory arises from the wrongful act of signing the check despite the insufficiency of funds in the account, while the civil liability attaching to the corporation is itself the very obligation covered by the check or the consideration for its execution. Yet these civil liabilities are mistaken to be indistinct. The confusion is traceable to the singularity of the amount of each.** If we conclude, as we should, that under the current Rules of Criminal Procedure, the civil action that is impliedly instituted in the B.P. Blg. 22 action is only the civil liability of the signatory, and not that of the corporation itself, the distinctness of the cause of action against the signatory and that against the corporation is rendered beyond dispute. It follows that the actions involving these liabilities should be adjudged according to their respective standards and merits. In the B.P. Blg. 22

case, what the trial court should determine whether or not the signatory had signed the check with knowledge of the insufficiency of funds or credit in the bank account, while in the civil case the trial court should ascertain whether or not the obligation itself is valid and demandable. The litigation of both questions could, in theory, proceed independently and simultaneously without being ultimately conclusive on one or the other. It might be argued that under the current rules, if the signatory were made liable for the amount of the check by reason of the B.P. Blg. 22 case, such signatory would have the option of recovering the same amount from the corporation. Yet that prospect does not ultimately satisfy the ends of justice. If the signatory does not have sufficient assets to answer for the amount of the check-a distinct possibility considering the occasional large-scale transactions engaged in by corporations – the corporation would not be subsidiarily liable to the complainant, even if it in truth the controversy, of which the criminal case is just a part, is traceable to the original obligation of the corporation. While the Revised Penal Code imposes subsidiary civil liability to corporations for criminal acts engaged in by their employees in the discharge of their duties, said subsidiary liability applies only to **felonies,** and not to crimes penalized by special laws such as B.P. Blg. 22. And nothing in B.P. Blg. 22 imposes such subsidiary liability to the corporation in whose name the check is actually issued. Clearly then, should the check signatory be unable to pay the obligation incurred by the corporation, the complainant would be bereft of remedy unless the right of action to collect on the liability of the corporation is recognized and given flesh.

6. ID.; ID.; ID.; ID.; CIVIL CASE AGAINST THE CORPORATION; ON FILING FEES AND PRESCRIPTION IN FILING CIVIL ACTION CONSIDERING THE LEGAL CONFUSION ON THE FILING OF CIVIL CASE AGAINST THE CORPORATION IN CASE AT BAR. — In petitioner's particular case, considering the previous legal confusion on whether he is authorized to file the civil case against ASB, he should, as a matter of equity, be exempted from paying the filing fees based on the amount of the checks should he pursue the civil action against ASB. In a similar vein and for a similar reason, we likewise find that petitioner should not be barred by prescription should he file the civil action as the period should

not run from the date the checks were issued but from the date this decision attains finality. The courts should not be bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.

APPEARANCES OF COUNSEL

Norman T. Daanoy for petitioner.
Seda Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

The right to recover due and demandable pecuniary obligations incurred by juridical persons such as corporations cannot be impaired by procedural rules. Our rules of procedure governing the litigation of criminal actions for violation of Batas Pambansa Blg. 22 (B.P. 22) have given the appearance of impairing such substantive rights, and we take the opportunity herein to assert the necessary clarifications.

Before us is a Rule 45 petition[1] which seeks the reversal of the Decision[2] of the Court of Appeals in CA-GR No. 29488. The Court of Appeals' decision affirmed the decision[3] of the Regional Trial Court of Pasig, Branch 68 in Criminal Case No. 120482. The RTC's decision reversed the decision[4] of the Metropolitan Trial Court of San Juan, Branch 58 in Criminal Case No. 70445 which involved a charge of violation of B.P. Blg. 22 against respondents Leticia Ching (Ching) and Edwin Casta (Casta).

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[1] *Rollo*. pp. 3-44.

[2] Dated 19 July 2006 and penned by Associate Justice Santiago Javier Ranada and concurred in by Associate Justices Portia Alino-Hormachuelos, Chairperson Fourth Division, and Amelita G. Tolentino. *id.* at 88-95.

[3] Dated 12 July 2005 and penned by Judge Santiago G. Estrella; *id.* at 83-87.

[4] Dated 08 February 2001 and penned by Judge Maxwel S. Rosete; *id.* at 73-82.

On 16 February 2000, petitioner Jaime Gosiaco (petitioner) invested ₱8,000,000.00 with ASB Holdings, Inc. (ASB) by way of loan. The money was loaned to ASB for a period of 48 days with interest at 10.5% which is equivalent to ₱112,000.00. In exchange, ASB through its Business Development Operation Group manager Ching, issued DBS checks no. 0009980577 and 0009980578 for ₱8,000,000.00 and ₱112,000.00 respectively. The checks, both signed by Ching, were drawn against DBS Bank Makati Head Office branch. ASB, through a letter dated 31 March 2000, acknowledged that it owed petitioner the abovementioned amounts.[5]

Upon maturity of the ASB checks, petitioner went to the DBS Bank San Juan Branch to deposit the two (2) checks. However, upon presentment, the checks were dishonored and payments were refused because of a stop payment order and for insufficiency of funds. Petitioner informed respondents, through letters dated 6 and 10 April 2000,[6] about the dishonor of the checks and demanded replacement checks or the return of the money placement but to no avail. Thus, petitioner filed a criminal complaint for violation of B.P. Blg. 22 before the Metropolitan Trial Court of San Juan against the private respondents.

Ching was arraigned and tried while Casta remained at large. Ching denied liability and claimed that she was a mere employee of ASB. She asserted that she did not have knowledge as to how much money ASB had in the banks. Such responsibility, she claimed belonged to another department.

On 15 December 2000, petitioner moved[7] that ASB and its president, Luke Roxas, be impleaded as party defendants. Petitioner, then, paid the corresponding docket fees. However, the MTC denied the motion as the case had already been submitted for final decision.[8]

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[5] The letter was signed by Luke Roxas; *id.* at 60.

[6] *Id.* at 62.

[7] *Id.* at 67-71.

[8] Records, p. 764.

On 8 February 2001, the MTC acquitted Ching of criminal liability but it did not absolve her from civil liability. The MTC ruled that Ching, as a corporate officer of ASB, was civilly liable since she was a signatory to the checks.[9]

Both petitioner and Ching appealed the ruling to the RTC. Petitioner appealed to the RTC on the ground that the MTC failed to hold ASB and Roxas either jointly or severally liable with Ching. On the other hand, Ching moved for a reconsideration which was subsequently denied. Thereafter, she filed her notice of appeal on the ground that she should not be held civilly liable for the bouncing checks because they were contractual obligations of ASB.

On 12 July 2005, the RTC rendered its decision sustaining Ching's appeal. The RTC affirmed the MTC's ruling which denied the motion to implead ASB and Roxas for lack of jurisdiction over their persons. The RTC also exonerated Ching from civil liability and ruled that the subject obligation fell squarely on ASB. Thus, Ching should not be held civilly liable.[10]

Petitioner filed a petition for review with the Court of Appeals on the grounds that the RTC erred in absolving Ching from civil liability; in upholding the refusal of the MTC to implead ASB and Roxas; and in refusing to pierce the corporate veil of ASB and hold Roxas liable.

On 19 July 2006, the Court of Appeals affirmed the decision of the RTC and stated that the amount petitioner sought to recover was a loan made to ASB and not to Ching. Roxas' testimony further bolstered the fact that the checks issued by Ching were for and in behalf of ASB. The Court of Appeals ruled that ASB cannot be impleaded in a B.P. Blg. 22 case since it is not a natural person and in the case of Roxas, he was not the subject of a preliminary investigation. Lastly, the Court of Appeals ruled that there was no need to pierce the corporate veil of ASB since none of the requisites were present.[11]

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[9] See note 4.

[10] See note 3.

[11] See note 2.

Hence this petition.

Petitioner raised the following issues: (1) is a corporate officer who signed a bouncing check civilly liable under B.P. Blg. 22; (2) can a corporation be impleaded in a B.P. Blg. 22 case; and (3) is there a basis to pierce the corporate veil of ASB?

B.P. Blg. 22 is popularly known as the Bouncing Checks Law. Section 1 of B.P. Blg. 22 provides:

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Where the check is drawn by a corporation, company or entity, the person or persons, who actually signed the check in behalf of such drawer shall be liable under this Act.

B.P. Blg. 22 was enacted to address the rampant issuance of bouncing checks as payment for pre-existing obligations. The circulation of bouncing checks adversely affected confidence in trade and commerce. The State criminalized such practice because it was deemed injurious to public interests[12] and was found to be pernicious and inimical to public welfare.[13] B.P. Blg. 22 punishes the act of making and issuing bouncing checks. It is the act itself of issuing the checks which is considered *malum prohibitum.* The law is an offense against public order and not an offense against property.[14] It penalizes the issuance of a check without regard to its purpose. It covers all types of checks.[15] Even checks that were issued as a form of deposit or guarantee were held to be within the ambit of B.P. Blg. 22.[16]

When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a

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[12] *Lozano v. Martinez*, Nos. 63419, 66839-42, 71654, 74524-25, 75122-49, 75812-13, 75765-67, 75789, 18 December 1986, 146 SCRA 323.

[13] *People v. Laggui*, G.R. Nos. 76262-63, 18 March 1989, 171 SCRA 305, 311.

[14] See Note 12.

[15] *Id.*

[16] *Que v. People*, Nos. 75217-18, 21 September 1987, 154 SCRA 160.

penal statute.[17] The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment.[18] Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.[19] As we held in *Llamado v. Court of Appeals*:[20]

> Petitioner's argument that he should not be held personally liable for the amount of the check because it was a check of the Pan Asia Finance Corporation and he signed the same in his capacity as Treasurer of the corporation, is also untenable. The third paragraph of Section 1 of BP Blg. 22 states: "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act."

The general rule is that a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted. In the recent case of *Bautista v. Auto Plus Traders Inc.*,[21] the Court ruled decisively that the civil liability of a corporate officer in a B.P. Blg. 22 case is extinguished with the criminal liability. We are not inclined through this case to revisit so recent a precedent, and the rule of *stare decisis* precludes us to discharge Ching of any civil liability arising from the B.P. Blg. 22 case against her, on account of her acquittal in the criminal charge.

We recognize though the bind entwining the petitioner. The records clearly show that it is ASB is civilly obligated to petitioner.

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[17] § 1643 18B AM. JUR. 2D CORPORATIONS citing *Semones v. Southern Bell Tel. & Tel. Co.*, 106 N.C. App. 334, 416 S.E.2d 909 (1992).

[18] *Id.* citing *Walker v. State*, 467 N.E.2d 1248 (Ind. Ct. App. 3d Dist.1984).

[19] 68 A.L.R. 2D 1269.

[20] *Llamado v. Court of Appeals,* G.R. No. 99032, 26 March 1997, 270 SCRA 423.

[21] G.R. No. 166405, 6 August 2008.

In the various stages of this case, petitioner has been proceeding from the premise that he is unable to pursue a separate civil action against ASB itself for the recovery of the amounts due from the subject checks. From this premise, petitioner sought to implead ASB as a defendant to the B.P. Blg. 22 case, even if such case is criminal in nature.[22]

What supplied the notion to the petitioner that he was unable to pursue a separate civil action against ASB? He cites the Revised Rules on Criminal Procedure, particularly the provisions involving B.P. Blg. 22 cases, which state that:

> Rule 111, Section 1—*Institution of criminal and civil action.*
>
> x x x x x x x x x
>
> (b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.
>
> Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complainant or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay the filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.
>
> Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the

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[22] A traditional theory in criminal law is that a corporation cannot be prosecuted . B.P. 22 clearly adheres to the traditional theory, as nothing therein holds a juridical person liable for the violation of the said law. Nonetheless, a more modern rule pronounces that a corporation may be criminally liable for actions or omissions made by its officers or agents in its behalf. And that while a corporation cannot be imprisoned, it may be fined, its charter may be revoked by the state, or other sanctions may be imposed by law. See Cox, James. Corporations. 2nd ed. Aspen Publishers. New York. © 2003 p. 130.

application is granted, the trial of both actions shall proceed in accordance with Section 2 of this Rule governing consolidation of the civil and criminal actions.[23]

We are unable to agree with petitioner that he is entitled to implead ASB in the B.P. Blg. 22 case, or any other corporation for that matter, even if the Rules require the joint trial of both the criminal and civil liability. A basic maxim in statutory construction is that the interpretation of penal laws is strictly construed against the State and liberally construed against the accused. Nowhere in B.P. Blg. 22 is it provided that a juridical person may be impleaded as an accused or defendant in the prosecution for violations of that law, even in the litigation of the civil aspect thereof.

Nonetheless, the substantive right of a creditor to recover due and demandable obligations against a debtor-corporation cannot be denied or diminished by a rule of procedure. Technically, nothing in Section 1(b) of Rule 11 prohibits the reservation of a separate civil action against the juridical person on whose behalf the check was issued. What the rules prohibit is the reservation of a separate civil action against the natural person charged with violating B.P. Blg. 22, including such corporate officer who had signed the bounced check.

In theory the B.P. Blg. 22 criminal liability of the person who issued the bouncing check in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. B.P. Blg. 22 itself fused this criminal liability of the signer of the check in behalf of the corporation with the corresponding civil liability of the corporation itself by allowing the complainant to recover such

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[23] Section 1, Rule 111(b), 2000 Rules of Criminal Procedure. Justice Florenz D. Regalado explained the rationale for the implementation of the abovementioned rule. The reason was to declog the courts of B.P. 22 cases because ordinarily payment of docket fees is not required in a criminal case for actual damages because prior to its amendment, it became the practice of creditors to use the courts as their personal collection agencies by the mere expediency of filing a B.P. Blg. 22 case. See FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM*, Vol. II. 9th revised ed. pp. 293-294.

civil liability not from the corporation, but from the person who signed the check in its behalf. Prior to the amendments to our rules on criminal procedure, it though clearly was permissible to pursue the criminal liability against the signatory, while going after the corporation itself for the civil liability.

However, with the insistence under the amended rules that the civil and criminal liability attaching to the bounced check be pursued jointly, the previous option to directly pursue the civil liability against the person who incurred the civil obligation–the corporation itself–is no longer that clear. In theory, the implied institution of the civil case into the criminal case for B.P. Blg. 22 should not affect the civil liability of the corporation for the same check, since such implied institution concerns the civil liability of the signatory, and not of the corporation.

Let us pursue this point further. B.P. Blg. 22 imposes a distinct civil liability on the signatory of the check which is distinct from the civil liability of the corporation for the amount represented from the check. **The civil liability attaching to the signatory arises from the wrongful act of signing the check despite the insufficiency of funds in the account, while the civil liability attaching to the corporation is itself the very obligation covered by the check or the consideration for its execution. Yet these civil liabilities are mistaken to be indistinct. The confusion is traceable to the singularity of the amount of each.**

If we conclude, as we should, that under the current Rules of Criminal Procedure, the civil action that is impliedly instituted in the B.P. Blg. 22 action is only the civil liability of the signatory, and not that of the corporation itself, the distinctness of the cause of action against the signatory and that against the corporation is rendered beyond dispute. It follows that the actions involving these liabilities should be adjudged according to their respective standards and merits. In the B.P. Blg. 22 case, what the trial court should determine whether or not the signatory had signed the check with knowledge of the insufficiency of funds or credit in the bank account, while in the civil case the trial court should ascertain whether or not the obligation itself

is valid and demandable. The litigation of both questions could, in theory, proceed independently and simultaneously without being ultimately conclusive on one or the other.

It might be argued that under the current rules, if the signatory were made liable for the amount of the check by reason of the B.P. Blg. 22 case, such signatory would have the option of recovering the same amount from the corporation. Yet that prospect does not ultimately satisfy the ends of justice. If the signatory does not have sufficient assets to answer for the amount of the check–a distinct possibility considering the occasional large-scale transactions engaged in by corporations – the corporation would not be subsidiarily liable to the complainant, even if it in truth the controversy, of which the criminal case is just a part, is traceable to the original obligation of the corporation. While the Revised Penal Code imposes subsidiary civil liability to corporations for criminal acts engaged in by their employees in the discharge of their duties, said subsidiary liability applies only to **felonies,**[24] and not to crimes penalized by special laws such as B.P. Blg. 22. And nothing in B.P. Blg. 22 imposes such subsidiary liability to the corporation in whose name the check is actually issued. Clearly then, should the check signatory be unable to pay the obligation incurred by the corporation, the complainant would be bereft of remedy unless the right of action to collect on the liability of the corporation is recognized and given flesh.

There are two prevailing concerns should civil recovery against the corporation be pursued even as the B.P. Blg. 22 case against the signatory remains extant. First, the possibility that the plaintiff might be awarded the amount of the check in both the B.P. Blg. 22 case and in the civil action against the corporation. For obvious reasons, that should not be permitted. Considering that petitioner herein has no chance to recover the amount of the

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[24] See REVISED PENAL CODE, Art. 103. "Art. 103. *Subsidiary civil liability of other persons.* — The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

check through the B.P. Blg. 22 case, we need not contend with that possibility through this case. Nonetheless, as a matter of prudence, it is best we refer the matter to the Committee on Rules for the formulation of proper guidelines to prevent that possibility.

The other concern is over the payment of filing fees in both the B.P. Blg. 22 case and the civil action against the corporation. Generally, we see no evil or cause for distress if the plaintiff were made to pay filing fees based on the amount of the check in both the B.P. Blg. 22 case and the civil action. After all, the plaintiff therein made the deliberate option to file two separate cases, even if the recovery of the amounts of the check against the corporation could evidently be pursued through the civil action alone.

Nonetheless, in petitioner's particular case, considering the previous legal confusion on whether he is authorized to file the civil case against ASB, he should, as a matter of equity, be exempted from paying the filing fees based on the amount of the checks should he pursue the civil action against ASB. In a similar vein and for a similar reason, we likewise find that petitioner should not be barred by prescription should he file the civil action as the period should not run from the date the checks were issued but from the date this decision attains finality. The courts should not be bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[25]

WHEREFORE, the petition is *DENIED*, without prejudice to the right of petitioner Jaime U. Gosiaco to pursue an independent civil action against ASB Holdings Inc. for the amount of the subject checks, in accordance with the terms of this decision. No pronouncements as to costs.

Let a copy of this Decision be *REFERRED to the Committee on Revision of the Rules for the formulation of the formal*

[25] *Santiago v. Court of Appeals,* G.R. No.103959, 21 August 1997, 278 SCRA 98,113, citing *Rañeses v. Intermediate Appellate Court*, G.R. No. 76518, 13 July 1990, 187 SCRA 404, and as cited in *Cometa v. Court of Appeals,* G.R. No. 141855, 6 February 2001, 351 SCRA 294, 310.

rules of procedure to govern the civil action for the recovery of the amount covered by the check against the juridical person which issued it.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175983. April 16, 2009]

METROPOLITAN CEBU WATER DISTRICT (MCWD), *petitioner, vs.* **J. KING AND SONS COMPANY, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; CONSTITUTIONAL REQUIREMENTS FOR THE EXERCISE OF THE POWER.— Eminent domain is the right of the state to acquire private property for public use upon payment of just compensation. The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law.

2. ID.; ID.; ID.; WHILE THE POWER TO EXPROPRIATE PERTAINS TO THE LEGISLATURE, CONGRESS MAY VALIDLY DELEGATE THE EXERCISE OF THE POWER TO GOVERNMENT AGENCIES, PUBLIC OFFICIALS AND QUASI-PUBLIC ENTITIES LIKE A LOCAL WATER

UTILITY.— As an inherent sovereign prerogative, the power to expropriate pertains to the legislature. However, Congress may, as in fact it often does, delegate the exercise of the power to government agencies, public officials and quasi-public entities. Petitioner is one of the numerous government offices so empowered. Under its charter, P.D. No. 198, as amended, petitioner is explicitly granted the power of eminent domain.

3. ID.; ID.; ID.; R.A. NO. 8974 (AN ACT TO FACILITATE THE ACQUISITION OF RIGHT OF WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES); APPLIES TO THE EXPROPRIATION SUBJECT OF THE PRESENT CASE.— On 7 November 2000, Congress enacted R.A. No. 8974, entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Section 2 thereof defines national government projects as follows: Sec. 2. *National Government Projects*.—The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, **including projects undertaken by government-owned and -controlled corporations,** all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of source of funding." R.A. No. 8974 includes projects undertaken by government owned and controlled corporations, such as petitioner. Moreover, the Implementing Rules and Regulations of R.A. No. 8974 explicitly includes water supply, sewerage, and waste management facilities among the national government projects covered by the law. It is beyond question, therefore, that R.A. No. 8974 applies to the expropriation subject of this case.

4. ID.; ID.; ID.; PETITIONER HAS LEGAL CAPACITY TO INSTITUTE THE EXPROPRIATION COMPLAINT.— A corporation does not have powers beyond those expressly conferred upon it by its enabling law. Petitioner's charter provides that it has the powers, rights and privileges given to private corporations under existing laws, in addition to the

powers granted in it. All the powers, privileges, and duties of the district shall be exercised and performed by and through the board and that any executive, administrative or ministerial power may be delegated and redelegated by the board to any of its officers or agents for such purpose. Being a corporation, petitioner can exercise its powers only through its board of directors. For petitioner to exercise its power of eminent domain, two requirements should be met, namely: first, its board of directors passed a resolution authorizing the expropriation, and; second, the exercise of the power of eminent domain was subjected to review by the LWUA. In this case, petitioner's board of directors approved on 27 February 2004, Board Resolution No. 015-2004 authorizing its general manager to file expropriation and other cases. Moreover, the LWUA did review and gave its stamp of approval to the filing of a complaint for the expropriation of respondent's lot. Specifically, the LWUA through its Administrator, Lorenzo H. Jamora, wrote petitioner's manager, Armando H. Paredes, a letter dated 28 February 2005 authorizing petitioner to file the expropriation case "against the owner of the five-square meter portion of Lot No. 921-A covered by TCT No. 168805, pursuant to Section 25 of P.D. No. 198, as amended." The letter not only explicitly debunks respondent's claim that there was no authorization from LWUA but it also identifies the lot sought to be expropriated with sufficient particularity. It is settled that the validity of a complaint may be questioned immediately upon its filing through a motion to dismiss or raised thereafter as an affirmative defense. However, there is no need to further belabor the issue since it is established that petitioner has the legal capacity to institute the expropriation complaint.

5. ID.; ID.; ID.; VARIOUS STAGES IN AN EXPROPRIATION PROCEEDINGS; EXPOUNDED.— The general rule is that upon filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation. An exception to this procedure is provided by R.A. No. 8974. It requires the payment of one hundred percent (100%) of the zonal value of the property to be expropriated to entitle the plaintiff to a writ of possession. In an expropriation proceeding there are two stages, first, is the determination of the validity of the expropriation, and second

is the determination of just compensation. In *Tan v. Republic*, we explained the two (2) stages in an expropriation proceeding to wit: (1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned for the public use or purpose described in the complaint, upon payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal. (2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation. Thus, the determination of the necessity of the expropriation is a justiciable question which can only be resolved during the first stage of an expropriation proceeding. Respondent's claim that the expropriated property is too small to be considered for public use can only be resolved during that stage.

6. ID.; ID.; ID.; R.A. No. 8974 DOES NOT TAKE AWAY FROM THE COURTS THE POWER TO JUDICIALLY DETERMINE THE AMOUNT OF JUST COMPENSATION WHICH MUST STILL BE DETERMINED BY THE COURTS ACCORDING TO THE STANDARDS SET FORTH IN SECTION 5 OF THE LAW.— The Court of Appeals ruled that Section 4 of R.A. No. 8974 runs counter to the express mandate of Section 2 of Rule 67. It held that the law undermined the principle that the determination of just compensation is a judicial function. However, this Court has already settled the issue. In *Republic v. Gingoyon*, this Court held that: It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment"

in cases involving national government infrastructure projects. x x x It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof. At the same time, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court. R.A. No. 8974 does not take away from the courts the power to judicially determine the amount of just compensation. The law merely sets the minimum price of the property as the provisional value. Thus, the amount of just compensation must still be determined by the courts according to the standards set forth in Section 5 of R.A. No. 8974.

7. ID.; ID.; ID.; R.A. NO. 8974 DOES NOT REQUIRE A DEPOSIT WITH A GOVERNMENT BANK BUT REQUIRES THE GOVERNMENT TO IMMEDIATELY PAY THE PROPERTY OWNER TO OBTAIN A WRIT OF POSSESSION; THE PROVISIONAL PAYMENT IS A PREREQUISITE AND TRIGGER FOR THE ISSUANCE OF A WRIT OF POSSESSION.— R.A. No. 8974 provides a different scheme for the obtention of a writ of possession. The law does not require a deposit with a government bank; instead it requires the government to immediately pay the property owner. The provisional character of this payment means that it is not yet final, yet, sufficient under the law to entitle the Government to the writ of possession over the expropriated property. The provisional payment is a prerequisite and a trigger for the issuance of the writ of possession. In *Gingoyon,* we held that: It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects. x x x Rep. Act. No. 8974 is plainly clear in imposing

the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act. No. 8974, the private owner sees immediate monetary recompense, with the same degree of speed as the taking of his/her property.

8. ID.; ID.; ID.; THE TRIAL COURT DID NOT COMMIT ERROR IN ACCEPTING PETITIONER'S DEPOSIT AND IN ISSUING THE WRIT OF POSSESSION; THE DEPOSIT OF THE PROVISIONAL AMOUNT WITH THE COURT IS EQUIVALENT TO PAYMENT.— Petitioner was supposed to tender the provisional payment directly to respondent during a hearing which it had failed to attend. Petitioner, then, deposited the provisional payment with the court. The trial court did not commit an error in accepting the deposit and in issuing the writ of possession. The deposit of the provisional amount with the court is equivalent to payment. Indeed, Section 4 of R.A. No. 8974 is emphatic to the effect that "upon compliance with the guidelines…the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project." Under this statutory provision, when the government, its agencies or government-owned and controlled corporations, make the required provisional payment, the trial court has a ministerial duty to issue a writ of possession. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, we held that: Upon compliance with the requirements, a petitioner in an expropriation case…is entitled to a writ of possession as a matter of right and it becomes the ministerial duty of the trial court to forthwith issue the writ of possession. No hearing is required and the court neither exercises its discretion or judgment in determining the amount of the provisional value of the properties to be expropriated as the legislature has fixed the amount under Section 4 of R.A. No. 8974. It is mandatory

on the trial court's part to issue the writ of possession and on the sheriff's part to deliver possession of respondent's property to petitioner pursuant to the writ.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Alvarez Nuez Galang Espina and Lopez Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

Before us is a Rule 45 petition[1] which seeks the reversal of the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. CEB-SP No. 00810. The Court of Appeals' decision nullified the orders[4] and the writ of possession[5] issued by the Regional Trial Court (RTC) of Cebu City, Branch 23, allowing petitioner to take possession of respondent's property.

Petitioner Metropolitan Cebu Water District is a government-owned and controlled corporation created pursuant to Presidential Decree No. 198, as amended. Among its purposes are to acquire, install, improve, maintain and operate water supply and distribution systems within the boundaries of the District.[6]

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[1] *Rollo*. pp. 9-23.

[2] *Id.* at 29-36; Dated 26 July 2006; penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Apolinario Bruselas, Jr. and Agustin S. Dizon.

[3] *Id.* at 49-50; Dated 28 September 2006.

[4] *Id.* at 57-58; Dated 01 April 2005 and 9 May 2005, both penned by Judge Generosa Labra.

[5] *Id.* at 98-100; Dated 21 June 2005 issued by Clerk of Court Jeoffrey Joaquino.

[6] P.D. No. 198, Sec. 5.

Section 5. *Purpose*.—Local water districts may be formed pursuant to this Title for the purposes of (a) acquiring, installing, improving, maintaining and operating water supply and distribution systems for domestic, industrial,

Petitioner wanted to acquire a five (5)-square meter lot occupied by its production well. The lot is part of respondent's property covered by TCT No. 168605 and located in Banilad, Cebu City. Petitioner initiated negotiations[7] with respondent J. King and Sons Company, Inc. for the voluntary sale of the latter's property. Respondent did not acquiesce to petitioner's proposal. After the negotiations had failed, petitioner pursuant to its charter[8] initiated expropriation proceedings through Board Resolution No. 015-2004[9] which was duly approved by the Local Water Utilities Administration (LWUA).[10] On 10 November 2004, petitioner filed a complaint[11] to expropriate the five (5)-square meter portion of respondent's property.

On 7 February 2005, petitioner filed a motion[12] for the issuance of a writ of possession. Petitioner wanted to tender the amount to respondent during a rescheduled hearing which petitioner's counsel had failed to attend.[13] Petitioner deposited[14] with the Clerk of Court the amount of ₱17,500.00 equivalent to one hundred percent (100%) of the current zonal value of the property

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municipal and agricultural uses for residents and lands within the boundaries of such districts, (b) providing, maintaining and operating waste-water collection, treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resource development, utilization and disposal within such districts, as are necessary or incidental to said purpose.

[7] *Rollo*, pp. 112-116.

[8] P.D. No. 198, Sec.. 25, as amended.

Section 25. *Authorization.* –The district may exercise all the powers which are expressly granted by this Title or which are necessarily implied from or incidental to the powers and purposes herein stated. For the purpose of carrying out the objectives of this Act, a district is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration.

[9] *Rollo*, p. 118.

[10] *Id.* at 95; Letter dated 28 February 2005.

[11] *Id.* at 102-106.

[12] Records, pp. 49-50.

[13] *Rollo,* p. 40.

[14] *Id.* at 56; Official Receipt No. 5908819 dated 16 March 2005.

which the Bureau of Internal Revenue had pegged at ₱3,500.00 per square meter.[15] Subsequently, the trial court granted the motion[16] and issued the writ of possession.[17] Respondent moved for reconsideration but the motion was denied.[18]

Respondent filed a petition[19] for *certiorari* under Rule 65 with the Court of Appeals. It sought the issuance of a temporary restraining order (TRO) which the Court of Appeals granted.[20] Thus, petitioner was not able to gain entry to the lot.[21]

On 26 July 2006, the Court of Appeals rendered the assailed decision[22] granting respondent's petition. It ruled that the board resolution which authorized the filing of the expropriation complaint lacked exactitude and particularity which made it invalid; that there was no genuine necessity for the expropriation of the five (5)-square meter lot and; that the reliance on Republic Act (R.A.) No. 8974 in fixing the value of the property contravenes the judicial determination of just compensation. Petitioner moved[23] for reconsideration but the motion was rejected.[24]

Hence, this petition.

The issues raised by petitioner can be summarized as follows:

1. Whether there was sufficient authority from the petitioner's board of directors to institute the expropriation complaint; and

2. Whether the procedure in obtaining a writ of possession was properly observed.

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[15] *Id.* at 117.

[16] *Id.* at 57-58; Order dated 1 April 2005.

[17] *Id.* at 98-100.

[18] *Id.* at 97.

[19] *Id.* at 233-278.

[20] *Id.* at 82-83; Dated 28 June 2005.

[21] *Id.* at 44.

[22] *Supra* note 2.

[23] *Id.* at 37-45; Dated 23 August 2006.

[24] *Supra* note 3.

Eminent domain is the right of the state to acquire private property for public use upon payment of just compensation.[25] The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law.[26]

As an inherent sovereign prerogative, the power to expropriate pertains to the legislature. However, Congress may, as in fact it often does, delegate the exercise of the power to government agencies, public officials and quasi-public entities. Petitioner is one of the numerous government offices so empowered. Under its charter, P.D. No. 198, as amended,[27] petitioner is explicitly granted the power of eminent domain.

On 7 November 2000, Congress enacted R.A. No. 8974, entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Section 2 thereof defines national government projects as follows:

> Sec. 2. *National Government Projects*. — The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, **including projects undertaken by government-owned and -controlled corporations**, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of source of funding." (emphasis ours)

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[25] 1987 CONST., Art. III, Sec. 9.

> Sec. 9 — Private property shall not be taken for public use without just compensation.

[26] *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals,* G.R. No. 150640, 22 March 2007, 518 SCRA 649.

[27] *Supra* note 8.

R.A. No. 8974 includes projects undertaken by government owned and controlled corporations,[28] such as petitioner. Moreover, the Implementing Rules and Regulations of R.A. No. 8974 explicitly includes water supply, sewerage, and waste management facilities among the national government projects covered by the law.[29] It is beyond question, therefore, that R.A. No. 8974 applies to the expropriation subject of this case.

The Court of Appeals held that the board resolution authorizing the expropriation lacked exactitude and particularity. It described the board resolution as akin to a general warrant in criminal law and as such declared it invalid. Respondent reiterates the same argument in its comment and adds that petitioner's exercise of the power of eminent domain was not reviewed by the LWUA.

A corporation does not have powers beyond those expressly conferred upon it by its enabling law. Petitioner's charter provides that it has the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in it.[30] All the powers, privileges, and duties of the district shall

[28] *Rollo*, p. 84.

[29] Implementing Rules and Regulation of R.A. No. 8974 (2001).

Sec. 2 Definition of Terms—

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(d) National government projects—based on Section 2 of the Act, refer to all national government infrastructure, engineering works, and service contracts, including all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-Transfer Law x x x these projects shall include, but not limited, to x x x water supply, sewerage and waste management facilities x x x

[30] P.D. No. 198, Sec. 6, as amended,

Sec. 6. *Formation of District*.—This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.

x x x x x x x x x

be exercised and performed by and through the board and that any executive, administrative or ministerial power may be delegated and redelegated by the board to any of its officers or agents for such purpose.[31] Being a corporation, petitioner can exercise its powers only through its board of directors.

For petitioner to exercise its power of eminent domain, two requirements should be met, namely: first, its board of directors passed a resolution authorizing the expropriation, and; second, the exercise of the power of eminent domain was subjected to review by the LWUA. In this case, petitioner's board of directors approved on 27 February 2004, Board Resolution No. 015-2004[32] authorizing its general manager to file expropriation and other cases. Moreover, the LWUA did review and gave its stamp of approval to the filing of a complaint for the expropriation of respondent's lot. Specifically, the LWUA through its Administrator, Lorenzo H. Jamora, wrote petitioner's manager, Armando H. Paredes, a letter dated 28 February 2005[33] authorizing petitioner to file the expropriation case "against the owner of the five-square meter portion of Lot No. 921-A covered by TCT No. 168805, pursuant to Section 25 of P.D. No. 198, as amended."

The letter not only explicitly debunks respondent's claim that there was no authorization from LWUA but it also identifies the lot sought to be expropriated with sufficient particularity.

It is settled that the validity of a complaint may be questioned immediately upon its filing through a motion to dismiss or raised thereafter as an affirmative defense. However, there is no need to further belabor the issue since

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[31] P.D. No. 198, Sec. 17, as amended.

Sec. 17. *Performance of District Powers*.–All powers, privileges, and duties of the district shall be exercised and performed by and through the board: Provided, however, that any executive, administrative or ministerial power shall be delegated and redelegated by the board to officers or agents designated for such purpose by the board.

[32] *Rollo*, p. 118.

[33] *Id.* at 95.

it is established that petitioner has the legal capacity to institute the expropriation complaint.

Anent the second issue involving the issuance of a writ of possession, a discussion on the various stages in an expropriation proceeding is necessary.

The general rule is that upon filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation. An exception to this procedure is provided by R.A. No. 8974.[34] It requires the payment of one hundred percent (100%) of the zonal value of the property to be expropriated to entitle the plaintiff to a writ of possession.

In an expropriation proceeding there are two stages, first, is the determination of the validity of the expropriation, and second is the determination of just compensation.[35] In *Tan v. Republic*,[36] we explained the two (2) stages in an expropriation proceeding to wit:

(1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned for the public use or purpose described in the complaint, upon payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.

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[34] Infra note 42.

[35] *Republic v. Phil-Ville Development and Housing Corporation,* G.R. No. 172243, 26 June 2007, 525 SCRA 776.

[36] *Tan v. Republic* G.R. No. 170740, 25 May 2007, 523 SCRA 203.

(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation.[37]

Thus, the determination of the necessity of the expropriation is a justiciable question which can only be resolved during the first stage of an expropriation proceeding. Respondent's claim that the expropriated property is too small to be considered for public use can only be resolved during that stage.

Further, the Court of Appeals ruled that Section 4 of R.A. No. 8974 runs counter to the express mandate of Section 2 of Rule 67.[38] It held that the law undermined the principle that the determination of just compensation is a judicial function.

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[37] *Id.* at 211-212. Citing *Municipality of Biñan v. Garcia*, G.R. No. 69260, 22 December 1989, 180 SCRA 576; *National Power Corp. v. Jocson*, G.R. Nos. 94193-99, 25 February 1992, 206 SCRA 520. See also *Lintag v. National Power Corporation,* G.R. No. 158609, 27 July 2007, 528 SCRA 287, 297.

[38] RULES OF COURT, Rule 67, Sec. 2.

Sec.2 *Entry of plaintiff upon depositing value with authorized government depositary*.—Upon filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

However, this Court has already settled the issue. In *Republic v. Gingoyon*,[39] this Court held that:

> It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.
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> It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof.
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> At the same time, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court.[40]

R.A. No. 8974 does not take away from the courts the power to judicially determine the amount of just compensation. The law merely sets the minimum price of the property as the provisional value. Thus, the amount of just compensation must still be determined by the courts according to the standards set forth in Section 5[41] of R.A. No. 8974.

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[39] G.R. No. 166429, 19 December 2005, 478 SCRA 474, 519.

[40] *Id.* at 519-520. Cited in *National Power Corporation v. Co*, G.R. No. 166973, 10 February 2009.

[41] Sec. 5 *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*.—In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

R.A. No. 8974 provides a different scheme for the obtention of a writ of possession. The law does not require a deposit with a government bank; instead it requires the government to immediately pay the property owner.[42] The provisional character of this payment means that it is not yet final, yet, sufficient under the law to entitle the Government to the writ of possession over the expropriated property.[43] The provisional payment is a

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(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape, or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[42] R.A. No. 8974, Sec. 4.

Sec. 4. *Guidelines for Expropriation Proceedings*.—Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

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Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

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[43] *Resolution* denying Motion for Reconsideration in *Republic v. Gingoyon*, G.R. No. 166429, 1 February 2006, 481 SCRA 457, 467.

prerequisite[44] and a trigger[45] for the issuance of the writ of possession. In *Gingoyon,*[46] we held that:

> It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.[47]
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> x x x x x x x x x
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> Rep. Act. No. 8974 is plainly clear in imposing the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act. No. 8974, the private owner sees immediate monetary recompense, with the same degree of speed as the taking of his/her property.[48]

Petitioner was supposed to tender the provisional payment directly to respondent during a hearing which it had failed to attend. Petitioner, then, deposited the provisional payment with the court. The trial court did not commit an error in accepting the deposit and in issuing the writ of possession. The deposit of the provisional amount with the court is equivalent to payment.

Indeed, Section 4 of R.A. No. 8974 is emphatic to the effect that "upon compliance with the guidelines…the court **shall** immediately issue to the implementing agency an order to take possession of the property and start the implementation of the

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[44] *Capitol Steel Corporation v. PHIVIDEC Industrial Authority,* G.R. No. 169453, 6 December 2006, 510 SCRA 590, 617.

[45] *Supra* note 43 at 469.

[46] G.R. No. 166429, 19 December 2005, 478 SCRA 474, 519.

[47] *Id.* at 519. Cited in *National Power Corporation v. Co*, G.R. No. 166973, 10 February 2009.

[48] *Id.* at 531-532.

project."[49] Under this statutory provision, when the government, its agencies or government-owned and controlled corporations, make the required provisional payment, the trial court has a ministerial duty to issue a writ of possession. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*,[50] we held that:

> Upon compliance with the requirements, a petitioner in an expropriation case…is entitled to a writ of possession as a matter of right and it becomes the **ministerial duty** of the trial court to forthwith issue the writ of possession. No hearing is required and the court neither exercises its discretion or judgment in determining the amount of the provisional value of the properties to be expropriated as the legislature has fixed the amount under Section 4 of R.A. No. 8974.[51] (emphasis ours)

It is mandatory on the trial court's part to issue the writ of possession and on the sheriff's part to deliver possession of respondent's property to petitioner pursuant to the writ.

WHEREFORE, the Court of Appeals' Decision dated 26 July 2006 and Resolution dated 28 September 2006 are *REVERSED*. The *ORDERS* of the Regional Trial Court dated 01 April 2005 and 9 May 2005 are hereby *REINSTATED*. The Regional Trial Court is further *DIRECTED* to immediately *REMIT* the amount of ₱17,500.00 to respondent and to *REQUIRE* the sheriff to implement the writ of possession. The case is *REMANDED* to the trial court for further proceedings.

SO ORDERED.

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

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[49] *Supra* note 42.

[50] *Supra* note 44.

[51] *Id.* at 602.

SECOND DIVISION

[G.R. No. 176348. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DIONISIO CABUDBOD *y* TUTOR and EDGAR CABUDBOD *y* LACROA,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MEDICAL EVIDENCE IS MERELY CORROBORATIVE AND IS EVEN DISPENSABLE IN PROVING RAPE; ABSENCE OF FRESH HYMENAL LACERATIONS DOES DISPROVE RAPE.— There is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape. A medical certificate is not necessary to prove the commission of rape and a medical examination of the victim is not indispensable in a prosecution for rape. In the instant case, the medical evidence showed that AAA has healed hymenal lacerations at 5 o'clock and 6 o'clock positions and a scar tissue in the *fossa navicularis*. Indeed, this Court has sustained convictions for rape despite the fact that healed, and not fresh, hymenal lacerations were detected after an examination conducted on the same day, the following day, or three days after the commission of the rape. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. Thus, the absence of fresh hymenal lacerations does not prove that appellants did not rape AAA. On the contrary, the healed hymenal lacerations confirmed, rather than belied, AAA's claim that appellants have raped her even prior to October 9, 13 and 14, 2000. In fact, Dr. Castillo even testified that it is possible to have a penetration without incurring a new injury.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; ESTABLISHED IN CASE AT BAR.— Under Republic Act No. 7659, the penalty of death shall be imposed in the crime of rape when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the

victim. Being in the nature of qualifying circumstances, and not ordinary aggravating circumstances which merely increase the period of the penalty, minority and relationship must be specifically pleaded in the information and proved during trial with equal certainty as the crime itself. The information in Criminal Case No. 00-1879 specifically alleged that AAA was a minor at the time she was raped and that the offender, Dionisio, is her guardian. During the trial, the prosecution proved the presence of the qualifying circumstances of minority and relationship through documentary and testimonial evidence. As shown in her Certificate of Live Birth, AAA was born on September 3, 1989. Therefore, at the time the rape was committed on October 9, 2000, she was 11 years old. Her relationship to Dionisio was likewise proved by the testimonies of AAA, BBB and all three accused. Dionisio's defense that he and BBB merely simulated AAA's Certificate of Live Birth should not be given credence since a Certificate of Live Birth is a public document which has in its favor the presumption of regularity. Thus, he who alleges forgery must prove the same by clear, positive and convincing evidence.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FEW DISCREPANCIES AND INCONSISTENCIES IN THE TESTIMONY OF THE VICTIM REFERRING TO MINOR DETAILS AND NOT IN ACTUALITY TOUCHING UPON THE CENTRAL FACT OF THE CRIME DO NOT IMPAIR THE VICTIM'S CREDIBILITY.— We have held time and again that a few discrepancies and inconsistencies in the testimony of the victim referring to minor details and not in actuality touching upon the central fact of the crime do not impair the victim's credibility. To every question asked, AAA gave straightforward and forthright answers which were credible and worthy of belief. The linchpin of her testimony is that appellants raped her. On this matter, she did not waver or contradict herself. What appellants make much of are trivial issues that cannot foreclose the fact that they had carnal knowledge of AAA. Thus, whether she was raped in the ground floor or second floor of the house, or whether October 9, 2000 was a Saturday or a Monday, or whether Dionisio was in xxx City or xxx Province on October 9, 2000, are trivial details. An ample margin of error and understanding should be accorded AAA since minor lapses are to be expected when a person is recounting the details of

a horrifying experience. Hence, she cannot be expected to mechanically retain and then give an accurate account of every single lurid detail of her harrowing experience. Far from eroding her credibility, her lapses could instead constitute signs of veracity for they show that her testimony was neither rehearsed nor contrived.

4. ID.; ID.; ALIBI AND DENIAL; ARE WEAK DEFENSES WHICH MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY; APPELLANT'S ALIBI PLACED THEM WITHIN THE PERIPHERY OF THE *LOCUS CRIMINIS*.— Appellants could only offer denial and alibi in their defense. Denial and alibi are weak defenses which must be supported by strong evidence of non-culpability to merit credibility. These are negative self-serving evidence which cannot be given greater weight than the testimony of a credible witness who testified on affirmative matters. Between the positive declarations of a prosecution witness and the negative statements of the accused, the former deserves more credence. In addition to AAA's positive declarations, appellants' alibi placed them within the periphery of the *locus criminis*. In order for the defense of alibi to prosper, it is not enough to prove that appellants were somewhere else when the offense was committed; it must, likewise, be demonstrated that they were so far away that it was not possible for them to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.

5. ID.; ID.; IMPUTATION OF ILL-MOTIVE ON THE PART OF THE VICTIM AGAINST APPELLANTS HARDLY MERITS CONSIDERATION; ONLY THE GENUINE DESIRE TO SEEK JUSTICE IMPELLED THE VICTIM TO COME OUT IN THE OPEN AND REVEAL HER UNFORTUNATE FATE IN THE HANDS OF HER FOSTER FATHER AND BROTHER.— The imputation of ill motive on the part of AAA against appellants hardly merits consideration. The alleged ill-feelings harbored by AAA against her foster father and brother are too flimsy to justify the filing of charges punishable by death or *reclusion perpetua*. The acts imputed against appellants are not ordinary criminal offenses that can be hurled with facility. In relating her experiences in public, not only the victim, but her entire family as well, had to go through the humiliation of a trial. Surely,

only the genuine desire to seek justice impelled AAA to come out in the open and reveal her unfortunate fate in the hands of her foster father and brother.

6. ID.; CRIMINAL PROCEDURE; AN AFFIDAVIT OF DESISTANCE IS NOT LOOKED UPON WITH FAVOR ON APPEAL FOLLOWING A CONVICTION, LET ALONE AS BEING THE SOLE CONSIDERATION FOR THE REVERSAL OF THE CONVICTION; THERE MUST BE OTHER CIRCUMSTANCES WHICH, WHEN COUPLED WITH RETRACTION OR DESISTANCE, CREATES DOUBT ON THE VERACITY OF THE TESTIMONY GIVEN AT THE TRIAL.— The *Sinumpaang Salaysay (Salaysay ng Pag-urong ng Demanda)* dated June 1, 2005 executed by AAA deserves scant consideration. An affidavit of desistance is not looked upon with favor on appeal following a conviction, let alone as being the sole consideration for the reversal of that conviction. There must be other circumstances which, when coupled with retraction or desistance, create doubts on the veracity of the testimony given by witnesses during the trial. As we have discussed earlier, the records do not here cast such doubts.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated September 26, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01975 which had affirmed with modification the Joint Decision[2] dated May 8, 2002 of the Regional Trial Court (RTC) of xxx, Branch 109 in Criminal Cases Nos. 00-1879, 00-1880 and 00-1881.

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[1] *Rollo*, pp. 4-22. Penned by Associate Justice Noel G. Tijam, with Associate Justices Remedios A. Salazar-Fernando and Arturo G. Tayag concurring.

[2] Records, Vol. 2, pp. 268-288. Penned by Judge Lilia C. Lopez.

The appellate court had found appellants Dionisio T. Cabudbod and Edgar L. Cabudbod guilty of qualified rape and simple rape through force and intimidation, respectively, committed against AAA.[3]

The Informations filed on October 26, 2000 charging appellants and German L. Tordecillas with rape, read as follows:

CRIMINAL CASE NO. 00-1879

That on or about the 14th day of October 2000, in xxx, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused DIONISIO CABUDBOD *y* TUTOR, being the guardian of AAA, a minor 11 years of age, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of said AAA, against her will and consent.

Contrary to law.[4]

CRIMINAL CASE NO. 00-1880

That on or about the **9th** day of **October 2000**, in xxx, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused *EDGAR CABUDBOD* did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of complainant *AAA*, a minor eleven (11) years of age, against her will and consent.

Contrary to law.[5]

CRIMINAL CASE NO. 00-1881

That on or about the **13th** day of **October 2000**, in xxx, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named youth offender German Tordecillas *y* [*Lacroa*], a

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[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] Records, Vol. 1, p. 4.

[5] *Id.* at 16.

16 years old minor, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of [the] complainant *AAA*, a minor eleven (11) years of age, against her will and consent.

Contrary to law.[6]

Appellants pleaded not guilty to the charges. Accordingly, joint trial ensued.

The prosecution presented as witnesses AAA, Orpha Juan, Reynaldo R. Gubaton, Ma. Erlinda N. Aguila, SPO4 Milagros A. Carrasco and Dr. Mariella S. Castillo. Taken together, their testimonies present the following narrative:

AAA was only five years old when Fernando, appellant Dionisio T. Cabudbod's son, brought her to their house.[7] She was 11 years old at the time the rape was committed, as shown in her Certificate of Live Birth.[8]

On October 9, 2000,[9] between 8:00 to 9:00 p.m., AAA's foster brother, appellant Edgar L. Cabudbod, entered the room in the second floor where AAA was sleeping. Edgar removed her underwear and warned her not to shout. Edgar undressed himself, kissed her private part and raped her. Edgar has raped AAA three times prior to October 9, 2000.

On October 13, 2000,[10] at around 5:00 p.m., AAA was inside their house watching television while her foster mother BBB was outside playing bingo. German L. Tordecillas, AAA's foster cousin, went to their house and joined her in watching television. Suddenly, German held her hands and pointed a knife at her. He ordered her to lie down on the wooden bed in the sala and removed her shorts and underwear. He undressed himself and raped her. German warned her not to tell anyone about the

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[6] *Id.* at 25.

[7] TSN, March 14, 2001, p. 3.

[8] Records, Vol. 2, p. 171.

[9] TSN, March 14, 2001, pp. 11-12.

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

incident otherwise he would kill her. German has molested AAA before for more than 10 times.

On October 14, 2000,[11] at around 8:00 p.m., AAA's foster father, appellant Dionisio T. Cabudbod, entered the room in the second floor where AAA was sleeping. BBB and AAA's foster brothers were then watching television downstairs. AAA was awakened when Dionisio locked the door. He immediately covered her mouth with a piece of cloth, removed her underwear and raped her. Dionisio warned her not to tell anyone about the incident otherwise he would kill her. Dionisio has raped AAA before for more than 10 times.

During cross-examination,[12] AAA testified that she did not tell BBB about the rape incidents because they were not close and she was afraid of the appellants. It was only three years after the first rape that she confided to her classmate, Melvina Tallon, about what happened to her. Melvina accompanied her to their school guidance counselor, Orpha Juan, to whom AAA related what happened in the presence of their class adviser, Ms. Elizabeth Conwi. Thereafter, they reported the incident to Barangay Captain Reynaldo R. Gubaton. Reynaldo referred AAA to Ma. Erlinda N. Aguila of the Department of Social Welfare and Development, in xxx for proper assistance.

Dr. Mariella S. Castillo[13] of the Child Protection Unit of the Philippine General Hospital physically examined AAA. Based on the Final Medico-Legal Report[14] she issued, AAA has healed hymenal lacerations at 5 o'clock and 6 o'clock positions and a scar tissue in the *fossa navicularis*. Dr. Castillo concluded that there was a penetration caused by a blunt object or an erect penis.

For their part, appellants denied the charges and claimed that AAA fabricated it to seek revenge against them.

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[11] *Id.* at 5-7.

[12] *Id.* at 15-16, 22; TSN, April 18, 2001, p. 8; TSN, April 20, 2001, pp. 16-17; TSN, April 30, 2001, pp. 3-9.

[13] TSN, March 27, 2001, pp. 2, 6-7.

[14] Records, Vol. 2, p. 12.

Edgar[15] testified that on October 9, 2000, between 8:00 to 9:00 p.m., he was not in their house since he was driving a passenger jeepney from 6:00 p.m. to midnight. Thus, it was impossible for him to commit the crime charged. He added that he treated AAA as his own sister but AAA harbored ill feelings against him since he teased her as *"ampon"* to which she replied, *"may araw ka rin."* He averred that AAA sought revenge since Dionisio beat her for stealing the latter's money.

German[16] was only 16 years old at the time the rape was committed, as shown in his Certificate of Live Birth.[17] He testified that he was at home on October 13, 2000, at around 4:00 p.m. When he passed by the Cabudbod's house to buy softdrinks, he noticed that the spouses Cabudbod were inside the house and a birthday party was being held in front of their house. He could not have raped AAA since he was in the store of his *ninong* from 4:00 to 6:00 p.m. He added that he always quarreled with AAA since he teased her as *"ampon"* to which she replied, *"may araw ka rin sa akin."*

Dionisio[18] testified that his son Fernando brought AAA to their house in 1995. She was from San Pablo, Laguna and they did not know her biological parents. They decided to adopt her because they pitied her and they wanted to have a daughter. However, the adoption was not legal and they merely simulated her Certificate of Live Birth by making it appear that she was their own child born on September 3, 1989.

Dionisio[19] contended that on October 14, 2000, between 6:00 a.m. to 9:00 p.m., he was with Edgar at xxx repairing their passenger jeepney. It was already past 9:00 p.m. when they returned home. He said that he could not molest AAA because he treated her as his own daughter. He added that it was also

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[15] TSN, May 9, 2001, pp. 11-13 & 21-22.

[16] TSN, May 17, 2001, pp. 4-11; TSN, May 21, 2001, pp. 2-4 & 8-9.

[17] Records, Vol. 1, p. 265.

[18] TSN, May 29, 2001, pp. 3-4; TSN, June 13, 2000, pp. 2-4 & 7.

[19] TSN, June 5, 2001, pp. 9-11 & 15.

impossible for German to rape AAA on October 13, 2000 since he and BBB were home at that time.

BBB[20] corroborated the testimonies of the appellants.

After trial, the trial court rendered a joint decision convicting Dionisio of qualified rape; Edgar of simple rape through force and intimidation; and German of simple rape through force and intimidation and with the use of a deadly weapon. The trial court believed AAA's testimony since it was supported by the findings of Dr. Castillo. It ruled that appellants' defense of denial and alibi could not prevail over the categorical and positive testimony of AAA. AAA's testimony deserved full credence especially when she has no motive to testify against appellants who are her foster family and benefactor. The trial court also found that the spouses Cabudbod took AAA into custody when she was only five years old. Thus, it took the qualifying circumstance of relationship against Dionisio as her guardian. The dispositive portion of the decision reads:

> WHEREFORE, in *People vs. Dionisio Cabudb[o]d,* Criminal Case No. 00-1879, the Court opines that the prosecution has proven the guilt of the accused Dionisio Cabudb[o]d *y* Tutor, beyond reasonable doubt and hereby sentence[s] him to Death. He is likewise ordered to pay Php50,000.00 civil indemnity and moral damages in the amount of Php50,000.00, with subsidiary imprisonment in case of insolvency.
>
> In Criminal Case No. 00-1880 entitled *People vs. Edgar Cabudb[o]d,* the Court opines that the prosecution has proven the guilt of the accused Edgar Cabudb[o]d *y* Lacroa, beyond reasonable doubt and hereby sentence[s] him to *reclusion perpetua*. He is likewise ordered to pay Php50,000.00 civil indemnity and moral damages in the amount of Php50,000.00, with subsidiary imprisonment in case of insolvency.
>
> And in Criminal Case No. 00-1881 entitled *People vs. German Tordecillas*, the Court opines that the prosecution has proven the guilt of the accused German Tordecillas *y* Lacroa, beyond reasonable doubt and with the privilege[d] mitigating circumstance of minority, he is hereby sentence[d] to *prision mayor* of ten (10) years and one (1) day to twelve (12) years. He is likewise ordered to pay Php50,000.00

[20] TSN, June 19, 2001, pp. 4-15.

civil indemnity and moral damages in the amount of Php50,000.00, with subsidiary imprisonment in case of insolvency.

SO ORDERED.[21]

Edgar, German and Dionisio appealed. German later withdrew his appeal and accepted the trial court's decision.[22] In their brief, Edgar and Dionisio raised the following as errors of the trial court:

I.

THE PHYSICAL AS WELL AS THE MEDICAL EVIDENCE DISPROVED ALLEGATIONS OF RAPE COMMITTED BY ACCUSED-APPELLANTS, DIONISIO CABUDBOD *Y* TUTOR AND EDGAR CABUDBOD ON OCTOBER 9, 2000 BETWEEN 8:00 TO 9:00 P.M. AND OCTOBER 14, 2000 BETWEEN 8:00 TO 9:00 P.M., RESPECTIVELY.

II.

MAJOR INCONSISTENCIES AND ADMISSIONS IN THE OVERALL TESTIMONY OF COMPLAINANT FAVOR THE INNOCENCE OF HEREIN ACCUSED-APPELLANTS, AND RENDER COMPLAINANT'S CREDIBILITY SUSPECT.

III.

COMPLAINANT'S CLAIM OF HER AGE AS ELEVEN (11) YEARS OLD IS NOT SUFFICIENTLY SUPPORTED BY EVIDENCE.

IV.

COMPLAINANT HAD THE MOTIVE TO CRY RAPE AGAINST ACCUSED-APPELLANTS, BROUGHT ABOUT BY SEVERAL FACTORS.[23]

On September 26, 2006, the Court of Appeals affirmed the trial court's decision, with the following modifications:

WHEREFORE, the Joint Decision of the Regional Trial Court of xxx, Branch 109, in Criminal Case Nos. 00-1879 and 00-1880 is hereby

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[21] Records, Vol. 2, pp. 287-288.

[22] CA *rollo*, pp. 91-93.

[23] *Id.* at 103-104.

AFFIRMED with Modification in that the Accused-appellant Dionisio Cabudbod, who is guilty beyond reasonable doubt of the crime of qualified rape and sentenced to suffer the penalty of DEATH, is ordered to pay the Private Complainant ₱75,000.00 [as] civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

However, in view of the subsequent passage of R.A. No. 9346, approved on June 24, 2006, which repealed R.A. No. 8177 and R.A. No. 7659, the penalty imposable upon the Accused-appellant Dionisio Cabudbod is reduced from Death to ***RECLUSION PERPETUA***.

SO ORDERED.[24]

Hence, the present appeal.

Simply put, the issues are: (1) Were the physical and medical evidence sufficient to prove that appellants raped AAA? (2) Did the inconsistencies in AAA's testimony render her credibility suspect? (3) Was AAA's minority sufficiently proven? (4) Was AAA impelled by ill motive to accuse appellants of rape?

First. There is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape.[25] A medical certificate is not necessary to prove the commission of rape and a medical examination of the victim is not indispensable in a prosecution for rape.[26] In the instant case, the medical evidence showed that AAA has healed hymenal lacerations at 5 o'clock and 6 o'clock positions and a scar tissue in the *fossa navicularis*. Indeed, this Court has sustained convictions for rape despite the fact that healed, and not fresh, hymenal lacerations were detected after an examination conducted on the same day, the following day, or three days after the commission of the rape.[27] Lacerations, whether healed or fresh,

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[24] *Rollo*, p. 21.

[25] *People v. Arango*, G.R. No. 168442, August 30, 2006, 500 SCRA 259, 279 citing *People v. Bohol*, G.R. Nos. 141712-13 & Crim. Case No. 98-0465, August 22, 2001, 363 SCRA 510, 519.

[26] *People v. Arango*, *supra* at 280; *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 541.

[27] *People v. Bismonte*, G.R. No. 139563, November 22, 2001, 370 SCRA 305, 320.

are the best physical evidence of forcible defloration.[28] Thus, the absence of fresh hymenal lacerations does not prove that appellants did not rape AAA.[29] On the contrary, the healed hymenal lacerations confirmed, rather than belied, AAA's claim that appellants have raped her even prior to October 9, 13 and 14, 2000. In fact, Dr. Castillo even testified that it is possible to have a penetration without incurring a new injury.[30]

Second. We have held time and again that a few discrepancies and inconsistencies in the testimony of the victim referring to minor details and not in actuality touching upon the central fact of the crime do not impair the victim's credibility.[31] To every question asked, AAA gave straightforward and forthright answers which were credible and worthy of belief.[32] The linchpin of her testimony is that appellants raped her. On this matter, she did not waver or contradict herself. What appellants make much of are trivial issues that cannot foreclose the fact that they had carnal knowledge of AAA.[33] Thus, whether she was raped in the ground floor or second floor of the house,[34] or whether October 9, 2000 was a Saturday or a Monday,[35] or whether Dionisio was in xxx City or xxx Province on October 9, 2000,[36] are trivial details. An ample margin of error and understanding should be accorded AAA since minor lapses are to be expected when a person is recounting the details of a horrifying experience.

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[28] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 335; *People v. Acala*, G.R. Nos. 127023-25, May 19, 1999, 307 SCRA 330, 345.

[29] *People v. Erardo*, G.R. No. 119368, August 18, 1997, 277 SCRA 643, 655.

[30] TSN, March 27, 2001, p. 8.

[31] *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 554.

[32] *People v. Gilbero*, G.R. No. 142005, January 23, 2002, 374 SCRA 413, 419.

[33] *People v. Perez*, G.R. No. 113265, March 5, 2001, 353 SCRA 609, 616.

[34] TSN, April 20, 2001, pp. 3-4.

[35] *Id.* at 6-7.

[36] *Id.* at 2.

Hence, she cannot be expected to mechanically retain and then give an accurate account of every single lurid detail of her harrowing experience. Far from eroding her credibility, her lapses could instead constitute signs of veracity for they show that her testimony was neither rehearsed nor contrived.[37]

In contrast, appellants could only offer denial and alibi in their defense. Denial and alibi are weak defenses which must be supported by strong evidence of non-culpability to merit credibility. These are negative self-serving evidence which cannot be given greater weight than the testimony of a credible witness who testified on affirmative matters. Between the positive declarations of a prosecution witness and the negative statements of the accused, the former deserves more credence.[38] In addition to AAA's positive declarations, appellants' alibi[39] placed them within the periphery of the *locus criminis*. In order for the defense of alibi to prosper, it is not enough to prove that appellants were somewhere else when the offense was committed; it must, likewise, be demonstrated that they were so far away that it was not possible for them to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[40]

Third. Under Republic Act No. 7659,[41] the penalty of death shall be imposed in the crime of rape when the victim is under

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[37] *People v. Perez*, *supra*.

[38] *People v. Amante*, G.R. Nos. 149414-15, November 18, 2002, 392 SCRA 152, 167; *People v. Alvero*, G.R. Nos. 134536-38, April 5, 2000, 329 SCRA 737, 756.

[39] Edgar testified that on October 9, 2000, between 8:00 to 9:00 p.m., he was not in their house since he was driving a passenger jeepney from 6:00 p.m. to midnight. On the other hand, Dionisio testified that on October 14, 2000, between 6:00 a.m. to 9:00 p.m., he was with Edgar at xxx repairing their passenger jeepney.

[40] *People v. Cadampog*, G.R. No. 148144, April 30, 2004, 428 SCRA 336, 353.

[41] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Being in the nature of qualifying circumstances, and not ordinary aggravating circumstances which merely increase the period of the penalty, minority and relationship must be specifically pleaded in the information and proved during trial with equal certainty as the crime itself.[42]

The information in Criminal Case No. 00-1879 specifically alleged that AAA was a minor at the time she was raped and that the offender, Dionisio, is her guardian. During the trial, the prosecution proved the presence of the qualifying circumstances of minority and relationship through documentary and testimonial evidence.[43] As shown in her Certificate of Live Birth, AAA was born on September 3, 1989. Therefore, at the time the rape was committed on October 9, 2000, she was 11 years old. Her relationship to Dionisio was likewise proved by the testimonies of AAA, BBB and all three accused. Dionisio's defense that he and BBB merely simulated AAA's Certificate of Live Birth should not be given credence since a Certificate of Live Birth is a public document[44] which has in its favor the presumption of regularity. Thus, he who alleges forgery must prove the same by clear, positive and convincing evidence.[45]

Fourth. The imputation of ill motive on the part of AAA against appellants hardly merits consideration. The alleged ill-feelings harbored by AAA against her foster father and brother are too flimsy to justify the filing of charges punishable by death or *reclusion perpetua*. The acts imputed against appellants

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[42] *People v. Musa*, G.R. No. 143703, November 29, 2001, 371 SCRA 234, 248.

[43] *People v. Ching*, *supra* note 3, at 131.

[44] *Heirs of Pedro Cabais v. Court of Appeals*, G.R. Nos. 106314-15, October 8, 1999, 316 SCRA 338, 343.

[45] *Macaspac v. Puyat, Jr.*, G.R. No. 150736, April 29, 2005, 457 SCRA 632, 644.

are not ordinary criminal offenses that can be hurled with facility. In relating her experiences in public, not only the victim, but her entire family as well, had to go through the humiliation of a trial. Surely, only the genuine desire to seek justice impelled AAA to come out in the open and reveal her unfortunate fate in the hands of her foster father and brother.[46]

Finally, the *Sinumpaang Salaysay (Salaysay ng Pag-urong ng Demanda)*[47] dated June 1, 2005 executed by AAA deserves scant consideration. An affidavit of desistance is not looked upon with favor on appeal following a conviction, let alone as being the sole consideration for the reversal of that conviction. There must be other circumstances which, when coupled with retraction or desistance, create doubts on the veracity of the testimony given by witnesses during the trial.[48] As we have discussed earlier, the records do not here cast such doubts.

WHEREFORE, the appeal is *DENIED*. The Decision dated September 26, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01975 which affirmed with modification the Joint Decision dated May 8, 2002 of the Regional Trial Court of xxx, Branch 109 in Criminal Cases Nos. 00-1879, 00-1880 and 00-1881 is *AFFIRMED*. Costs *de oficio*.

SO ORDERED.

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

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[46] *People v. Guillermo*, G.R. No. 173787, April 23, 2007, 521 SCRA 597, 604.

[47] CA *rollo*, pp. 233-234.

[48] *People v. Lou*, G.R. No. 146803, January 14, 2004, 419 SCRA 345, 351.

THIRD DIVISION

[G.R. No. 176566. April 16, 2009]

ELISEO EDUARTE *y* COSCOLLA, *accused-appellee, vs.* **PEOPLE OF THE PHILIPPINES,** *plaintiff-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF TRIAL COURTS; TRIAL COURT DID NOT OVERLOOK, MISAPPREHEND, OR MISAPPLY ANY FACT OR VALUE FOR THE COURT TO OVERTURN THE FINDINGS OF THE TRIAL COURT.— Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the findings. Eduarte wants this Court to weigh the credibility of the prosecution witnesses *vis-à-vis* the defense witnesses and to take this case out of the purview of the general rule and to review in its entirety, a task entrusted to the trial court, which is in the best position to discriminate between truth and falsehood because of its untrammeled opportunity to observe the deportment and demeanor of witnesses during trial. Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts and circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact or value for us to overturn the findings of the trial court. Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.

2. ID.; ID.; ID.; THE MOST NATURAL REACTION OF VICTIMS OF VIOLENCE IS TO STRIVE TO LOOK AT THE APPEARANCE OF THE PERPETRATORS OF THE CRIME AND OBSERVE THE MANNER IN WHICH THE CRIME IS BEING COMMITTED.— The most natural reaction of victims of violence is to strive to look at the appearance of the perpetrators of the crime and observe the manner in which the

crime is being committed. Eduarte's assumption that it is harder to look at the features of a stranger's face when he is closer to you than when he is farther away may hold water only in normal situations. Under emotional stress, however, when the human body's adrenaline surges, it is highly inconceivable that the mind could not even manage to register the face of the person who threatened bodily harm. As a matter of fact, it is natural, if not instinctive, for the victims to look at the face of the felon. The production of sketches of criminals who were able to flee from authorities is borne out by this human experience. As aptly put by the RTC: Experience shows that because of the unusual act committed before their very eyes, witnesses specially the victims of the crime, can remember with a high degree of reliability the identity of criminals. Most often, the face and body movements of the criminal create an impression which cannot easily be erased from their memory. x x x.

3. ID.; ID.; ID.; THE CREDIBLE AND FORTHRIGHT NARRATIONS OF PROSECUTION WITNESSES DEBASE THE ALREADY WEAK DENIALS OF ACCUSED-APPELLEE.— While this Court does not want to second-guess the wisdom of Eduarte's acts, his casual pretenses after the incident could not easily get him off the hook in light of the **direct, straightforward and spontaneous identification by both Navarra and Adoro that he was the one who robbed Navarra of her bracelet.** It is ineluctably clear from the foregoing that Eduarte was the snatcher. The firm, candid and unmistakable declaration of the prosecution witnesses that it was he whom they saw grabbing the bracelet was unerring and rang with truth. A testimony is credible if it bears the earmarks of truth and sincerity and has been delivered in a spontaneous, natural, and straightforward manner. The credible and forthright narrations of the prosecution witnesses debase the already weak denials of Eduarte. The infirmity of his denial becomes even more evident when, in his vain attempt to extricate himself, he pretended to be a police commander who had many connections. Eduarte's explanation that he was probably misheard by Navarra and Adoro is clearly an afterthought and deserves scant consideration.

4. ID.; ID.; ID.; ACCUSED-APPELLEE HAS NOT SHOWN ANY ULTERIOR MOTIVE IN TESTIFYING AGAINST HIM.— What further fortifies the credibility of prosecution witnesses is that

Eduarte has not shown that Navarra and Adoro had any ulterior motive in testifying against him. Adoro testified that the only reason why she testified against Eduarte was because he was the real culprit. Absent evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimony is thus worthy of full faith and credit.

5. CRIMINAL LAW; ROBBERY; ELEMENTS; PROVEN BY PROSECUTION BEYOND REASONABLE DOUBT; THAT THE BRACELET WAS NOT FOUND IN HIS POSSESSION DOES NOT NEGATE THE EXISTENCE OF *ANIMUS LUCRANDI,* CONSIDERING THAT THERE EXIST A SUBSTANTIAL INTERVAL OF TIME BETWEEN THE ACTUAL TAKING OF THE BRACELET AND THE SUBSEQUENT FRISKING OF ACCUSED-APPELLEE, GIVING HIM ENOUGH OPPORTUNITY TO DISPOSE OF THE STOLEN PROPERTY.— Eduarte is charged with the crime of simple robbery under paragraph 5, Article 294 of the Revised Penal Code, the elements of which are: (1) intent to gain; (2) unlawful taking of personal property belonging to another; and (3) violence against or intimidation of any person. Contrary to Eduarte's claim, all the above elements of robbery were proven by the prosecution beyond reasonable doubt. That the bracelet was not found in his possession does negate the existence of *animus lucrandi,* considering that there exists a substantial interval of time between the actual taking of the bracelet and the subsequent frisking of Eduarte, giving him enough opportunity to dispose of the stolen property. Eduarte himself narrated in open court that after he was confronted by Navarra and Adoro, the two left.

6. ID.; ID.; "FALL-GUY" THEORY OF ACCUSED-APPELLEE, REJECTED.— Eduarte's insinuations, that it was only after the real culprit eluded the victim and the authorities' pursuit that they turned to him, is clutching at straws. The grabbing incident and the confrontation at the food stall constitute one continuous, unbroken chain of events that could lead to only one conclusion — that Eduarte was the one who forcefully took Navarra's bracelet. The heated arguments that ensued at the restaurant was but an offshoot of the robbery that took place one block away. That the incident was attended by an interval of ten minutes does not detract from the continuity of events

for, during such gap, Eduarte was being chased by the victim and her friend who never lost sight of the fleeing accused. For this Court to buy the fall-guy theory postulated by Eduarte is for us to close our eyes on the glaring facts and betray our formidable task of ferreting out the truth and administering justice to all.

7. ID.; ID.; NON-FLIGHT CANNOT BE SINGULARLY CONSIDERED AS EVIDENCE OR AS MANIFESTATION DETERMINATIVE OF INNOCENCE.— Eduarte invoked his non-flight as an indication of his innocence. We remain unperturbed. Although flight is an indication of guilt, non-flight does not necessarily mean non-guilt or innocence. This judicial doctrine is simply applied to strengthen the evidence of guilt, taking into consideration other corroborative pieces of evidence. It cannot be singularly considered as evidence or as a manifestation determinative of innocence.

8. CRIMINAL LAW; ROBBERY; CRIME OF ROBBERY WAS ESTABLISHED BEYOND REASONABLE DOUBT IN CASE AT BAR.— The prosecution has proven beyond reasonable doubt the guilt of Eduarte of the charge of robbery when, with the use of violence against the person of Navarra, he managed to take away the latter's jewelry. The trial court aptly gave full credence to the testimonies of Navarra and Adoro, which unmistakably demonstrated how Eduarte successfully robbed Navarra and almost successfully eluded apprehension. This finding was adopted by the appellate court, considering that the trial court was in the best position to ascertain credibility issues, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Considering that the records show a dearth of evidence that reasonable doubt attended the conviction of Eduarte, we affirm the conclusion of the trial court and the appellate court that Eduarte is guilty of robbery under Article 294(5) of the Code and should be accorded with the proper penalty.

9. ID.; ID.; PROPER IMPOSABLE PENALTY.— The felony committed by Eduarte was robbery by means of violence against or intimidation of persons which, under Article 294(5) of the Revised Penal Code, is punishable with *prision correccional* maximum to *prision mayor* medium (4 years, 2 months and 1 day to 10 years). There being no aggravating or mitigating

circumstance, the penalty should be imposed in the medium period, *i.e., prision mayor* minimum, which has a range of 6 years and 1 day to 8 years. Applying the Indeterminate Sentence Law, Eduarte is entitled to a minimum term to be taken within the penalty next lower in degree to that imposed by the Code, or *arresto mayor* maximum to *prision correccional* medium, which has a range of 4 months and 1 day to 4 years and 2 months. As correctly found by the Court of Appeals, the penalty of imprisonment to be imposed should be 4 years and 2 months of *prision correccional*, as minimum, and 8 years of *prision mayor*, as maximum.

APPEARANCES OF COUNSEL

Carolina C. Griño-Aquino for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

To ferret out the truth in the maze of the conflicting claims of opposing parties is the Herculean task of the courts, the path which must always be illuminated by reason and justice. Tribunals should always insist on having the truth and judging only upon satisfactory evidence of the truth. The quest for truth is their main responsibility. To judge by means of untruths is to debase the noblest function in the hands of humanity.[1]

Before this Court is a Petition for Review on *Certiorari* filed by accused-appellant Eliseo Eduarte (Eduarte) seeking to reverse and set aside the Decision[2] of the Court of Appeals dated 12 August 2004 in CA-G.R. CR No. 26716, affirming with modification the Decision[3] dated 26 August 2002 of the Regional Trial Court (RTC) of Manila, Branch 53, in Criminal

[1] *Enriquez v. Bautista*, 79 Phil. 220, 225 (1947).

[2] Penned by Associate Justice Eliezer L. delos Santos with Associate Justices Delilah Vidallon-Magtolis, and Arturo D. Brion, concurring; *rollo,* pp. 37-46.

[3] Penned Judge Reynaldo A. Alhambra; CA *rollo,* pp. 44-46.

Case No. 94-132224. The RTC found Eduarte guilty beyond reasonable doubt of the crime of robbery and, accordingly, sentenced him to suffer the penalty of imprisonment of four years, two months to 10 years and to pay Catherine Navarra (Navarra) compensatory damages in the amount of ₱8,875.00. The decretal part of the assailed Court of Appeals Decision reads:

> Wherefore, the appealed decision is hereby **AFFIRMED with MODIFICATION.** [Eduarte] is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from [four] years and [two] months of *pricion (sic) correcional* as minimum to [eight] years of *prision mayor* as maximum.[4]

An Information for Robbery was filed against Eduarte, to wit:

> The undersigned accuses ELISEO EDUARTE *Y* COSCOLIA of the crime of Robbery, committed as follows:
>
> That on or about the 26th day of January, 1994 in the City of Manila, Philippines, the said accused with intent to gain and by means of force, violence and intimidation, to wit: by pointing a sharp instrument on the waist of Catherine Navarra *y* Miranda and uttering the following, to wit: "*Huwag kang kikilos ng masama, masasaktan ka*" and thereafter forcibly grabbing her gold bracelet valued at ₱8,875.00 did then and there willfully, unlawfully and feloniously take, rob and carry away the said bracelet belonging to CATHERINE NAVARRA *Y* MIRANDA against her will, to the damage and prejudice of the said owner in the aforesaid amount of ₱8,875.00, Philippine Currency.[5]

Upon arraignment, Eduarte, assisted by counsel, entered a plea of not guilty. Subsequently, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Navarra, the victim; (2) Karen Adoro (Adoro), Navarra's classmate who was her companion at the time of the robbery; and (3) Senior Police Officer (SPO) 3 Maphilendo Praves, one of the two police officers who arrested Eduarte.

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[4] *Rollo,* p. 46.

[5] Records, p. 1.

The collective testimonial evidence adduced by the prosecution shows that at around 7:45 in the evening of 26 January 1994, Navarra, together with Adoro, was walking along the corner of United Nations (UN) and Taft Avenue in Manila. Navarra and Adoro were Tourism Management students of the Philippine Women's University (PWU) and were on their On-the-Job Training (OJT) at Attic Tours and Travels at Malate, Manila. That night, the two students just came from their OJT and they were on their way to the Philippine Long Distance Telephone (PLDT) Office at Padre Faura Street, Manila, when suddenly a man positioned himself between them and poked a pointed object at the waist of Navarra. The man ordered Navarra not to move; otherwise, she would get hurt. The man immediately grabbed the bracelet from Navarra's wrist and slowly ran away as if nothing happened. The jewelry was a 22-karat gold bracelet with eight dangling fruits and was worth ₱8,875.00.

The man fled to the opposite direction of Taft Avenue going to the Manila City Hall, and he was chased by Adoro. Right behind Adoro was Navarra who was also running after the perpetrator. Adoro then saw the man casually sit inside the Greenrich Food Chain (not Greenwich) located below the UN Avenue Light Rail Transit (LRT) Station and immediately confronted him, demanding the return of the bracelet: *"Ikaw ang magnanakaw, ibalik mo ang bracelet."* Shortly thereafter, Navarra also arrived at the food stall and positively identified the snatcher: *"Yan nga, siya, siya yon."* The man denied the accusations and even tried to impress Navarra and Adoro by bragging to them that he was a Station Commander and that he had many connections. To convince Navarra and Adoro, the man flaunted his purported Police Identification (ID) Card. It was shown from the ID that his name was Eduarte.

Feeling that they could not prevail over Eduarte to return the bracelet, Navarra and Adoro sought help by shouting, *"Magnanakaw, magnanakaw,"* which pleadings were heard by SPO3 Praves and SPO3 Nasareo Cueto (Cueto), who happened to be in their routine anti-crime night patrol along the area. The policemen responded and brought Eduarte to the police station for investigation.

For his defense, Eduarte denied the accusations hurled against him. His version of the incident was that on the night of 26 January 1994 at around 6:00 to 6:30, he arrived at the Greenrich Food Chain as part of his routine of fetching his girlfriend Clarissa Villafranca (Villafranca). Villafranca worked at the food stall as a waitress. Eduarte was already in Greenrich for more than an hour talking to Villafranca when Navarra and Adoro suddenly appeared and accused him of thievery. The imputations came as a surprise to Eduarte, so he reasoned that they might be mistaken: *"Miss, baka nagkakamali po kayo."* His explanation was seconded by Villafranca, who also told the ladies that they might just have mistaken him for someone else: *"Miss, baka nagkamali po kayo, kanina pa sya nakaupo dyan,"* but to no avail. Eduarte then introduced himself as a former junior police officer and showed to Navarra and Adoro his ID in an effort to make the two believe that he could not have committed the alleged acts. Unable to sway his accusers, Eduarte told Navarra and Adoro that it would be better if all of them would go to the nearest police station in order to clear the matter. After Eduarte said that, Navarra and Adoro left. At this point, Villafranca tried to convince Eduarte to leave the area in order to avoid any trouble, but he stood his ground. After around 30 minutes, Navarra and Adoro returned to the food chain; this time they were with SPO3 Praves and SPO3 Cueto. Once again, Eduarte reiterated to the policemen that he was just erroneously identified: "*Sir, itinuro ako, alam nyo naman hindi ko magagawa yun.*" But instead of listening to his plea, SPO3 Praves punched him on the stomach and slapped his face, while SPO3 Cueto snapped that he better explain that in the precinct. SPO3 Praves even took his wallet with his money and ID.

On 26 August 2002, the trial court rendered a Judgment finding Eduarte guilty beyond reasonable doubt of the crime of robbery, the dispositive portion of which reads:

> WHEREOFRE, in view of the foregoing, judgment is hereby rendered finding the accused Eliseo Eduarte *y* Coscolla GUILTY beyond reasonable doubt of the crime of robbery defined and punished under Article 294 of the Revised Penal Code and is hereby sentenced

to Four (4) Years, Two (2) months of *Pricion Correcional* as minimum to Ten (10) Years of *Pricion Mayor* as maximum; and further, said accused is ordered to pay Catherine Navarra compensatory damages in the amount of ₱8,875.00 with legal interest computed from January 26, 1994; and to pay costs.[6]

The Court of Appeals, in its Decision dated 12 August 2004, confirmed the presence of all the elements of robbery under Article 294 of the Revised Penal Code and brushed aside the inconsistencies pointed out by Eduarte in the testimonies of witnesses. The appellate court, however, reduced the maximum length of imprisonment to eight years, applying the Indeterminate Sentence Law.

Eduarte is now before this Court urging us to reverse the findings of the RTC and the Court of Appeals arguing, in the main, that his conviction was tainted with reasonable doubt. Before we proceed, this Court opted not to dispense with the procedural issues raised by the parties and decide this case based on the merits involved, ignoring technicalities. Pertinent to the resolution of this case is the sole issue of:

WHETHER OR NOT THE CONVICTION OF EDUARTE TO THE CRIME OF ROBBERY IS TAINTED WITH REASONABLE DOUBT.

Maintaining his innocence, Eduarte insists that he was mistakenly identified by Navarra and Adoro as the malefactor who robbed Navarra of her bracelet. Eduarte invites the attention of this Court to pass upon the circumstances that assail the credibility of testimonies offered by Navarra and Adoro, underscoring their frailties and thereby creating a reasonable doubt on his conviction.

Inarguably, the resolution of the issue raised by Eduarte requires us to inquire into the credibility of the witnesses, a course of action which this Court will not do, consistent with our repeated holding that this Court is not a trier of facts.

Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to

[6] *Id.* at 46.

great weight and respect by this Court, particularly when the Court of Appeals affirms the findings.[7]

Eduarte wants this Court to weigh the credibility of the prosecution witnesses *vis-à-vis* the defense witnesses and to take this case out of the purview of the general rule and to review in its entirety, a task entrusted to the trial court, which is in the best position to discriminate between truth and falsehood because of its untrammeled opportunity to observe the deportment and demeanor of witnesses during trial.

Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts and circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case.[8] In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact or value for us to overturn the findings of the trial court. Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.[9]

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[7] *Rivera v. Roman*, G.R. No. 142402, 20 September 2005, 470 SCRA 276, 287.

This rule, however, admits of several 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 those of 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.

[8] *Bautista v. Castillo*, G.R. No. 174405, 26 August 2008, 563 SCRA 398, 406.

[9] *Castillo v. Court of Appeals*, 329 Phil. 150, 159 (1996).

Eduarte is charged with the crime of simple robbery under paragraph 5, Article 294[10] of the Revised Penal Code, the elements of which are: (1) intent to gain; (2) unlawful taking of personal property belonging to another; and (3) violence against or intimidation of any person.

Contrary to Eduarte's claim, all the above elements of robbery were proven by the prosecution beyond reasonable doubt. That the bracelet was not found in his possession does negate the existence of *animus lucrandi,* considering that there exists a substantial interval of time between the actual taking of the bracelet and the subsequent frisking of Eduarte, giving him enough opportunity to dispose of the stolen property. Eduarte himself narrated in open court that after he was confronted by Navarra and Adoro, the two left. They returned only after 30 minutes together with the policemen, *viz:*

Q: You mean to say Mr. Witness, that when these two (2) women continuously insisted that you were the thief, you challenged them to call the police, my question is did they call a policeman?

A: When I told them to go to the police station they left and when they returned after thirty (30) minutes they were with a policeman, sir.[11]

Eduarte fervently argues that he was not the one who robbed Navarra, but was erroneously accused as the thief. Eduarte claims the time and the manner of carrying out the crime made it highly improbable for Navarra and Adoro to create in their minds the image of the perpetrator that would enable them to correctly identify him later on. At the moment the snatching took place, it was already dark; and the snatching was swiftly

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[10] Art. 294. *Robbery with violence against or intimidation of persons - Penalties*. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer.

x x x x x x x x x

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases."

[11] TSN, 3 February 1997, p. 9.

carried out, thereby depriving Navarra and Adoro the opportunity to look at the physical features of the culprit, making their subsequent judgments of the identity of the suspect highly questionable.

We cannot agree. The most natural reaction of victims of violence is to strive to look at the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed.[12] Eduarte's assumption that it is harder to look at the features of a stranger's face when he is closer to you than when he is farther away may hold water only in normal situations. Under emotional stress, however, when the human body's adrenaline surges, it is highly inconceivable that the mind could not even manage to register the face of the person who threatened bodily harm. As a matter of fact, it is natural, if not instinctive, for the victims to look at the face of the felon. The production of sketches of criminals who were able to flee from authorities is borne out by this human experience. As aptly put by the RTC:

> Experience shows that because of the unusual act committed before their very eyes, witnesses specially the victims of the crime, can remember with a high degree of reliability the identity of criminals. Most often, the face and body movements of the criminal create an impression which cannot easily be erased from their memory. x x x.[13]

Eduarte further posits that if he were the one who snatched the jewelry, why would he be just sitting in a nearby food chain and not running farther away to escape captivity. He argues that his demeanor of casually sitting in the food stall and nonchalantly chatting to his girlfriend was not that of a person who had just escaped from a crime, but that of an innocent man.

While this Court does not want to second-guess the wisdom of Eduarte's acts, his casual pretenses after the incident could not easily get him off the hook in light of the **direct,**

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[12] *People v. Pedroso*, 391 Phil. 43, 54 (2000).

[13] CA *rollo,* p. 46.

straightforward and spontaneous identification by both Navarra and Adoro that he was the one who robbed Navarra of her bracelet, thus:

Q: And after the snatcher grabbed your bracelet what did you do, if any?
A: My classmate chased him and I also followed my classmate, he went inside the Greenrich restaurant as if there was nothing unusual that happened.

Q: What did he do there?
A: Sit down as if nothing happened, your Honor.

x x x x x x x x x

Q: What happened, he sit down as if nothing happened?
A: We confronted him and told him that he is the snatcher.

Q: What did he say?
A: He tried to impress us that he is a big or influential person.[14]

Witness Adorro corroborated Navarra in this wise:

Q: What happened after the accused was able to grab the bracelet from the wrist of Catherine?
A: He ran slowly as if he was jogging only (sic) seems as if nothing happened, sir.

Q: Then what happened after that?
A: I ran after him, sir.

Q: Then what happened?
A: He just sat down at [Greenrich] sir.

Q: Is that [Greenrich] a restaurant?
A: He sat down at [Greenrich] Cathy (sic) located under the LRT, sir.

Q: What did you do?
A: I approached him at the place there he (sic) sitted (sic) himself, sir.

Q: After that what happened?
A: Then I asked him to return the bracelet "*Ikaw magnanakaw, ibalik mo yong bracelet.*"

[14] TSN, 8 August 1994, pp. 5-6.

Q: Then what did you do?
A: He just stared at me for a long time and nod his head and I told him to look at me you are a sinner then he looked at me and said *"Hindi mo ba ako kilala"* then he brought out something from his pocket and told me that he is a police commander and I told him that if you are a police commander why do (sic) you steal?

Q: Then what was his answer?
A: He said, a lot of people knew me, ask these people around.[15]

Q: When Catherine arrived at the Greenrich Restaurant, did anything happen between her and the accused?
A: None, your Honor, Catherine was shocked.

Q: And did she and the accused had many (sic) exchange of words or conversation?
A: There is, your Honor.

Q: What did Catherine say?
A: "*Yan nga, siya, siya yon,*" your Honor.

Q: How about the accused?
A: There are many reactions, "how can that be, I am a police commander."

x x x x x x x x x

Q: One last question. What made you sure that it was the accused who grabbed the bracelet of your friend?
A: *Simple lang, yong height nya, buhok,* everything, his appearance sir.[16]

It is ineluctably clear from the foregoing that Eduarte was the snatcher. The firm, candid and unmistakable declaration of the prosecution witnesses that it was he whom they saw grabbing the bracelet was unerring and rang with truth. A testimony is credible if it bears the earmarks of truth and sincerity and has been delivered in a spontaneous, natural, and straightforward manner.[17] The credible and forthright narrations of the prosecution

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[15] TSN, 14 July 1995, pp. 7-9.

[16] TSN, 2 August 1995. p. 7-20.

[17] *People v. Lazo*, G.R. No. 75367, 19 June 1991, 198 SCRA 274, 281.

witnesses debase the already weak denials of Eduarte. The infirmity of his denial becomes even more evident when, in his vain attempt to extricate himself, he pretended to be a police commander who had many connections. Eduarte's explanation that he was probably misheard by Navarra and Adoro is clearly an afterthought and deserves scant consideration.

What further fortifies the credibility of prosecution witnesses is that Eduarte has not shown that Navarra and Adoro had any ulterior motive in testifying against him. Adoro testified that the only reason why she testified against Eduarte was because he was the real culprit.[18] Absent evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimony is thus worthy of full faith and credit.[19]

Eduarte's insinuations, that it was only after the real culprit eluded the victim and the authorities' pursuit that they turned to him, is clutching at straws. The grabbing incident and the confrontation at the food stall constitute one continuous, unbroken chain of events that could lead to only one conclusion — that Eduarte was the one who forcefully took Navarra's bracelet. The heated arguments that ensued at the restaurant was but an offshoot of the robbery that took place one block away. That the incident was attended by an interval of ten minutes does not detract from the continuity of events for, during such gap, Eduarte was being chased by the victim and her friend who never lost sight of the fleeing accused.[20] For this Court

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[18] Q: My question is you do not know him personally?
A: No, sir.
Q: So that you have no reason why you testified against him here?
A: There is, sir.
Q: Why are you testifying against him?
A: *"Siya ang salarin," sir.* (TSN, 2 August 1995, p. 20.)

[19] *Ureta v. People*, 436 Phil. 148, 160 (2002).

[20] Q: In other words, Ms. Adoro, while you were running, because according to you, you did not focus your attention to him because you were also looking at Catherine?

to buy the fall-guy theory postulated by Eduarte is for us to close our eyes on the glaring facts and betray our formidable task of ferreting out the truth and administering justice to all.

Finally, Eduarte invoked his non-flight as an indication of his innocence. We remain unperturbed. Although flight is an indication of guilt, non-flight does not necessarily mean non-guilt or innocence. This judicial doctrine is simply applied to strengthen the evidence of guilt, taking into consideration other corroborative pieces of evidence. It cannot be singularly considered as evidence or as a manifestation determinative of innocence.[21]

All told, the prosecution has proven beyond reasonable doubt the guilt of Eduarte of the charge of robbery when, with the use of violence against the person of Navarra, he managed to take away the latter's jewelry. The trial court aptly gave full credence to the testimonies of Navarra and Adoro, which unmistakably demonstrated how Eduarte successfully robbed Navarra and almost successfully eluded apprehension. This finding was adopted by the appellate court, considering that the trial court was in the best position to ascertain credibility issues, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Considering that the records show a dearth of evidence that reasonable doubt attended the conviction of Eduarte, we affirm the conclusion of the trial court and the appellate court that Eduarte is guilty of robbery under Article 294(5) of the Code and should be accorded with the proper penalty.

A: My attention was focused on him and I saw him sitting at Greenwich, sir.

Q: My question Ms. Adoro, while you were running after the accused, you were also looking back to your classmate as you told a while ago, is that correct?

A: No, I never. I just told Catherine, "just stay here, while I will run after the accused."

Q: You did not notice the accused having something coming from his pocket?

A: He just sit there, sir. (TSN, 2 August 1995, p. 5.)

[21] *People v. Abacia*, 411 Phil. 881, 889 (2001).

Article 294(5) of the Revised Penal Code provides for the penalty for simple robbery, to wit:

> Art. 294. *Robbery with violence against or intimidation of persons - Penalties*. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer.
>
> x x x x x x x x x
>
> 5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases."

The felony committed by Eduarte was robbery by means of violence against or intimidation of persons which, under Article 294(5) of the Revised Penal Code, is punishable with *prision correccional* maximum to *prision mayor* medium (4 years, 2 months and 1 day to 10 years). There being no aggravating or mitigating circumstance, the penalty should be imposed in the medium period, *i.e., prision mayor* minimum, which has a range of 6 years and 1 day to 8 years. Applying the Indeterminate Sentence Law, Eduarte is entitled to a minimum term to be taken within the penalty next lower in degree to that imposed by the Code, or *arresto mayor* maximum to *prision correccional* medium, which has a range of 4 months and 1 day to 4 years and 2 months. As correctly found by the Court of Appeals, the penalty of imprisonment to be imposed should be 4 years and 2 months of *prision correccional*, as minimum, and 8 years of *prision mayor*, as maximum.

WHEREFORE, *IN VIEW OF THE FOREGOING*, the instant petition is *DENIED*. The Decision dated 12 August 2004 of the Court of Appeals in CA-G.R. CR No. 26716 affirming the conviction of Eliseo Eduarte *y* Coscolla for the crime of Robbery and sentencing him to suffer the prison term ranging from 4 years and 2 months of *prision correccional* as minimum to 8 years *prision mayor* as maximum, is hereby affirmed *in toto.* He is ordered to pay private complainant Catherine Navarra the amount of ₱8,875.00 by way of restitution.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177302. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JAIME LOPEZ, ROGELIO REGALADO, AND ROMEO ARAGON,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; SHOWN BY THE FACT THAT APPELLANTS COOPERATED IN A COMMON DESIGN TO KILL THE VICTIM.— This Court finds no reason to overturn the factual findings of the trial court, especially since the prosecution's version is culled from the testimony of eyewitnesses. Appellants' disclaimer of the presence of conspiracy fails. The evidence shows that they cooperated in a common design to kill Chu. Regalado initiated the killing when he stabbed Chu on the chest, and the two other appellants joined Regalado in chasing Chu, with Regalado hitting Chu with firewood along the way. Then, when the three of them had cornered Chu, Aragon boxed and kicked Chu, enabling Lopez to stab him several times. These indicate a conspiracy.

2. ID.; JUSTIFYING CIRCUMSTANCES; DEFENSE OF RELATIVE; ELEMENTS THEREOF; ABSENT IN CASE AT BAR.— Neither does Lopez's "defense of relative." As the Court of Appeals held: Under [Paragaraph 2 of Article 11 of the Revised Penal Code], the elements of the justifying circumstance of defense of relatives are as follows: 1. Unlawful aggression; 2. Reasonable necessity of the means employed to prevent or repel it; 3. In case provocation was given by the person attacked, that the one making the defense had no part therein. Even if We adopt accused-appellants' version of the incident, We still find the foregoing elements absent in the case at bar. As alleged by Lopez, he merely heard someone shouting "police, police, police!" and when he looked out he allegedly saw his father-in-law being chased by Chu. He then went to Regalado's house to get a knife and when he caught up with Chu, he no longer saw accused-appellant Regalado and it was only Chu who was there.

He allegedly stabbed Chu because of the latter's threatening words, "Are you going to defend your father-in-law?" We cannot, by any stretch of imagination, consider said remarks threatening as to consider it unlawful aggression. It bears stressing that unlawful aggression, as defined under the Revised Penal Code, contemplates assault or at least threatened assault of an immediate and imminent kind. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause injury shall have been made. A mere threatening or intimidating attitude is not sufficient…there must be a real danger to life and personal safety. Even assuming *ex gratia argumenti*, that there was unlawful aggression on Chu's part when he chased Regalado, Lopez was not justified in stabbing Chu since as admitted by him, he did not see accused-appellant Regalado anymore when he was able to catch up with Chu. The unlawful aggression of Chu, had it indeed been present, had already ceased when upon reaching Chu, as Regalado, whom Lopez allegedly wanted to protect, was no longer there. When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor. We further do not find any reasonable necessity in the means employed by Lopez to repel Chu's alleged aggression. Nowhere in the records is it shown that when Chu allegedly chased Regalado, the former was wielding a weapon. Thus, the intention of Lopez to get a knife for his protection and that of his father-in-law was unwarranted. The fact that Chu allegedly boxed and taunted him prompting him to stab the victim several times in retaliation negates the reasonableness of the means employed to repel Chu's aggression assuming that indeed, Chu started the aggression. x x x The wounds sustained by Chu xxx indicate that the assailant who inflicted the same was more in a killing rage than one who was merely acting in defense of a relative.

3. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE OF TREACHERY IS A DELIBERATE AND SUDDEN ATTACK THAT RENDERS THE VICTIM UNABLE AND UNPREPARED TO DEFEND HIMSELF BY REASON OF THE SUDDENNESS AND SEVERITY OF THE ATTACK; CASE AT BAR.— Appellants' denial of the existence of treachery in this

wise does not convince: x x x Based on the prosecution witnesses' testimony, the victim was allegedly asking forgiveness from accused-appellant Rogelio Regalado and placed his hands on his shoulder when the latter stabbed the former. Based from the foregoing, it is apparent that the victim committed a wrongful act against herein accused-appellant, which was so grave that there was a need for him to ask for forgiveness. Thus, x x x the victim was expecting a retaliation from herein accused-appellant. The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. In the case at bar, Chu was caught off-guard when, after he was asking forgiveness from Regalado, the latter suddenly drew a curved knife and stabbed and pursued the following victim. And once Regalado and his co-appellants cornered Chu, Aragon kicked and punched him while Lopez stabbed him several times to thus preclude Chu from defending himself.

4. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; NOT PERSUASIVE.— Aragon's alibi does not persuade. As the trial court held: xxx From the ocular inspection of the wharf conducted in Hinatuan, Surigao del Sur on February 26, 2000, it was established that the wharf was located at the dead-end portion of Villaluz Street. Aragon was at the wharf at about the same date and time of the stabbing incident, allegedly to buy fish. He was seated at the last step of the wharf. He stayed there for thirty (30) minutes to wait for a pump boat bringing in fish but there was none. At about the time of the incident, the water level was supposed to be low tide so that no pump boat, if there was any, can dock on the wharf. Applying common sense, nobody in his right mind would wait for about thirty (30) minutes just to buy fish where no pump boat is in sight. x x x Aragon was positively identified by prosecution witnesses, hence his defense of being at the wharf does not hold water. For alibi to prosper, accused must prove not only (1) that he was somewhere else when the crime was committed; but (2) it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, the wharf was only a few meters from the scene of the incident. Ergo, Aragon could have been physically present at the place or its immediate vicinity at the time of the commission of the crime.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

CARPIO MORALES, *J.*:

Jaime Lopez, Rogelio Regalado and Romeo Aragon (appellants) were charged of Murder by an Information filed before the Regional Trial Court (RTC) of Surigao del Sur, the accusatory portion of which reads:

> That on or about 3:30 o'clock in the afternoon of April 25, 1996 at Bandola Street, Pob. Municipality of Hinatuan, Province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another for a common purpose, with treachery and evident premeditation and with deliberate intent to kill, and armed with sharp bladed instruments (knives and "Tare"), did then and there willfully, unlawfully and feloniously attack, assault, box and stab to death EDENCITO CHU *Y* VILLAHERMOSA, thereby inflicting upon the latter fatal multiple stab wounds as certified to by a doctor, which caused his instantaneous death, to the damage and prejudice of the heirs of the said CHU.
>
> CONTRARY TO LAW: (In violation of Article 248 of the Revised Penal Code of the Philippines, with the aggravating circumstances of superior strength).[1]

From the evidence for the prosecution, the following version of events is culled:[2]

At around 3:30 P.M. of April 25, 1996, appellant Rogelio Regalado (Regalado), who was outside Bantogan[3] Tailoring, a

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[1] Records, p. 27.

[2] Vide TSN, December 10, 1996, pp. 6-37; TSN, February 27, 1997, pp. 2-53; TSN, May 5, 1997, pp. 2-31; TSN, May 21, 1997, pp. 2-35; TSN, June 23, 1997, pp. 2-33; TSN, July 7, 1997, pp. 2-23; TSN, August 15, 1997, pp. 2-28; records, p. 149; Documentary Exhibits, pp. 143-172.

[3] Sometimes spelled as "Bantugan" or "Bantayan."

tailoring shop at Bandola street corner Villaluz, Hinatuan, Surigao del Sur, called out: "You let Bonjong come out so we could measure his courage!," referring to Edencito Chu (Chu) whose nickname is "Bonjong." Chu thereupon emerged from his mother's bakery, Purity Bakery, fronting the tailor shop, put his arms around Regalado's shoulders and asked for forgiveness. Regalado, however, pushed Chu's arms aside, drew a curved four to five inches long knife as he uttered "*Putang Ina, ka Jong!"* and stabbed Chu below the left nipple.

As Chu ran towards Villaluz street, Regalado chased him and picked up two pieces of firewood along the way with which he hit Chu.

Appellant Jaime Lopez (Lopez) in the meantime surfaced from a house beside the tailoring shop and, armed with a hunting knife, joined the chase.

Soon appellant Romeo Aragon (Aragon) also surfaced from the back of the tailoring shop and also joined the chase.

The three appellants caught up with Chu at the corner of Lindo and Bandola streets at which Aragon boxed Chu, causing the latter to fall. Aragon kicked Chu. Lopez then stabbed Chu several times as Regalado looked on. When Chu was no longer moving, the three appellants left. Chu expired before reaching the hospital.

Post-mortem examination of Chu's body yielded the following findings:

STAB WOUND LEFT DELTOID 4CM MUSCLE DEEP

PENETRATING STAB WOUND LEFT POSTERIOR AXILLARY LINE AT THE LEVEL OF T10, 3CM

PENETRATING STAB WOUND RIGHT POSTERIOR AXILLARY LINE AT THE LEVEL OF T8, 1.5 CM

PENETRATING STAB WOUND RIGHT ANTERIOR TRUNK AT THE LEVEL OF T10, 1 CM

PENETRATING STAB WOUND LEFT ANTERIOR AXILLARY LINE 1 CM

STAB WOUND LEFT NIPPLE 1 CM SUBCUTANEOUS DEEP

2 LACERATED WOUNDS LEFT ELBOWS SKIN DEEP 0.5 CM EACH[4]

Autopsy of Chu's body yielded results which coincided with those of the post-mortem examination, thus:

Body, embalmed, well-preserved.

Embalming incisions, sutured: neck, antero-lateral aspect, right, 3.5 cm.; supra-umbilibical region, right, 1.0 cm.

Contused-abrasions, patellar region, bilateral right, 5.0 x 11. 5cm; left, 11.0 x 12.0cm.

Incised wounds, modified by suturing and embalming: chest, infra-mammary region, right, 1.5 cm.; inguinal region, right, 1.5 cm.; forearm, proximal third, postero-lateral aspect, left, 1.6 cm.

Stab wounds, modified by suturing and embalming:

1. Roughly curved-shaped, 4.5cm., edges are clean-cut, oriented vertically, superior extremity is blunt, inferior extremity is sharp. Located at the left arm, proximal third, antero-lateral aspect, 23.0cm. above the left elbow, directed backward, downward, and laterally, involving the soft tissue, cutting the major blood vessels with an approximate depth of 7.5cm.

2. Roughly spindle-shaped, 2.3cm., edges are clean-cut, oriented vertically, superior extremity is sharp, inferior extremity is blunt. Located at infra-mammary region, between sixth (6^{th}) and seventh (7^{th}) intercostal space, lateral aspect, left, 16.0cm. from anterior median line, directed, backward, downward, and medially, involving the soft tissues, into the thoracic cavity, into the pericardial sac, penetrating the left ventricle of the heart with an approximate depth of 10.0cm.

3. Roughly spindle-shaped, 1.8cm., edges are clean-cut oriented vertically, superior extremity is sharp, inferior extremity is blunt. Located at supra-mammary region; left, 1.0cm. from anterior median line, directed backward, sideward, and medially involving the soft tissues, cutting the sternum superficially, with an approximate depth of 5.0cm.

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[4] Exhibit "C", Documentary Exhibits, p. 152.

4. Roughly spindle-shaped, 2.0cm., edges are clean-cut, oriented vertically, superior extremity is blunt, inferior extremity is sharp. Located at the infra-scapular region, right, 20.0cm. from posterior median line, directed forward, downward, and laterally, involving the soft tissues only, with an approximate depth of 5.0cm.

5. Roughly curved-shaped, 3.5 edges are clean-cut, oriented horizontally, lateral extremity is blunt, medial extremity is sharp. Located at the infra-scapular region, 11.0cm. from posterior medial line, directed forward, downward and medially, involving the soft tissues only with an approximate depth of 5.2cm.

Hemopericardium, residual clotted blood – 250cc.

Brain & other visceral organs, pale, embalmed.

Stomach – small amount of grayish food particles.[5]

Dr. Ricardo M. Rodaje, who conducted the autopsy, explained that wounds 1 and 5 were caused by a curve-shaped weapon.[6]

At the witness stand,[7] Regalado claimed as follows:

At 3:00 P.M. on April 25, 1996, after he bought a hotcake from the hotcake stand of Angelina Aragon (Angelina), wife of appellant Aragon and daughter of appellant Regalado, at the corner of Bandola and Villaluz streets, Chu approached and choked him.

He elbowed Chu and extricated himself. He then left but Chu pursued him as he (Regalado) proceeded to Angelina's house at the corner of España and Villaluz streets where he hid for around two minutes.

When he returned to the hotcake stand, his son-in-law appellant Lopez summoned him, telling him "I have done something, you

[5] Exhibit "F", Documentary Exhibits, p. 156.

[6] TSN, May 21, 1997, pp. 13-14.

[7] *Vide* TSN, July 24, 1998, pp. 3-29; TSN, September 10, 1998, pp. 2-33; TSN, October 15, 1998, pp. 2-32; TSN, May 11, 1999, pp. 2-17; TSN, July 9, 1999, pp. 2-29; Exhibits "1" – "6" and submarkings, Documentary Exhibits, pp. 313-329; Records, p. 283.

accompany me in going to the police station because I am going to surrender."

He and Lopez thereupon boarded a *tricycad* and repaired to the police station where Lopez surrendered, handed a knife to the police, and was detained. As he (Regalado) was about to go home, he was restrained as he might be waylaid by Chu. The following morning, he was detained because the police found him to have participated in the killing of Chu.

As for appellant Lopez, he interposed "defense of relative" and "self-defense."[8]

His version goes as follows:

At 3:00 P.M. of April 25, 1996, while he was at one Lily Balbuena's *mahjong* house along Villaluz street, he heard a woman's voice shouting. "Police, police, police!" He thus stepped out and saw Chu chasing Regalado, his father-in-law, prompting him to go to Regalado's nearby house to get a knife, and to thereafter follow Chu as he was chasing Regalado. Lopez soon intercepted Chu who boxed him as he (Chu) posed "Are you going to defend your father-in-law?" He thereupon stabbed Chu several times and surrendered to the police station in the company of Regalado.

Appellant Aragon invoked alibi,[9] claiming that at 3:00 P.M. of April 25, 1996, he went to the wharf which is 40 meters away from Angelina's hotcake stand to buy fish. He waited for 30 minutes for fishermen but no one came, so he went home. Before reaching his house he was surprised to see many people at the corners of Villaluz and Bandola streets. Angelina soon met him and told him that Lopez had stabbed Chu because he choked Regalado.

He later learned that police investigator Pedic Mangin was looking for him, hence, he visited the latter who told him that

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[8] *Vide* TSN, November 10, 1999, pp. 3-29; TSN, November 16, 1999, pp. 2-21.

[9] *Vide* TSN, February 18, 2000, pp. 2-40; TSN, February 26, 2000, p. 2-12.

they would talk things over at the municipal hall. When he reached the municipal hall, he was immediately detained.

The defense presented evidence of Chu's supposed reputation as a bully who picked fights for no reason and who had an existing criminal record.[10]

Branch 29 of the Bislig City RTC found the three appellants to have killed Chu, qualified by treachery which absorbed "abuse of superior strength." The trial court thus disposed:

> WHEREFORE, finding the accused **JAIME LOPEZ *alias* "DODONG", ROGELIO REGALADO *alias* "ROGER", and ROMEO ARAGON,** all co-principals by direct participation, guilty beyond reasonable doubt of the crime of **MURDER** defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, this Court hereby sentences them to suffer the penalty of *Reclusion Perpetua* with all the accessory penalties provided by law.
>
> To pay the heirs of the victim the sum of one hundred nine thousand six hundred seventy-five pesos and forty (₱109,675.40) centavos as interment and burial expenses, fifty thousand (₱50,000.00) pesos as life indemnity twenty-three thousand (₱23,000.00) pesos as attorney's fees, and ten thousand (₱10,000) pesos as exemplary damages.
>
> To pay the cost.
>
> SO ORDERED.[11]

On appeal, appellants faulted the trial court for

> I
>
> x x x FINDING THAT CONSPIRACY ATTENDED THE KILLING OF THE VICTIM.
>
> II
>
> x x x NOT CONSIDERING THE DEFENSES INTERPOSED BY THE ACCUSED-APPELLANTS.[12]

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[10] *Vide* TSN, July 10, 2000, pp. 2-13; Exhibits "4" – "6" and submarkings, Documentary Exhibits, pp. 319-329.

[11] Records, p. 370.

[12] CA *rollo*, pp. 76-77.

III

x x x CONVICTING THE ACCUSED APPELLANTS OF MURDER.[13]

The Court of Appeals affirmed the trial court's decision,[14] hence, the present appeal.[15]

The appeal is bereft of merit.

This Court finds no reason to overturn the factual findings of the trial court, especially since the prosecution's version is culled from the testimony of eyewitnesses.

Appellants' disclaimer of the presence of conspiracy fails. The evidence shows that they cooperated in a common design to kill Chu. Regalado initiated the killing when he stabbed Chu on the chest, and the two other appellants joined Regalado in chasing Chu, with Regalado hitting Chu with firewood along the way. Then, when the three of them had cornered Chu, Aragon boxed and kicked Chu, enabling Lopez to stab him several times. These indicate a conspiracy.

Aragon's alibi does not persuade. As the trial court held:

> x x x From the ocular inspection of the wharf conducted in Hinatuan, Surigao del Sur on February 26, 2000,[16] it was established that the wharf was located at the dead-end portion of Villaluz Street. Aragon was at the wharf at about the same date and time of the stabbing incident, allegedly to buy fish. He was seated at the last step of the wharf. He stayed there for thirty (30) minutes to wait for a pump boat bringing in fish but there was none. At about the time of the incident, the water level was supposed to be low tide[17] so that no pump boat, if there was any, can dock on the wharf. Applying common

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[13] *Id.* at 81.

[14] Decision of September 22, 2006, penned by Court of Appeals Associate Justice Rodrigo F. Lim, Jr. with the concurrence of Associate Justices Teresita Dy-Liaco Flores and Mario V. Lopez. CA *rollo*, pp. 157-179.

[15] CA *rollo*, pp. 180-182.

[16] *Vide* TSN, February 26, 2000, pp. 2-12.

[17] *Vide* TSN, February 18, 2000, p. 37.

sense, nobody in his right mind would wait for about thirty (30) minutes just to buy fish where no pump boat is in sight. x x x Aragon was positively identified by prosecution witnesses, hence his defense of being at the wharf does not hold water. For alibi to prosper, accused must prove not only (1) that he was somewhere else when the crime was committed; but (2) it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, the wharf was only a few meters from the scene of the incident. Ergo, Aragon could have been physically present at the place or its immediate vicinity at the time of the commission of the crime. (Citations omitted)[18]

Neither does Lopez's "defense of relative." As the Court of Appeals held:

Under [Paragraph 2 of Article 11 of the Revised Penal Code], the elements of the justifying circumstance of defense of relatives are as follows:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it;
3. In case provocation was given by the person attacked, that the one making the defense had no part therein.

Even if We adopt accused-appellants' version of the incident, We still find the foregoing elements absent in the case at bar.

As alleged by Lopez, he merely heard someone shouting "police, police, police!" and when he looked out he allegedly saw his father-in-law being chased by Chu. He then went to Regalado's house to get a knife and when he caught up with Chu, he no longer saw accused-appellant Regalado and it was only Chu who was there. He allegedly stabbed Chu because of the latter's threatening words, "Are you going to defend your father-in-law?"

We cannot, by any stretch of imagination, consider said remarks threatening as to consider it unlawful aggression. It bears stressing that unlawful aggression, as defined under the Revised Penal Code,

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[18] Records, pp. 383-384. Citing *Dela Cruz v. Court of Appeals*, 414 Phil. 171 (2001).

contemplates assault or at least threatened assault of an immediate and imminent kind. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause injury shall have been made. A mere threatening or intimidating attitude is not sufficient…there must be a real danger to life and personal safety.

Even assuming *ex gratia argumenti*, that there was unlawful aggression on Chu's part when he chased Regalado, Lopez was not justified in stabbing Chu since as admitted by him, he did not see accused-appellant Regalado anymore when he was able to catch up with Chu. The unlawful aggression of Chu, had it indeed been present, had already ceased when upon reaching Chu, as Regalado, whom Lopez allegedly wanted to protect, was no longer there. When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor.

We further do not find any reasonable necessity in the means employed by Lopez to repel Chu's alleged aggression.

Nowhere in the records is it shown that when Chu allegedly chased Regalado, the former was wielding a weapon. Thus, the intention of Lopez to get a knife for his protection and that of his father-in-law was unwarranted.

The fact that Chu allegedly boxed and taunted him prompting him to stab the victim several times in retaliation negates the reasonableness of the means employed to repel Chu's aggression assuming that indeed, Chu started the aggression. x x x

x x x x x x x x x

The wounds sustained by Chu xxx indicate that the assailant who inflicted the same was more in a killing rage than one who was merely acting in defense of a relative.[19] (Underscoring supplied)

Finally, appellants' denial of the existence of treachery in this wise does not convince:

x x x Based on the prosecution witnesses' testimony, the victim was allegedly asking forgiveness from accused-appellant Rogelio

[19] CA *rollo*, pp. 171-174.

Regalado and placed his hands on his shoulder when the latter stabbed the former. Based from the foregoing, it is apparent that the victim committed a wrongful act against herein accused-appellant, which was so grave that there was a need for him to ask for forgiveness. Thus, x x x the victim was expecting a retaliation from herein accused-appellant.[20] (Underscoring supplied)

The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[21]

In the case at bar, Chu was caught off-guard when, after he was asking forgiveness from Regalado, the latter suddenly drew a curved knife and stabbed and pursued the following victim. And once Regalado and his co-appellants cornered Chu, Aragon kicked and punched him while Lopez stabbed him several times to thus preclude Chua from defending himself.

WHEREFORE, the appeal is *DENIED*. The September 22, 2008 Decision of the Court of Appeals is *AFFIRMED*.

Costs against appellant.

SO ORDERED.

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

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

[21] *Vide People v. Malejana,* G.R. No. 145002, January 24, 2006, 479 SCRA 610, 626; *People v. Beltran, Jr.,* G.R. No. 118051, September 27, 2006, 503 SCRA 715, 735.

SECOND DIVISION

[G.R. No. 178127. April 16, 2009]

VIRGEN SHIPPING CORPORATION, CAPT. RENATO MORENTE & ODYSSEY MARITIME PTE. LTD., NATIONAL LABOR RELATIONS COMMISSION, *petitioners, vs.* **JESUS B. BARRAQUIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; FINDINGS OF FACT; RULE; NOT APPLICABLE IN CASE AT BAR.— As a general rule, only questions of law may be raised and resolved by the Court as regards petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts, hence, it is not duty bound to re-examine the evidence on record. Where, as in the present case, the NLRC and the Labor Arbiter arrived at conflicting decisions and the findings of the Labor Arbiter, as partly affirmed by the appellate court, appear to be contrary to the evidence at hand, the Court finds the need to review the records to distill the facts.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESIGNATION; RESPONDENT'S RESIGNATION WAS VOLUNTARY WHICH CAN BE GLEANED FROM THE UNAMBIGUOUS TERMS OF HIS LETTER TO THE CREWING MANAGER.— From a considered review, the Court finds that respondent's resignation was voluntary. Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment. Respondent's resignation can be gleaned from the **unambiguous** terms of his letter to Captain Cristino. As earlier reflected, respondent returned home upon docking in Singapore on May 13, 2000 after he was treated for the abscess in his left thumb and diagnosed with hypertension. His return home is in consonance with his request in his letter of April 26, 2000 to the crewing manager. Respondent's bare claim that he was forced to execute

his resignation letter deserves no merit. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation. That such claim was proferred a year later all the more renders his contention bereft of merit. It bears noting that in respondent's previous contract with petitioner aboard another accredited vessel, M/T *Ocean Blossom*, he also requested for early repatriation, citing domestic reasons. Respondent is thus charged with awareness of the consequences of pre-termination, this being his second time to so request. Captain Cristino's alleged statement that respondent had to shoulder the repatriation expenses cannot thus be construed as compulsion.

3. ID.; ID.; PHILIPPINE OVERSEAS EMPLOYMENT OFFICE (POEA) STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS; RESPONDENT DID NOT COMPLY WITH THE 3-DAY REQUIREMENT TO SEEK THE SERVICES OF A COMPANY DESIGNATED PHYSICIAN FOR PURPOSES OF POST-EMPLOYMENT MEDICAL EXAMINATION.— If respondent was indeed repatriated for medical reasons, he was, under the above-said provision, required to undergo post-employment medical examination by a company-designated physician within three working days from arrival. Contending that he complied therewith, he invites attention to the written annotation "Reported To Office – May 17/00" on the medical report from Gleneagles Maritime Medical Centre. The provision requires respondent to submit himself to a post-medical employment examination by a company designated physician within three working days from arrival or, in respondent's case, three working days after May 15, 2000, a Monday, when he arrived by ship or not later than May 18, 2000. Respondent sought examination-treatment on May 17 – June 30, 2000 from Dr. Romina Alpasan who appears to be a physician of his choice. He only tried to look for a company-designated physician after treatment by Dr. Alpasan. Clearly, he did not comply with the 3-day requirement to seek the services of a company-designated physician for purposes of post-employment medical examination.

4. ID.; ID.; OPINION OF PHYSICIAN DOES NOT CONTAIN RECOMMENDATION AS TO RESPONDENT'S BILL OF HEALTH FOR PETITIONERS TO ASSUME THAT HE WAS FIT FOR REPATRIATION.— Respondent goes on to claim that he underwent treatment for Ischemic heart disease which

developed while employed by petitioners. Ischemic heart disease is a condition in which fatty deposits (*atheroma*) accumulate in the cells lining the wall of the coronary arteries. These fatty deposits build up **gradually** and **irregularly, however,** in the large branches of the two main coronary arteries which encircle the heart and are the main source of its blood supply. This process, called atherosclerosis, leads to narrowing or hardening of the blood vessels supplying blood to the heart muscle (the coronary arteries) resulting in *ischemia* - or the inability to provide adequate oxygen - to heart muscle and this can cause damage to the heart muscle. Complete occlusion of the blood vessel leads to a heart attack. Finally, respondent claims that in light of the opinion of the physician in Korea that he had "suspected ischemic heart," petitioners affirmed his medical repatriation. As reflected in the immediately preceding paragraph, however, ischemic heart disease cannot develop in a short span of time that respondent served as chief cook for petitioners. In fact, as indicated above, the Gleneagles Maritime Medical Centre doctor who treated respondent in May 2000 for abscess in his left hand had noted respondent's "[h]istory of hypertension for 3 years." Moreover, the Korean physician did not make any recommendation as to respondent's bill of health for petitioners to assume that he was fit for repatriation.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Byrone M. Timario for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed *via* petition for review on *certiorari* is the Court of Appeals[1] Decision of November 13, 2006 holding Virgen Shipping Corporation, Capt. Renato Morente and Odyssey Maritime PTE. Ltd. (petitioners) liable to Jesus B. Barraquio (respondent) for payment of sickness allowance equivalent to

[1] Penned by Presiding Justice Ruben T. Reyes with the concurrence of Associate Justices Roberto A. Barrios and Juan Q. Enriquez.

120 days, disability benefits, accrued interest, moral damages, exemplary damages and attorney's fees.

By a contract forged on February 29, 2000, petitioner Odyssey Maritime, PTE. Ltd., through its local manning agent co-petitioner Virgen Shipping Corporation, hired respondent as chief cook on board the vessel M/T *Golden Progress* for a period of ten (10) months.

Before the contract was executed, respondent was made to undergo the routine Pre-Employment Medical Examination (PEME) at S.M. Lazo Medical Clinic, Inc. and was found to be fit to work by the attending physician Dr. Jose Dante V. Jacinto.

On March 23, 2000, respondent boarded the above-named vessel and commenced to perform his duty as chief cook.

Twenty one (21) days later or on April 13, 2000, while the vessel was docked in Korea, respondent requested medical attention due to chest pains and hypertension and was brought to the Hyundai Surgical Center. The attending physician made no pronouncement as to respondent's fitness for work but made the following diagnosis:

(Impression) (1) **Suspected** ischemic heart disease (2) Hypertension (Treatment) Calcium channel block medication. Jao Ho Lee"[2] (Emphasis and underscoring supplied)

Subsequently or on April 26, 2000, respondent, by letter of even date addressed to Captain Thomas Cristino, Crewing Manager of petitioner Virjen, wrote, **quoted *verbatim***:

"**With much regret, I would like to say my sincere sorry for having me decided to quit my job**. Poor Health is the main reason and thus affecting the performance of my duty.

However too, if somebody is going to disembark this coming May in Singapore may I respectfully request your permission to **allow me to join said disembarkation crew.** Just in case it is not possible, then I will patiently wait to those are scheduled by early June."

[2] NLRC records, p. 39 (Annex D to Complainant's [respondent] Position Paper).

As well, it is clear to me that I am responsible for my airfare and to joining crew as my replacement since I have not complied with the terms of the contract.

Thank you very much to your kind consideration & understanding & hope this **irrevocable resignation** be granted on proper time so as to allow me to accommodate the due expenses for repatriation."[3] (Emphasis and underscoring supplied)

Upon arrival of the vessel in Singapore and prior to his disembarkation, respondent again requested on May 13, 2000 medical treatment for abscess in his left thumb. Dr. Ivan Chan of Gleneagles Maritime Medical Centre who attended to respondent stated in his report:

Name/Age: Jesus B. Barraquio/50

Rank/Nationality: CCK/Filipino

Agent/Vessel: Heng Fu Kot/Golden Progress

Allergy: Nil

HISTORY: Painful swelling left thumb for 10 days. History of *hypertension for 3 years*, on calciblock. Medication finished. Cholesterol normal.

x x x x x x x x x

DIAGNOSIS: **ABSCESS LEFT THUMB; HYPERTENSION**

x x x x x x x x x

RECOMMENDATIONS:

DISPOSITION: Fit to sail.[4] (Emphasis and underscoring in the original; italics supplied)

Respondent was allowed by petitioners to disembark. He arrived in the Philippines on May 15, 2000. On August 2, 2000, respondent signed a Statement of Account acknowledging set-off of his vacation leave pay in the amount of ₱15,188.75 from the cost of finding respondent's replacement and the cost of

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[3] *Id.* at p. 11 (Exhibit 2 of Respondent's [petitioners] Position Paper).

[4] *Id.* at p. 33 (Annex "C" to Complainant's [respondent] Position Paper).

repatriation in the amount of ₱38, 373.65. For the balance of ₱23, 184.90, respondent signed a promissory note in favor of petitioner Virgen.

A year later or on August 1, 2001, respondent filed a complaint for non-payment of 120 days sickness allowance under Section 20 (B) paragraph 2 of the Standard Employment Contract for Seafarers,[5] disability benefits, legal interest computed from date of formal demand, reimbursement of medical expenses, and damages.

In his Complaint, respondent alleged that due to constant verbal abuse from the ship master, Captain Marino Kasala, he suffered dizziness, chest pains, headaches and irregular sleep leading to hypertension; that he was forced to execute the request for disembarkation for fear that his health would worsen; and that medical findings in his PEME that he was fit to sail is binding upon petitioners and proof that his condition developed while on board.

Taking a contrary stand, petitioners countered that hypertension cannot develop in a short span of time; and in any event, respondent committed misrepresentation in his PEME as to his health.

By Decision of April 1, 2002, Labor Arbiter Renaldo O. Hernandez rendered judgment in favor of respondent, disposing as follows:

WHEREFORE, premises considered, judgment is entered finding respondents foreign principal and manning agency and its president/chairman Eng. Emilio A. Santiago and the rest of the corporate officers liable to pay to complainant his money claims as above discussed, thus ORDERING said respondents and officers *in solido*:

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

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

1) to reimburse to complainant his receipted cost of medical expenses incurred to Annex "J-8". Complainant's Affidavit dated 01 July 2002) of ₱1,270.00;

2) to pay complainant his sickness allowance up to maximum equivalent of basic wage x 120 days or US $ 2,320.00 under Sec. 20 (B) in par. 2, Standard Employment Contract for Seafarers;

3) to pay complainant his disability benefits in accordance with the schedule of benefits in Sec. 30 of the Contract with disability rating of Grade 6 pursuant to Schedule of Disability Allowance in Sec. 30-A of the POEA SEC, with impediment percentage of 50% equivalent to US $25,000.00; and finally,

4) to pay complainant moral and exemplary damages in the combined amount of two hundred thousand pesos (₱200,000.00) and 10% of the entire award as attorney's fees.

SO ORDERED.[6]

On appeal, the National Labor Relations Commission (NLRC) First Division by Decision of August 30, 2002 reversed the ruling of the Labor Arbiter and dismissed the complaint for lack of merit.[7] Albeit echoing the same factual background, the NLRC found respondent's resignation voluntary, hence, he cannot claim entitlement to the benefits under the Standard Employment Contract of the Philippine Overseas Employment Administration (POEA). Thus, the NLRC First Division declared:

The aforequoted handwritten resignation, the terms and conditions of which are very clear and explicit that he is quitting his job and even executed a promissory note to pay the amount of ₱23,184.90 representing the balance of his repatriation and his replacement's expenses.

Further, complainant-appellee (respondent) even signed the Statement of Account after he signed-off from the vessel on August 02, 2000. The same shows the balance due Virgen Shipping Corporation which apparently may be construed that complainant-appellee knew from the beginning that he is liable for his and his

[6] *Id.* at pp. 9-10.

[7] CA *rollo*, pp. 25-31.

replacement transportation because he pre-terminated his employment contract. (Underscoring supplied)

On respondent's petition for *certiorari*, the Court of Appeals reversed the NLRC Decision in light of the observation that respondent's hypertension probably developed while on board the vessel, *viz*:

> Thus, We are constrained to declare compensability primarily because evidence points that petitioner's hypertension was **probably** developed while on board the vessel. After all, strict rules of evidence are not applicable in claims for compensation. In fact, in *NFD International Manning Agents, Inc. vs. NLRC*, the High Court held that probability and not the ultimate degree of certainty is the test of proof in compensation proceedings.[8] (Citations omitted, italics in the original, emphasis and underscoring supplied)

The appellate court thus disposed:

> WHEREFORE, the petition is **GRANTED**. The assailed NLRC Decision is hereby **NULLIFIED** and the Labor Arbiter Decision **REINSTATED with the MODIFICATION** that the name Engr. Emilio Santiago and the rest of the corporate officers are ordered deleted from its dispositive portion.
>
> SO ORDERED.[9] (Emphasis in the original; underscoring supplied)

Hence, the present petition, petitioners positing the following arguments:

1. …. That there is no disharmony between the factual findings of the Labor Arbiter and those of the NLRC. The findings of the NLRC are more in accord with the evidence presented in the proceedings.
2. … That private respondent's resignation letter was voluntary and made upon his own instance, the petitioner's (sic) argument of involuntariness has no factual basis and is a mere afterthought. Having resigned from his position, private respondent is not entitled to his monetary claims.

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

[9] *Id*. at p. 239.

3. Assuming, without admitting, that private respondent was medically repatriated as "poor health" was stated as the reason for his resignation only bolsters the view that private respondent knew of his history of hypertension prior to boarding the MV "Golden Progress" and that he concealed such material information in his pre-employment medical examination (PEME for brevity).

4. Private respondent's PEME is not binding against the petitioners with respect to the determination of his true state of health and that petitioner's willful and fraudulent concealment of his known pre-existing medical condition bars him from receiving disability benefits. (Underscoring supplied)

As a general rule, only questions of law may be raised and resolved by the Court as regards petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts, hence, it is not duty bound to re-examine the evidence on record.

Where, as in the present case, the NLRC and the Labor Arbiter arrived at conflicting decisions and the findings of the Labor Arbiter, as partly affirmed by the appellate court, appear to be contrary to the evidence at hand, the Court finds the need to review the records to distill the facts.

From a considered review, the Court finds that respondent's resignation was voluntary.

Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment.[10]

Respondent's resignation can be gleaned from the **unambiguous** terms of his letter to Captain Cristino.

As earlier reflected, respondent returned home upon docking in Singapore on May 13, 2000 after he was treated for the

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[10] *Valdez vs. National Labor Relations Commission*, G.R. No. 125028, February 9, 1998, 286 SCRA 87, 94.

abscess in his left thumb and diagnosed with hypertension. His return home is in consonance with his request in his letter of April 26, 2000 to the crewing manager.

Respondent's bare claim that he was forced to execute his resignation letter deserves no merit. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation.[11] That such claim was proferred a year later all the more renders his contention bereft of merit.

It bears noting that in respondent's previous contract with petitioner aboard another accredited vessel, M/T *Ocean Blossom*, he also requested for early repatriation, citing domestic reasons. Respondent is thus charged with awareness of the consequences of pre-termination, this being his second time to so request. Captain Cristino's alleged statement that respondent had to shoulder the repatriation expenses cannot thus be construed as compulsion.

Respondent claims entitlement under Section 20 (B) [2] of the Standard Employment Contract of the POEA, which must be read in conjunction with Section 20 (B) [3], *viz*:

SECTION 20. COMPENSATION AND BENEFITS

B. x x x

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

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

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until

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[11] *St. Michael Academy vs. National Labor Relations Commission*, G.R. No. 119512, July 13, 1998, 354 Phil. 491.

he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

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

If the doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Underscoring supplied)

If respondent was indeed repatriated for medical reasons, he was, under the above-said provision, required to undergo post-employment medical examination by a company-designated physician within three working days from arrival. Contending that he complied therewith, he invites attention to the written annotation "Reported To Office – May 17/00" on the medical report from Gleneagles Maritime Medical Centre.

The provision requires respondent to submit himself to a post-medical employment examination by a company designated physician within three working days from arrival or, in respondent's case, three working days after May 15, 2000, a Monday, when he arrived by ship or not later than May 18, 2000. Respondent sought examination-treatment on May 17 – June 30, 2000 from Dr. Romina Alpasan who appears to be a physician of his choice.[12] He only tried to look for a company-designated physician after treatment by Dr. Alpasan. Clearly, he did not comply with the 3-day requirement to seek the services of a company-designated physician for purposes of post-employment medical examination.

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[12] NLRC records, p. 41 (Annex "E" to Complainant's [respondent] Position Paper).

Respondent goes on to claim that he underwent treatment for Ischemic heart disease which developed while employed by petitioners. Ischemic heart disease is a condition in which fatty deposits (*atheroma*) accumulate in the cells lining the wall of the coronary arteries. These fatty deposits build up **gradually** and **irregularly, however,** in the large branches of the two main coronary arteries which encircle the heart and are the main source of its blood supply. This process, called atherosclerosis, leads to narrowing or hardening of the blood vessels supplying blood to the heart muscle (the coronary arteries) resulting in *ischemia* - or the inability to provide adequate oxygen - to heart muscle and this can cause damage to the heart muscle. Complete occlusion of the blood vessel leads to a heart attack.

Finally, respondent claims that in light of the opinion of the physician in Korea that he had "suspected ischemic heart," petitioners affirmed his medical repatriation. As reflected in the immediately preceding paragraph, however, ischemic heart disease cannot develop in a short span of time that respondent served as chief cook for petitioners. In fact, as indicated above, the Gleneagles Maritime Medical Centre doctor who treated respondent in May 2000 for abscess in his left hand had noted respondent's "[h]istory of hypertension for 3 years." Moreover, the Korean physician did not make any recommendation as to respondent's bill of health for petitioners to assume that he was fit for repatriation.

IN FINE, respondent's actions show that he voluntarily resigned.

WHEREFORE, the Court of Appeals Decision of November 13, 2006 is *REVERSED* and the NLRC Decision of August 30, 2002 is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178453. April 16, 2009]

GLORIA ARTIAGA, *petitioner, vs.* **SILIMAN UNIVERSITY and SILIMAN UNIVERSITY MEDICAL CENTER/SILIMAN UNIVERSITY MEDICAL CENTER FOUNDATION, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE A PARTY'S CONTENTION APPEARS TO BE CLEARLY TENABLE, OR WHERE THE BROADER INTEREST OF JUSTICE AND PUBLIC POLICY REQUIRE, THE ERROR MAY BE CORRECTED IN A *CERTIORARI* PROCEEDING.— While review of NLRC decisions *via Certiorari* should be confined to issues of want of jurisdiction and grave abuse of discretion, grave abuse of discretion is committed when the board, tribunal or officer exercising judicial function fails to consider evidence adduced by the parties, as did the NLRC in the present case. Moreover, where a party's contention appears to be clearly tenable, or where the broader interest of justice and public policy so require, the error may be corrected in a *certiorari* proceeding, as again in the present case.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; PETITIONER RESIGNED AND WAS NOT CONSTRUCTIVELY DISMISSED.— In reversing the Labor Arbiter's decision, the NLRC upheld petitioner's version and found her to have been constructively dismissed. Petitioner presented no evidence to substantiate her claim, however. On the other hand, SUMC's evidence of petitioner's irregular acts is documented. And it sent petitioner a Notice on September 11, 1998 requiring her to explain her side and placing her under preventive suspension. Petitioner's above-quoted letter-explanation *cum* resignation is self-explanatory. Against the documentary evidence of respondents, petitioner's claim thus fails. Petitioner's claim that respondents' pieces of evidence were fabricated, *viz*, Firstly, these documents [Notice

of Preventive Suspension and Audit Report] were neither served [to] nor received by complainant. None of the documents even bear a signature identical to that written in her resignation letter. The signatures in Annexes ["2"] [Notice of Preventive Suspension] and ["3"] [September 11, 1998 Audit Report] are not even identical to each other. As claimed by respondents these two documents were supposedly received by complainant on September 11, 1998 or before her resignation. Strangely, the signature appearing on the left bottom of Annex ["3"] was dated 9/14/98 2:00PM while the recipient's signature in Annex ["2"] has no date at all. Why [this] variance if the documents were actually given to complainant on the same day, September 11, 1998? does not persuade. Petitioner's earlier-quoted explanation-resignation letter of September 13, 1998 unquestionably shows that she received the notices referred to, otherwise, to what matters she was explaining therein? In fine, the Court of Appeals did not err in overturning the findings of the NLRC.

APPEARANCES OF COUNSEL

Moises P. Lapa, Jr. for petitioner.
EDLaw Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Siliman University Medical Center (SUMC) hired Gloria Artiaga (petitioner) in June 1978.

On September 13, 1998, petitioner, then Credit and Collection Officer, resigned from SUMC by letter of even date reading:

I am writing this **letter of explanation** with a broken spirit and in distress[ed] heart as if myself broken to pieces and I asked God to be my refuge in this time of tribulation. I am not this bad as you and others may think of me. I pray to Him to listen [to] my prayers to let me stand again. The people in the whole community condemned me.

I committed errors and mistakes in the posting of ledger cards as seen on the cards but I could not be certain how I could do this. I can't think anymore. Maybe some of [these] are temporary receipts. As to insurance payments as questioned by the auditors, all cheques coming from insurance company which are payable to SUMC are receipted and later posted to individual ledgers for in patient but for outpatient the Statement of Account is discounted once it is paid.

Sir, I am very sorry that this trouble happened and I am now struggling. I am just crushed and I don't want to move anymore. Please forgive my mistakes. Please give me a chance to stand again.

I have endorsed my responsibility to the one who is taking over my work and I have oriented her of all she is supposed to do except those jobs like appearing [in] court for your legal cases related to patient account. Sir, please **consider this letter a resignation letter** because I could [not] think of something that could make me stand again and I have already asked the Lord for this decision.[1] (Emphasis and underscoring supplied)

After petitioner submitted the above-quoted letter, the operation of SUMC was transferred from SU to petitioner Siliman University Medical Foundation, Inc. (the Foundation).

More than three years after petitioner resigned or on November 6, 2001, she filed a Complaint[2] for constructive dismissal against SU, SUMC and the Foundation.

In her Position Paper,[3] petitioner claimed that in the last week of August 1998, she was suddenly instructed to indorse all her responsibilities and/or papers to a new employee, one Mrs. Catacutan, and to give the latter an orientation about her duties within two weeks; that she was given no new assignment and when she asked for the instructions, no explanation was given except that a mention was made about some discrepancy in the posting of entries in four patients' ledgers; that she asked to be allowed to dig up files of patients' ledgers, official receipts, and charge slips to explain her side, but to no avail; that eventually,

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[1] NLRC records, pp. 79-80.

[2] *Id.* at 1.

[3] *Id.* at 71-78.

Mrs. Catacutan was designated to take her place as Credit and Collection Officer; and that after two weeks, as she was extremely humiliated and sensed that her continued employment without any new assignment would humiliate her further, she tendered her resignation on September 13, 1998.

In their Position Paper,[4] respondents gave their side as follows: In September 1998, an audit report found irregularities in the transactions under petitioner's control and supervision. Thus, petitioner was found to have posted official receipts and payments in the individual patient accounts receivable ledger cards but issued official receipts for lower amounts and misappropriated the difference. And she used fictitious receipts in posting payments in the patients' ledger cards and kept the actual payments.[5] Petitioner misappropriated a total of ₱300,000.

SUMC thus wrote petitioner on September 11, 1998 requiring her to explain in writing, within five days, why no disciplinary action should be taken against her,[6] and she was preventively suspended for 30 days and requested to turn over all monies, files, and records within her control.

Complying, petitioner, by the above-quoted Sept. 13, 1998, gave her explanation and at the same time tendered her resignation which was accepted.[7]

By Decision[8] of November 29, 2002, Labor Arbiter Geoffrey P. Villahermosa dismissed the complaint for lack of legal and factual basis.

On appeal, the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision, it finding that petitioner was constructively dismissed. It thus ordered respondents to reinstate petitioner and pay her full backwages from September

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[4] *Id.* at 122-130.

[5] *Vide id.* at 136-137, 157-159, 166-201.

[6] *Id.* at 134.

[7] *Id.* at 138.

[8] *Id.* at 210-217.

13, 1998 up to the time of her actual reinstatement.[9] Respondents' Motion for Reconsideration[10] having been denied,[11] they filed a Petition for *Certiorari*[12] before the Court of Appeals.

By Decision[13] of May 30, 2006, the Court of Appeals reversed the NLRC decision and reinstated the Labor Arbiter's decision, prompting petitioner to file the present petition.[14]

Petitioner faults the Court of Appeals in reevaluating the NLRC's findings of fact for, so she contends, a petition for *certiorari* is limited to issues of want or excess of jurisdiction, and grave abuse of discretion does not include an inquiry as to the correctness of the evaluation of evidence.[15]

The Court is not impressed.

While review of NLRC decisions *via Certiorari* should be confined to issues of want of jurisdiction and grave abuse of discretion,[16] grave abuse of discretion is committed when the board, tribunal or officer exercising judicial function fails to consider evidence adduced by the parties,[17] as did the NLRC in the present case. Moreover, where a party's contention appears to be clearly tenable, or where the broader interest of justice and public policy so require, the error may be corrected in a *certiorari* proceeding,[18] as again in the present case.

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[9] *Id.* at 371-379.

[10] *Id.* at 380-391.

[11] *Id.* at 418-420.

[12] CA *rollo*, pp. 2-24.

[13] Penned by Court of Appeals Associate Justice Vicente L. Yap, with the concurrence of Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr. *Id.* at 149-158.

[14] *Rollo*, pp. 8-41.

[15] *Id.* at 17.

[16] *Deles, Jr. v. National Labor Relations Commission,* 384 Phil. 271, 283 (2000).

[17] *Vide Muaje-Tuazon v. Wenphil Corporation,* G.R. No. 162447, December 27, 2006, 511 SCRA 521, 529.

[18] *Ibid.*

In reversing the Labor Arbiter's decision, the NLRC upheld petitioner's version and found her to have been constructively dismissed. Petitioner presented no evidence to substantiate her claim, however.[19]

On the other hand, SUMC's evidence of petitioner's irregular acts is documented. And it sent petitioner a Notice on September 11, 1998 requiring her to explain her side and placing her under preventive suspension. Petitioner's above-quoted letter-explanation *cum* resignation is self-explanatory.

Against the documentary evidence of respondents, petitioner's claim thus fails.

Petitioner's claim that respondents' pieces of evidence were fabricated, *viz*,

> Firstly, these documents [Notice of Preventive Suspension and Audit Report] were neither served [to] nor received by complainant. None of the documents even bear a signature identical to that written in her resignation letter. The signatures in Annexes ["2"] [Notice of Preventive Suspension] and ["3"] [September 11, 1998 Audit Report] are not even identical to each other. As claimed by respondents these two documents were supposedly received by complainant on September 11, 1998 or before her resignation. Strangely, the signature appearing on the left bottom of Annex ["3"] was dated 9/14/98 2:00PM while the recipient's signature in Annex ["2"] has no date at all. Why [this] variance if the documents were actually given to complainant on the same day, September 11, 1998?[20] (Underscoring supplied)

does not persuade. Petitioner's earlier-quoted explanation-resignation letter of September 13, 1998 unquestionably shows that she received the notices referred to, otherwise, to what matters she was explaining therein?

In fine, the Court of Appeals did not err in overturning the findings of the NLRC.

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[19] *Vide Dator v. University of Santo Tomas*, G.R. No. 169464, August 31, 2006, 500 SCRA 677, 688; *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 366.

[20] NLRC records, p. 152.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated May 30, 2006 is *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 178678. April 16, 2009]

DR. HANS CHRISTIAN M. SEÑERES, *petitioner, vs.* **COMMISSION ON ELECTIONS and MELQUIADES A. ROBLES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* WHEN MAY BE AVAILED OF.— A special civil action for *certiorari* may be availed of when the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling the proceeding. It is the "proper remedy to question any final order, ruling and decision of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers." For *certiorari* to prosper, however, there must be a showing that the COMELEC acted with grave abuse of discretion and that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

2. ID.; ID.; ID.; IMPROPER REMEDY IN CASE AT BAR.— In the present case, a plain, speedy and adequate remedy in the ordinary course of law was available to Señeres. The 1987 Constitution cannot be more explicit in this regard. Its Article VI, Section 17 states: Sec. 17. The Senate and the House of Representatives

shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of their respective Members. x x x This constitutional provision is reiterated in Rule 14 of the 1991 Revised Rules of the Electoral Tribunal of the House of Representatives, to wit: RULE 14. *Jurisdiction.*—The Tribunal shall be the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives. In *Lazatin v. House Electoral Tribunal*, the Court elucidated on the import of the word "sole" in Art. VI, Sec. 17 of the Constitution, thus: The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as 'intended to be as complete and unimpaired as if it had remained originally in the legislature.' Earlier, this grant of power to the legislature was characterized by Justice Malcolm as 'full, clear and complete.' Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution." Then came *Rasul v. COMELEC and Aquino-Oreta*, in which the Court again stressed that "the word 'sole' in Sec. 17, Art. VI of the 1987 Constitution and Sec. 250 of the Omnibus Election Code underscore the exclusivity of the Tribunal's jurisdiction over election contests relating to its members." The House of Representatives Electoral Tribunal's (HRET's) sole and exclusive jurisdiction over contests relative to the election, returns and qualifications of the members of the House of Representatives "begins only after a candidate has become a member of the House of Representatives." Thus, once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, COMELEC's jurisdiction over elections relating to the election, returns, and qualifications ends, and the HRET's own jurisdiction begins.

3. ID.; ID.; ID.; A PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW WHICH WAS AVAILABLE TO PETITIONER.— Without a doubt, at the time Señeres filed this petition before this Court on July 23, 2007, the right of the nominees as party-list representatives had been

recognized and declared in the July 19, 2007 Resolution and the nominees had taken their oath and already assumed their offices in the House of Representatives. As such, the proper recourse would have been to file a petition for *quo warranto* before the HRET within ten (10) days from receipt of the July 19, 2007 Resolution and not a petition for *certiorari* before this Court. Since Señeres failed to file a petition for *quo warranto* before the HRET within 10 days from receipt of the July 19, 2007 Resolution declaring the validity of Robles' Certificate of Nomination, said Resolution of the COMELEC has already become final and executory. Thus, this petition has now become moot and can be dismissed outright. And even if we entertain the instant special civil action, still, petitioner's postulations are bereft of merit.

4. ID.; ID.; ID.; A PETITION FOR *QUO WARRANTO* BEFORE THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) IS THE PROPER REMEDY IN CASE AT BAR.— Robles' act of submitting a nomination list for BUHAY cannot, without more, be considered electioneering or partisan political activity within the context of the Election Code. First of all, petitioner did not aver that Robles committed any of the five (5) acts defined in the aforequoted Sec. 79(b) of the Code, let alone adduce proof to show the fact of commission. Second, even if Robles performed any of the previously mentioned acts, Sec. 79 of the Code is nonetheless unequivocal that if the same is done only for the "purpose of enhancing the chances of aspirants for nominations for candidacy to a public office by a political party, agreement, or coalition of parties," it is not considered as a prohibited electioneering or partisan election activity. From this provision, one can conclude that as long as the acts embraced under Sec. 79 pertain to or are in connection with the nomination of a candidate by a party or organization, then such are treated as internal matters and cannot be considered as electioneering or partisan political activity. The twin acts of signing and filing a Certificate of Nomination are purely internal processes of the party or organization and are not designed to enable or ensure the victory of the candidate in the elections. The act of Robles of submitting the certificate nominating Velarde and others was merely in compliance with the COMELEC requirements for nomination of party-list representatives and, hence, cannot be treated as electioneering or partisan political activity proscribed under by Sec. 2(4) of

Art. IX(B) of the Constitution for civil servants. Moreover, despite the fact that Robles is a nominating officer, as well as Chief of the LRTA, petitioner was unable to cite any legal provision that prohibits his concurrent positions of LRTA President and acting president of a party-list organization or that bars him from nominating. Last but not least, the nomination of Velarde, Coscolluela, Tieng, Monsod, and Villarama to the 2007 party-list elections was, in the final analysis, an act of the National Council of BUHAY. Robles' role in the nominating process was limited to signing, on behalf of BUHAY, and submitting the party's Certificate of Nomination to the COMELEC. The act of nominating BUHAY's representatives was veritably a direct and official act of the National Council of BUHAY and not Robles'. Be that as it may, it is irrelevant who among BUHAY's officials signs the Certificate of Nomination, as long as the signatory was so authorized by BUHAY. The alleged disqualification of Robles as nominating officer is indeed a non-issue and does not affect the act of the National Council of nominating Velarde and others. Hence, the Certificate of Nomination, albeit signed by Robles, is still the product of a valid and legal act of the National Council of BUHAY. Robles' connection with LRTA could not really be considered as a factor invalidating the nomination process.

5. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ACT OF NOMINATING IS NOT PARTISAN POLITICAL ACTIVITY.— As a general rule, officers and directors of a corporation hold over after the expiration of their terms until such time as their successors are elected or appointed. Sec. 23 of the Corporation Code contains a provision to this effect, thus: Section 23. *The board of directors or trustees*.—Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. The holdover doctrine has, to be sure, a purpose which is at once legal as it is practical. It accords validity to what would otherwise be deemed as dubious corporate acts and gives continuity to a corporate enterprise in its relation to outsiders. This is the analogical

situation obtaining in the present case. The voting members of BUHAY duly elected Robles as party President in October 1999. And although his regular term as such President expired in October 2002, no election was held to replace him and the other original set of officers. Further, the constitution and by-laws of BUHAY do not expressly or impliedly prohibit a hold-over situation. As such, since no successor was ever elected or qualified, Robles remained the President of BUHAY in a "hold-over" capacity.

6. ID.; ID.; "HOLD-OVER" PRINCIPLE UNDER THE CORPORATION CODE IS APPLICABLE IN CASE AT BAR.— Authorities are almost unanimous that one who continues with the discharge of the functions of an office after the expiration of his or her legal term––no successor having, in the meantime, been appointed or chosen––is commonly regarded as a *de facto* officer, even where no provision is made by law for his holding over and there is nothing to indicate the contrary. By fiction of law, the acts of such *de facto* officer are considered valid and effective. So it must be for the acts of Robles while serving as a hold-over Buhay President. Among these acts was the submission of the nomination certificate for the May 14, 2007 elections.

7. ID.; ID.; PETITIONER IS ESTOPPED FROM QUESTIONING THE AUTHORITY OF PRIVATE RESPONDENT AS PRESIDENT OF *BUHAY*; PETITIONER CANNOT NOW BE HEARD TO ARGUE THAT PRIVATE RESPONDENT'S TERM AS BUHAY PRESIDENT HAS LONG SINCE EXPIRED, AND THAT HIS ACT OF SUBMITTING THE CERTIFICATE OF NOMINATION AND THE MANIFESTATION TO PARTICIPATE IN THE 2007 ELECTIONS IS NULL AND VOID.— It bears to state that petitioner is estopped from questioning the authority of Robles as President of BUHAY. As a principle of equity rooted on natural justice, the bar of estoppel precludes a person from going back on his own acts and representations to the prejudice of another whom he has led to rely upon them. Again, it cannot be denied that Robles, as BUHAY President, signed all manifestations of the party's desire to participate in the 2001 and 2004 elections, as well as all Certificates of Nomination. In fact, the corresponding certificate for the 2004 elections included petitioner as one of the nominees. During this time, Robles' term as President had already expired, and yet, petitioner never

questioned Robles' authority to sign the Certificate of Nomination. As a matter of fact, petitioner even benefited from the nomination, because he earned a seat in the House of Representatives as a result of the party's success. Clearly, petitioner cannot now be heard to argue that Robles' term as president of BUHAY has long since expired, and that his act of submitting the Certificate of Nomination and the manifestation to participate in the 2007 elections is null and void. He is already precluded from doing so.

APPEARANCES OF COUNSEL

Antonio R. Bautista and Partners for petitioner.
The Solicitor General for public respondent.
Romulo B. Macalintal for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for *Certiorari*[1] under Rule 65 with a prayer for a temporary restraining order and/or preliminary injunction to nullify and enjoin the implementation of the Resolution[2] dated July 19, 2007 of the Commission on Elections (COMELEC), which declared respondent Melquiades Robles (Robles) as the President of BUHAY HAYAAN YUMABONG (BUHAY).

The Undisputed Facts

In 1999, private respondent Robles was elected president and chairperson of BUHAY, a party-list group duly registered with COMELEC.[3] The constitution of BUHAY provides for a three-year term for all its party officers, without re-election.[4]

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[1] *Rollo*, pp. 3-17.

[2] *Id.* at 20-26.

[3] BUHAY was registered with the COMELEC on March 9, 2001. *Rollo*, p. 132.

[4] *Id.* at 172.

BUHAY participated in the 2001 and 2004 elections, with Robles as its president. All the required Manifestations of Desire to Participate in the said electoral exercises, including the Certificates of Nomination of representatives, carried the signature of Robles as president of BUHAY.[5] On January 26, 2007, in connection with the May 2007 elections, BUHAY again filed a Manifestation of its Desire to Participate in the Party-List System of Representation.[6] As in the past two elections, the manifestation to participate bore the signature of Robles as BUHAY president.

On March 29, 2007, Robles signed and filed a Certificate of Nomination of BUHAY's nominees for the 2007 elections containing the following names: (i) Rene M. Velarde, (ii) Ma. Carissa Coscolluela, (iii) William Irwin C. Tieng, (iv) Melchor R. Monsod, and (v) Teresita B. Villarama. Earlier, however, or on March 27, 2007, petitioner Hans Christian Señeres, holding himself up as acting president and secretary-general of BUHAY, also filed a Certificate of Nomination with the COMELEC, nominating: (i) himself, (ii) Hermenegildo C. Dumlao, (iii) Antonio R. Bautista, (iv) Victor Pablo C. Trinidad, and (v) Eduardo C. Solangon, Jr.[7]

Consequently, on April 17, 2007, Señeres filed with the COMELEC a Petition to Deny Due Course to Certificates of Nomination.[8] In it, petitioner Señeres alleged that he was the acting president and secretary-general of BUHAY, having assumed that position since August 17, 2004 when Robles vacated the position. Pushing the point, Señeres would claim that the nominations made by Robles were, for lack of authority, null and void owing to the expiration of the latter's term as party president. Furthermore, Señeres asserted that Robles was, under the Constitution,[9] disqualified from being an officer of any political

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[5] *Id.* at 130-133.

[6] *Id.* at 134.

[7] *Id.* at 6.

[8] *Id.* at 27-31.

[9] *See* 1987 CONSTITUTION, Art. IX (B), Sec. 2 (4).

party, the latter being the Acting Administrator of the Light Railway Transport Authority (LRTA), a government-controlled corporation. Robles, so Señeres would charge, was into a partisan political activity which civil service members, like the former, were enjoined from engaging in.

On May 10, 2007, the National Council of BUHAY adopted a resolution[10] expelling Señeres as party member for his act of submitting a Certificate of Nomination for the party. The resolution reads in part:

WHEREAS, Hans Christian M. Señeres, without authority from the National Council, caused the filing of his Certificate of Nomination with the Comelec last 27 March 2007.

WHEREAS, Hans Christian M. Señeres, again without authority from the National Council, listed in his Certificate of Nomination names of persons who are not even members of the Buhay party.

WHEREAS, Hans Christian M. Señeres, knowing fully well that the National Council had previously approved the following as its official nominees, to wit x x x to the 2007 Party-List elections; and that Mr. Melquiades A. Robles was authorized to sign and submit the party's Certificate of Nomination with the Comelec; and, with evident premeditation to put the party to public ridicule and with scheming intention to create confusion, still proceeded with the filing of his unauthorized certificate of nomination even nomination persons who are not members of Buhay.

WHEREAS, Hans Christian M. Señeres, in view of the foregoing, underwent Party Discipline process pursuant to Article VII of the Constitution and By-Laws of the Party.

x x x x x x x x x

WHEREAS, after a careful examination of the [evidence] on his case, the National Council found Hans Christian M. Señeres to have committed acts in violation of the constitution and by-laws of the party and decided to expel him as a member of the party.

NOW THEREFORE, be it **RESOLVED** as it is hereby **RESOLVED** that the National Council has decided to expel Hans M. Señeres as a member of the party effective close of business hour of 10 May 2007.

[10] *Rollo*, p. 40.

BE IT RESOLVED FURTHER, that all rights and privileges pertaining to the membership of Hans M. Señeres with the party are consequently cancelled.

BE IT RESOLVED FURTHER, that the President and Chairman of the National Council of Buhay, Mr. Melquiades A. Robles, is hereby authorized to cause the necessary filing of whatever documents/letters before the House of Representatives and/or to any other entity/agency/person to remove/drop Mr. Señeres' name in the roll of members in the said lower house.[11]

Later developments saw Robles filing a petition praying for the recognition of Jose D. Villanueva as the new representative of BUHAY in the House of Representatives for the remaining term until June 30, 2007.[12] Attached to the petition was a copy of the expelling resolution adverted to. Additionally, Robles also filed on the same day an "Urgent Motion to Declare Null and Void the Certificate of Nomination and Certificates of Acceptance filed by Hans Christian M. Señeres, Hermenegildo Dumlao, Antonio R. Bautista, Victor Pablo Trinidad and Eduardo Solangon, Jr."[13]

On July 9 and July 18, 2007, respectively, the COMELEC issued two resolutions proclaiming BUHAY as a winning party-list organization for the May 2007 elections entitled to three (3) House seats.[14]

This was followed by the issuance on July 19, 2007 by the *en banc* COMELEC of Resolution E.M. No. 07-043 recognizing and declaring Robles as the president of BUHAY and, as such, was the one "duly authorized to sign documents in behalf of the party particularly the Manifestation to participate in the party-list system of representation and the Certification of

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[11] *Id.* at 36. The Resolution was signed by Melquiades A. Robles, Melchor R. Monsod, Emmanuel R. Sison, Wilfrido B. Villarama, and Norberto D. Enriquez.

[12] *Id.* at 39.

[13] *Id.* at 32-34.

[14] NBC Resolution No. 07-60, July 9, 2007, *id.* at 67-72; NBC Resolution No. 07-72, July 18, 2007, *id.* at 73-77.

Nomination of its nominees."[15] Explaining its action, COMELEC stated that since no party election was held to replace Robles as party president, then he was holding the position in a hold-over capacity.[16]

The COMELEC disposed of the partisan political activity issue with the terse observation that Señeres' arguments on the applicability to Robles of the prohibition on partisan political activity were unconvincing.[17] The dispositive portion of the COMELEC Resolution reads:

> WHEREFORE, premises considered, this Commission (*En Banc*) hereby recognizes Melquiades A. Robles as the duly authorized representative of *Buhay Hayaan Yumabong* (Buhay) and to act for and in its behalf pursuant to its Constitution and By-Laws.
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> SO ORDERED.[18]

On July 20, 2007, the first three (3) listed nominees of BUHAY for the May 2007 elections, as per the Certificate of Nomination filed by Robles, namely Rene M. Velarde, Ma. Carissa Coscolluela, and William Irwin C. Tieng, took their oaths of office as BUHAY party-list representatives in the current Congress.[19] Accordingly, on September 3, 2007, the COMELEC, sitting as National Board of Canvassers, issued a Certificate of Proclamation to BUHAY and its nominees as representatives to the House of Representatives.[20]

Aggrieved, petitioner filed the instant petition.

The Issue

Whether or not the COMELEC acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its challenged Resolution dated June

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[15] *Id.* at 25.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 115.

[20] *Id.* at 213.

19, 2007, which declared respondent Robles as the duly authorized representative of BUHAY, and there is no appeal or any other plain, speedy or adequate remedy in the ordinary course of law except the instant petition.

Our Ruling

The petition should be dismissed for lack of merit.

Petition for *Certiorari* Is an Improper Remedy

A crucial matter in this recourse is whether the petition for *certiorari* filed by Señeres is the proper remedy.

A special civil action for *certiorari* may be availed of when the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling the proceeding.[21] It is the "proper remedy to question any final order, ruling and decision of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers."[22] For *certiorari* to prosper, however, there must be a showing that the COMELEC acted with grave abuse of discretion and that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

In the present case, a plain, speedy and adequate remedy in the ordinary course of law was available to Señeres. The 1987 Constitution cannot be more explicit in this regard. Its Article VI, Section 17 states:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of their respective Members. x x x

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[21] *Guerrero v. COMELEC*, G.R. No. 137004, July 26, 2000, 336 SCRA 458, 466; citing *Suntay v. Conjuangco-Suntay*, G.R. No. 132524, December 29, 1998, 300 SCRA 760, 766.

[22] *Id.*; citing *Loong v. Commission on Elections, et al.*, G.R. No. 133676, April 14, 1999, 305 SCRA 832, 852.

This constitutional provision is reiterated in Rule 14 of the 1991 Revised Rules of the Electoral Tribunal of the House of Representatives, to wit:

> RULE 14. *Jurisdiction.*—The Tribunal shall be the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives.

In *Lazatin v. House Electoral Tribunal*, the Court elucidated on the import of the word "sole" in Art. VI, Sec. 17 of the Constitution, thus:

> The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as 'intended to be as complete and unimpaired as if it had remained originally in the legislature.' Earlier, this grant of power to the legislature was characterized by Justice Malcolm as 'full, clear and complete.' Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution."[23]

Then came *Rasul v. COMELEC and Aquino-Oreta*, in which the Court again stressed that "the word 'sole' in Sec. 17, Art. VI of the 1987 Constitution and Sec. 250 of the Omnibus Election Code underscore the exclusivity of the Tribunal's jurisdiction over election contests relating to its members."[24]

The House of Representatives Electoral Tribunal's (HRET's) sole and exclusive jurisdiction over contests relative to the election, returns and qualifications of the members of the House of Representatives "begins only after a candidate has become a member of the House of Representatives."[25] Thus, once a

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[23] No. 84297, December 8, 1988, 168 SCRA 391, 401.

[24] G.R. No. 134142, August 24, 1999, 313 SCRA 18, 23.

[25] *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 340-341. *See* also *Domino v. COMELEC*, G.R. No. 134015, July 19, 1999, 310 SCRA 547; *Aquino v. COMELEC*, G.R. No. 120265, September 18, 1995, 248 SCRA 400.

winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, COMELEC's jurisdiction over elections relating to the election, returns, and qualifications ends, and the HRET's own jurisdiction begins.[26]

It is undisputed that the COMELEC, sitting as National Board of Canvassers, proclaimed BUHAY as a winning party-list organization for the May 14, 2007 elections, entitled to three (3) seats in the House of Representatives.[27] The proclamation came in the form of two Resolutions dated July 9, 2007 and July 18, 2007,[28] respectively. Said resolutions are official proclamations of COMELEC considering it is BUHAY that ran for election as party-list organization and not the BUHAY nominees.

The following day, on July 19, 2007, the COMELEC issued the assailed resolution declaring "Melquiades A. Robles as the duly authorized representative of Buhay Hayaan Yumabong (Buhay) and to act in its behalf pursuant to its Constitution and By-Laws." COMELEC affirmed that his Certificate of Nomination was a valid one as it ruled that "Robles is the President of Buhay Party-List and therefore duly authorized to sign documents in behalf of the party particularly the Manifestation to participate in the pary-list system of representation and the **Certificate of Nomination of its nominees**."[29] The September 3, 2007 proclamation merely confirmed the challenged July 19, 2007 Resolution. The July 19, 2007 Resolution coupled with the July 9, 2007 and July 18, 2007 proclamations vested the Robles nominees the right to represent BUHAY as its sectoral representatives.

Consequently, the first three (3) nominees in the Certificate of Nomination submitted by Robles then took their oaths of

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[26] *Aggabao v. COMELEC*, G.R. No. 163756, January 26, 2005, 449 SCRA 400; *Guerrero*, *supra* note 21; *Lazatin*, *supra* note 23.

[27] *See* NBC Resolution No. 07-60 and 07-72, *rollo*, pp. 67-77.

[28] *Supra* note 14.

[29] *Rollo*, p. 211.

office before the Chief Justice on July 20, 2007 and have since then exercised their duties and functions as BUHAY Party-List representatives in the current Congress.

Without a doubt, at the time Señeres filed this petition before this Court on July 23, 2007, the right of the nominees as party-list representatives had been recognized and declared in the July 19, 2007 Resolution and the nominees had taken their oath and already assumed their offices in the House of Representatives. As such, the proper recourse would have been to file a petition for *quo warranto* before the HRET within ten (10) days from receipt of the July 19, 2007 Resolution and not a petition for *certiorari* before this Court.[30]

Since Señeres failed to file a petition for *quo warranto* before the HRET within 10 days from receipt of the July 19, 2007 Resolution declaring the validity of Robles' Certificate of Nomination, said Resolution of the COMELEC has already become final and executory. Thus, this petition has now become moot and can be dismissed outright. And even if we entertain the instant special civil action, still, petitioner's postulations are bereft of merit.

Act of Nominating Is Not Partisan Political Activity

Petitioner Señeres contends that Robles, acting as BUHAY President and nominating officer, as well as being the Administrator of the LRTA, was engaging in electioneering or partisan political campaign. He bases his argument on the Constitution, which prohibits any officer or employee in the civil service from engaging, directly or indirectly, in any electioneering or partisan political campaign.[31] He also cites Sec. 4 of the Civil Service Law which provides that "no officer or employee in the Civil Service x x x shall engage in any partisan political activity." Lastly, he mentions Sec. 26(i) of the Omnibus Election Code which makes it "an election offense for any officer in the civil service to directly or indirectly x x x engage in any partisan political activity."

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[30] *See* Revised Rules of the HRET, Rule 17.

[31] CONSTITUTION, Art. IX(B), Sec. 2(4).

This contention lacks basis and is far from being persuasive. The terms "electioneering" and "partisan political activity" have well-established meanings in the Omnibus Election Code, to wit:

> Section 79. x x x
>
> (b) The term 'election campaign' or 'partisan political activity' refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:
>
> (1) Forming organizations, associations, clubs, committees, or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;
>
> (2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;
>
> (3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;
>
> (4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or
>
> (5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.
>
> **The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nominations for candidacy to a public office by a political party, agreement, or coalition of parties shall not be considered as election campaign or partisan election activity.**
>
> Public expression of opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forth coming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article. (Emphasis supplied.)

Guided by the above perspective, Robles' act of submitting a nomination list for BUHAY cannot, without more, be considered

electioneering or partisan political activity within the context of the Election Code. First of all, petitioner did not aver that Robles committed any of the five (5) acts defined in the aforequoted Sec. 79(b) of the Code, let alone adduce proof to show the fact of commission.

Second, even if Robles performed any of the previously mentioned acts, Sec. 79 of the Code is nonetheless unequivocal that if the same is done only for the "purpose of enhancing the chances of aspirants for nominations for candidacy to a public office by a political party, agreement, or coalition of parties," it is not considered as a prohibited electioneering or partisan election activity.

From this provision, one can conclude that as long as the acts embraced under Sec. 79 pertain to or are in connection with the nomination of a candidate by a party or organization, then such are treated as internal matters and cannot be considered as electioneering or partisan political activity. The twin acts of signing and filing a Certificate of Nomination are purely internal processes of the party or organization and are not designed to enable or ensure the victory of the candidate in the elections. The act of Robles of submitting the certificate nominating Velarde and others was merely in compliance with the COMELEC requirements for nomination of party-list representatives and, hence, cannot be treated as electioneering or partisan political activity proscribed under by Sec. 2(4) of Art. IX(B) of the Constitution for civil servants.

Moreover, despite the fact that Robles is a nominating officer, as well as Chief of the LRTA, petitioner was unable to cite any legal provision that prohibits his concurrent positions of LRTA President and acting president of a party-list organization or that bars him from nominating.

Last but not least, the nomination of Velarde, Coscolluela, Tieng, Monsod, and Villarama to the 2007 party-list elections was, in the final analysis, an act of the National Council of BUHAY. Robles' role in the nominating process was limited to signing, on behalf of BUHAY, and submitting the party's

Certificate of Nomination to the COMELEC.[32] The act of nominating BUHAY's representatives was veritably a direct and official act of the National Council of BUHAY and not Robles'. Be that as it may, it is irrelevant who among BUHAY's officials signs the Certificate of Nomination, as long as the signatory was so authorized by BUHAY. The alleged disqualification of Robles as nominating officer is indeed a non-issue and does not affect the act of the National Council of nominating Velarde and others. Hence, the Certificate of Nomination, albeit signed by Robles, is still the product of a valid and legal act of the National Council of BUHAY. Robles' connection with LRTA could not really be considered as a factor invalidating the nomination process.

"Hold-Over" Principle Applies

Petitioner Señeres further maintains that at the time the Certificate of Nomination was submitted, Robles' term as President of BUHAY had already expired, thus effectively nullifying the Certificate of Nomination and the nomination process.

Again, petitioner's contention is untenable. As a general rule, officers and directors of a corporation hold over after the expiration of their terms until such time as their successors are elected or appointed.[33] Sec. 23 of the Corporation Code contains a provision to this effect, thus:

Section 23. *The board of directors or trustees*.—Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation,

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[32] *Rollo*, p. 36.

[33] 2 Fletcher Cyc. Corp. § 344; *citing Skarda v. Commissioner of Internal Revenue*, 250 F2d 429; *Schuckman v. Rubenstein*, 164 F2d 952; *In re Mathews Const. Co.*, 120 F Supp 818; *Liken v. Shaffer*, 64 F Supp 432; *Ingram v. Omelet Shoppe, Inc.*, 388 So 2d 190 (Ala); *Robertson v. Hartman*, 6 Cal 2d 408, 57 P2d 1310; *Levine v. Randolph Corp*., 150 Conn 232, 188 A2d 59, and other cases. *See also* 19 C.J.S. Corporations § 536.

who shall hold office for one (1) year until their successors are elected and qualified.

The holdover doctrine has, to be sure, a purpose which is at once legal as it is practical. It accords validity to what would otherwise be deemed as dubious corporate acts and gives continuity to a corporate enterprise in its relation to outsiders.[34] This is the analogical situation obtaining in the present case. The voting members of BUHAY duly elected Robles as party President in October 1999. And although his regular term as such President expired in October 2002,[35] no election was held to replace him and the other original set of officers.[36] Further, the constitution and by-laws of BUHAY do not expressly or impliedly prohibit a hold-over situation. As such, since no successor was ever elected or qualified, Robles remained the President of BUHAY in a "hold-over" capacity.

Authorities are almost unanimous that one who continues with the discharge of the functions of an office after the expiration of his or her legal term—no successor having, in the meantime, been appointed or chosen—is commonly regarded as a *de facto* officer, even where no provision is made by law for his holding over and there is nothing to indicate the contrary.[37] By fiction of law, the acts of such *de facto* officer are considered valid and effective.[38]

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[34] 2 Fletcher Cyc. Corp. § 344; citing *Jacksonville Terminal Co. v. Florida East Coast Ry. Co.*, 363 F2d 216.

[35] *Rollo*, p. 12.

[36] *Id.* at 25.

[37] *Smith v. City Council of Charleston*, 198 SC 313, 17 SE2d 860, 863; citing *Heyward v. Long*, 178 SC 351, 365, 183 SE 145, 151, 114 ALR 1130; *Cantwell v. Southfield*, 95 Mich App 375, 290 NW2d 151; *Gilson v. Heffernan*, 40 NJ 367, 192 A2d 577; *Commonwealth v. Glass*, 295 Pa 291, 145 A 278; *Killian v. Wilkins*, 203 SC 74, 26 SE2d 246; *Whatley v. State*, 110 Tex Crim 337, 8 SW2d 174; *Thorington v. Gould*, 59 Ala 461; *Milliken v. Steiner*, 56 Ga 251 and other cases.

[38] *Topacio v. Ong*, G.R. No. 179895, December 18, 2008; citing *Tayko v. Capistrano*, 53 Phil. 866 (1928).

So it must be for the acts of Robles while serving as a hold-over Buhay President. Among these acts was the submission of the nomination certificate for the May 14, 2007 elections.

As a final consideration, it bears to state that petitioner is estopped from questioning the authority of Robles as President of BUHAY. As a principle of equity rooted on natural justice, the bar of estoppel precludes a person from going back on his own acts and representations to the prejudice of another whom he has led to rely upon them.[39]

Again, it cannot be denied that Robles, as BUHAY President, signed all manifestations of the party's desire to participate in the 2001 and 2004 elections, as well as all Certificates of Nomination.[40] In fact, the corresponding certificate for the 2004 elections included petitioner as one of the nominees. During this time, Robles' term as President had already expired, and yet, petitioner never questioned Robles' authority to sign the Certificate of Nomination. As a matter of fact, petitioner even benefited from the nomination, because he earned a seat in the House of Representatives as a result of the party's success.[41] Clearly, petitioner cannot now be heard to argue that Robles' term as president of BUHAY has long since expired, and that his act of submitting the Certificate of Nomination and the manifestation to participate in the 2007 elections is null and void. He is already precluded from doing so.

WHEREFORE, the petition is *DISMISSED*. Resolution E.M. No. 07-043 of the COMELEC dated July 19, 2007 is *AFFIRMED*. No costs.

SO ORDERED.

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

Puno, C.J., no part. Close to the parties.

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[39] *Stokes v. Malayan Insurance Co., Inc.*, No. L-34768, February 24, 1984, 127 SCRA 766, 770.

[40] *Rollo*, pp. 123, 132-133.

[41] *Id.* at 124-125.

SECOND DIVISION

[G.R. No. 179708. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARCELO ALETA,[1] FERDINAND ALETA, ROGELIO ALETA, MARLO[2] ALETA, JOVITO ALETA,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURTS ARE BEST EQUIPPED TO MAKE ASSESSMENTS ON THE ISSUE OF CREDIBILITY.— As in most criminal cases, the present appeal hinges primarily on the issue of credibility of witness and of testimony. As held in a number of cases, the trial court is best equipped to make the assessment on said issue and, therefore, its factual findings are generally not disturbed on appeal, unless: (1) the testimony is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion. From a considered review of the records of the cases, the Court finds that none of the above-stated exceptions is present to warrant a reversal of the factual findings of the trial and appellate courts.

2. ID.; ID.; ID.; WITNESS' NARRATION WAS WELL DETAILED AND CORROBORATED THEREBY ACQUIRING GREAT WEIGHT AND CREDIBILITY AGAINST ALL DEFENSES.— As held in a catena of cases and correctly applied by both lower courts, Marina's positive identification of *all* appellants as the assailants and her accounts of what transpired during the incidents, which were corroborated on all material points by prosecution witnesses Loreta Duldulao (Loreta) and Willie

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[1] Died on January 20, 2006, during the pendency of the appeal before the Court of Appeals. Criminal liability extinguished pursuant to Art. 89 of the Revised Penal Code. See Resolution of the Court of Appeals dated August 30, 2007, *rollo*, pp. 20-22.

[2] Spelled as "Marlou" in the records.

Duldulao (Willie), as well as the findings of the medico-legal officer, carry greater weight than appellants' claims of self-defense, defense of relative and alibi. More particularly, that Marina's narration was so detailed all the more acquires greater weight and credibility against all defenses, especially because it jibed with the autopsy findings.

3. ID.; ID.; ID.; MINOR INCONSISTENCIES REFERRING TO INSIGNIFICANT DETAILS DOES NOT AFFECT CREDIBILITY BUT RATHER GUARANTEE TRUTHFULNESS AND CANDOR.— Respecting the defense's questioning of Loreta's testimony that Willie had told her that Duldulao was already dead, but was later to claim that on reaching the scene of the crime, Duldulao was still alive, lying on the ground and being clubbed by appellants, the same deserves scant consideration. Far from being inconsistent, the same is in sync with the other witnesses' claim and Marlo's own admission that appellants continued to club the two victims even as they lay motionless and helpless on the ground. At any rate, inconsistencies in the testimonies of witnesses which refer to minor and insignificant details, such as whether Duldulao was still alive or not, cannot destroy Loreta's testimony. Minor inconsistencies in fact even guarantee truthfulness and candor. A witness' testimony deserves full faith and credit where there exists no evidence to show any dubious reason or improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense. That the prosecution witnesses are all related by blood to appellants should a *fortiori* be credited, absent a showing that they had motive to falsely accuse appellants.

4. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY, NOT ESTABLISHED.— As for the *alibi* of Marcelo, Rogelio and Jovito, for it to prosper, it must be shown that it was physically impossible for them to have been at the scene of the crime at the approximate time of its commission. That they were in Marcelo's house attending to a relative who was allegedly having difficulty breathing, did not render it impossible for them to have been at the scene of the crimes, the house being a mere 13.5 meters away, more or less. Besides, it is impossible that they could not have noticed the commotion that preceded and attended the incidents.

5. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF RELATIVE; UNSUBSTANTIATED.— As to the claims of self-defense, defense of relative, and alibi relied upon by appellants, the lower courts' finding the same unsubstantiated is well taken. Assuming *arguendo* that Acob was indeed the aggressor, the aggression ceased the moment he was disarmed and already lying on the ground after being struck by Marlo. Even if Marlo's account that Duldulao approached with a piece of wood above his head, the same, albeit intimidating, cannot be said to reek of imminent and actual danger. When Marlo then continued to club Acob while in a prone position, and struck Duldulao after he had fallen, self-defense and defense of relative no longer avail. **It is settled that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exists; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression was still existing when the aggressor was injured by the accused.** Besides, the self-defense claimed to have been employed by Marlo cannot be said to be reasonable. The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression. **The nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor as well as those of the person who invokes self-defense; and the place and the occasion of the assault also define the reasonableness of the means used in self-defense.** Thus, even if Ferdinand's and Marlo's accounts of what transpired were true, Marlo's repeated clubbing of the already unarmed and helpless victims inside their own compound is clearly unreasonable. Marlo did not thus intend to merely repel the alleged attack. He wanted to be sure that the two victims would not survive. That Ferdinand sustained a ½ to 1 centimeter deep stab wound in the thigh does not necessarily prove that he acted in self-defense or that Marlo acted in defense of a relative. Parenthetically, the knife, allegedly used by Acob

which Marlo claims to have taken, was not even presented in evidence.

6. ID.; MURDER; QUALIFYING CIRCUMSTANCES; APPELLANTS ENJOYED SUPERIORITY IN NUMBER CLEARLY SHOWING ABUSE OF SUPERIOR STRENGTH.— It bears noting that appellants enjoyed superiority in number (five) over the two victims, clearly showing abuse of superior strength and that the force used by them was out of proportion to the means of defense available to the victims.

7. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; INFERRED FROM THE ACTS OF APPELLANTS.— Contrary to the contention of appellants, conspiracy was present during the attack. When two or more persons aim their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative indicating closeness of personal association and a concurrence of sentiment, conspiracy may be inferred. And where there is conspiracy, the act of one is deemed the act of all.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the July 9, 2007 Court of Appeals Decision[3] affirming with modification the October 25, 2001 Decision[4] of the Regional Trial Court (RTC) of Ilocos Norte, Branch 19, with station at Bangui, convicting accused-appellant Marcelo and his sons-co-appellants Ferdinand, Rogelio, Marlo and Jovito, all surnamed Aleta, of Murder in two cases.

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[3] CA *rollo*, pp. 177-191. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[4] Records, Vol. I, pp. 270-283. Penned by Judge Manuel L. Argel, Jr.

Two Informations dated June 21, 1994 for the death of Celestino Duldulao (Duldulao) and Fernando Acob (Acob) were filed against accused-appellants:

The accusatory portion of Criminal Case No. 1102-19 reads:

> That on about May 22, 1994, at about 3:00 o'clock in the afternoon, all the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and with abuse of superior strength, did then and there willfully, unlawfully and feloniously strike and club with the use of hard objects one *Celestino Duldulao y Yadao* inflicting upon the latter bodily injuries which caused his death as a consequence thereof.
>
> CONTRARY TO LAW.[5] (Underscoring supplied)

The accusatory portion of Criminal case No. 1103-19 reads:

> That on about May 22, 1994, at about 3:00 o'clock in the afternoon, all the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and with abuse of superior strength, did then and there willfully, unlawfully and feloniously strike and club with the use of hard objects one FERNANDO ACOB inflicting upon the latter bodily injuries which caused his death as a consequence thereof. (Underscoring supplied)
>
> CONTRARY TO LAW.[6]

The victim Acob was the son of appellant Marcelo's sister Marina Acob (Marina), while the other victim Duldulao was the victim Acob's father-in-law.

Culled from the evidence for the prosecution is its following version:

While the deceased Acob's mother Marina was at the community center of Barangay Nagsurot, Burgos, Ilocos Norte on May 22, 1994, she heard a commotion at the yard of appellants. Soon after returning home, she told Acob that there was a quarrel at appellants' compound.

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[5] *Id.* at 20.

[6] Records, Vol II, p. 1.

Against his mother's pleas, Acob repaired to appellants' compound. Marina followed and upon reaching appellants' compound, she saw her nephew appellant Rogelio striking her son Acob twice at the left cheek and at the back of his head with a piece of wood, causing Acob to fall on the ground. She thereafter saw Rogelio striking Acob's father-in-law Duldulao twice on the face drawing his eyes to pop up, and again on the head causing him to fall on the ground.

Rogelio then ran towards the family house whereupon Marina heard gunshots. Rogelio's brothers-co-appellants Jovito, Marlo and Ferdinand and their father Marcelo at once began clubbing Acob and Duldulao with pieces of wood, mainly on the face and head, as well as on different parts of their bodies.

Even while the victims were already lying prostrate on the ground, Marcelo, Jovito, Marlo, and Ferdinand continued to hit them. And when Rogelio emerged from the house, he got another piece of wood and again clubbed the victims.

As found by Dr. Arturo G. Llabore, a medico-legal officer of the National Bureau of Investigation-Regional Office, San Fernando, La Union who supervised the exhumation and autopsy of the bodies of Acob and Duldulao on June 3, 1994, the two victims suffered multiple abrasions, lacerations, open wounds, contusions and fractures on their face, head, scalp, arms, legs and thighs; that Acob's death was due to "hemorrhage, intercranial, severe, secondary to traumatic injuries, head" while Duldulao's was due to "hemorrhage, intercranial, severe, secondary to traumatic injuries, head, multiple;" that both victims could have died within one (1) hour after the infliction of the injuries; and that because of the severity and multiplicity of the injuries sustained, the same could not have been inflicted by only one person.

Upon the other hand, appellants Ferdinand and Marlo interposed self-defense and defense of relative, respectively. Additionally, Marlo invoked voluntary surrender as a mitigating circumstance. Marcelo, Rogelio and Jovito invoked alibi. Their version of the incidents follows:

At around 3:00 in the afternoon, while Ferdinand and Marlo were resting at their compound, Acob arrived, uttering "*Oki ni inayo"* (Vulva of your mother") and drew out a knife about six inches long. As Acob repeatedly uttered "Vulva of your mother, I will kill all of you!," he thrust the knife at Ferdinand was able to evade it. Acob and Ferdinand slipped and fell on the ground, After some struggle, Acob succeeded in stabbing Ferdinand on the thigh. As Acob was about to stab Ferdinand again, Marlo took a piece of wood and struck him three times on the face. Ferdinand thereafter fell on the ground at which instant Marlo dropped the wood.

Duldulao soon emerged and at about 10 meters away from Marlo, he uttered "Vulva of your mother." As Duldulao looked as though he was going to strike Marlo with a piece of wood, Marlo took a piece of wood and hit Duldulao twice on the left cheekbone, causing him to fall on the ground. He went on to club Duldulao, as well as Acob, to make sure that "they will no longer live." Marlo thereafter pocketed the knife used by Acob in stabbing Ferdinand.

Marlo never noticed where prosecution witnesses including Marina were during the incidents. Nor did he notice where his father Marcelo and his brothers Rogelio and Jovito were.

Ferdinand later went to the Batac General Hospital where Dr. Edgar Cabading treated his stab wound, ½ to 1 centimeter deep, at his inner thigh.

The following morning, Marlo surrendered to the police. Marcelo and the other appellants also surrendered days later.

Crediting the prosecution version, the trial court found appellants guilty beyond reasonable doubt of Murder in both cases and sentenced each of them to suffer the death penalty and to pay, jointly and severally, ₱250,000 to the heirs of Duldulao, and another ₱250,000.00 to the heirs of Acob by way of civil damages.

In arriving at its Decision, the trial court held that although what triggered the incidents was never explained, Acob and

Duldulao died as a result of the attacks on them, qualified by abuse of superior strength and cruelty.

In brushing aside Marlo's claim of self-defense and Ferdinand's defense of relative, the trial court held that, assuming *arguendo* that there was unlawful aggression on the part of the victims, the same ceased when the victims were already on the ground after Marlo hit them; and that force beyond what was necessary to repel the aggression was employed when the victims were repeatedly clubbed.

The trial court also brushed aside Marcelo, Jovito and Rogelio's alibi — that they were inside their house attending to a sick relative during the incidents, given their silence and failure to deny the imputations against them, their alibi having been invoked not by them but by Ferdinand and Marlo on their behalf.

Also brushing aside Marlo's claim of voluntary surrender, the trial court noted that there was no conscious effort on his part to surrender or acknowledge his guilt; and that that he did not resist but went peacefully with the police did not amount to voluntary surrender.

Appellants moved for a reconsideration of the trial court's decision, contending that there was no abuse of superior strength as the same was not consciously adopted; and that the testimonies of the prosecution witnesses, particularly Marina's, are incredible or inconsistent. The motion for reconsideration having been denied by Order[7] dated January 29, 2003, appellants appealed to the Court of Appeals, before which it raised the same issues as those in their motion for reconsideration before the trial court. Additionally, they questioned the penalty imposed upon them.

By the challenged Decision dated July 9, 2007, the appellate court affirmed appellants' conviction of murder but lowered the penalty imposed from death to *reclusion perpetua*. And it modified the damages awarded from ₱250,000.00 to the heirs

[7] CA *rollo*, pp. 73-76. Penned by Judge Manuel L. Argel, Jr.

of each victim to the following amounts: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

In modifying the penalty from death to *reclusion perpetua*, the appellate court noted that in the absence of any mitigating or aggravating circumstance, the lesser of the two indivisible penalties should be imposed.

Hence, the present appeal, appellants maintaining that both the trial and the appellate courts erred in giving full weight and credence to the testimonies of the prosecution witnesses.

As in most criminal cases, the present appeal hinges primarily on the issue of credibility of witness and of testimony. As held in a number of cases, the trial court is best equipped to make the assessment on said issue and, therefore, its factual findings are generally not disturbed on appeal, unless: (1) the testimony is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion.[8]

From a considered review of the records of the cases, the Court finds that none of the above-stated exceptions is present to warrant a reversal of the factual findings of the trial and appellate courts.

As held in a catena of cases and correctly applied by both lower courts, Marina's positive identification of all appellants as the assailants and her accounts of what transpired during the incidents, which were corroborated on all material points by prosecution witnesses Loreta Duldulao (Loreta) and Willie Duldulao (Willie), as well as the findings of the medico-legal officer, carry greater weight than appellants' claims of self-defense, defense of relative and alibi. More particularly, that Marina's narration was so detailed all the more acquires greater

[8] *People v. Casela*, G.R. No. 173243, March 23, 2007, 519 SCRA 30, 39.

weight and credibility against all defenses, especially because it jibed with the autopsy findings.[9]

Respecting the defense's questioning of Loreta's testimony that Willie had told her that Duldulao was already dead, but was later to claim that on reaching the scene of the crime, Duldulao was still alive, lying on the ground and being clubbed by appellants, the same deserves scant consideration. Far from being inconsistent, the same is in sync with the other witnesses' claim and Marlo's own admission that appellants continued to club the two victims even as they lay motionless and helpless on the ground.

At any rate, inconsistencies in the testimonies of witnesses which refer to minor and insignificant details, such as whether Duldulao was still alive or not, cannot destroy Loreta's testimony. Minor inconsistencies in fact even guarantee truthfulness and candor.[10]

A witness' testimony deserves full faith and credit where there exists no evidence to show any dubious reason or improper motive why he should testify falsely against the accused, or why he should implicate the accused in a serious offense.[11] That the prosecution witnesses are all related by blood to appellants should *a fortiori* be credited, absent a showing that they had motive to falsely accuse appellants.

As to the claims of self-defense, defense of relative, and alibi relied upon by appellants, the lower courts' finding the same unsubstantiated is well taken. *People v. Caabay*[12] instructs:

Case law has it that like alibi, self-defense or defense of relatives are inherently weak defenses which, as experience has shown, can

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[9] *Vide People v. Barrameda*, G.R. No. 130177, October, 11, 2000, 342 SCRA 568, 573.

[10] *Vide People v. Vallador*, 327 Phil. 303, 312 (1996).

[11] *People v. Comiling,* G.R. No. 141405, March 4, 2004, 424 SCRA 698, 721.

[12] G.R. Nos. 129961-62, August 25, 2003, 409 SCRA 486, 507-508.

easily be fabricated. **If the accused admits the killing, the burden of evidence, as distinguished from burden of proof, is shifted on him to prove with clear and convincing evidence the essential elements of the justifying circumstance of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the accused defending himself. Defense of a relative requires the following essential elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression of the victim; and (c) in case of provocation given by the person being attacked, the one evading the attack, defense had no part therein.** For the accused to be entitled to exoneration based on self-defense or defense of relatives, complete or incomplete, it is essential that there be unlawful aggression on the part of the victim, for if there is no unlawful aggression, there would be nothing to prevent or repel. **For unlawful aggression to be appreciated, there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.** (Emphasis supplied)

Assuming *arguendo* that Acob was indeed the aggressor, the aggression ceased the moment he was disarmed and already lying on the ground after being struck by Marlo. Even if Marlo's account that Duldulao approached with a piece of wood above his head, the same, albeit intimidating, cannot be said to reek of imminent and actual danger. When Marlo then continued to club Acob while in a prone position, and struck Duldulao after he had fallen, self-defense and defense of relative no longer avail.[13]

It is settled that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression was still existing when the aggressor was injured by the accused. (Emphasis supplied)

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[13] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 301.

Besides, the self-defense claimed to have been employed by Marlo cannot be said to be reasonable.

> The means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression. **The nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor as well as those of the person who invokes self-defense; and the place and the occasion of the assault also define the reasonableness of the means used in self-defense**.[14] (Emphasis supplied)

Thus, even if Ferdinand's and Marlo's accounts of what transpired were true, Marlo's repeated clubbing of the already unarmed and helpless victims inside their own compound is clearly unreasonable. Consider the following admission of Marlo during his direct examination:

> Q.: And what happened to him when you were able to strike him?
> A: He fell down, sir.
>
> Q.: And when he fell down, what did you do next?
> A: I again clubbed him, sir.
>
> Q.: And after clubbing him for the second time, what did you do next?
> A: I clubbed them alternately, sir.
>
> Q.: Why did you club them alternately?
> A.: **Because they might still live and will again attacked (sic) us, sir**.
>
> Q.: Whom did you club alternately?
> A.: Fernando Acob and Celestino Duldulao, your honor. (Emphasis supplied)

Marlo did not thus intend to merely repel the alleged attack. He wanted to be sure that the two victims would not survive.

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[14] *Id.* at 301-302.

That Ferdinand sustained a ½ to 1 centimeter deep stab wound in the thigh does not necessarily prove that he acted in self-defense or that Marlo acted in defense of a relative.[15] Parenthetically, the knife, allegedly used by Acob which Marlo claims to have taken, was not even presented in evidence.

As for the *alibi* of Marcelo, Rogelio and Jovito, for it to prosper, it must be shown that it was physically impossible for them to have been at the scene of the crime at the approximate time of its commission.[16] That they were in Marcelo's house attending to a relative who was allegedly having difficulty breathing, did not render it impossible for them to have been at the scene of the crimes, the house being a mere 13.5 meters away,[17] more or less. Besides, it is impossible that they could not have noticed the commotion that preceded and attended the incidents.

It bears noting that appellants enjoyed superiority in number (five) over the two victims, clearly showing abuse of superior strength and that the force used by them was out of proportion to the means of defense available to the victims.[18]

More. Contrary to the contention of appellants, conspiracy was present during the attack. When two or more persons aim their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative indicating closeness of personal association and a concurrence of sentiment, conspiracy may be inferred. And where there is conspiracy, the act of one is deemed the act of all.[19]

The appellate court's reduction of the penalty of death to *reclusion perpetua* in its July 9, 2007 decision is in order,

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[15] *Vide People v. Caabay*, *supra*, p. 512.

[16] *People v. Monieva*, G.R. No. 123912, June 8, 2000, citing *People v. Maguad*, 287 SCRA 535 (1998).

[17] See location sketch, records, Vol. I, p. 29.

[18] *Vide People v. Barrameda*, *supra*, p. 575

[19] *Vide People v. Delmo*, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395, 434.

there being no mitigating nor aggravating circumstance in the present cases. In any event, in view of the enactment of Republic Act No. 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines on June 24, 2006, the imposition of the death penalty could not have been maintained. So too is the lowering of the civil indemnity for the heirs of Fernando and Duldulao.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals dated July 9, 2007 is, in light of the foregoing discussion, *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179933. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH FABITO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE PRIVATE NATURE OF THE CRIME OF RAPE WHICH JUSTIFIES THE ACCEPTANCE OF THE LONE TESTIMONY OF A CREDIBLE VICTIM TO CONVICT COMPELS THE COURT TO APPROACH RAPE CASES WITH GREAT CAUTION AND TO SCRUTINIZE THE STATEMENTS OF THE VICTIM ON WHOSE SOLE TESTIMONY CONVICTION OR ACQUITTAL DEPENDS.— The review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of

evidence. In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These realities compel us to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.

2. ID.; ID.; ID.; APPELLANT'S CONVICTION WAS BASED LARGELY ON THE UNCORROBORATED TESTIMONY OF THE VICTIM; VARIOUS CIRCUMSTANCES SHOW THAT THE VICTIM'S TESTIMONY IS NOT WHOLLY BELIEVABLE.— An examination of the appealed decision shows that the appellant's conviction was based largely on the uncorroborated testimony of the victim, AAA. This is not at all unusual in rape cases, as the participants are usually the only parties at the rape scene and only they can testify on what happened. But as we stated above, the testimony of a sole witness to the alleged rape must be closely examined when it is the pivotal point on which conviction or acquittal will turn. We should be ready to accept it if the victim's sincerity is above reproach, and at the same time reject it if indicators point to her doubtful credibility. In the present case, we opt for the latter option as various circumstances show that we cannot wholly believe the victim's testimony.

3. ID.; ID.; ID.; MEDICAL FINDINGS DOES NOT FULLY SUPPORT THE VICTIM'S CLAIM THAT SHE WAS RAPED.— The medical findings of Dr. De Luna, the examining physician, does not fully support AAA's claim that she was raped. Effectively, Dr. De Luna testified that the victim was no longer a virgin and has had past sexual experience. She could not, however, conclude whether the healed vaginal lacerations were the result of forced or consensual sexual congress. Thus, the healed lacerations are undisputed but they can only prove that AAA has had prior sexual experience. Lacking is the specific proof that sexual intercourse occurred on or about the time she was alleged to have been raped by the appellant.

4. ID.; ID.; ID.; THE IDEA OF THE RAPE VICTIM GOING TO A BIRTHDAY PARTY AT THE HOUSE OF HER BOYFRIEND,

WHO HAD WATCHED HER BEING RAVAGED, A DAY AFTER SHE WAS RAPED, IS DIRECTLY INCONSISTENT WITH THE NATURAL REACTION OF AN OUTRAGED WOMAN WHO HAD BEEN ROBBED OF HER HONOR.— AAA's declaration that her boyfriend, Froilan, watched her being raped by the appellant strikes us as highly unlikely and contrary to human nature and experience. This impression is further reinforced by her statement that on December 9, 1999, or a day after the alleged rape, she went to Froilan's house to attend the birthday party of his (Froilan's) brother. The idea of the rape victim going to a birthday party at the house of her boyfriend – who had watched her (AAA) being ravaged – a day after she was raped baffles us no end; the party was at house of one who participated in and who was initially accused of the rape and ordinarily was an occasion an aggrieved rape victim would not attend. Her attendance done immediately after the rape, in our view, was a conduct, that is directly inconsistent with the natural reaction of an outraged woman who had been robbed of her honor. Time and again, this Court has emphasized that a woman's conduct immediately after an alleged sexual assault is critically important in gauging the truth of her accusations. The conduct must coincide with logic and experience, taking into account the experience she just went through. While it may be true that AAA cannot be expected to act in any particular manner and that people may react differently to a given situation, still, this Court finds it hard to believe that she would act as if nothing untoward happened so soon after an allegedly harrowing incident.

5. ID.; ID.; ID.; STATEMENTS OF THE VICTIM REGARDING HER WHEREABOUTS ON THE DAY OF THE RAPE WERE CONTRADICTED BY DOCUMENTARY AND TESTIMONIAL EVIDENCE.— AAA's statements that (a) she attended school on December 8, 1999; (b) she went to the house of Tony to look for her boyfriend after her class was dismissed at 4:00 p.m.; and (c) she was wearing her school uniform when she was raped, were contradicted by the evidence on record. Jovito's testimony is corroborated by AAA's attendance records from September to December 1999 (*Exhibits "6"* and *"7"*), which disclosed that the last time she attended school was on October 29, 1999; as well as a certification (*Exh "8"*) dated September 22, 2000 signed by the school principal stating that AAA was

dropped from the list of students for the school year 1999-2000 on October 29, 1999. The authenticity and validity of these documents remained unrebutted throughout the trial and were never controverted nor assailed by the prosecution. Significantly, no logical reason exists for witness Jovito to testify falsely; in fact, the prosecution did not discredit nor attribute any ill motive against him.

6. ID.; ID.; ID.; VICTIM'S CREDIBILITY IS FURTHER ERODED BY INCONSISTENCIES BETWEEN HER SWORN STATEMENT AND HER TESTIMONY IN OPEN COURT; THE DISCREPANCIES ARE NOT ISOLATED NOR ARE THEY MINOR DETAILS OF HER TALE OF RAPE.— AAA's credibility is further eroded by inconsistencies between her sworn statement, on the one hand, and her court testimony, on the other hand. In her sworn statement, she stated that she felt dizzy on arrival at Tony's house because she "already drank shots of liquor;" thereafter she accepted Tony's offer to sleep upstairs. However, in her testimony dated September 18, 2000, she stated that she only became dizzy and fell asleep **after** she consumed the coke offered by Froilan. When she regained consciousness, she was already lying on a bed in a room and the appellant was already on top of her. When asked to explain the inconsistencies between her testimony in court and her affidavit, she simply stated that she **forgot** to state in her affidavit that she was offered a glass of coke by her boyfriend. She also added that she no longer could remember who led or carried her upstairs. In her sworn statement, she also declared that she did not bother to shout or ask for help because she was scared that the three (3) accused might kill her; she **reiterated** this matter in her court testimony of September 18, 2000. However, upon further cross examination, she stated that she asked Froilan to help her, thus: She likewise stated in her sworn statement that the appellant and Tony **accompanied** her to the public market after the rape incident; thereafter, the three (3) of them parted ways. However, in her testimony of September 18, 2000, she testified that Froilan and the appellant went downstairs after the rape leaving her and Tony in the room; thereafter, she got her panty from the floor, wore it, and then left. While rape victims are not required or expected to remember all the details of their harrowing experience, the inconsistencies drawn from AAA's sworn statement and her declarations during trial cannot be considered as minor inconsistencies that do not

affect her credibility. These discrepancies are not isolated nor are they on minor details of her tale of rape. Her contradictory statements are on important details and cannot but seriously impair the probative value and cast serious doubt on the integrity of her testimony.

7. ID.; ID.; ID.; TOTALITY OF VICTIM'S TESTIMONY FOUND INCREDIBLE.— There were facts elicited during trial that give us reasons not to unquestionably accept AAA's testimony. One of these is her testimony that she woke up **lying on a bed** inside a room at the second floor of Tony's house after consuming the coke that Froilan offered. We have to reject this testimony because the unrebutted testimony on record is that both rooms in the second floor of Tony's house had neither beds nor doors. Trinidad, Tony's mother, testified to this physical fact, confirming Tony's own testimony that there was no bed in the room where the alleged rape took place. AAA's story, on the other hand, remained unsubstantiated. We also find it unlikely that when AAA returned home after the rape incident, BBB did not observe anything unusual about her that could have immediately aroused her suspicion that something untoward had happened to her. Surprisingly, AAA even told BBB that she came from a Bible study. Taking AAA's testimony in its totality, we find ourselves unable to accord it the same credibility extended to it by the lower courts. For evidence to be believed, it must not only come from the mouth of a credible witness, but must be credible in itself; it must be one that reason and the common experience and observation of mankind can approve as probable under the circumstances. These are the same standards to determine its *value* in weighing it in the scale of judicial acceptance.

8. ID.; ID.; ID.; DEFENSE OF DENIAL; FINDS ITS SPECIAL PLACE AND ASSUMES PRIMACY WHEN THE CASE FOR THE PROSECUTION IS AT MARGIN OF SUFFICIENCY IN ESTABLISHING PROOF BEYOND REASONABLE DOUBT; A VALIDLY ESTABLISHED DENIAL BECOMES SUFFICIENT TO DEFEAT THE PROSECUTION'S CASE AND TILT THE OUTCOME IN FAVOR OF THE DEFENSE.— Generally, denial as a defense is weak and is looked upon with disfavor. Weakness of the defense, however, cannot be the basis for conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight and who

must establish by proof beyond reasonable doubt the guilt of the accused before there can be conviction. Under this rule, the defense of denial finds its special place and assumes primacy when the case for the prosecution is at the margin of sufficiency in establishing proof beyond reasonable doubt; a validly established denial then becomes sufficient to defeat the prosecution's case and tilt the outcome in favor of the defense.

9. ID.; ID.; ID.; CASE AT BAR; A DOUBLE PLUS IN FAVOR OF THE DEFENSE.— In our view, the present case is characterized by a double plus in favor of the defense. A first plus factor is the weakness in the prosecution's case. The prosecution almost solely relied on the testimony of AAA. As discussed above, her testimony is replete with inconsistencies and we cannot accept it, by itself, as sufficient proof beyond reasonable doubt that would support a conviction. It could have been helped by the corroborative testimony of Ardee who appeared to have been present in the "drinking spree" that preceded the alleged rape, but who, inexplicably, was never called by either party. There are, of course, other prosecution witnesses but they did not contribute in any significant way in establishing the level of proof that the law requires. In fact, we read the medical evidence as an indicator of how ambivalent the prosecution's case is. Thus, the prosecution's evidence, by itself, is sufficient to lead to a verdict of acquittal on grounds of reasonable doubt. A second plus for the defense is the evidence of denial that it adduced. The evidence was straight forward and needed no elaborate analysis to understand. Three boys were enjoying life on their own, conversing and drinking under the shade of a mango tree, when two girls came and joined them. One girl has had several drinks before she came and indicated signs of being tipsy. This much was undisputed. At the time they were drinking, the family of the owner of the house were at the premises, and the father even asked the group to break up after some time. Thus, the group did and that would have ended that happy afternoon except for the accusation of rape that subsequently followed. Under these facts, it is not hard to resolve, given the shaky contrary tale of the prosecution, that a simple denial is all that is needed for a verdict of acquittal on grounds of reasonable doubt. We thus confirm once more what we said in *People v. Muleta*: In our jurisdiction accusation is not synonymous with guilt. The freedom of the accused is

> forfeit[ed] only if the requisite quantum of proof necessary for conviction be in existence. This, of course, requires the most careful scrutiny of the evidence for the State, both oral and documentary, independent of whatever defense is offered by the accused. Every circumstance favoring the accused's innocence must be duly taken into account. The proof against the accused must survive the test of reason. Strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. If the prosecution fails to discharge the burden, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

This is an appeal from the June 29, 2007 decision of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00006.[1] The CA affirmed the February 12, 2001 decision of the Regional Trial Court (*RTC*), Branch 43, Dagupan City,[2] finding the appellant Joseph Fabito (*appellant*) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

THE CASE

The prosecution charged three individuals – the appellant, Froilan Paraan (*Froilan*) and Tony Bauzon (*Tony*) – before

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justice Bienvenido L. Reyes and Associate Justice Aurora Santiago-Lagman; *rollo*, pp. 4-15.

[2] Penned by Judge Silverio Q. Castillo; CA *rollo*, pp. 19-33.

the RTC with the crime of rape under an Information that states:

> That on or about December 8, 1999 at around 4:00 o'clock in the afternoon, at Barangay Ventinilla, Municipality of Sta. Barbara, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPH FABITO, in conspiracy with his co-accused FROILAN PARAAN and TONY BAUZON, with the use of force and intimidation, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with one [AAA],[3] minor, aged 14 years old, against her will and without her consent, to her damage and prejudice.
>
> CONTRARY to Article 335 of the Revised Penal Code, as amended.[4]

All the accused pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; BBB; and Dr. Mary Gwendolyn Luna (*Dr. Luna*). The appellant, Froilan, Tony, Jovito Idos (*Jovito*) and Trinidad Bauzon (*Trinidad*) testified for the defense.

AAA testified that she was born in San Diego, California on October 7, 1985. She went to the Philippines in December 1997 at the age of 12 to pursue her schooling; she enrolled at the Daniel Maramba National High School.[5]

According to AAA, she went to the house of Tony on December 8, 1999 after classes to look for her boyfriend, Froilan. At Tony's house, she saw the appellant, Froilan and Tony under a mango tree drinking Tanduay. She approached them and Froilan offered him a glass of coke and some crackers. She drank the

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[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 has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

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

[5] TSN, September 18, 2000, pp. 4-7.

coke and after five (5) minutes felt dizzy and afterwards fell asleep.[6]

When she woke up, she was lying on a bed in a room at the second floor of Tony's house. She also noticed that her skirt had been lifted up and her panty had been removed. Tony was then two (2) steps away on her left side, Froilan was two (2) steps away on her right side, while the appellant was on top of her "doing up and down position." When asked to explain what she meant by "doing up and down position," she explained that the appellant inserted his penis into her vagina which caused her pain. She asked the appellant why he was sexually abusing her but the appellant did not reply; instead, he held her hand tightly and continued abusing her. She turned her body from left to right causing the withdrawal of the appellant's penis from her private part. The appellant tried to insert his penis again but was unsuccessful because of her continued movements. Thereafter, Froilan pulled the appellant downstairs. AAA picked up her panty, wore it, and left.[7] During the rape, Froilan and Tony simply watched and did nothing.[8]

On cross examination, AAA stated that premarital sex was prevalent in the United States and admitted that she had her first sexual intercourse when she was around eight (8) or nine (9) years old.[9] She did not shout during the rape incident because she was afraid that the appellant might kill her. She also clarified that when she woke up, the appellant's penis was already inside her vagina. Her vagina did not bleed during the sexual intercourse.[10]

She further testified that before going to school on December 8, 1999, she drank two (2) shots liquor with her friends because of a family problem; and that neither her teacher nor her

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[6] *Id.*, pp. 10-14.

[7] *Id.*, pp. 14-19.

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

[9] *Id.*, pp. 21-22.

[10] *Id.*, pp. 40-42.

classmates noticed that she had consumed liquor because she took *chicklets*. She added that the last subject she attended before her class was dismissed was T.H.E.[11] She likewise admitted attending the birthday party of her boyfriend's brother the next day.[12]

On re-direct, she clarified that the sexual intercourse she had when she was eight (8) years old was without her consent; and that the person who sexually abused her was in jail in the United States.[13]

On re-cross, she recalled that when she was moving her body from left to right, the appellant's face was approximately two (2) inches away from her face. She also explained that the kiss mark on the left side of her neck indicated in the medico-legal certificate was not made during the rape incident, and that she did not know where it came from.[14]

BBB, the guardian of AAA, testified that her custody over AAA started in 1997 after AAA's arrival from the United States. She recalled that on December 8, 1999, AAA arrived home late and told her that she came from a Bible study.[15] The next day, she looked for AAA when she failed to return home on her usual schedule. She found her in *Barangay* Ventinilla, Sta. Barbara, Pangasinan, and she scolded her for not coming home on time. AAA then disclosed that she had been raped by the appellant, Froilan and Tony the previous day. Thereafter, they reported the incident to the police and then proceeded to the Region 1 Medical Center for medical examination.[16]

On cross examination, BBB admitted that she reported the incident to the police only on December 13, 1999.[17]

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[11] TSN, September 25, 2000, pp. 6-9.

[12] *Id.*, pp. 21-22.

[13] *Id.*, pp. 24-25.

[14] *Id.,* pp. 28-30.

[15] TSN, September 25, 2000, p. 34.

[16] *Id.*, pp. 34-36.

[17] *Id.*, p. 44.

Dr. De Luna, Medical Officer IV of the Region I Medical Center in Dagupan City, narrated that at around 5:15 p.m. of December 10, 1999, AAA arrived at the hospital to undergo medical examination. At the interview prior to the examination, AAA disclosed to her that she (AAA) had been sexually abused. The examination thereafter followed with the following findings:

MEDICO-LEGAL CERTIFICATE

x x x x x x x x x

HEEN T - (+) Kiss mark left side of the neck

Genitalia: Old, healed deep hymen laceration at 1, 4, 5, 7, 8 o'clock superficial healed hymenal laceration at 10, 11 o'clock

Vagina admits 2 fingers with ease cervix close uteri small adnexia

[F]ree whitish vaginal discharge

x x x x x x x x x

RESULT: "NEGATIVE" for the presence of spermatozoa

x x x x x x x x x[18]

She explained that "old, healed laceration" means that the lacerations were not fresh and that there was no bleeding. According to her, these lacerations could have been caused by previous sexual intercourse or by anything placed on the vagina.[19]

On cross examination, Dr. De Luna added that she did not find any other injuries sustained by AAA other than the lacerations on her vagina.

The defense presented a different version of events.

Froilan testified that AAA was his sweetheart and he did not know why she would charge him with rape.[20] He narrated that at around 11:00 a.m. of December 8, 1999, he and the appellant went near the river to cut bamboo. Afterwards, they

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[18] Records, p. 5.

[19] TSN, September 29, 2000, p. 10.

[20] TSN, October 4, 2000, p. 3.

went to Tony's place where, together with Tony, they stayed under a mango tree, conversing and drinking a bottle of Tanduay.[21] At around 1:00 p.m., Ardee Bauzon (*Ardee*) and AAA arrived. Ardee told him that AAA was looking for him. He noticed that AAA was drunk when she (AAA) sat beside him. Tony's father subsequently arrived and told them to stop drinking. Then they escorted AAA outside Tony's compound and went on their separate ways.[22]

He also testified that he was at home chopping wood at around 4:00 p.m. of the next day (December 9, 1999) when AAA arrived at his place. He brought her inside the house, where AAA told him that she just attended a birthday celebration in Tuliao. Soon after, he told AAA to go home because her grandmother might scold her; he then escorted her outside, asking Ardee to accompany her home.[23]

He narrated further that AAA again went to his house on December 10, 1999 carrying her clothes. She asked if she could stay with him. She also told him that something happened to her in Tuliao, and threatened to implicate him if he refused to accept her. BBB afterwards came to fetch AAA.[24]

Tony testified that the appellant and Froilan came to his house in the morning of December 8, 1999. They brought with them a bottle of Tanduay. He led them to a mango tree inside his compound where they had a "drinking spree."[25] Afterwards, Ardee and AAA arrived; Ardee informed Froilan that AAA, his girlfriend, had been looking for him. AAA sat beside Froilan and they talked. At around 4:00 p.m., they escorted AAA out of the compound going towards the *barangay* hall, and they then all parted ways.[26]

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[21] *Id.*, pp. 4-6.

[22] *Id.*, pp. 6-8.

[23] *Id.*, pp. 8-9.

[24] *Id.*, pp. 9-11.

[25] TSN, October 16, 2000, pp. 3-4.

[26] *Id.*, pp. 4-6.

On cross examination, Tony stated that he already knew that AAA was the girlfriend of Froilan four (4) months before December 8, 1999. He recalled that when AAA arrived, she was already drunk.[27] He added that his two-storey house has two (2) rooms, both of which have neither doors nor beds.[28] He also claimed that he and the appellant did not talk to AAA while they were drinking. On re-direct, he stated that there were about three (3) other houses near his house.[29] He added that he did not ask AAA to take a rest in his house because his parents might scold him if he brought a woman inside the house.

Jovito, a teacher at the Daniel Maramba National High School, testified that he was AAA's class adviser,[30] and that AAA had dropped out of school as of October 29, 1999. He also brought with him AAA's attendance sheet and confirmed that she (AAA) has no attendance record for the month of December 1999.[31] He also confirmed that the last scheduled subject on December 8, 1999 was Filipino II, and that AAA was currently enrolled and was repeating second year high school because she had dropped out the previous year.[32]

On cross examination, he reiterated that AAA attended classes only from June 1999 until October 29, 1999, but clarified that it was only in the month of June when AAA had a perfect attendance.[33]

The appellant, for his part, testified that at around 11:00 a.m. of December 8, 1999, he and Froilan were at *Barangay* Ventinilla, Santa Barbara and were cutting bamboo near the river. As they were finishing this task, his best friend Edwin Benito came

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[27] *Id.*, p. 13.

[28] *Id.*, pp. 14-15.

[29] *Id.,* p. 19.

[30] TSN, October 19, 2000, p. 4.

[31] *Id.*, pp. 5-7.

[32] *Id.*, pp. 7-10.

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

and gave them a bottle of Tanduay. He and Froilan then proceeded to Tony's house where they saw him under a mango tree; they invited him to have a drink with them.[34]

The appellant further narrated that Ardee and AAA arrived at around 1:00 p.m., and Ardee informed Froilan that AAA was looking for him. Froilan approached AAA and they talked. They finished drinking at around 4:00 p.m. when Tony's father warned them that AAA's parents might already be looking for her. Thereafter, they escorted AAA out of the compound; all of them then went home. He was surprised to learn the next day that AAA had accused him of rape.[35]

On cross examination, the appellant denied raping AAA and insisted that he met her for the first time only on December 8, 1999.[36] He also recalled that on December 8, 1999 when AAA arrived, he assumed that she was drunk because she had reddish eyes and he overheard her saying that she came from a "drinking spree" in Barangay Tuliao.[37]

Trinidad, Tony's mother, recalled that on December 8, 1999, she saw AAA drinking Tanduay together with her son, the appellant, and Froilan under the mango tree located at the back of their house.[38] According to her, she never saw AAA inside their house.[39]

On cross examination, she maintained that on December 8, 1999 from 1-4 p.m., she was inside their house together with her husband, their children and grandchildren.[40] She further narrated that during the drinking spree, she was inside one of the rooms fixing clothes and insisted that she never saw anyone

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[34] TSN, October 26, 2000, pp. 3-5.

[35] *Id.*, pp. 6-8.

[36] *Id.*, pp. 9-11.

[37] *Id.*, pp. 14-15.

[38] TSN, November 6, 2000, pp. 4-5.

[39] *Id.*, p. 5.

[40] *Id.*, pp. 7-8.

enter the other room. She emphasized that both rooms have no beds or doors.[41]

The RTC's decision of February 12, 2001 convicted the appellant of the crime of rape, but acquitted his two (2) co-accused. The dispositive portion of the trial court's decision reads:

> WHEREFORE, the Court finds accused Joseph Fabito guilty beyond reasonable doubt for the felony of RAPE defined and punishable under Article 266-A of the Revised Penal Code and in conformity with law, he is hereby sentenced to suffer prison term of ***RECLUSION PERPETUA*** and to pay the offended party the following amounts to wit:
>
> 1. Civil Indemnity in the amount of ₱50,000.00;
> 2. Moral Damages in the amount of ₱50,000.00;
> 3. And cost.
>
> Further, the Court orders his **immediate commitment** to the National Penitentiary without unnecessary delay.
>
> With respect to accused Froilan Paraan and Tony Bauzon for failure to prove their GUILT beyond reasonable doubt they are ordered **ACQUITTED.**
>
> The BJMP Dagupan City is ordered to release said accused (Paraan and Bauzon) from detention in so far as the above case is concerned.
>
> SO ORDERED.[42] [*Emphasis in the original*]

The appellant directly appealed his conviction to this Court in view of the penalty of *reclusion perpetua* that the RTC imposed. We referred the case to the CA for intermediate review[43] pursuant to our ruling in *People v. Mateo.*[44]

The CA affirmed the RTC decision but increased the amounts of civil indemnity and moral damages to ₱75,000.00,

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

[42] CA *rollo*, pp. 32-33.

[43] Resolution dated August 30, 2004.

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

respectively.[45] According to the CA, the fact that the victim was brought up the American way and was not the "typical innocent barrio lass" does not discount the possibility of rape because even a woman of loose morals could still be the victim of rape. Moreover, the essence of rape is the carnal knowledge of a woman without her consent.[46]

The CA also held that AAA sufficiently explained the inconsistencies in her sworn statement of December 13, 1999 and her testimony in court. Even granting that inconsistencies existed, an errorless recollection of a harrowing experience cannot be expected of a young victim especially when she was recounting the details of an occurrence as humiliating and as painful as rape. In addition, AAA was consistent and never faltered in her testimony when asked during the direct and cross examinations how she had been raped. She also described in every detail how the appellant raped her.[47]

The CA added that the defense merely offered the appellant's outright denial and alibi. The appellate court then cited the well-settled rule that a categorical and positive identification of the accused, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial. According to the CA, the appellant did not present satisfactory evidence that it was physically impossible for him to be at the scene of the crime at the time of its commission; he never denied the fact that he was at Tony's house in the afternoon of December 8, 1999 drinking with his co-accused when AAA arrived.

Finally, the CA invoked the consistent holding that when a victim testifies that she has been raped and her testimony is credible, such testimony may be the sole basis of conviction.[48]

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[45] *Rollo*, pp. 4-15.

[46] *Id.*, pp. 9-10.

[47] *Id.*, pp. 10-12.

[48] *Id.*, pp. 12-13.

In his brief,[49] the appellant contends that the RTC erred in finding him guilty of the crime of rape despite the insufficiency of the prosecution's evidence; and in giving full faith and credence to the testimony of AAA. He maintains that AAA was well trained and excelled in the art of coquetry, and claims that the court *a quo* blindly convicted him by believing her every statement.

The appellant further argues that AAA's conduct before and after the alleged rape renders her testimony unbelievable. First, she admitted that she had her first sexual intercourse at an early age of 8 or 9 years old. Second, she admitted having consumed liquor before proceeding to the house of Tony, causing her to be flirtatious. Finally, she gave conflicting statements in her sworn statement and in her court testimony.[50]

THE COURT'S RULING

We find that the prosecution failed to prove the appellant's guilt beyond reasonable doubt and therefore **ACQUIT** him of the crime charged.

AAA's Credibility

The review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence.[51] In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These

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[49] CA *rollo*, pp. 50-63.

[50] *Id.*

[51] See *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005, 463 SCRA 652.

realities compel us to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.[52]

An examination of the appealed decision shows that the appellant's conviction was based largely on the uncorroborated testimony of the victim, AAA. This is not at all unusual in rape cases, as the participants are usually the only parties at the rape scene and only they can testify on what happened. But as we stated above, the testimony of a sole witness to the alleged rape must be closely examined when it is the pivotal point on which conviction or acquittal will turn. We should be ready to accept it if the victim's sincerity is above reproach, and at the same time reject it if indicators point to her doubtful credibility. In the present case, we opt for the latter option as various circumstances show that we cannot wholly believe the victim's testimony.[53]

First, the medical findings of Dr. De Luna, the examining physician, does not fully support AAA's claim that she was raped. Effectively, Dr. De Luna testified that the victim was no longer a virgin and has had past sexual experience. She could not, however, conclude whether the healed vaginal lacerations were the result of forced or consensual sexual congress.

ATTY. ELMER M. SUROT:

Q: Madam Witness, in your expert opinion, based on this particular findings, the lacerations sustained, will you be in a position to tell us whether this particular laceration in consistent with voluntary copulation or there was violence?

PROSECUTOR MARLON MENESES:

Objection, your Honor, that area has already been touched.

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[52] See *People v. Fernandez*, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224,232.

[53] See *People v. Domogoy*, G.R. No. 116738, March 22, 1999, 305 SCRA 75.

COURT:

Witness may answer.

DR. DE LUNA:

A: Because the laceration is old, I also placed there that the vagina is vary lax and admits two (2) fingers so **I could not tell exactly whether there was voluntary consent or there is forcible penetration**, sir.

COURT:

Especially so when the victim have had previous sexual intercourse?

A: Yes, your Honor.[54] [*Emphasis supplied*]

Thus, the healed lacerations are undisputed but they can only prove that AAA has had prior sexual experience. Lacking is the specific proof that sexual intercourse occurred on or about the time she was alleged to have been raped by the appellant.

Second, AAA's declaration that her boyfriend, Froilan, watched her being raped by the appellant strikes us as highly unlikely and contrary to human nature and experience. This impression is further reinforced by her statement that on December 9, 1999, or a day after the alleged rape, she went to Froilan's house to attend the birthday party of his (Froilan's) brother. To directly quote from the records:

ATTY. ELMER M. SUROT:

Q: Madam Witness, considering that as you have said or claimed you were allegedly raped by Joseph Fabito, why is it that you still attended your boyfriend's brother [*sic*] on December 9, 1999?

PROSECUTOR MARLON MENESES:

Vague, your Honor.

COURT:

Reform.

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[54] TSN, September 29, 2000, pp. 15-16.

ATTY. SUROT:

> Madam Witness, I am showing you back this sworn statement particularly Question No. 12 "Q – How about this Ardy Bauzon, what is his participation?" "A – That is a separate incident and that was transpired [*sic*] on the following day December 9, 1999 at around 6:00 o'clock in the evening wherein I attended the birthday party of Froilan's brother also in Barangay Ventinilla, Sta, Barbara, Pangasinan together with my friends (ladies) but later on they already left me behind and I'm talking to my boyfriend Froilan and that he also give [*sic*] me orange juice which he ordered me to consume all of it. After consuming, my boyfriend Froilan ordered Ardy Bauzon to accompany me in going to my grandmother's house also in Brgy. Ventinilla, Sta. Barbara, but while on half-way I was down on my knees into the ground and I already felt dizzy, and as Ardy helped me stand, he brought me at the house of his Lola also in Brgy. Ventinilla, Sta. Barbara, Pangasinan." Do you confirm that?

x x x x x x x x x

AAA:

A: Yes, sir.

Q: So, it is clear that **despite the alleged rape which happened to you on December 8, 1999, you still went back to your boyfriend Froilan's house?**

A: **Yes, sir.**

x x x[55] [*Emphasis ours*]

The idea of the rape victim going to a birthday party at the house of her boyfriend – who had watched her (AAA) being ravaged – a day after she was raped baffles us no end; the party was at house of one who participated in and who was initially accused of the rape and ordinarily was an occasion an aggrieved rape victim would not attend. Her attendance done immediately after the rape, in our view, was a conduct that is directly inconsistent with the natural reaction of an outraged

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[55] TSN, September 25, 2000, pp. 21-22.

woman who had been robbed of her honor.[56] Time and again, this Court has emphasized that a woman's conduct immediately after an alleged sexual assault is critically important in gauging the truth of her accusations. The conduct must coincide with logic and experience, taking into account the experience she just went through. While it may be true that AAA cannot be expected to act in any particular manner and that people may react differently to a given situation, still, this Court finds it hard to believe that she would act as if nothing untoward happened so soon after an allegedly harrowing incident.[57]

Third, AAA's statements that 100(a) she attended school on December 8, 1999; (b) she went to the house of Tony to look for her boyfriend after her class was dismissed at 4:00 p.m.; and (c) she was wearing her school uniform when she was raped, were contradicted by the evidence on record.

AAA's very own class adviser, Jovito, testified that she (AAA) had **dropped out of school as of October 29, 1999**.

ATTY. ELMER M. SUROT:

Q: Now, Mr. Witness do you know one by the name of AAA?

JOVITO Q. IDOS

A: Yes, sir. I am the adviser of AAA.

Q: Now, have you received the subpoena issued by the Court for you to bring the attendance record of AAA?

A: I received the subpoena last October 11, 2000, sir.

Q: Did you bring that document with you?

A: Yes, sir. [Witness bringing out school register and pointing the same to the name of student AAA]

Q: With respect to this document, in what school year is this covered?

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[56] *People v. Subido*, G.R. No. 115004, February 5, 1996, 253 SCRA 196.

[57] See *People v. Laurente*, G.R. No. 129594, March 7, 2001, 353 SCRA 765, 776.

A: For the school year 1999-2000, sir.

Q: Now, Mr. Witness, using this school register, could you please inform the Honorable Court regarding the attendance of AAA on the month of December 1999?

A: **She has no attendance already in the month of December**, sir.

COURT:

Q: What do you mean by no attendance in the month of December?

A: **She was already dropped, sir.**

ATTY. ELMER M. SUROT:

Q: You said that AAA is already drop [*sic*] in that particular document, will you please show on what date was she considered already as drop [sic]?

JOVITO Q. IDOS

A: **She was dropped as early as October 29, 1999**, sir.

COURT:

Q: What was the last attendance of AAA?

A: October 29, 1999, sir.

x x x[58] [*Emphasis and italics supplied*]

Jovito's testimony is corroborated by AAA's attendance records from September to December 1999 (*Exhibits "6"*[59] and *"7"*[60]), which disclosed that the last time she attended school was on October 29, 1999; as well as a certification (*Exh "8"*)[61] dated September 22, 2000 signed by the school principal stating that AAA was dropped from the list of students for the school year 1999-2000 on October 29, 1999. The authenticity and validity of these documents remained unrebutted throughout the trial and were never controverted nor assailed by the prosecution.

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[58] TSN, October 19, 2000, pp. 3-5.

[59] Records, p. 121.

[60] *Id.*, p. 122.

[61] *Id.*, p. 123.

Significantly, no logical reason exists for witness Jovito to testify falsely; in fact, the prosecution did not discredit nor attribute any ill motive against him.

Fourth, AAA's credibility is further eroded by inconsistencies between her sworn statement, on the one hand, and her court testimony, on the other hand.[62]

In her sworn statement, she stated that she felt dizzy on arrival at Tony's house because she "already drank shots of liquor;" thereafter she accepted Tony's offer to sleep upstairs, thus:

x x x x x x x x x

5. Q - : Will you relate to me in brief how this incident happened?

A - : This is the story, sir. I've just dismissed [*sic*] from the school last December 8, 1999 at around 4:00 o'clock in the afternoon when I decided to visit my boyfriend Froilan Paraan in Brgy. Ventinilla, Sta. Barbara, Pangasinan wherein upon arrival thereat, at the house of one Tony *alyas* Enciong Bauzon, my boyfriend together with another named Joseph Fabito were then having a drinking spree. While there I told them that **I felt dizzy because I already drank shots of liquor and that this Enciong Bauzon offered me to just take a rest upstairs of the house.**

6. Q - : Did you accepted [*sic*] his offer?

A - : Yes, sir.

x x x[63] [*Emphasis supplied*]

However, in her testimony dated September 18, 2000, she stated that she only became dizzy and fell asleep **after** she consumed the coke offered by Froilan. When she regained consciousness, she was already lying on a bed in a room and the appellant was already on top of her. When asked to explain the inconsistencies between her testimony in court and her affidavit, she simply stated that she **forgot** to state in her affidavit

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[62] *People v. Laurente*, G.R. No. 129594, March 7, 2001, 353 SCRA 765.

[63] Records, p. 2.

that she was offered a glass of coke by her boyfriend. She also added that she no longer could remember who led or carried her upstairs.

In her sworn statement, she also declared that she did not bother to shout or ask for help because she was scared that the three (3) accused might kill her; she **reiterated** this matter in her court testimony of September 18, 2000. However, upon further cross examination, she stated that she asked Froilan to help her, thus:

ATTY. ELMER M. SUROT

Q: You were already awake when you turned your body? [AAA]
A: Yes, sir.

Q: Did you shout at him?
A: I told him do not do this to me, I do not like this but he kept on doing it, sir.

Q: Now, did you not seek the help of your boyfriend taking into consideration that he was present at that time?
A: He does not want to help me, sir.

Q: But did you try to seek his help?
A: Yes, sir.

Q: In what way?
A: Help me, help me but he did not help me, sir.[64]

She likewise stated in her sworn statement that the appellant and Tony **accompanied** her to the public market after the rape incident; thereafter, the three (3) of them parted ways. However, in her testimony of September 18, 2000, she testified that Froilan and the appellant went downstairs after the rape leaving her and Tony in the room; thereafter, she got her panty from the floor, wore it, and then left. To directly quote her testimony:

COURT:

Q: How many times did Joseph Fabito insert his penis?

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[64] TSN, September 25, 2000, p. 12.

[AAA]:

A: Only once, sir.

PROSECUTOR MARLON MENESES:

Q: And so what happened next?
A: Froilan Paraan pulled Joseph Fabito downstairs.

x x x x x x x x x

Q: So you claimed that Froilan Paraan and Joseph Fabito went down afterwards, **how about Tony Bauzon?**
A: **He was upstairs, he was with me upstairs, he did not do anything to me, sir.**

Q: What did Tony Bauzon do to you when you were left alone with him?
A: Nothing, sir.

Q: And so what happened next after Joseph Fabito and Froilan Paraan went down?
A: I got my panty from the floor, I wore it then I left, sir.[65]

In her subsequent testimony dated September 25, 2000, AAA again contradicted herself and declared that **no one** was in the room when she left. She testified:

ATTY. ELMER M. SUROT:

Q: Now, Madam Witness, after the alleged rape, who accompanied you in going downstairs?

[AAA]:

A: **Nobody, sir**.

Q: At the time you left the room where you were allegedly raped, **all of the accused were still there and you left them inside the room?**
A: **No, sir.**

Q: At the time you left the room, who were still there?
A: **Nobody, sir.**[66]

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[65] TSN, September 18, 2000, pp. 17-19.

[66] TSN, September 25, 2000, p. 19.

While rape victims are not required or expected to remember all the details of their harrowing experience, the inconsistencies drawn from AAA's sworn statement and her declarations during trial cannot be considered as minor inconsistencies that do not affect her credibility.[67] These discrepancies are not isolated nor are they on minor details of her tale of rape. Her contradictory statements are on important details and cannot but seriously impair the probative value and cast serious doubt on the integrity of her testimony.[68]

Finally, there were facts elicited during trial that give us reasons not to unquestionably accept AAA's testimony. One of these is her testimony that she woke up ***lying on a bed*** inside a room at the second floor of Tony's house after consuming the coke that Froilan offered. We have to reject this testimony because the unrebutted testimony on record is that both rooms in the second floor of Tony's house had neither beds nor doors. Trinidad, Tony's mother, testified to this physical fact, confirming Tony's own testimony that there was no bed in the room where the alleged rape took place. AAA's story, on the other hand, remained unsubstantiated.

We also find it unlikely that when AAA returned home after the rape incident, BBB did not observe anything unusual about her that could have immediately aroused her suspicion that something untoward had happened to her.[69] Surprisingly, AAA even told BBB that she came from a Bible study.

Taking AAA's testimony in its totality, we find ourselves unable to accord it the same credibility extended to it by the lower courts. For evidence to be believed, it must not only come from the mouth of a credible witness, but must be credible in itself; it must be one that reason and the common experience and observation of mankind can approve as probable under the circumstances. These are the same

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[67] See *People v. Perez*, G.R. No. 172875, August 15, 2007.

[68] *People v. Torion*, G.R. No. 120469, May 18, 1999, 307 SCRA 169.

[69] See *People v. Salazar*, G.R. No. 122479, December 4, 2000, 346 SCRA 735.

standards to determine its *value* in weighing it in the scale of judicial acceptance.[70]

Denial as a defense

Generally, denial as a defense is weak and is looked upon with disfavor. Weakness of the defense, however, cannot be the basis for conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight and who must establish by proof beyond reasonable doubt the guilt of the accused before there can be conviction. Under this rule, the defense of denial finds its special place and assumes primacy when the case for the prosecution is at the margin of sufficiency in establishing proof beyond reasonable doubt; a validly established denial then becomes sufficient to defeat the prosecution's case and tilt the outcome in favor of the defense.

In our view, the present case is characterized by a double plus in favor of the defense.

A first plus factor is the weakness in the prosecution's case. The prosecution almost solely relied on the testimony of AAA. As discussed above, her testimony is replete with inconsistencies and we cannot accept it, by itself, as sufficient proof beyond reasonable doubt that would support a conviction. It could have been helped by the corroborative testimony of Ardee who appeared to have been present in the "drinking spree" that preceded the alleged rape, but who, inexplicably, was never called by either party. There are, of course, other prosecution witnesses but they did not contribute in any significant way in establishing the level of proof that the law requires. In fact, we read the medical evidence as an indicator of how ambivalent the prosecution's case is. Thus, the prosecution's evidence, by itself, is sufficient to lead to a verdict of acquittal on grounds of reasonable doubt.

A second plus for the defense is the evidence of denial that it adduced. The evidence was straight forward and needed no elaborate analysis to understand. Three boys were enjoying

[70] See *People v. San Juan*, G.R. No. 130969, February 29, 2000, 326 SCRA 786.

life on their own, conversing and drinking under the shade of a mango tree, when two girls came and joined them. One girl has had several drinks before she came and indicated signs of being tipsy. This much was undisputed. At the time they were drinking, the family of the owner of the house were at the premises, and the father even asked the group to break up after some time. Thus, the group did and that would have ended that happy afternoon except for the accusation of rape that subsequently followed. Under these facts, it is not hard to resolve, given the shaky contrary tale of the prosecution, that a simple denial is all that is needed for a verdict of acquittal on grounds of reasonable doubt. We thus confirm once more what we said in *People v. Muleta*:[71]

> In our jurisdiction accusation is not synonymous with guilt. The freedom of the accused is forfeit[ed] only if the requisite quantum of proof necessary for conviction be in existence. This, of course, requires the most careful scrutiny of the evidence for the State, both oral and documentary, independent of whatever defense is offered by the accused. Every circumstance favoring the accused's innocence must be duly taken into account. The proof against the accused must survive the test of reason. Strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. If the prosecution fails to discharge the burden, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him.[72]

WHEREFORE, under these premises, we *ACQUIT* the appellant Joseph Fabito on grounds of reasonable doubt. We consequently *REVERSE* and *SET ASIDE* the June 29, 2007 decision of the Court of Appeals in CA-G.R. CR-HC No. 00006 that affirmed with modification the judgment of conviction of the Regional Trial Court, Branch 43, Dagupan City.

Unless confined for any other lawful cause, Joseph Fabito is hereby immediately ordered *RELEASED* from detention.

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[71] G.R. No. 130189, June 25, 1999, 309 SCRA 148, citing *People v. Mejia*, 275 SCRA 127 (1997).

[72] *Id.*

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, Tinga, and *Velasco, Jr., JJ.,* concur.

EN BANC

[G.R. No. 180314. April 16, 2009]

NORMALLAH A. PACASUM, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; THE CREDIT NOTICE REQUIREMENT OF THE COMMISSION ON AUDIT IS IRRELEVANT AND A NON-ISSUE AS REGARDS THE RELEASE OF SALARIES PRIOR TO 1 SEPTEMBER 2000; THE INFORMATION CHARGES PETITIONER NOT WITH FAILURE TO SECURE A CREDIT NOTICE BUT WITH ALLEGEDLY FALSIFYING HER EMPLOYEES CLEARANCE BY IMITATING THE SIGNATURE OF A CERTAIN LAURA Y. PANGILAN, SUPPLY OFFICER 1 OF THE DEPARTMENT OF TOURISM IN THE AUTONOMOUS REGION OF MUSLIM MINDANAO (DOT-ARMM).— We agree with petitioner that under the aforesaid memorandum, what was required before she could draw her salaries was a Credit Notice from the COA and not an Employees Clearance. It is clear from said memorandum that what was required from officers/ employees who had unliquidated cash advances was the corresponding Credit Notice issued by the COA after they had settled their accounts. There was indeed no mention of any

Employees Clearance therein. Up to this point, we agree with petitioner. However, on her contention that the signature of Laura Pangilan in her Employees Clearance was "irrelevant and a non-issue," we disagree. Whether the signature of Laura Pangilan was imitated or not is the main issue in this case for falsification. From the memorandum of Gov. Misuari, the Credit Notice requirement was effective only starting 1 September 2000 and not before. In the case at bar, the information charges petitioner not with failure to secure a Credit Notice, but with allegedly falsifying her Employees Clearance by imitating the signature of Laura Y. Pangilan, Supply Officer I of the DOT-ARMM. The Credit Notice requirement was therefore irrelevant and a non-issue as regards the release of salaries prior to 1 September 2000.

2. ID.; ID.; THERE WAS A NEED FOR PETITIONER TO FILE AN EMPLOYEES CLEARANCE NOT ONLY FOR COMPLIANCE WITH THE *MISUARI* MEMORANDUM BUT, MORE IMPORTANTLY, BECAUSE HER TERM OF OFFICE WAS ABOUT TO END, SINCE HER POSITION IS COTERMINOUS WITH THE TERM OF GOV. MISUARI, THE APPOINTING AUTHORITY.— There was a need for petitioner to file an Employees Clearance not only for compliance with the Misuari memorandum but, more importantly, because her term of office was about to end, since her position was coterminous with the term of Gov. Misuari, the appointing authority. She even admitted that before she received her salary for August, 2000, an Employees Clearance was necessary. Moreover, her claim that Atty. Parcasio told her and her secretary that she did not need an Employee Clearance to get her salary does not persuade us. In fact, we find her alleged "re-appointment," when she was working for her Employees Clearance at around August 2000, improbable. How could she have been re-appointed by Gov. Alvarez, whom she claims re-appointed her sometime in the year 2000, when Gov. Misuari was still the Regional Governor of the ARMM when she had her Employees Clearance prepared sometime in August 2000? Clearly, her statement that she did not need an Employees Clearance because she was re-appointed does not inspire belief.

3. ID.; ID.; THE FALSIFICATION OF THE EMPLOYEES CLEARANCE WAS CONSUMMATED THE MOMENT THE SIGNATURE OF LAURA PANGILAN WAS IMITATED; THE

PURPOSE FOR WHICH THE FALSIFICATION WAS MADE AND WHETHER THE OFFENDER PROFITED OR HOPED TO PROFIT FROM SUCH FALSIFICATION ARE NO LONGER MATERIAL.— It is to be made clear that the "use" of a falsified document is separate and distinct from the "falsification" of a public document. The act of "using" falsified documents is not necessarily included in the "falsification" of a public document. Using falsified documents is punished under Article 172 of the Revised Penal Code. In the case at bar, the falsification of the Employees Clearance was consummated the moment the signature of Laura Pangilan was imitated. In the falsification of a public document, it is immaterial whether or not the contents set forth therein were false. *What is important is the fact that the signature of another was counterfeited.* It is a settled rule that in the falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person for the reason that in the falsification of a public document, *the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.* Thus, the *purpose* for which the falsification was made *and whether the offender profited or hoped to profit* from such falsification *are no longer material.*

4. ID.; ID.; ELEMENTS OF THE CRIME OF FALSIFICATION OF PUBLIC DOCUMENTS; SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— Petitioner was charged with falsifying her Employees Clearance under Article 171, paragraph 1 of the Revised Penal Code. For one to be convicted of falsification under said paragraph, the followings elements must concur: (1) that the offender is a public officer, an employee, or a notary public; (2) that he takes advantage of his official position; and (3) that he falsifies a document by counterfeiting or imitating any handwriting, signature or rubric. All the foregoing elements have been sufficiently established. There is no dispute that petitioner was a public officer, being then the Regional Secretary of the Department of Tourism of the ARMM, when she caused the preparation of her Employees Clearance (a public document) for the release of her salary for the months of August and September 2000. Such being a requirement, and she being a public officer, she was duty-bound to prepare, accomplish and submit said document. Were it not for her position and employment in the ARMM, she could not have accomplished said Employees Clearance. In a falsification of public document,

the offender is considered to have taken advantage of his official position when (1) he had the duty to make or prepare or otherwise intervene in the preparation of the document; or (2) he had official custody of the document which he falsified. It being her duty to prepare and submit said document, she clearly took advantage of her position when she falsified or caused the falsification of her Employees Clearance by imitating the signature of Laura Pangilan.

5. ID.; ID.; IMPOSABLE PENALTY.— Going now to the penalties imposed on petitioner, we find the same proper. The penalty for falsification under Article 171 of the Revised Penal Code is *prision mayor* and a fine not exceeding ₱5,000.00. There being no mitigating or aggravating circumstance in the commission of the felony, the imposable penalty is *prision mayor* in its medium period, or within the range of eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the medium period of *prision mayor*, while the minimum shall be taken from within the range of the penalty next lower in degree, which is *prision correccional* or from six (6) months and one (1) day to six (6) years.

6. REMEDIAL LAW; EVIDENCE; DENIAL; MUST CERTAINLY FAIL WHEN UNSUBSTANTIATED AND UNCORROBORATED BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.— Petitioner's denial, unsubstantiated and uncorroborated, must certainly fail. Denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters. Denial is intrinsically weak, being a negative and self-serving assertion. In the case at bar, petitioner did not even present as her witness Marie Cris Batuampar, the person whom she instructed to work for her Employees Clearance. Her failure to present this person in order to shed light on the matter was fatal to her cause. In fact, we find that the defense never intended to present Marie Cris Batuampar as a witness. This is clear from the pre-trial order, because the defense never listed her as a witness. Her attempt to present Ms. Batuampar to help her cause after she has been convicted is already too late in the day, and Ms. Batuampar's testimony, which is supposed to be given, cannot be considered newly discovered evidence as to merit the granting

of her motion for new trial and/or reception of newly discovered evidence.

7. ID.; ID.; RULE THAT IN THE ABSENCE OF SATISFACTORY EXPLANATION, ONE WHO IS FOUND IN POSSESSION OF, AND WHO HAS USED, A FORGED DOCUMENT, IS THE FORGER AND, THEREFORE GUILTY OF FALSIFICATION; APPLICABLE AGAINST PETITIONER IN CASE AT BAR.— The lack of direct evidence showing that petitioner "actually" imitated the signature of Laura Pangilan in her Employees Clearance will not exonerate her. We have ruled that it is not strange to realize that in cases of forgery, the prosecution would not always have the means for obtaining such direct evidence to confute acts contrived clandestinely. Courts have to rely on circumstantial evidence consisting of pieces of facts, which if woven together would produce a single network establishing the guilt of the accused beyond reasonable doubt. The circumstances enumerated by the Sandiganbayan, as against the denials of petitioner, convince us to apply the rule that in the absence of satisfactory explanation, one who is found in possession of, and who has used, a forged document, is the forger and, therefore, guilty of falsification. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, which, if no contrary proof is offered, will thereby prevail. A *prima facie* case of falsification having been established, petitioner should have presented clear and convincing evidence to overcome such burden. This, she failed to do.

8. ID.; ID.; CREDIBILITY OF WITNESSES; DETERMINATION THEREOF IS THE DOMAIN OF THE TRIAL COURT.— It is a settled rule that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. The determination of the credibility of witnesses is the domain of the trial court, as it is in the best position to observe the witnesses' demeanor. The Sandiganbayan has given full probative value to the testimonies of the prosecution witnesses. So have we. We find no reason to depart from such a rule.

9. ID.; ID.; THE SANDIGANBAYAN CORRECTLY ADMITTED IN EVIDENCE THE PHOTOCOPY OF THE EMPLOYEE'S

CLEARANCE.— The Sandiganbayan correctly admitted in evidence the photocopy of the Employees Clearance. This Court decrees that even though the original of an alleged falsified document is not, or may no longer be produced in court, a criminal case for falsification may still prosper if the person wishing to establish the contents of said document *via* secondary evidence or substitutionary evidence can adequately show that the best or primary evidence – the original of the document – is not available for any of the causes mentioned in Section 3, Rule 130 of the Revised Rules of Court.

10. ID.; CRIMINAL PROCEDURE; NO DENIAL OF DUE PROCESS; PETITIONER WAS GIVEN EVERY OPPORTUNITY TO ADDUCE HER EVIDENCE AND THE FAILURE OF THE DEFENSE TO PRESENT THEIR WITNESS IS THEIR OWN DOING.— Petitioner claims she was denied due process when the Sandiganbayan severely restricted her time to present evidence, allowing her only two hearing dates, thus resulting in her failure to present another important witness in the of person of Atty. Randolph Parcasio. Petitioner was not denied due process. She was given every opportunity to adduce her evidence. The Sandiganbayan properly dealt with the situation. In fact, we find that the trial court was lenient with the petitioner. The failure of the defense to present Atty. Parcasio was its own doing. The defense failed to prepare its witnesses for the case.

QUISUMBING, *J., dissenting opinion*:

1. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; EVIDENCE IS NOT SUFFICIENT TO PROVE PETITIONER'S GUILT BEYOND REASONABLE DOUBT; NO EVIDENCE DIRECT OR CIRCUMSTANTIAL SHOWING THAT PETITIONER IMITATED OR CAUSE TO BE IMITATED THE ALLEGED FALSIFIED SIGNATURE IN THE CLEARANCE AS THE WITNESSES MERELY TESTIFIED THAT THE SIGNATURE IN PETITIONER'S CLEARANCE WAS FALSIFIED.— In my view, it is erroneous to convict petitioner because of the following grounds: First, there is lack of sufficient evidence to prove petitioner's guilt beyond reasonable doubt. Article 171, paragraph 1 of the Revised Penal Code punishes "any public officer, employee, or notary who, taking advantage

of his/her official position shall falsify a document by counterfeiting or imitating any handwriting, signature, or rubric." The elements of falsification of public document are as follows: (a) the offender is a public officer, employee or notary public; (b) s/he takes advantage of his/her official position; (c) s/he falsifies a document by committing any of the acts mentioned in Article 171 of the Revised Penal Code such as counterfeiting or imitating any handwriting, signature or rubric. Elements (b) and (c) are absent in this case. Petitioner could not have taken advantage of her official position to have her employee clearance falsified because she had no need for the clearance. Moreover, the mere act of an employee of having his/her clearance signed is not taking advantage of one's official position. It is erroneous to conclude that were it not for her position and her employment in the ARMM, petitioner could not have accomplished her clearance. There is no evidence, direct or circumstantial, showing that petitioner imitated or caused to be imitated the alleged falsified signature in the clearance. The witnesses merely testified that the signature in petitioner's clearance was falsified. This fact alone is not sufficient proof beyond reasonable doubt that she is guilty of falsification. The Sandiganbayan, for lack of proof of petitioner's direct participation in falsifying the document, relied on the disputable legal presumption that the possessor of a falsified document who makes use of such to her advantage is presumed to be the author of the falsification. At any rate, for the presumption of authorship of falsification to apply, the possessor must stand to profit or had profited from the use of the falsified document. In this case, petitioner does not stand to profit nor profited from the use of the alleged falsified document.

2. ID.; ID.; NO CRIMINAL INTENT OR MOTIVE COULD BE ATTRIBUTED TO PETITIONER AS THE ALLEGED FALSIFIED DOCUMENT WAS NOT NEEDED BY HER TO GET HER SALARIES FOR THE MONTHS OF AUGUST AND SEPTEMBER 2000.— The allegedly falsified document, petitioner's employee clearance, was not needed by her to get her salaries for the months of August and September 2000 and therefore, no criminal intent or ill motive could be attributed to petitioner to warrant her conviction for falsification under Article 171, paragraph 1, of the Revised Penal Code. Criminal intent must be present in felonies committed by means of *dolo*, such as falsification. In this case, there is no reasonable ground

to believe that the requisite criminal intent or *mens rea* was present. Petitioner had no ill motive to falsify her own employee's clearance. She had no need to do so since the employee clearance was not needed by her in the procurement of her salaries. Even if she had her employee clearance prepared, this act, by itself, is not felonious. There was nothing willful or felonious in petitioner's acts that would warrant her prosecution for falsification.

APPEARANCES OF COUNSEL

Jose Ventura Aspiras for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a petition for review on *certiorari* which seeks to set aside the Decision[1] of the Sandiganbayan in Crim. Case No. 27483 promulgated on 7 August 2007 which found petitioner Normallah A. Pacasum guilty of Falsification under Article 171, paragraph 1 of the Revised Penal Code, and its Resolution[2] dated 22 October 2007 denying petitioner's Motion for Reconsideration and Motion for New Trial/Reception of Newly Discovered Evidence.

On 2 May 2002, petitioner was charged before the Sandiganbayan with Falsification of Public Documents, defined and punished under paragraph 1 of Article 171 of the Revised Penal Code, committed as follows:

That on or about August 22-23, 2000, or sometime prior or subsequent thereto in Cotabato City, Philippines and within the jurisdiction of this Honorable Court, the accused NORMALLAH A. PACASUM, a high ranking public official being the Regional Secretary

[1] Penned by Associate Justice Rodolfo A. Ponferrada with Associate Justices Gregory S. Ong and Jose R. Hernandez, concurring; records, Vol. 1, pp. 527-555.

[2] Records, Vol. 2, pp. 41-50.

of the Department of Tourism in the Autonomous Region in Muslim Mindanao, Cotabato City, while in the performance of her official functions, committing the offense in relation thereto, taking advantage of her official position, did then and there, willfully, unlawfully and feloniously falsified her Employee Clearance[3] submitted to the Office of the Regional Governor of the Autonomous Region in Muslim Mindanao, by imitating the signature of Laura Y. Pangilan, the Supply officer I of the DOT-ARMM, for the purpose of claiming her salary for the months of August and September 2000.[4]

On 29 May 2002, petitioner filed a Motion for Reinvestigation asking that she be given the opportunity to file her counter-affidavit during a preliminary investigation in order that her right to due process would not be violated.[5] Petitioner further filed an Urgent Motion for Preliminary Investigation and/or Reinvestigation with a Prayer to Recall or Defer Issuance of Warrant of Arrest.[6]

On 4 May 2004, the Sandiganbayan denied petitioner's motion for preliminary investigation/reinvestigation decreeing that petitioner was not deprived of the opportunity to be heard before the Office of the Ombudsman as she had waived her right to be heard on preliminary investigation.[7]

On 16 June 2004, petitioner, assisted by counsel *de parte*, pleaded not guilty to the crime charged.[8] Thereafter, pre-trial conference was held and the Sandiganbayan issued a Pre-Trial Order.[9] The parties did not enter any admission or stipulation of facts, and agreed that the issues to be resolved were as follows:

1. Whether or not accused Normallah Pacasum, being then the Regional Secretary of the Department of Tourism in the

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[3] Should be "Employees Clearance." See Exh. A-2, Folder of Exhibits.

[4] Records, Vol. 1, p. 1.

[5] *Id.* at 23-24.

[6] *Id.* at 48-51.

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

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

[9] *Id.* at 180-183.

Autonomous Region in Muslim Mindanao, Cotabato City, falsified her Employee Clearance, which she submitted to the Office of the Regional Governor of the Autonomous Region in Muslim Mindanao, by imitating the signature of Laura Y. Pangilan, the Supply Officer I of the DOT-ARMM, for purposes of claiming her salary for the months of August and September 2000;

2. Whether or not the accused took advantage of her official position in order to commit the crime charged.[10]

The prosecution presented three witnesses, namely: Subaida K. Pangilan,[11] former Human Resource Management Officer V of the Autonomous Region in Muslim Mindanao (ARMM); Laura Y. Pangilan, former Supply Officer of the Department of Tourism, ARMM;[12] and Rebecca A. Agatep,[13] Telegraph Operator, Telegraph Office, Quezon City.

Subaida K. Pangilan (Pangilan) testified that she was a retired government employee and formerly a Human Resource Management Officer V of the ARMM which position she held from May 1993 to 28 May 2003. As such, one of her duties was to receive applications for clearance of Regional Secretaries of the ARMM. She explained that an Employees Clearance was a requirement to be submitted to the Office of the Regional Director by retiring employees, employees leaving the country or those applying for leave in excess of thirty days. The person applying for clearance shall get a copy of the employees clearance and shall accomplish the same by having the different division heads sign it.

Mrs. Pangilan disclosed that she knew the accused-petitioner – Norma Pacasum – to be the former Regional Secretary of the Department of Tourism (DOT), ARMM. She narrated that in the year 2000, petitioner submitted the original of an Employees

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[10] *Id.* at 182.

[11] TSN, 6 April 2005.

[12] *Id.*

[13] TSN, 14 June 2005.

Clearance to her office in compliance with the memorandum[14] dated 8 August 2000 issued by Governor Nur Misuari, directing all officers and employees to clear themselves of property and money accountabilities before their salaries for August and September 2000 would be paid. Upon inspection of the Employees Clearance, she noticed that the signature of Laura Pangilan (Laura) contained in said document was not hers. She said Laura Pangilan was her daughter-in-law, and that the latter's signature was very familiar to her. Mrs. Pangilan immediately photocopied[15] the original Employees Clearance with the intention of sending the same to her daughter-in-law for the purpose of having the latter confirm if the signature on top of her name in the Employees Clearance was hers. There being no messenger available, she instead called up Laura to come to her office to verify the signature. Laura, whose office was only a walking distance away, came and inspected the clearance, and denied signing the same. After she denied that she signed the clearance, and while they were conversing, the bearer of the Employees Clearance took said document and left.

Mrs. Pangilan said she did not know the name of the person who took the original of the Employee Clearance, but said that the latter was a niece and staff member of the petitioner. She said that all the signatures[16] appearing in the Employees Clearance were all genuine except for Laura's signature.

The next witness for the prosecution was Laura Y. Pangilan, the person whose signature was allegedly imitated. Laura testified that presently she was holding the position of Human Resource Management Officer II of the Department of Tourism - ARMM. Prior to said position, she was the Supply Officer of the DOT - ARMM from 1994 to January 2001. As such, she issued memorandum receipts (MR) to employees who were issued government property, and received surrendered office properties from officers and employees of the DOT - ARMM.

[14] Exh. A-5, Folder of Exhibits.

[15] Exh. A-2, Folder of Exhibits.

[16] Exhs. A-2-b to A-2-g, Folder of Exhibits.

She said she knew the accused, as she was their Regional Secretary of the DOT - ARMM.

Laura recounted that on 9 August 2002, Marie Cris[17] Batuampar, an officemate and niece of petitioner Pacasum, went to her house with the Employees Clearance of petitioner. Batuampar requested her to sign in order to clear petitioner of all property accountabilities. She refused to sign the clearance because at that time, petitioner had not yet turned over all the office properties issued to her. A few days later, she was called by her mother-in-law to go to the latter's office and inspect the Employees Clearance submitted by the representative of petitioner. She went to her mother-in-law's office and was shown the Employees Clearance of petitioner. Upon seeing the same, she denied the signature[18] appearing on top of her name. Thereupon, Marie Cris Batuampar, the representative of petitioner, took the Employees Clearance and left.

Laura revealed she executed a joint complaint-affidavit[19] dated 28 August 2001 regarding the instant case. She issued a certification[20] with a memorandum receipt[21] dated 23 November 1999, signed[22] by petitioner. The certification attested she did not sign petitioner's Employees Clearance because all the office properties issued to petitioner had not been turned over or returned to the Supply Officer of the DOT - ARMM. Finally, she said that as of 2 January 2005, her last day as Supply Officer, petitioner had not returned anything.

The last witness for the prosecution, Rebecca A. Agatep, Telegraph Operator, Telegraph Office, Quezon City, testified that she had been a telegraph operator for nineteen years. On 31 May 2005, she was at the Telegraph Office in Commission

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[17] Spelled as "Maricris" by the Sandiganbayan.

[18] Exh. A-2-a, Folder of Exhibits.

[19] Exh. A-1, Folder of Exhibits.

[20] Exh. A-3, Folder of Exhibits.

[21] Exh. A-4, Folder of Exhibits.

[22] Exh. A-4-a, Folder of Exhibits.

on Audit, Quezon City. She received two telegrams[23] for transmissions both dated 31 May 2005. One was addressed to petitioner and the other to Marie Cris Batuampar. Upon receiving said documents, she transmitted the documents through telegram. The telegram addressed to petitioner was received by her relative, Manso Alonto, in her residence on 1 June 2005, while that addressed to Ms. Batuampar was transmitted to, and received in, Cotabato City on 1 June 2005.[24]

On 4 July 2005, the prosecution formally offered[25] its documentary evidence consisting of Exhibits A, A-1, A-1-a, A-2, A-2-a, A-2-b, A-2-c, A-2-d, A-2-e, A-2-f, A-2-g, A-3, A-3-1, A-4, A-4-a, A-5, A-6, A-7, A-8, and A-9, to which the accused filed her objections.[26] The trial court admitted all the exhibits on 10 August 2005.[27]

For the defense, petitioner and Atty. Jose I. Lorena, former ARMM Regional Solicitor General, took the stand.

For her defense, petitioner testified that she was appointed by ARMM Regional Governor Nur Misuari (Gov. Misuari) as Regional Secretary of the DOT of the ARMM in 1999. She said she was familiar with the Memorandum dated 8 August 2000 issued by Gov. Misuari directing all ARMM officers and employees to liquidate all outstanding cash advances on or before 31 August 2000 in view of the impending expiration of the Governor's extended term. At first, she said the memorandum applied to her, she being a cabinet secretary, but later she said same did not apply to her because she had no cash advances. Only those with cash advances were required to get an Employees Clearance before they could receive their salaries. She then instructed her staff to work on her salary.

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[23] Exhs. A-6 and A-7, Folder of Exhibits.

[24] Exhs. A-8 and A-9, Folder of Exhibits.

[25] Records, Vol. 1, pp. 260-265.

[26] *Id.* at 268-276.

[27] *Id.* at 284.

Petitioner said she did not know where the original of her Employees Clearance was. Neither did she know if the signature of Laura Pangilan therein had been imitated or forged. She likewise said that although the Employee Clearance was in her name, she did not cause Laura's signature to be affixed thereto.

Petitioner disclosed that she was able to get her salary for the month of August 2000 sometime in said month, because ARMM Executive Secretary Randolph C. Parcasio told her that she did not need a clearance before she could get her salary because she was re-appointed.[28]

Petitioner explained that she has not seen the original of the subject Employees Clearance.[29] When she first saw the photocopy of the Employees Clearance, the signature of Laura was not there. She was able to see the photocopy of the Employees Clearance again after this case had been filed with the Sandiganbayan, already with the alleged signature of Laura. Petitioner said it was not she who placed or caused Laura's purported signature to be affixed there.

Petitioner added that the memorandum of Gov. Misuari did not apply to her, because she had no cash advances and she could receive her salary even without clearance. At that time, she said the Cashier, Accountant and the Auditor checked her records and found that she had no cash advances.[30] Because she was elsewhere, she instructed her secretary to get her salary. However, she was informed by her staff that her salary could not be released because the Office of the Governor required a clearance. Her staff worked on her clearance, the purpose of which was for the release of her salary for the months of August and September 2000. She was able to get all the needed signatures except for Laura's signature. With the refusal of Laura to sign, her staff went to Executive Secretary Parcasio and explained the situation.

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[28] TSN, 5 February 2007, p. 17.

[29] *Id.* at 19.

[30] *Id.* at 29.

Petitioner denied receiving a telegram from Asst. Special Prosecutor I Anna Isabel G. Aurellano ordering her to submit to the Office of the Special Prosecutor the original of the Employees Clearance of the DOT-ARMM issued in her name sometime on 22-23 August 2000.

On cross-examination, petitioner said that prior to her receipt of her salary, she believed that an Employees Clearance was necessary, and for this reason she had this document prepared by her staff. She said her Employees Clearance was always in the possession of Marie Cris, her assistant secretary. It was Marie Cris who showed her the document twice.[31]

Atty. Jose I. Lorena, former ARMM Solicitor General, testified that he was familiar with the Memorandum dated 8 August 2000 issued by Gov. Misuari because the same was the product of consultation among him, Gov. Misuari and ARMM Executive Secretary Parcasio. He explained that this memorandum pertained only to outstanding cash advances. He added that an Employees Clearance was not a requirement and was not sufficient to comply with the directive contained in the memorandum, because what was required for the purpose of release of salaries was a credit notice from the Resident Auditors of the Commission on Audit.

On 16 February 2007, the defense formally offered its documentary exhibits[32] consisting of Exhibits 1 to 5, with sub-markings. The prosecution objected to the purpose for which Exhibit 1 was offered. The trial court admitted all the defense exhibits.[33]

On 7 August 2007, the Sandiganbayan rendered the assailed decision convicting petitioner of the crime charged in the information. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused Normallah A. Pacasum GUILTY beyond reasonable doubt of the

[31] *Id.* at 50.

[32] Records, Vol. 1, pp. 451-453.

[33] *Id.*, Exh. 1 is the same as Exh. A-5; Exh. 2 is the same as Exh. A-2, Folder of Exhibits.

offense charged in the Information and, with the application of the Indeterminate Sentence Law and without any mitigating or aggravating circumstance, hereby sentencing her to suffer the 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 with the accessories thereof and to pay a fine of TWO THOUSAND PESOS (₱2,000.00) with costs against the accused.[34]

The Sandiganbayan found the signature of DOT-ARMM Supply Officer Laura Y. Pangilan appearing in the Employees Clearance of petitioner to have been falsified/forged. It did not give much weight on petitioner's defense denying she was the one who actually falsified her Employees Clearance by imitating the signature of Laura Pangilan and that she had no idea about the alleged falsification, because it was her assistant secretary, Marie Cris Batuampar, who worked for her clearance and the one who submitted the said clearance to the Office of the Regional Governor of the ARMM. The trial court found said denial unsubstantiated and ruled that while there was no direct evidence to show that petitioner herself "actually" falsified/forged the signature of Laura Pangilan, there were circumstances that indicated she was the one who committed the falsification/forgery, or who asked somebody else to falsify/forge the subject signature in her Employees Clearance. The Sandiganbayan added that considering it was petitioner who took advantage of and profited from the use of the falsified clearance, the presumption was that she was the material author of the falsification. Despite full opportunity, she was not able to rebut said presumption, failing to show that it was another person who falsified/forged the signature of Laura Pangilan, or that another person had the reason or motive to commit the falsification/forgery or could have benefited from the same.

The Sandiganbayan likewise did not sustain petitioner's contention that she did not stand to benefit from the falsification of her Employees Clearance and from the submission thereof to the Office of the Regional Governor, because she allegedly

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[34] *Id.* at 554.

had no existing cash advances. She claimed that an Employees Clearance was not needed to enable her to draw her salary for the months of August and September 2000 under the 8 August 2000 Memorandum of Gov. Misuari, and that the presumption that he who benefits from the falsification is presumed to be the author thereof does not apply to her. The lower court explained that the aforementioned memorandum applied to petitioner, she being an official of the ARMM. It said that the applicability of said memorandum to petitioner was even admitted by her when she, in compliance therewith, instructed her staff/assistant secretary to work for her Employees Clearance to enable her to collect her salary for the month of August 2000. It said that the fact that she (allegedly) had no existing cash advances did not exempt her from the coverage of the memorandum, because she must show she had no cash advances and the only way to do this was by obtaining a clearance.

Petitioner argued that the photocopy of her Employees Clearance had no probative value in proving its contents and was inadmissible because the original thereof was not presented by the prosecution. The Sandiganbayan did not agree. It said that the presentation and admission of secondary evidence, like a photocopy of her Employees Clearance, was justified to prove the contents thereof, because despite reasonable notices (telegrams) made by the prosecution to petitioner and her assistant secretary to produce the original of her Employees Clearance, they ignored the notice and refused to present the original of said document.

On 21 August 2007, petitioner filed a motion for reconsideration of the decision of the Sandiganbayan[35] to which the prosecution filed a Comment/Opposition.[36] Subsequent thereto, petitioner filed a Supplement to Accused's Motion for Reconsideration & Motion for New Trial/Reception of Newly Discovered Evidence.[37] Petitioner prayed that her motion for new trial be granted in order that the testimony of Marie Cris Batuampar

[35] Records, Vol. 2, pp. 5-11.

[36] *Id.* at 18-24.

[37] *Id.* at 25-31.

be introduced, the same being newly discovered evidence. The prosecution filed its Opposition.[38]

On 22 October 2007, the Sandiganbayan issued its resolution denying petitioner's motion for reconsideration for lack of merit; and the motion for new trial, because the evidence sought to be presented did not qualify as newly discovered evidence.[39]

On 16 November 2007, the instant petition was filed.

In our Resolution[40] dated 27 November 2007, respondent People of the Philippines, through the Office of the Special Prosecutor (OSP), was required to file its Comment on the petition.[41] After two motions for extension to file comment on the petition, which were granted by this Court, the OSP filed its Comment dated 18 February 2008.[42] Petitioner was required[43] to file a Reply to the Comment, which she did on 5 June 2008.[44]

On 5 August 2008, the Court resolved to give due course to the petition for review on *certiorari* and required the parties to submit their respective memoranda within thirty (30) days from notice. They filed their respective memoranda on 21 November 2008 and on 5 November 2008.[45]

Petitioner assails her conviction arguing that the Sandiganbayan committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in:

I. Finding that petitioner benefited from the alleged falsification, hence must be deemed the author thereof, when the evidence on record does not support, but even contradicts, such a conclusion.

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[38] *Id.* at 35-39.

[39] *Id.* at 41-50.

[40] *Rollo*, p. 188.

[41] *Id.*

[42] *Id.* at 195-218.

[43] *Id.* at 219.

[44] *Id.* at 226-237.

[45] *Id.* at 242-265, 266-279.

II. Presuming that petitioner had unliquidated cash advances hence was required under the Misuari Memorandum to submit her Employee's Clearance to clear herself of these, when there is no evidence to that effect and the prosecution even admitted so.

III. Not resolving doubt as to the authenticity of the photocopy of the allegedly forged Employee's Clearance, in favor of the innocence of the Accused.

IV. In short-circuiting the right of the petitioner to present additional evidence on her behalf, thus denying her due process.[46]

Petitioner contends that under the Misuari memorandum dated 8 August 2000, she was not required to file an Employees Clearance to draw her salary, since what was required under said memorandum was a Credit Notice from the COA. She further contends that since she was not required to file said Employees Clearance because she had no cash advances, the signature in her Employees Clearance was "irrelevant and a non-issue" because what was required was a Credit Notice.

As to the first contention, we agree with petitioner that under the aforesaid memorandum, what was required before she could draw her salaries was a Credit Notice from the COA and not an Employees Clearance. The full text of the Memorandum[47] form the Regional Governor reads:

MEMORANDUM FROM THE REGIONAL GOVERNOR

TO: ALL CONCERNED
SUBJECT: AS STATED
DATE: AUGUST 8, 2000

1. In view of the impending expiration of the extended term of the undersigned, it is hereby directed that all outstanding cash advances be liquidated on or before August 31, 2000.

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[46] *Id.* at 14.

[47] Exhibit A-5, Folder of Exhibits.

2. Effective September 1, 2000, the salaries and other emoluments of all ARMM officials/employees with unliquidated cash advance shall be withheld until they have settled their accounts and a corresponding Credit Notice is issued to them by the Commission on Audit.

3. Due to budgetary and financial constraints brought about by the drastic cut of our budget, memorandum dated December 01, 1998 is hereby reiterated. Therefore all releases for financial assistance is hereby suspended effective immediately.

4. For strict compliance.

PROF. NUR MISUARI

It is clear from said memorandum that what was required from officers/employees who had unliquidated cash advances was the corresponding Credit Notice issued by the COA after they had settled their accounts. There was indeed no mention of any Employees Clearance therein. Up to this point, we agree with petitioner. However, on her contention that the signature of Laura Pangilan in her Employees Clearance was "irrelevant and a non-issue," we disagree. Whether the signature of Laura Pangilan was imitated or not is the main issue in this case for falsification.

From the memorandum of Gov. Misuari, the Credit Notice requirement was effective only starting 1 September 2000 and not before. In the case at bar, the information charges petitioner not with failure to secure a Credit Notice, but with allegedly falsifying her Employees Clearance by imitating the signature of Laura Y. Pangilan, Supply Officer I of the DOT-ARMM. The Credit Notice requirement was therefore irrelevant and a non-issue as regards the release of salaries prior to 1 September 2000.

The questions to be answered are: (1) Was the signature of Laura Pangilan in petitioner's Employees Clearance imitated? If yes, (2) Who imitated or caused the imitation of said signature?

On the first query, the same was answered by Laura Pangilan. She said that the signature in petitioner's Employees Clearance

was not hers. The same was an imitation. When a person whose signature was affixed to a document denies his/her signature therein, a *prima facie* case for falsification is established which the defendant must overcome.[48]

Petitioner argues there was no need for her to file an Employees Clearance to draw her salary. She adds that Atty. Randolph C. Parcasio, Executive Secretary of the ARMM, told her and her secretary, Marie Cris Batuampar, that she did not need an Employees Clearance because she was re-appointed.[49]

These arguments are untenable. There was a need for petitioner to file an Employees Clearance not only for compliance with the Misuari memorandum but, more importantly, because her term of office was about to end, since her position was coterminous with the term of Gov. Misuari, the appointing authority.[50] She even admitted that before she received her salary for August, 2000,[51] an Employees Clearance was necessary.[52] Moreover, her claim that Atty. Parcasio told her and her secretary that she did not need an Employee Clearance to get her salary does not persuade us. In fact, we find her alleged "re-appointment," when she was working for her Employees Clearance at around August 2000, improbable. How could she have been re-appointed by Gov. Alvarez,[53] whom she claims re-appointed her sometime in the year 2000, when Gov. Misuari was still the Regional Governor of the ARMM when she had her Employees Clearance prepared sometime in August 2000? Clearly, her statement that she did not need an Employees Clearance because she was re-appointed does not inspire belief.

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[48] Ramon C. Aquino, *THE REVISED PENAL CODE* (1997 Edition), Vol. II, p. 233, citing *US v. Viloria*, 1 Phil. 682, 684-685 (1903).

[49] TSN, 5 February 2007, pp. 17-18, 52.

[50] TSN, 6 February 2007, p. 20.

[51] TSN, 5 February 2007, p. 17.

[52] *Id.* at 42.

[53] *Id.* at 44.

Petitioner faults the Sandiganbayan for applying the presumption that if a person had in his position a falsified document and he made use of it (uttered it), taking advantage of it and profiting thereby, he is presumed to be the material author of the falsification. He argues that the Sandiganbayan overlooked the fact that there was no evidence to prove that petitioner made use of or uttered the Employees Clearance, because there was no evidence that she submitted it — if not, at least caused it to be submitted to the Office of the Regional Governor. To support such claim, she said there were no "receipt marks" in the Employees Clearance to show that the Office of the Regional Governor received said documents.

It is to be made clear that the "use" of a falsified document is separate and distinct from the "falsification" of a public document. The act of "using" falsified documents is not necessarily included in the "falsification" of a public document. Using falsified documents is punished under Article 172 of the Revised Penal Code. In the case at bar, the falsification of the Employees Clearance was consummated the moment the signature of Laura Pangilan was imitated. In the falsification of a public document, it is immaterial whether or not the contents set forth therein were false. *What is important is the fact that the signature of another was counterfeited.*[54] It is a settled rule that in the falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person for the reason that in the falsification of a public document, *the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed*.[55] Thus, the *purpose* for which the falsification was made *and whether the offender profited or hoped to profit* from such falsification *are no longer material*.

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[54] *Caubang v. People*, G.R. No. 62634, 26 June 1992, 210 SCRA 377, 392.

[55] *Lumancas v. Intas*, 400 Phil. 785, 798 (2000), citing *People v. Po Giok To*, 96 Phil. 913, 918 (1955).

The records further show that petitioner "used" or uttered the Employees Clearance. The fact that the same was circulated to the different division heads for their signatures is already considered use of falsified documents as contemplated in Article 172. The lack of the stamp mark "Received" in the Employees Clearance does not mean that said document was not received by the Office of the Regional Governor. We find the certification signed by Atty. Randolph C. Parcasio, Executive Secretary of Office of the Regional Governor - ARMM, as contained in the Employees Clearance, to be sufficient proof that the same was submitted to the Office of the Regional Governor. It must be stressed that the Executive Secretary is part of the Office of the Regional Governor.

Petitioner denies having "actually" falsified her Employees Clearance by imitating the signature of Laura Pangilan, claiming that she had no knowledge about the falsification because it was her assistant secretary, Marie Cris Batuampar, who worked for her Employees Clearance.

Petitioner's denial, unsubstantiated and uncorroborated, must certainly fail. Denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[56] Denial is intrinsically weak, being a negative and self-serving assertion.[57]

In the case at bar, petitioner did not even present as her witness Marie Cris Batuampar, the person whom she instructed to work for her Employees Clearance. Her failure to present this person in order to shed light on the matter was fatal to her cause. In fact, we find that the defense never intended to present Marie Cris Batuampar as a witness. This is clear from the pre-trial order, because the defense never listed her as a witness.[58] Her attempt to present Ms. Batuampar to help her

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[56] *People v .Maglente,* G.R. No. 179712, 27 June 2008, 556 SCRA 447, 468.

[57] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 466.

[58] Pre-Trial Order, Records, Vol. 1, p. 181.

cause after she has been convicted is already too late in the day, and Ms. Batuampar's testimony, which is supposed to be given, cannot be considered newly discovered evidence as to merit the granting of her motion for new trial and/or reception of newly discovered evidence.

The lack of direct evidence showing that petitioner "actually" imitated the signature of Laura Pangilan in her Employees Clearance will not exonerate her. We have ruled that it is not strange to realize that in cases of forgery, the prosecution would not always have the means for obtaining such direct evidence to confute acts contrived clandestinely. Courts have to rely on circumstantial evidence consisting of pieces of facts, which if woven together would produce a single network establishing the guilt of the accused beyond reasonable doubt.[59] We totally agree with the Sandiganbayan, which said:

> While there is no direct evidence to show that the accused herself "actually" forged the signature of Laura Pangilan in the Employees Clearance in question, the Court nevertheless finds the following circumstances, obtaining in the records, to establish/indicate that she was the one who committed the forgery or who asked somebody else to forge or caused the forgery of the signature of Laura Pangilan in her Employees Clearance, to wit –
>
> 1. that the accused instructed her staff Maricris Batuampar to work for her Employees Clearance in compliance with the Memorandum of ARMM Regional Governor Nur Misuari and that the forged signature of Laura Pangilan was affixed on her clearance are strong evidence that the accused herself either falsified the said signature or caused the same to be falsified/imitated, and that possession by Maricris of the falsified clearance of the accused is possession by the accused herself because the former was only acting upon the instructions and in behalf of the latter;
>
> 2. that it was the accused who is required to accomplish and to submit her Employees Clearance to enable her to collect her salary for the months of August and September 2000 is sufficient and strong motive or reason for her to commit the falsification by imitating the signature of Laura Pangilan or order someone else to forge it; and

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[59] *Caubang v. People*, *supra* note 51 at 390.

3. that the accused was the only one who profited or benefited from the falsification as she admitted that she was able to collect her salary for the month of August 2000 after her falsified Employees Clearance was submitted and approved by the ORG-ARMM and therefore, she alone could have the motive for making such falsification.

On the basis of the foregoing circumstances, no reasonable and fair-minded man would say that the accused – a Regional Secretary of DOT-ARMM – had no knowledge of the falsification. It is an established rule, well-buttressed upon reason, that in the absence of a satisfactory explanation, when a person has in his possession or control a falsified document and who makes use of the same, the presumption or inference is justified that such person is the forger or the one who caused the forgery and, therefore, guilty of falsification. Thus, in *People v. Sendaydiego,* the Supreme Court held that –

> The rule is that if a person had in his possession a falsified document and he made use of it (uttered it), taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. This is especially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers. (*U.S. v. Castillo,* 6 Phil. 453; *People v. De Lara,* 45 Phil. 754; *People v. Domingo,* 49 Phil. 28; *People v. Astudillo,* 60 Phil. 338; *People v. Manansala,* 105 Phil. 1253).

In line with the above ruling, and considering that it was the accused who took advantage and profited in the use of the falsified Employees Clearance in question, the presumption is inevitable that she is the material author of the falsification. And despite full opportunity, she was not able to rebut such presumption by failing to show that it was another person who forged or falsified the signature of Laura Pangilan or that at least another person and not she alone, had the reason or motive to commit the forgery or falsification, or was or could have been benefited by such falsification/forgery.[60]

The circumstances enumerated by the Sandiganbayan, as against the denials of petitioner, convince us to apply the rule

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[60] *Rollo,* pp. 546-549.

that in the absence of satisfactory explanation, one who is found in possession of, and who has used, a forged document, is the forger and, therefore, guilty of falsification.[61] The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, which, if no contrary proof is offered, will thereby prevail.[62] A *prima facie* case of falsification having been established, petitioner should have presented clear and convincing evidence to overcome such burden. This, she failed to do.

Petitioner assails the weight given by the Sandiganbayan to the testimonies of the two Pangilans when they failed to report the alleged falsification to the police or alert the Office of the Regional Governor of said falsification, or tried to stop petitioner from getting her salaries.

We do not agree with the petitioner. It is a settled rule that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect.[63] The determination of the credibility of witnesses is the domain of the trial court, as it is in the best position to observe the witnesses' demeanor.[64] The Sandiganbayan has given full probative value to the testimonies of the prosecution witnesses. So have we. We find no reason to depart from such a rule.

Aware that the prosecution failed to present the original from which the photocopy of petitioner's Employees Clearance was supposed to have been obtained, she maintains that the

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[61] *Nierva v. People*, G.R. No. 153133, 26 September 2006, 503 SCRA 114, 124-125.

[62] *Republic v. Vda. de Neri*, 468 Phil. 842, 862-863 (2004), citing Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES* (Vol. VII, Part II), p. 7.

[63] *Fullero v. People*, G.R. No. 170583, 12 September 2007, 533 SCRA 97, 113.

[64] *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, 18 February 2008, 546 SCRA 51, 65.

Sandiganbayan should have doubted the authenticity and probative value of the photocopy of the Employees Clearance.

The Sandiganbayan correctly admitted in evidence the photocopy of the Employees Clearance. We agree when it ruled:

> Section 3, Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. The purpose of the rule requiring the production by the offeror of the best evidence if the prevention of fraud, because if a party is in possession of such evidence and withholds it and presents inferior or secondary evidence in its place, the presumption is that the latter evidence is withheld from the court and the adverse party for a fraudulent or devious purpose which its production would expose and defeat. Hence, as long as the original evidence can be had, the Court should not receive in evidence that which is substitutionary in nature, such as photocopies, in the absence of any clear showing that the original has been lost or destroyed or cannot be produced in court. Such photocopies must be disregarded, being inadmissible evidence and barren of probative weight.
>
> The foregoing rule, however, admits of several exceptions. Under Section 3(b) of Rule 130, secondary evidence of a writing may be admitted "*when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice.*" And to warrant the admissibility of secondary evidence when the original of a writing is in the custody or control of the adverse party, Section 6 of Rule 130 provides as follows:
>
> > *Sec. 6. When original document is in adverse party's custody or control. – If the document is in the custody or control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of loss.*
>
> Thus, the mere fact that the original is in the custody or control of the adverse party against whom it is offered does not warrant the admission of secondary evidence. The offeror must prove that he has done all in his power to secure the best evidence by giving notice

to the said party to produce the document which may be in the form of a motion for the production of the original or made in open court in the presence of the adverse party or via a subpoena *duces tecum*, provided that the party in custody of the original has sufficient time to produce the same. When such party has the original of the writing and does not voluntarily offer to produce it, or refuses to produce it, secondary evidence may be admitted.

Here, the accused admitted that her Employees Clearance was always in the possession of her assistant secretary, [Marie Cris] Batuampar. So the prosecution in its effort to produce the original copy of the said Employees Clearance of the accused, thru Assistant Special Prosecutor Anna Isabel G. Aurellano of the Office of the Prosecutor, sent on May 31, 2005 thru the COA Telegraph Office at Quezon City two (2) telegram subpoenas addressed to accused Normallah Pacasum, and [Marie Cris] Batuampar ordering them to submit to the Office of the Special Prosecutor on or before June 8, 2005, the original of the Employees' Clearance in the name of Normallah Alonto Lucman-Pacasum for the release of her August and September 2000 salary as DOT Regional Secretary. Notwithstanding receipt of the said telegram subpoena by her uncle Manso Alonto in her residence on June 1, 200[5], the accused did not appear before or submit to Assistant Special Prosecutor Anna Isabel G. Aurellano, the original of the said Employees Clearance, much less offered to produce the same.

Under the circumstances, since there was proof of the existence of the Employees Clearance as evidenced by the photocopy thereof, and despite the reasonable notices made by the prosecution to the accused and her assistant secretary to produce the original of said employees clearance they ignored the notice and refused to produce the original document, the presentation and admission of the photocopy of the original copy of the questioned Employees Clearance as secondary evidence to prove the contents thereof was justified.[65]

This Court decrees that even though the original of an alleged falsified document is not, or may no longer be produced in court, a criminal case for falsification may still prosper if the person wishing to establish the contents of said document *via* secondary evidence or substitutionary evidence can adequately show that the best or primary evidence – the original of the document –

[65] *Rollo,* pp. 550-552.

is not available for any of the causes mentioned in Section 3,[66] Rule 130 of the Revised Rules of Court.

Petitioner claims she was denied due process when the Sandiganbayan severely restricted her time to present evidence, allowing her only two hearing dates, thus resulting in her failure to present another important witness in the of person of Atty. Randolph Parcasio. Petitioner was not denied due process. She was given every opportunity to adduce her evidence. The Sandiganbayan outlined the proceedings of the case as follows:

> After the prosecution rested its case, by agreement of the parties, the initial hearing for the reception of defense evidence was scheduled on September 19 and 20, 2005 both at 8:30 in the morning. However, upon motion of the prosecution, the Court, in its Order of September 16, 2005, cancelled the setting as the handling prosecutor, Pros. Anna Isabel G. Aurellano, had to attend a 5-day workshop at PHINMA in Tagaytay City on September 19-23, 2005 and scheduled anew the hearing on November 23 and 24, 2005, both at 8:30 in the morning. However, *for failure of the defense counsel, Atty. Rico B. Bolongaita, to appear at the November 23, 2005 hearing despite due notice, the Court cancelled the November 23 and 24 hearings*, and moved the same to March 13 and 14, 2006 both at 8:30 in the morning, and at the same time directed the said defense counsel to show cause in writing within five (5) days from receipt of the Order why he should not be held in contempt for his failure to appear despite due notice. In compliance with this Order, Atty. Rico B. Bolongaita, filed his Explanation and Withdrawal of Appearance, respectively, which were both Noted by the Court in its Resolution of January 19, 2006.

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[66] Sec. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

In view of the *absence of the accused in the March 13, 2006 hearing and her continued failure to get a substitute counsel* considering that her counsel, Atty. Rico B. Bolongaita, had already withdrawn from the case since January 16, 2006, the *Court cancelled the March 13 and 14, 2006 hearings* and moved the same to July 3 and 4, 2006 both at 8:30 in the morning and designated Atty. Conrado Rosario of the PAO as counsel *de oficio* of the accused and directed the accused upon receipt of the order to immediately confer with said counsel for purposes of preparing for her defense in the case.

On March 20, 2006, the Court issued the following Resolution, which reads:

Accused Normallah L. Pacasum's letter of February 17, 2006 (received by mail on March 16, 2006) requesting extension of time to engage the services of counsel is merely NOTED WITHOUT ACTION as the *next hearings are scheduled on July 3 and 4, 2006 and said accused would have more than ample time to engage the services of counsel of her choice.* For this reason, *any excuse from the accused on said settings that she failed to engage the services of counsel or that her counsel needs more time to prepare will be unacceptable.* At all events, this Court, in its Order of March 13, 2006, had already appointed Atty. Conrado Rosario of the PAO as a counsel *de oficio* to represent the accused, with specific orders to the latter to confer with Atty. Rosario and assist him in preparing for her defense.

On July 3, 2006, upon the manifestation of Atty. Conrado Rosario, counsel for the accused, that since he was appointed *counsel de oficio, the accused has not communicated with him and therefore he was not ready to present any evidence for the accused, the Court cancelled the hearing in order to give the defense another opportunity to present its evidence and reset it to July 4, 2006*, the following day as previously scheduled.

On July 4, 2006, the Court issued the following Order, which reads –

> "When this case was called for hearing, *accused asked for the resetting of the case on the ground that she just hired a new counsel* who thereafter arrived and entered his appearance as Atty. Napoleon Uy Galit with address at Suite 202 Masonic Building, #35 Matalino St., Diliman, Quezon City. With the appearance of her new counsel, Atty. Conrado C. Rosario is hereby discharged as counsel *de oficio* of the accused.

"As prayed for by the accused, *she is given the last chance to present her evidence on October 9 and 10, 2006*, both at 8:30 o'clock in the morning. For repeated failure of the accused to acknowledge receipt of the notices of the Court, her waiver of appearance is hereby cancelled and she is ordered to personally appear in the scheduled hearings of this case.

SO ORDERED.

On October 6, 2006, *the accused thru counsel, Atty. Bantreas Lucman, filed an Entry of Appearance, Motion For Postponement of October 9 and 10 Hearings* stating therein that since his service as new counsel was just engaged by the accused, and that the accused herself cannot also attend the said hearing because she is undergoing fasting until October 24, 2006 in observance of Ramadan, he asked to postpone the settings on October 9 and 10, 2006. At the hearing on October 9, 2006, the Court issued the following, which reads –

"Acting on the Entry of Appearance, Motion for Postponement of October 9 and 10, 2006 Hearing filed by accused Normallah L. Pacasum, thru counsel, Atty. Bantreas Lucman, finding the same to be without merit, as *this case has been set for hearing several times and the accused has been given the last chance to present evidence, the Court hereby denies the motion for postponement.*

"In this regard, in view of the *absence of accused Normallah L. Pacasum in today's hearing despite the Order of the Court dated July 4, 2006, canceling her waiver of appearance, and ordering her to personally appear before this Court, as prayed for by the prosecution, let a Bench Warrant of Arrest be issued against the said accused.* The cash bond posted for her provisional liberty is ordered confiscated in favor of the government. The accused is given thirty (30) days from notice to explain in writing why final judgment shall not be rendered against the said bond.

With the Manifestation of Atty. Bantreas Lucman that the *defense is not ready to present its evidence today and tomorrow, the last chance for it to present its evidence, the Court is constraint to consider the accused's right to present evidence as waived.*

The parties are hereby given thirty (30) days to submit their respective memoranda. Thereafter, the case shall be deemed submitted for decision.

SO ORDERED.

Subsequently, the accused thru counsel, filed a Motion for Reconsideration of the above Order dated October 25, 2006, and Motion to Set Hearing For Motion for Reconsideration and to Lift Warrant of Arrest dated October 31, 2006.

At the hearing of accused's motion for reconsideration on November 3, 2006, the Court issued the following Order, which reads –

"When the 'Motion To Set Hearing for Motion for Reconsideration and to Lift Warrant of Arrest' was called for hearing this morning, only Attorneys Bantuas M. Lucman and Jose Ventura Aspiras appeared. *Accused Normallah L. Pacasum was absent.*

In view of the absence of the accused, the Court is not inclined to give favorable action to the Motion for Reconsideration. It must be stressed that the primordial reason for the issuance of the order sought to be reconsidered in the presence of the accused in the previous hearing in violation of the Court's Order for her to personally appear in the hearings of this case and for her indifference to the directives of the Court. With the absence anew of the accused, the Court has no alternative but to deny the Motion.

Moreover, the Court notes the allegation in the Motion that the counsel sought the assurance of the accused (and she promised) to appear before this Court if the motion will be granted, as if the Court owes the accused the favor to appear before it. The accused is reminded/advised that the issuance of the warrant of arrest, she has to voluntarily surrender and appear before the Court or be arrested and brought to the Court.

WHEREFORE, the Motion for Reconsideration is denied.

SO ORDERED.

Acting on the Omnibus Motion to Hold in Abeyance Consideration of Prosecution's Memorandum (And for a Second Look on the Matter of Accused's Right to Present Defense Evidence) of the accused

dated November 21, 2006, and the prosecution's Opposition thereto, the Court issued the following Order, which reads –

"This refers to the Accused "Omnibus Motion to Hold in Abeyance Consideration of Prosecution's November 7, 2006 Memorandum (And For a Second Look on the Matter of Accused's Right to Present Defense Evidence)" dated November 21, 2006 and the plaintiff's Opposition thereto dated November 28, 2006.

"Inasmuch as the accused has already appeared before the Court and posted an additional bond of ₱10,000.00 despite the aforesaid opposition of the prosecution, *in the interest of justice, the Court is inclined to reconsider and give favorable action to the motion and grant the accused another and last opportunity to present here evidence.*

"WHEREFORE, the motion is granted and this case is *set for hearing for the accused's last chance to present and/or complete the presentation of her evidence on February 5 and 6, 2007* both at 8:30 in the morning in the Sandiganbayan Centennial Building in Quezon City.

SO ORDERED.

Thus, despite the initial indifference of the accused to present her defense, the Court gave her ample opportunity to present her evidence.[67]

The Sandiganbayan properly dealt with the situation. In fact, we find that the trial court was lenient with the petitioner. The failure of the defense to present Atty. Parcasio was its own doing. The defense failed to prepare its witnesses for the case. As proof of this, we quote a portion of the hearing when petitioner was testifying:

ATTY. ASPIRAS

Q Would you know where (sic) the whereabouts of this Sec. Parcasio would be (sic) at this time?

A He lives in Davao but after what happened to Gov. Misuari, we have not got together with the other members of the cabinet of Gov. Misuari, but he lives in Davao, sir.

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[67] *Rollo*, pp. 532-536.

Q Would it be possible, Madame Witness, to request or ask him to testify in this case?

A After this hearing, I will look for Sec. Parcasio just to clear my name, sir.

CHAIRMAN

Not after this hearing, you should have already done that. Because we already gave you enough opportunity to present your side, right? You should not be telling the Court that only after this hearing, you will start looking (for) people who will, definitely, clear your name. You should be doing that months ago, correct?

WITNESS

Yes, your Honors.[68]

Petitioner was charged with falsifying her Employees Clearance under Article 171, paragraph 1 of the Revised Penal Code. For one to be convicted of falsification under said paragraph, the followings elements must concur: (1) that the offender is a public officer, an employee, or a notary public; (2) that he takes advantage of his official position; and (3) that he falsifies a document by counterfeiting or imitating any handwriting, signature or rubric.

All the foregoing elements have been sufficiently established. There is no dispute that petitioner was a public officer, being then the Regional Secretary of the Department of Tourism of the ARMM, when she caused the preparation of her Employees Clearance (a public document) for the release of her salary for the months of August and September 2000. Such being a requirement, and she being a public officer, she was duty-bound to prepare, accomplish and submit said document. Were it not for her position and employment in the ARMM, she could not have accomplished said Employees Clearance. In a falsification of public document, the offender is considered to have taken advantage of his official position when (1) he had the duty to make or prepare or otherwise intervene in the preparation of

[68] TSN, 5 February 2007, pp. 21-22.

the document; or (2) he had official custody of the document which he falsified.[69] It being her duty to prepare and submit said document, she clearly took advantage of her position when she falsified or caused the falsification of her Employees Clearance by imitating the signature of Laura Pangilan.

Going now to the penalties imposed on petitioner, we find the same proper. The penalty for falsification under Article 171 of the Revised Penal Code is *prision mayor* and a fine not exceeding ₱5,000.00. There being no mitigating or aggravating circumstance in the commission of the felony, the imposable penalty is *prision mayor* in its medium period, or within the range of eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the medium period of *prision mayor*, while the minimum shall be taken from within the range of the penalty next lower in degree, which is *prision correccional* or from six (6) months and one (1) day to six (6) years.

WHEREFORE, premises considered, the decision of the Sandiganbayan in Crim. Case No. 27483 dated 7 August 2007 and its resolution dated 22 October 2007 are hereby *AFFIRMED*.

SO ORDERED.

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

Quisumbing, J., please see dissenting opinion.

Tinga, J., joins J. Quisumbing's dissent.

DISSENTING OPINION

QUISUMBING, *J.*:

With due respect, I dissent from the majority opinion. I vote to grant the petition and reverse the decision of the Sandiganbayan

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[69] *Fullero v. People*, *supra* note 63 at 114.

finding petitioner Normallah A. Pacasum guilty beyond reasonable doubt of the crime of falsification under Article 171, paragraph 1, of the Revised Penal Code.

In my view, it is erroneous to convict petitioner because of the following grounds:

First, there is lack of sufficient evidence to prove petitioner's guilt beyond reasonable doubt. Article 171, paragraph 1[1] of the Revised Penal Code punishes "any public officer, employee, or notary who, taking advantage of his/her official position shall falsify a document by counterfeiting or imitating any handwriting, signature, or rubric."

The elements of falsification of public document are as follows:

(a) the offender is a public officer, employee or notary public;

(b) s/he takes advantage of his/her official position;

(c) s/he falsifies a document by committing any of the acts mentioned in Article 171 of the Revised Penal Code such as counterfeiting or imitating any handwriting, signature or rubric.[2]

Elements (b) and (c) are absent in this case. Petitioner could not have taken advantage of her official position to have her employee clearance falsified because she had no need for the clearance. Moreover, the mere act of an employee of having his/her clearance signed is not taking advantage of one's official position. It is erroneous to conclude that were it not

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[1] 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:

1. Counterfeiting or imitating any handwriting, signature or rubric;

x x x x x x x x x

[2] *Flores v. Layosa,* G.R. No. 154714, August 12, 2004, 436 SCRA 337, 349.

for her position and her employment in the ARMM, petitioner could not have accomplished her clearance.

There is no evidence, direct or circumstantial, showing that petitioner imitated or caused to be imitated the alleged falsified signature in the clearance. The witnesses merely testified that the signature in petitioner's clearance was falsified. This fact alone is not sufficient proof beyond reasonable doubt that she is guilty of falsification.

The Sandiganbayan, for lack of proof of petitioner's direct participation in falsifying the document, relied on the disputable legal presumption that the possessor of a falsified document who makes use of such to her advantage is presumed to be the author of the falsification.[3] At any rate, for the presumption of authorship of falsification to apply, the possessor must stand to profit or had profited from the use of the falsified document.[4] In this case, petitioner does not stand to profit nor profited from the use of the alleged falsified document.

Second, the allegedly falsified document, petitioner's employee clearance, was not needed by her to get her salaries for the months of August and September 2000 and therefore, no criminal intent or ill motive could be attributed to petitioner to warrant her conviction for falsification under Article 171, paragraph 1, of the Revised Penal Code.

Criminal intent must be present in felonies committed by means of *dolo*, such as falsification.[5] In this case, there is no reasonable ground to believe that the requisite criminal intent or *mens rea* was present. Petitioner had no ill motive to falsify her own employee's clearance. She had no need to do so since the employee clearance was not needed by her in the procurement of her salaries. Even if she had her employee clearance prepared, this act, by itself, is not felonious. There was nothing willful or

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[3] *Eugenio v. People of the Philippines*, G.R. No. 168163, March 26, 2008, 549 SCRA 433, 447.

[4] *Id.* at 449.

[5] *De Jesus v. Sandiganbayan*, G.R. No. 164166 & 164173-80, October 17, 2007, 536 SCRA 394, 405.

felonious in petitioner's acts that would warrant her prosecution for falsification.

I therefore vote to set aside the Decision dated August 7, 2007 of the Sandiganbayan and acquit petitioner of the charges against her.

SECOND DIVISION

[G.R. No. 181318. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GERMAN AGOJO *y* LUNA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 6425); SALE OF REGULATED DRUGS; ESTABLISHED IN CASE AT BAR.— A thorough review of the records clearly shows that the prosecution proved beyond reasonable doubt that appellant sold the *shabu* to the poseur-buyer. The testimony of Alonzo on the sale of illegal drugs and the identification of appellant as the seller is clear and straightforward. The testimony of Alonzo was corroborated by members of the buy-bust team, particularly Calapati and Salazar, who both testified that they saw appellant hand Alonzo the VHS tape containing the *shabu* despite only partial payment for the *shabu*.

2. ID.; ID.; ID.; THE ABSENCE OF MARKED MONEY DOES NOT CREATE A HIATUS IN THE EVIDENCE PROVIDED THAT THE PROSECUTION ADEQUATELY PROVES THE SALE.— There is similarly little weight in the claim of appellant that the inconsistencies revealed by the Bangko Sentral ng Pilipinas (BSP) certification in the serial numbers of the marked money, as well as the fact that only a fraction of the money was recovered, should exonerate him. The marked money used in the buy-bust operation is not indispensable in drug cases.

Otherwise stated, the absence of marked money does not create a hiatus in the evidences provided that the prosecution adequately proves the sale. Only appellant would know what happened to the rest of the marked money since only ₱10,000.00 out of the ₱70,000.00 was recovered from him. In any event, the partial recovery of the marked money from appellant would indicate that the buy-bust operation did take place.

3. ID.; ID.; ID.; IT IS NOT SURPRISING THAT DRUG PUSHERS WILL ACCEPT PARTIAL PAYMENT FOR THEIR WARES WITH THE BALANCE PAYABLE ON INSTALLMENT.— Questions have been raised in connection with the admitted peculiar business sense of the appellant–selling 200 grams of *shabu* for ₱70,000.00 and accepting payment by installments for the contraband. This aspect of the tale may strike as incredulous, but the evidence is plain that it did happen. Truth may sometimes be stranger than fiction, and as long as such truth is corroborated by evidence, the Court is bound by the facts. This Court has also taken judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public or private places, with no regard for time as they have become increasingly daring and blatantly defiant of the law. It is therefore not surprising that drug pushers will even accept partial payment for their wares with the balance payable on installment.

4. ID.; ID.; ID.; THE UNBROKEN CUSTODY OF THE *SHABU*, FROM THEIR SEIZURE FROM APPELLANT UNTIL THEIR PRESENTATION IN COURT, WAS CLEARLY ESTABLISHED.— Appellant's assertion that the chain of custody over the drugs was not preserved also lacks merit. A thorough review of the records of this case reveals that the chain of custody of the seized substance was not broken, and that the prosecution properly identified the drugs seized in this case. Appellant sold the drugs to Alonzo in a legitimate buy-bust operation. Alonzo then handed the VHS tape containing the drugs to Major Ablang, who kept the drugs during appellant's detention, and then turned them over to Ricero, so that the packets could be marked when the buy-bust team returned with Agojo to the Police Provincial Office in Kumintang Ilaya, Batangas. The drugs, along with a letter request, were then sent by Ricero to the PNP crime laboratory in Camp Vicente Lim, Canlubang, Laguna for examination. Lorna Tria, a PNP chemist

working at Camp Vicente Lim, examined the marked packets, which had tested positive for *shabu*. These same marked packets were identified in open court by Major Ablang, Ricero and Tria. Thus, the unbroken chain of custody of the *shabu*, from their seizure from appellant until their presentation in court, was clearly established.

5. REMEDIAL LAW; EVIDENCE; DEFENSE OF FRAME-UP; VIEWED WITH DISFAVOR SINCE IT IS EASILY CONCOCTED AND IS COMMON PLOY OF THE ACCUSED.— Appellant's assertion that he was framed-up has no merit. In almost every case involving a buy-bust operation, the accused puts up the defense of frame-up. This court has repeatedly emphasized that the defense of "frame-up" is viewed with disfavor, since the defense is easily concocted and is a common ploy of the accused. Therefore, clear and convincing evidence of the frame-up must be shown for such a defense to be given merit.

6. ID.; CRIMINAL PROCEDURE; THE FACT THAT ARREST WAS NOT IN *FLAGRANTE DELICTO* IS OF NO CONSEQUENCE; THE ARREST WAS VALIDLY EXECUTED PURSUANT TO SECTION 5, PARAGRAPH (b) OF RULE 113 OF THE RULES OF COURT.— In this case, appellant points to the arrest not being in *flagrante delicto*, the existence of discrepancies in the serial numbers of the buy-bust money and a prior attempt to frame him up as proofs of the frame-up. However, the fact that the arrest was not in *flagrante delicto* is of no consequence. The arrest was validly executed pursuant to Section 5, paragraph (b) of Rule 113 of the Rules of Court. The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it. A review of the records shows that both requirements were met in this case.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Paul P. Lentejas for appellant.

D E C I S I O N

TINGA, *J.*:

Subject of this appeal is the March 30, 2007 decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00946, affirming the November 11, 2002 judgment[2] of the Regional Trial Court (RTC) of Tanauan, Batangas, finding appellant German Agojo *y* Luna guilty of violation of Section 15, Article III of Republic Act (R.A.) No. 6425.

Appellant was charged with illegal sale of *shabu* in an Information dated October 14, 1999, the accusatory portion of which reads:

> That on or about the 27th day of August 1999 at about 11:30 o'clock in the evening at Poblacion, Municipality of Tanauan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, and deliver (4) plastic bags of methamphetamine hydrochloride commonly known as "*shabu*," weighing 51.00, 51.10, 52.67 and 51.55 grams, with a total weight of 206.32 grams, a regulated dangerous drug.
>
> Contrary to law.[3]

Appellant was also charged with violation of Presidential Decree No. 1866 (P.D. No. 1866) as amended by Republic Act No. 8294 in an Information, the accusatory portion of which reads:

> That on or about the 27th day of August 1999 at about 11:30 o'clock in the evening at Poblacion, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control

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[1] *Rollo*, pp. 3-17; Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario.

[2] CA *rollo*, pp. 42-50; Presided by Judge Voltaire Y. Rosales.

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

one (1) caliber .45 pistol Ithaca with defaced serial number, one (1) magazine and seven (7) rounds of live ammunitions for caliber .45, without having secured the necessary license and/or permit from the proper authorities to possess the same.

Contrary to law.[4]

Appellant entered a not guilty plea upon arraignment.[5] Thereafter, trial ensued. As culled from the record, the evidence for the prosecution is as follows:

On August 23, 1999, Rodolfo Alonzo, a civilian informant, reported the drug trading activities of appellant to Police Chief Inspector Ablang.[6] Alonzo narrated that appellant agreed to sell him 200 grams of *shabu* for ₱70,000.00 on a 50% cash and 50% credit basis. The sale was to take place in front of the Mercado Hospital in Tanauan, Batangas, on August 27, 1999 at 11:30 p.m. Ablang formed a team to conduct the buy-bust operation.[7]

On August 27, 1999, the team proceeded to Mercado Hospital. Ablang then entrusted Alonzo with ₱71,000.00 each marked "JUA." Alonzo was instructed to remove his hat to signal the team that the sale had been consummated. The buy-bust team arrived at Mercado Hospital at 11:00 p.m. The team members immediately took strategic positions. Alonzo stayed in an eatery in front of the hospital.[8]

Agojo arrived at 11:30 p.m. aboard a white Mitsubishi Lancer (Lancer) with plate number DRW-392. Appellant then approached Alonzo to ask if the latter had the money. Alonzo handed appellant the marked money. Appellant took a VHS box from his car and handed it to Alonzo. Appellant and Alonzo then walked along the hospital gate near the emergency room. Appellant then entered the hospital.

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

[5] *Id.* at 18-20.

[6] *Id.* at 49.

[7] *Id.*

[8] *Id.*

Alonzo examined the VHS box then took off his cap to signal the buy-bust team. The buy-bust team immediately proceeded to the scene. Alonzo told the team that appellant had entered the hospital. Alonzo handed the VHS box to Ablang. Upon examination, the box was found to contain four (4) plastic bags of a crystalline substance which the team suspected was *shabu*. Ablang instructed Salazar to inform the appellant that his car had been bumped.

Appellant then exited from the hospital via the emergency room door. Salazar introduced himself as a policeman and attempted to arrest HIM.[9] Appellant resisted, but the other team members handcuffed appellant. The team recovered ₱10,000.00 of the buy-bust money. Ablang opened appellant's Lancer and recovered a .45 caliber pistol containing seven (7) bullets and a Panasonic cellular phone from the passenger seat.

Arsenio Ricero, the Chief of the PNP Batangas Intelligence and Investigation Section, later requested a laboratory examination of the contents of the four (4) plastic sachets confiscated from appellant.[10] Lorna Tria, a chemist at the Philippine National Police (PNP) crime laboratory in Camp Vicente Lim conducted an examination of the four (4) plastic sachets. The examination revealed that the sachets contained methamphetamine hydrochloride with a total weight of 206.32 grams.

Appellant presented a different version of the facts, in support of the defenses of denial and frame up. He said that on August 27, 1999, appellant arrived at Mercado Hospital at 8:25 p.m. Thereafter, he stayed in the room of a certain Imelda Papasin. At this time, his wife, Precilla was also confined in the hospital. She had asked him to bring money to settle her bills, so she could be discharged the next day. Upon being informed by a security guard that his car had been sideswiped, he went down. The police later arrested him when he reached the ground floor. The police later opened his car. He was made to board a police vehicle. While aboard, the police confiscated ₱6,000.00 in cash,

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[9] *Id.*

[10] *Id.* at 50.

a wrist watch and a necklace from him. He was brought to the police headquarters in Kumintang Ilaya, Batangas City.

In a Decision[11] dated November 11, 2002, the RTC found appellant guilty beyond reasonable doubt of the charge against him for violation of Section 15[12] of R.A. No. 6425 and acquitted him of the charge of violation of P.D. No. 1866 for lack of sufficient evidence. The case was brought on automatic review before the Supreme Court, since appellant was sentenced to death by the trial court.[13]

In his brief dated July 30, 2003,[14] appellant imputed three (3) errors to the trial court, namely: (1) the trial court convicted him despite failure of the prosecution to overcome the presumption of innocence and to prove his guilt beyond reasonable

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[11] *Supra* note 2. The dispositive portion reads as follows:

WHEREFORE, in Criminal Case No. P-891 for Violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294, or for Illegal Possession of Firearm and Ammunitions, accused German Agojo *y* Luna is hereby acquitted for lack of evidence.

In Criminal Case No. P-892, this Court finds the accused German Agojo *y* Luna GUILTY beyond reasonable doubt of Violation of Section 15 of Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659 and sentences accused to **DEATH** and to pay a fine of five Hundred Thousand (₱500,000.00) Pesos.

The City Warden of Tanauan City, Batangas is hereby directed to effect within twenty-four hours the transfer of detention German Agojo *y* Luna to the National Penitentiary in Muntinlupa, Metro Manila.

Let the records of this case be elevated to the Supreme Court for automatic review on appeal.

[12] Section 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* — The penalty of *reclusion perpetua* 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, dispense, deliver, transport or distribute any regulated drug.

x x x x x x x x x

[13] CA *rollo*, p. 54.

[14] *Id.* at 100-129.

doubt; (2) the trial court erred in relying on the weakness of the defense rather than on the strength of the prosecution evidence; and (3) the trial court erred in considering the aggravating circumstances of nighttime and use of a motor vehicle.

On September 28, 2003, Agojo moved for new trial *ad cautelam.*[15] Appellant claimed to have secured the statistical data list from the cash department of Bangko Sentral ng Pilipinas that seven (7) of the ₱71,000.00 peso bills used in the buy-bust operation on September 4, 2003 were bogus. Appellant claimed that Ablang must have merely copied the serial numbers of bills of other denominations when he ran out of serial numbers of one thousand peso bills.

In his brief dated January 30, 2004, for the People, the Solicitor General asserted that the positive declarations of Alonzo and the buy-bust team should prevail over Agojo's self-serving denial and allegations of having been framed up.[16] However, he urged the court to lower Agojo's penalty to *reclusion perpetua*, as the trial court erred in ruling that nighttime and the use of a motor vehicle had attended the offense.

On March 2, 2004, the Solicitor General filed its comment on Agojo's motion for new trial,[17] averring that the motion lacked merit since, during the trial, appellant could have secured during the trial the BSP's certification which was relied upon for the new trial sought.

In a resolution dated August 31, 2004, this Court transferred the case to the appellate court for intermediate review, following the ruling in *People v. Mateo*.[18] An exchange of pleadings before the appellate court followed, wherein the parties reiterated their earlier stances.

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[15] *Id.* at 137-161.

[16] *Id.* at 191- 220.

[17] *Id.* at 224-235.

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

On March 30, 2007, the appellate court addressed both the errors raised in the appellant's brief and the appellant's motion for new trial. It affirmed with modification the decision of the trial court, but reduced the penalty to *reclusion perpetua* in line with Republic Act No. 9346, "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," and because of the finding that aggravating circumstances were not present.[19]

The case was again elevated to this Court. In a resolution dated March 19, 2008, this Court required the parties to file their supplemental briefs.[20]

The Solicitor General demurred, averring that the brief earlier filed with the Court was sufficient.[21]

Appellant filed a supplemental memorandum, reiterating that the appellate court had erred.[22] Appellant maintains that the prosecution was not able to prove his guilt beyond reasonable doubt.[23] He also claims that the evidence proves that he was in fact framed-up by the buy-bust team.

The appeal lacks merit.

The errors raised by the appellant boil down to the issue of whether appellant's guilt was proven beyond reasonable doubt, as well as to the question whether appellant was framed-up by the buy-bust team.

A thorough review of the records clearly shows that the prosecution proved beyond reasonable doubt that appellant sold the shabu to the poseur-buyer. The testimony of Alonzo on the sale of illegal drugs and the identification of appellant as the seller is clear and straightforward, thus:[24]

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[19] *Supra* note 1.

[20] *Rollo*, p. 23.

[21] *Id.* at 24-26.

[22] *Id.* at 34-79 with annexes.

[23] *Id.* at 35-36.

[24] TSN, March 12, 2001.

x x x x x x x x x

Q: And after you were informed by German Agojo that he has only 200 grams available, what else did you tell him, if any?

A: We talked about the price and we agreed that ½ will be in cash and ½ will be on consignment which is ₱70,000.00 per 100 grams, sir.[25]

x x x x x x x x x

Q: Did you call up German Agojo on the date you agreed?

A: Yes, sir.

Q: When was that?

A: In the evening of August of 27, 1999 at about 7:00 o'clock in the evening, sir.

Q: And what was the subject of your conversation?

A: We agreed that we will meet at the Mercado Hospital, sir.[26]

x x x x x x x x x

Q: After you talked with German Agojo about the deal to be performed at the Mercado Hospital at 11:00 o'clock in the evening of August 27, 1999, what happen next?

A: Major Ablang organized a team who will be proceeding to Mercado Hospital, sir.[27]

x x x x x x x x x

Q: What else did Major Ablang do, if any, aside from organizing a team to proceed to Mercado Hospital, Tanauan, Batangas?

A: Major Ablang gave me the money, ₱70,000.00, supposed to be paid for the 100 grams of *shabu*, sir.[28]

x x x x x x x x x

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[25] *Id.* at 7.

[26] *Id.* at 8.

[27] *Id.* at 9.

[28] *Id.*

Q: Did he give instruction to you on that night when to proceed to Tanauan, Batangas?
A: Yes, sir.

Q: What was the instruction?
A: He told me that whatever is my agreement with German Agojo, I have to do it and he even instructed me to give signal to his men, sir.[29]

x x x x x x x x x

Q: What was then that signal you agreed with SPO4 Calapati?
A: To remove my hat or cap, sir.

Q: And after that instruction was made by Major Ablang, what else happened?
A: We waited for a while and after [*sic*] few hours, we proceeded to Tanauan, Batangas, sir.[30]

x x x x x x x x x

Q: Was there a time that German Agojo arrived?
A: Yes, sir.

Q: How many minutes interval from your arrival up to the time German Agojo arrived?
A: Around thirty minutes, sir.

Q: When he arrived, were you inside your vehicle or outside?
A: Outside, sir.

Q: When he arrived, what happened?
A: He approached me and asked me if I brought the money.

Q: And what was your answer?
A: I told him that I have the money and gave it to him, sir.

Q: You gave the ₱70,000.00 to German Agojo?
A: Yes, sir.

Q: After you gave the money to him, what happened?

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[29] *Id.* at 11.

[30] *Id.* at 11-12.

A: After that he returned to his car and took something, sir, and when he came back he presented to me a cassette tape case saying "it is there," sir.

Q: After you received the cassette tape case, what did you do?
A: After that he placed his hand on my shoulder. We went to the emergency room near the gate and he entered the hospital, sir.

Q: What did you do with the cassette tape case?
A: After examining the cassette tape case and [*sic*] I found that there was *shabu* inside and I gave a signal to SPO4 Calapati, sir.

Q: What else happened after you made that signal?
A: SPO4 Calapati and PO3 Salazar approached me and inquired if it is *shabu* and I told them that it is *shabu* then they informed Major Ablang, sir.[31]

x x x x x x x x x

Q: After that, what else happened?
A: Major Ablang approached me and I handed to him the cassette tape case, sir.

Q: How about the suspected *shabu* which according to you was placed inside the cassette tape case?
A: I handed it also to Major Ablang, sir.

Q: After you handed the same to Major Ablang, what else happened?
A: They requested the security guard of Mercado Hospital to inform German Agojo that his car was bumped for him to get out of the hospital, sir.

Q: Did the security guard inform(ed) German Agojo?
A: Yes, sir.

Q: What happened after that?
A: He went down, sir.

Q: In what particular place of Mercado Hospital did he go when you said he went down?

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[31] *Id.* at 13-15.

A: At the lobby of the hospital, sir, near the emergency room.

Q: After he went down the hospital, what happened?

A: PO3 Salazar introduced himself as a policeman to German Agojo and informed him that he is arresting him, sir, and there was a scuffle because German Agojo resisted, arrest, sir.[32]

The testimony of Alonzo was corroborated by members of the buy-bust team, particularly Calapati[33] and Salazar,[34] who both testified that they saw appellant hand Alonzo the VHS tape containing the *shabu* despite only partial payment for the *shabu*.

Appellant's assertion that he was framed-up has no merit. In almost every case involving a buy-bust operation, the accused puts up the defense of frame-up. This court has repeatedly emphasized that the defense of "frame-up" is viewed with disfavor,[35] since the defense is easily concocted and is a common ploy of the accused.[36] Therefore, clear and convincing evidence of the frame-up must be shown for such a defense to be given merit.[37]

In this case, appellant points to the arrest not being *in flagrante delicto*, the existence of discrepancies in the serial numbers of the buy-bust money and a prior attempt to frame him up as proofs of the frame-up. However, the fact that the arrest was not *in flagrante delicto* is of no consequence. The arrest was

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

[33] TSN, May 4, 2000, p. 10.

[34] TSN, September 5, 2000, pp. 13-14.

[35] *People v. Barita*, 325 SCRA 22 (2000) cited in *People v. Patayek*, 447 Phil. 626, 640 (2003).

[36] *Id.*

[37] *People v. Huang Zhen Hua*, G.R. No. 139301, September 29, 2004, 439 SCRA 350; *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570.

validly executed pursuant to Section 5, paragraph (b) of Rule 113 of the Rules of Court, which states:

> SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; **(b) When an offense has in fact been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and,** (c) When the person to be arrested is a prisoner who has escaped from penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)

The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it.[38] A review of the records shows that both requirements were met in this case.

From the spot where the buy-bust team was, they definitely witnessed the sale of *shabu* took place. So, too, there was a large measure of immediacy between the time of commission of the offense and the time of the arrest.[39] After Alonzo had signaled the buy-bust team when he received the VHS tape from appellant, Ablang approached Alonzo and immediately examined the tape.[40] Soon thereafter, he executed the ruse to make appellant to go down, as the latter had in the meantime gone up. The ruse succeeded when appellant went down, and he was arrested right then and there.

There is similarly little weight in the claim of appellant that the inconsistencies revealed by the Bangko Sentral ng Pilipinas (BSP) certification in the serial numbers of the marked money,

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[38] *People v. Del Rosario*, 365 Phil. 292, 312 (1999).

[39] *Id.*

[40] TSN, September 5, 2000, pp. 14-15.

as well as the fact that only a fraction of the money was recovered, should exonerate him. The marked money used in the buy-bust operation is not indispensable in drug cases.[41] Otherwise stated, the absence of marked money does not create a hiatus in the evidences provided that the prosecution adequately proves the sale.[42] Only appellant would know what happened to the rest of the marked money since only ₱10,000.00 out of the ₱70,000.00 was recovered from him. In any event, the partial recovery of the marked money from appellant would indicate that the buy-bust operation did take place.

Questions have been raised in connection with the admitted peculiar business sense of the appellant–selling 200 grams of *shabu* for ₱70,000.00 and accepting payment by installments for the contraband. This aspect of the tale may strike as incredulous, but the evidence is plain that it did happen. Truth may sometimes be stranger than fiction, and as long as such truth is corroborated by evidence, the Court is bound by the facts.[43]

This Court has also taken judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public or private places, with no regard for time as they have become increasingly daring and blatantly defiant of the law.[44] It is therefore not surprising that drug pushers will even accept partial payment for their wares with the balance payable on installment.

Appellant's assertion that the chain of custody over the drugs was not preserved also lacks merit. A thorough review of the records of this case reveals that the chain of custody of the

[41] *People v. Domingcil*, 464 Phil. 342, 358 (2004); *People v. Cueno*, 359 Phil. 151, 162 (1998).

[42] *People v. Saludes,* 451 Phil. 719, 726 (2003); *People v. Gireng*, 311 Phil. 12, 21 (1995).

[43] See *People v. Francisco*, 78 Phil. 694 (1947); *People v. Buyco*, 80 Phil. 58 (1948); *People v. de Pascual*, No. L-32512, 31 March 1980, 96 SCRA 722.

[44] *People v. Beriarmente*, G.R. No. 137612, September 25, 2001; *People v. Requiz*, 318 SCRA 635, 644 (1999).

seized substance was not broken, and that the prosecution properly identified the drugs seized in this case. Appellant sold the drugs to Alonzo in a legitimate buy-bust operation.[45] Alonzo then handed the VHS tape containing the drugs to Major Ablang,[46] who kept the drugs during appellant's detention, and then turned them over to Ricero, so that the packets could be marked when the buy-bust team returned with Agojo to the Police Provincial Office in Kumintang Ilaya, Batangas.[47] The drugs, along with a letter request, were then sent by Ricero to the PNP crime laboratory in Camp Vicente Lim, Canlubang, Laguna for examination. Lorna Tria, a PNP chemist working at Camp Vicente Lim, examined the marked packets, which had tested positive for *shabu*.[48] These same marked packets were identified in open court by Major Ablang,[49] Ricero[50] and Tria.[51] Thus, the unbroken chain of custody of the *shabu*, from their seizure from appellant until their presentation in court, was clearly established.

Finally, the assertion that the buy-bust team had the habit of framing him up is similarly misleading. The appellate court acquitted appellant of a previous charge of possession of *shabu*, because he was charged with illegal sale rather than mere possession of *shabu*.[52] Hence, there was no attempt to frame him up in a prior case, nor was there any evidence that such an attempt to frame him up was made in this case.

WHEREFORE, the appeal is *DISMISSED*, the decision dated March 30, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00946 is *AFFIRMED*.

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[45] *Supra* note 37, 39 & 40.

[46] *Id.,* TSN, August 6, 2001, pp. 21-22.

[47] TSN, August 23, 2001, pp. 17-20; TSN, August 6, 2001, pp. 21-22.

[48] TSN, April 3, 2000, pp. 4-6.

[49] TSN, August 6, 2001, pp. 11-12.

[50] TSN, August 20, 2001, pp. 6-7.

[51] TSN, April 3, 2000, p. 8.

[52] Records (Vol. I), pp. 254-264, C.A.-G.R. 23837, July 18, 2001.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182231. April 16, 2009]

THE PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **EDDIE GUM-OYEN *y* SACPA,** *appellee.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; NO COGENT REASON TO DISTURB OR MODIFY THE FACTUAL FINDINGS OF THE LOWER COURTS.— There is no cogent reason to disturb the findings of the lower courts. Well-entrenched is the rule that an appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter, as a trier of facts, is in a better position to appreciate the same. The only exceptions allowed are when the trial court has plainly overlooked certain facts of substance which, if considered, may affect the result of the case; or in instances where the evidence fails to support or substantiate the lower court's findings and conclusions, or where the disputed decision is based on a misapprehension of facts. This case does not fall under any of the exceptions. Hence, there is no reason for us to modify the factual findings of the lower courts.

2. ID.; ID.; *CORPUS DELICTI* ESTABLISHED WITH MORAL CERTAINTY THE UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS SUFFICIENTLY ESTABLISHED.— The prosecution's evidence sufficiently established the unbroken chain of custody of the seized drugs beginning from the entrapment team, to the investigating officer, to the forensic chemist whose laboratory tests were well-documented, up to

the time there were offered in 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. The Court also finds that the arresting officers strictly complied with the guidelines prescribed by law regarding the custody and control of the seized drugs. There was testimony regarding the marking of the seized items at the police station and in the presence of appellant. Likewise there was mention that an elected official was present during the inventory. In addition, it appears on record that the team photographed the contraband in accordance with law. Absent any indication that the police officers were ill-motivated in testifying against appellant, full credence should be given to their testimonies. In sum, contrary to appellant's lone argument, the prosecution established the *corpus delicti* with moral certainty.

3. ID.; ID.; DEFENSE OF INSTIGATION IS UNSUBSTANTIATED.— Appellant's defense of instigation is unsubstantiated. Not only was his testimony in this regard inconsistent, he was also unable to support his assertions with any other evidence. Significantly, the person named Roger whom he referred to as his instigator was never presented in court, raising questions as regards his identity and existence. As correctly quipped by the appellate court, appellant's tale of instigation was a futile attempt to secure his acquittal. Finally, it bears underscoring that appellant himself admitted that he was carrying marijuana at the time of his arrest and even though he knew it was against the law to so possess it in any amount. Hence, the lower courts aptly held him liable for illegal possession of dangerous drugs.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Two separate informations[1] for violations of Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, were filed against appellant Eddie Gum-Oyen *y* Sacpa. He pleaded not guilty to both charges at the arraignment.[2]

During the pre-trial conference, the prosecution and the defense stipulated on the existence of Chemistry Report Nos. D-049-03 and P1-002-03, as well as the existence of the request for the ultraviolet fluorescent dusting addressed to the Philippine National Police (PNP) Crime Laboratory, Regional Office No. 1; the identity of the accused, and the date indicated

[1] Records, Vol. 1, p. 1; Records, Vol. II, p. 1.

Criminal Case No. 2808-Bg

That on or about the 5th day of February, 2003, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, for and in consideration of the amount of ONE THOUSAND ONE HUNDRED TWENTY PESOS (₱1,120.00), willfully, unlawfully, and feloniously sell, deliver, and give away to another one (1) brickof dried marijuana, a dangerous drug, weighing about nine hundred ninety-one point five (991.5) grams.

CONTRARY TO Sec. 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Criminal Case No. 2809-Bg

That on or about the 5th day of February, 2003, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully, and feloniously have in his possession, control and custody three (3) bricks of dried marijuana, a dangerous drug, weighing nine hundred eighty-five point seven (985.7) grams, nine hundred eighty-nine point two (989.2) grams, and nine hundred ninety-one point six (991.6) grams, respectively, for a total weight of two thousand nine hundred sixty-six point five (2966.5) grams.

CONTRARY TO Sec. 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[2] *Id.*

in the information as the alleged date of the incident. Thereafter, trial on the merits ensued.

The prosecution presented, as witnesses, Police Officer (PO)3 Allan Bañana, Police Inspector and Forensic Chemist Imelda Roderos, Senior Police Inspector and Forensic Chemist Valeriano P. Laya II, and Senior Police Officer (SPO)1 Wilfredo Montero. On the other hand, the defense called to the witness stand the accused himself Marilou Panit and Balloguing Gum-Oyen.

According to the prosecution, the facts are as follows:

On 5 February 2003, PO3 Allan Bañana and SPO1 Wilfredo Montero of the Drug Enforcement Unit, Naguilian, La Union received a report from a police asset that a certain Eddie would deliver marijuana to Barangay Cabaritan, Naguilian, La Union. PO3 Bañana and SPO1 Montero immediately relayed this information to their station commander, Police Superintendent Rolando Nana, who directed them to conduct a buy-bust operation together with PO3 Mendoza and PO1 Mendoza.[3]

With the police asset acting as the *poseur-buyer* and ₱1,120.00 as buy-bust money,[4] PO3 Bañana and SPO1 Montero proceeded to the target place. PO3 Bañana and SPO1 Montero positioned themselves at a waiting shed while the rest of the buy-bust team who followed stood by the houses opposite the shed. The police asset waited for the arrival of the appellant by the road close to the houses.[5]

Around 11:30 a.m, appellant arrived at the place on board a tricycle. Carrying a blue bag, he alighted therefrom and talked to the police asset. Then appellant put down his bag, opened it and took out a square-shaped object wrapped in a brown-colored plastic. Appellant partially opened it and gave it to the police asset. After smelling the object, the police asset handed the

[3] TSN, 12 August 2003, pp. 3-7.

[4] In the following denominations: ten (10) ₱100.00 predusted bills consisting of one (1) ₱50.00 bill and seven (7) ₱10.00 bills, all bearing the initials of PO3 Bañana and whose serial numbers were recorded in the police blotter. All the bills, except the ₱100.00 bills, were dusted with ultraviolet powder.

[5] TSN, 12 August 2003, pp. 8-15.

buy-bust money to appellant. While appellant was counting the money, the buy-bust team identified themselves as policemen, arrested him, apprised him of his rights and frisked him for dangerous weapons.[6]

PO3 Bañana searched appellant's bag and recovered three (3) more bricks of marijuana. Thereafter, they brought appellant to the police station and to the hospital for medical examination.[7]

At the police station, the buy-bust money was recovered from appellant, together with the four (4) bricks of marijuana, and turned over to the investigator on duty, SPO1 Valentin Abenoja, who marked the items. The police next presented appellant to the Municipal Mayor, and photographs of them with several police officers and the seized items were taken.[8]

Afterward, PO3 Bañana and SPO1 Abenoja, with appellant in tow, brought the marijuana, seven (7) of the ₱10.00 bills and one (1) P50.00 bill with two (2) requests for laboratory examination to the PNP Crime Laboratory. When the initial and the final laboratory reports confirmed the positive existence of marijuana, PO3 Bañana and SPO1 Montero executed a joint affidavit against appellant and a request for his inquest.[9]

Police Inspector Imelda Roderos, a forensic chemist at the PNP Crime Laboratory testified that she had received a request to conduct an ultraviolet examination of several money bills and of the person of the appellant. Both hands of appellant and the money bills were found positive for the presence of ultraviolet powder. Her findings are embodied in Chemistry Report No. PI-002-03.[10]

Senior Police Inspector Valeriano P. Laya II, also a forensic chemist of the Philippine National Police (PNP) Crime Laboratory, stated that he had received a letter-request from the Naguilian

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[6] *Id.* at 15-22.

[7] *Id.* at 22-24.

[8] *Id.* at 24-26.

[9] *Id.* at 26-30.

[10] *Rollo*, pp. 7, 77.

Police Station for the laboratory examination of four (4) bricks of dried marijuana fruiting tops. The specimen tested positive for marijuana, and the findings were recorded in Chemistry Report No. D-049-03.[11]

In his defense, appellant maintained that he had only been instigated to commit the offenses charged. He testified that on 12 January 2003, a certain Roger Fundanera, a former co-worker at a construction firm in Irisan, Baguio City and a police asset, had gone to his house and asked him to go buy marijuana from someone in San Gabriel. Roger returned a couple more times and, on the last date, 4 February 2003, gave him ₱2,500.00 and a letter and instructed him to give them to the person from whom he was going to buy marijuana. On even date, appellant left for Sacdaan, San Gabriel.[12]

Appellant reached the place at 2:00 p.m. and thereat handed the letter and the money, in the amount of ₱2,200.00, to Ponsing. Appellant used the remaining ₱300.00 for his fare. Ponsing then told him to meet him at Lon-oy, San Gabriel the following day at 6:30 a.m. Subsequently, appellant went home to his parents' house in Bayabas, San Gabriel.[13]

In the morning of the next day, appellant met with Ponsing in Lon-oy. Appellant handed to him his handbag, and the latter placed inside it something wrapped in plastic. Thereafter, appellant traveled to Bauang to meet with Roger. At the meeting place, after appellant had given Roger the handbag, the latter placed it inside a tricycle, boarded the same and asked appellant to ride with him to Naguilian. En route, three (3) men in civilian clothes boarded the tricycle. Roger asked appellant to give one (1) bundle from inside the bag to one of the three (3) persons. Following this, the three (3) persons, whom he later found out to be police officers, arrested him and brought him to the Municipal Hall of Naguilian.[14]

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[11] *Id.* at 7.

[12] *Id.* at 8, 79-80.

[13] TSN, 27 January 2004, pp. 4-5.

[14] *Id.* at pp. 6-9.

Appellant denied having ₱1,120.00 in his pocket at the time of his arrest but he confirmed that his hands were found positive for the presence of ultraviolet powder.[15] Appellant also testified that he had gone to San Gabriel upon Roger's request to help the latter procure marijuana, without any intent to gain on his part and despite the fact that he knew it was prohibited for anybody to have in his possession any amount of marijuana.[16]

Marilou Panit, appellant's live-in partner, testified that Roger Fundanera, a police asset, had been to their house on 12 and 20 January 2003, and on 4 February 2004. Marilou stated that appellant had merely gone to San Gabriel to purchase marijuana for Roger upon the insistence of and as an accommodation to Roger in order for the policemen to believe appellant's story about its real source. After appellant left for San Gabriel, Marilou next saw him when he was already behind bars.[17]

Balloguing Gum-Oyen, appellant's father, testified that in the evening of 4 February 2003, he was roused from sleep by the knocking at the door. When he opened it, he saw appellant. Asked about the purpose for his visit, appellant replied that somebody had ordered him to get something. Appellant left at dawn the next day without telling him where he was going.[18]

In a Decision promulgated on 5 May 1995, the Regional Trial Court (RTC) of Bauang, La Union, Branch 67 found appellant guilty of illegal possession of marijuana. Appellant, however, was acquitted of the offense of illegal sale of marijuana. The dispositive portion of the decision reads, as follows:

WHEREFORE, judgment is rendered:

In Criminal Case No. 2808 **ACQUITTING** the accused Eddie Gum-oyen *y* Sacpa on reasonable doubt of the charge;

In Criminal Case No. 2809, finding the accused Eddie Gum-oyen *y* Sacpa **GUILTY** beyond reasonable doubt of the crime of Illegal

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

[16] *Id.* at 16.

[17] TSN, 10 February 2004, pp. 4-8.

[18] TSN, 2 March 2004, pp. 4-5.

Possession of Marijuna defined and penalized under Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the supreme penalty of death by lethal injection and to pay a fine of Ten Million (₱10,000,000.00) Pesos, and the cost.

The confiscated and/or seized items were already destroyed in accordance with Section 21, par. 4 of Republic Act 9165 on October 29, 2004 at 9:30 A.M. in front of the Justice Hall, Municipality of Bauang, Province of La Union.

SO ORDERED.[19]

Before the Court of Appeals, appellant raised a lone assignment of error—"the trial court gravely erred in convicting accused-appellant of the crime charged despite the failure of the prosecution to establish the identity of the *corpus delicti*."

On 19 November 2007, the Court of Appeals rendered the assailed decision[20] affirming the judgment of the trial court but modifying the penalty to life imprisonment conformably to R.A. No. 9346[21] prohibiting the imposition of the death penalty. The pertinent portions of the decision follow:

The prosecution successfully proved the existence of all elements necessary to convict accused-appellant of illegal possession of dangerous drugs penalized under Section 11, Article II of R.A. 9165. PO3 Bañana, SPO1 Montero and the other police operatives caught accused-appellant in unauthorized possession of the three (3) bricks of marijuana at the time of his arrest. Accused-appellant was not authorized to possess marijuana. He knew that the unauthorized possession of marijuana is penalized by law. He freely and consciously possessed the bricks of marijuana notwithstanding his knowledge that such possession is illegal.

Likewise, the prosecution established the *corpus delicti* of the offense with moral certainty. PO3 Bañana and the other members

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

[20] In C.A.-G.R. CR-H.C. No. 01105. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Rodrigo V. Cosico and Arturo G. Tayag; *id.* at 2-21.

[21] ENTITLED "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES."

of the buy-bust team immediately turned over the three bricks of marijuana to the police investigator on duty, SPO1 Abenoja. The latter, PO3 Bañana and SPO1 Montero marked the three bricks of marijuana with their respective initials at the police station after accused-appellant's arrest. PO3 Bañana also recorded in the police blotter the items seized from accused-appellant including the three bricks of marijuana subject of this case. PO3 Bañana and SPO1 Abenoja turned over the three bricks of marijuana to the crime laboratory for examination. Chemistry Report No. D-049-03 shows that the three bricks tested positive to the laboratory examination for the presence of marijuana. The three marijuana bricks were properly identified, marked and offered in evidence during the trial. The testimony of PO3 Bañana sufficiently proves that the three bricks of marijuana seized from accused-appellant are the same items presented as evidence against him before the court *a quo.*

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The defense of instigation put up by accused-appellant does not inspire belief. Accused-appellant's testimony in this regard is inconsistent and not credible. He initially testified that he worked with Roger Fundanera in a construction work, and that Roger asked him to buy marijuana for him. Despite the incredulity of Roger's request, accused-appellant gave in and traveled to Sacdaan, San Gabriel to buy marijuana from the person whom Roger mentioned. It was, however, only during the next hearing that accused-appellant testified that Roger was a police asset. Significantly, Roger never testified for the prosecution and for the defense. His identity remains questionable to this Court. Clearly, what the records reveal is that accused-appellant merely weaved a flimsy tale of instigation in a futile attempt to secure his acquittal.

It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers or deviation from the regular performance of their duties. The records do not show that prosecution witnesses PO3 Bañana and SPO1 Montero were moved by an improper motive in testifying against accused-appellant. Neither is there any evidence showing that the two police officers failed to perform their duties in a regular manner when they seized the three

(3) bricks of marijuana from accused-appellant's possession immediately after his apprehension.

All elements of illegal possession of dangerous drugs under Section 11, Article II, R.A. 9165 being present in the case at bar, and the *corpus delicit* of the said offense having been established beyond reasonable doubt by the prosecution, this Court sees no convincing reason to overturn the conviction of accused-appellant.[22]

The Court sustains the verdict of conviction.

There is no cogent reason to disturb the findings of the lower courts. Well-entrenched is the rule that an appellate court will generally not disturb the assessment of the trial court on factual matters considering that the latter, as a trier of facts, is in a better position to appreciate the same. The only exceptions allowed are when the trial court has plainly overlooked certain facts of substance which, if considered, may affect the result of the case; or in instances where the evidence fails to support or substantiate the lower court's findings and conclusions, or where the disputed decision is based on a misapprehension of facts.[23] This case does not fall under any of the exceptions. Hence, there is no reason for us to modify the factual findings of the lower courts.

Moreover, the prosecution's evidence sufficiently established the unbroken chain of custody of the seized drugs beginning from the entrapment team, to the investigating officer, to the forensic chemist whose laboratory tests were well-documented, up to the time there were offered in 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.[24]

The Court also finds that the arresting officers strictly complied with the guidelines prescribed by law regarding the custody and

[22] *Rollo*, pp. 18-20.

[23] *People v. Naag,* G.R. No. 136394, 15 February 2001.

[24] *Lopez v. People*, G.R. No. 172953, 30 April 2008, citing *United States v. Howard-Arias*, 679 F. 2d. 363, 363 and *United States v. Ricco*, 52 F. 3d 58.

control of the seized drugs.[25] There was testimony regarding the marking of the seized items at the police station and in the presence of appellant. Likewise there was mention that an elected official was present during the inventory. In addition, it appears on record that the team photographed the contraband in accordance with law.[26] Absent any indication that the police officers were ill-motivated in testifying against appellant, full credence should be given to their testimonies. In sum, contrary to appellant's lone argument, the prosecution established the *corpus delicti* with moral certainty.

In contrast, appellant's defense of instigation is unsubstantiated. Not only was his testimony in this regard inconsistent, he was also unable to support his assertions with any other evidence. Significantly, the person named Roger whom he referred to as his instigator was never presented in court, raising questions as regards his identity and existence. As correctly quipped by the appellate court, appellant's tale of instigation was a futile attempt to secure his acquittal.

Finally, it bears underscoring that appellant himself admitted that he was carrying marijuana at the time of his arrest and even though he knew it was against the law to so possess it in any amount.[27] Hence, the lower courts aptly held him liable for illegal possession of dangerous drugs.

WHEREFORE, the appealed judgment of conviction is hereby *AFFIRMED in toto.*

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[25] Section 21 of R.A No. 9165 states that:

1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[26] *Cf People of the Philippines v. Ranilo de la Cruz y Lizing,* G.R. No. 177222, 29 October 2008.

[27] TSN, 27 January 2004, pp. 13-14, 16.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183905. April 16, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **THE HON. COURT OF APPEALS, (8TH DIVISION), ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, and FRANCIS GILES PUNO,** *respondents.*

[G.R. No. 184275. April 16, 2009]

SECURITIES AND EXCHANGE COMMISSION, COMMISSIONER JESUS ENRIQUE G. MARTINEZ in his capacity as officer-in-charge of THE SECURITIES AND EXCHANGE COMMISSION and HUBERT G. GUEVARA in his capacity as director of THE COMPLIANCE AND ENFORCEMENT DEPT. OF SECURITIES, *petitioners, vs.* **ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, and FRANCIS GILES PUNO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SECURITIES AND EXCHANGE COMMISSION (SEC) COMMISSIONERS MARTINEZ AND GUEVARRA ARE NOT REAL PARTIES-IN-INTEREST TO THE DISPUTE AND

THUS BEREFT OF CAPACITY TO FILE THE PETITION.— We agree that the petitioners therein, namely: the SEC, Commissioner Martinez and Guevarra, are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero. The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on *certiorari*, but withheld giving due course to it. Under Section 1 of Rule 45, which governs appeals by *certiorari*, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for *certiorari* before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for *certiorari* filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. The provision further states that "public respondents shall not appear in or file an answer or comment to the petition or any pleading therein."

2. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; IT WOULD BE FACETIOUS TO ASSUME THAT THE SEC HAD ANY REAL INTEREST OR STAKE IN THE INTRA-CORPORATE DISPUTE WITH MERALCO.— Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for *certiorari* filed with the Court of Appeals. Yet their involvement in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest. Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party in interest, that 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." It would be facetious to assume that the SEC had any real interest or stake in the intra-corporate dispute within Meralco.

3. ID.; ID.; ID.; THE EXPUNCTION OF THE PETITION IN G.R. NO. 184275 IS IN ORDER; THERE IS SIMPLY NO PLAUSIBLE REASON FOR THE COURT TO DEVIATE FROM A TIME-HONORED RULE THAT PRESERVES THE PURITY OF OUR JUDICIAL AND QUASI-JUDICIAL OFFICES TO ACCOMMODATE THE SEC'S DISTRUST AND RESENTMENT OF THE APPELLATE COURT'S DECISION.— We find our ruling in *Hon. Santiago v. Court of Appeals* quite opposite to the question at hand. Petitioner therein, a trial court judge, had presided over an expropriation case. The litigants had arrived at an amicable settlement, but the judge refused to approve the same, even declaring it invalid. The matter was elevated to the Court of Appeals, which promptly reversed the trial court and approved the amicable settlement. The judge took the extraordinary step of filing in his own behalf a petition for review on *certiorari* with this Court, assailing the decision of the Court of Appeals which had reversed him. Justice Isagani Cruz added, in a Concurring Opinion in *Santiago*: "The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation." Note that in *Santiago*, the Court recognized the good faith of the judge, who perceived the amicable settlement "as a manifestly iniquitous and illegal contract." The SEC could have similarly felt in good faith that the assailed Court of Appeals decision had unduly impaired its prerogatives or caused some degree of hurt to it. Yet assuming that there are rights or prerogatives peculiar to the SEC itself that the appellate court had countermanded, these can be vindicated in the petition for *certiorari* filed by GSIS, whose legal capacity to challenge the Court of Appeals decision is without question. There simply is no plausible reason for this Court to deviate from a time-honored rule that preserves the purity of our judicial and quasi-judicial offices to accommodate the SEC's distrust and resentment of the appellate court's decision. The expunction of the petition in G.R. No. 184275 is accordingly in order.

4. ID.; EVIDENCE; JUDICIAL NOTICE; THE COURT TAKES COGNIZANCE OF ITS RESOLUTION IN A.M. NO. 08-8-11-CA DATED 9 SEPTEMBER 2008 WHICH DULY RECITED THE VARIOUS ANOMALOUS OR UNBECOMING ACTS IN RELATION TO THE CASE PERFORMED BY SEVERAL JUSTICES OF THE COURT OF APPEALS IN ORDER TO SQUARELY AND SATISFACTORILY ADDRESS THE QUESTIONS OF LAW RAISED IN THE PETITION.— With the objective to resolve the key questions of law raised in the petition, some of the issues raised diminish as peripheral. For example, petitioners raise arguments tied to the behavior of individual justices of the Court of Appeals, particularly former Justice Vicente Roxas, in relation to this case as it was pending before the appellate court. The Court takes cognizance of our Resolution in A.M. No. 08-8-11-CA dated 9 September 2008, which duly recited the various anomalous or unbecoming acts in relation to this case performed by two of the justices who decided the case in behalf of the Court of Appeals—former Justice Roxas (the *ponente*) and Justice Bienvenido L. Reyes (the Chairman of the 8th Division) – as well as three other members of the Court of Appeals. At the same time, the consensus of the Court as it deliberated on A.M. No. 08-8-11-CA was to reserve comment or conclusion on the assailed decision of the Court of Appeals, in recognition of the reality that however stigmatized the actions and motivations of Justice Roxas are, the decision is still the product of the Court of Appeals as a collegial judicial body, and not of one or some rogue justices. The penalties levied by the Court on these appellate court justices, in our estimation, redress the unwholesome acts which they had committed. At the same time, given the jurisprudential importance of the questions of law raised in the petition, any result reached without squarely addressing such questions would be unsatisfactory, perhaps derelict even.

5. MERCANTILE LAW; SECURITIES REGULATION CODE (R.A. NO. 8799); PROXY SOLICITATIONS; A PROCEDURE THAT ANTECEDES PROXY VALIDATION, THE FORMER INVOLVES THE SECURING AND SUBMISSION OF PROXIES, WHILE THE LATTER CONCERNS THE VALIDATION OF SUCH SECURED AND SUBMITTED PROXIES.— The right of a stockholder to vote by proxy is generally established by

the Corporation Code, but it is the SRC which specifically regulates the form and use of proxies, more particularly the procedure of proxy solicitation, primarily through Section 20. AIRR-SRC Rule 20 defines the terms **solicit** and **solicitation:** The terms solicit and solicitation include: A. any request for a proxy whether or not accompanied by or included in a form of proxy B. any request to execute or not to execute, or to revoke, a proxy; or C. the furnishing of a form of proxy or other communication to security holders under circumstance reasonably calculated to result in the procurement, withholding or revocation of a proxy. It is plain that proxy solicitation is a procedure that antecedes proxy validation. The former involves the securing and submission of proxies, while the latter concerns the validation of such secured and submitted proxies. GSIS raises the sensible point that there was no election yet at the time it filed its petition with the SEC, hence no proper election contest or controversy yet over which the regular courts may have jurisdiction. And the point ties its cause of action to alleged irregularities in the proxy solicitation procedure, a process that precedes either the validation of proxies or the annual meeting itself.

6. ID.; ID.; ID.; THE LINCHPIN IN DECIDING THE ISSUE OF SEC'S JURISDICTION TO INVESTIGATE ALLEGED VIOLATIONS ON THE RULES OF PROXY SOLICITATIONS IS WHETHER OR NOT THE CAUSE OF ACTION OF PETITIONER GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) IS INTIMATELY TIED TO AN ELECTION CONTROVERSY UNDER SECTION 5 (c) OF THE PRESIDENTIAL DECREE NO. 902-A.— There is an interesting point, which neither party raises, and it concerns Section 6(g) of Presidential Decree No. 902-A, which states: SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: xxx (g) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members; xxx As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC. Yet a closer reading of the provision

indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction." Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers. Based on the foregoing, it is evident that the linchpin in deciding the question is whether or not the cause of action of GSIS before the SEC is intimately tied to an election controversy, as defined under Section 5(c) of Presidential Decree No. 902-A. To answer that, we need to properly ascertain the scope of the power of trial courts to resolve controversies in corporate elections.

7. ID.; PRESIDENTIAL DECREE NO. 902-A; THE JURISDICTION OF THE REGULAR COURTS OVER THE SO CALLED ELECTION CONTEST OR CONTROVERSIES UNDER SECTION 5 (c) DOES NOT EXTEND TO EVERY POTENTIAL SUBJECT THAT MAY BE VOTED ON BY SHAREHOLDERS, BUT ONLY TO THE ELECTION OF DIRECTORS OR TRUSTEES, IN WHICH STOCKHOLDERS ARE AUTHORIZED TO PARTICIPATE UNDER SECTION 24 OF THE CORPORATION CODE.— Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5(c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.**

8. ID.; ID.; ID.; WHEN PROXIES ARE SOLICITED IN RELATION TO THE ELECTION OF CORPORATE DIRECTORS, THE RESULTING CONTROVERSY, EVEN IF IT OSTENSIBLY RAISED THE VIOLATION OF THE SEC RULES ON PROXY SOLICITATION, SHOULD BE PROPERLY SEEN AS AN ELECTION CONTROVERSY WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE TRIAL COURTS BY VIRTUE OF SECTION 5.2 OF THE SECURITIES REGULATION CODE IN RELATION TO SECTION 5 (c) OF PRESIDENTIAL DECREE NO. 902-A.— This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. **However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5(c) of Presidential Decree No. 902-A.**

9. ID.; ID.; ID.; IT IS INDUBITABLE FROM THE LANGUAGE OF SECTION 5 (c) OF PRESIDENTIAL DECREE NO. 902-A THAT CONTROVERSIES AS TO THE QUALIFICATION OF VOTING SHARES, OR THE VALIDITY OF VOTES CAST IN FAVOR OF A CANDIDATE FOR ELECTION TO THE BOARD OF DIRECTORS ARE PROPERLY COGNIZABLE AND ADJUDICABLE BY THE REGULAR COURTS EXERCISING ORIGINAL AND EXCLUSIVE JURISDICTION OVER ELECTION CASES AND QUESTIONS RELATING TO THE PROPER SOLICITATION OF PROXIES USED IN SUCH ELECTION ARE INDISPUTABLY RELATED TO SUCH ISSUES.— The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the

aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) **the validation of proxies,** (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5(c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases. Questions relating to the proper solicitation of proxies used in such election are indisputably related to such issues, yet if the position of GSIS were to be upheld, they would be resolved by the SEC and not the regular courts, even if they fall within "controversies in the election" of directors.

10. ID.; ID.; ID.; IT IS UNDISPUTED THAT THE PROXY CHALLENGE RAISED BY PETITIONER GSIS RELATED TO THE ELECTION OF THE DIRECTORS OF THE MANILA ELECTRIC COMPANY (MERALCO) AND FALL WITHIN THE CONTEMPLATION OF AN ELECTION CONTROVERSY PROPERLY WITHIN THE JURISDICTION OF THE REGULAR COURTS.— That the proxy challenge raised by GSIS relates to the election of the directors of Meralco is undisputed. The controversy was engendered by the looming annual meeting, during which the stockholders of Meralco were to elect the directors of the corporation. Under the circumstances, we do not see it feasible for GSIS to posit that its challenge to the solicitation or validation of proxies bore no relation at all to the scheduled election of the board of directors of Meralco during the annual meeting. GSIS very well knew that the controversy falls within the contemplation of an election controversy properly within

the jurisdiction of the regular courts. Otherwise, it would have never filed its original petition with the RTC of Pasay. GSIS may have withdrawn its petition with the RTC on a new assessment made in good faith that the controversy falls within the jurisdiction of the SEC, yet the reality is that the reassessment is precisely wrong as a matter of law.

11. ID.; ID.; ID.; THE LACK OF JURISDICTION OF THE SEC OVER THE SUBJECT MATTER OF GSIS'S PETITION NECESSARILY INVALIDATES THE CEASE AND DESIST ORDER (CDO) AND SHOW CAUSE ORDER (SCO) ISSUED BY THE BODY; THE ERROR OF THE SEC IN GRANTING THE CDO WITHOUT STATING WHICH KIND OF CDO IT WAS ISSUING IS MORE UNPARDONABLE, AS IT IS AN ACT THAT CONTRAVENES DUE PROCESS OF LAW.— The lack of jurisdiction of the SEC over the subject matter of GSIS's petition necessarily invalidates the *CDO* and *SDO* issued by that body. However, especially with respect to the *CDO*, there is need for this Court to squarely rule on the question pertaining to its validity, if only for jurisprudential value and for the guidance of the SEC. The Court of Appeals cited the *CDO* as having been issued in violation of the constitutional provision on due process, which requires both prior notice and prior hearing. Yet interestingly, the *CDO* as contemplated in Section 53.3 or in Section 64, may be issued "*ex-parte*" (under Section 53.3) or "without necessity of hearing" (under Section 64.1). Nothing in these provisions impose a requisite hearing before the *CDO* may be issued thereunder. Nonetheless, there are identifiable requisite actions on the part of the SEC that must be undertaken before the *CDO* may be issued either under Section 53.3 or Section 64. In the case of Section 53.3, the SEC must make two findings: (1) that such person has engaged in any such act or practice, and (2) that there is a reasonable likelihood of continuing, (or engaging in) further or future violations by such person. In the case of Section 64, the SEC must adjudge that the act, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public." Noticeably, the *CDO* is not precisely clear whether it was issued on the basis of Section 5.1, Section 53.3 or Section 64 of the SRC. The *CDO* actually refers and cites all three provisions, yet it is apparent that a singular *CDO*

could not be founded on Section 5.1, Section 53.3 and Section 64 collectively. At the very least, the *CDO* under Section 53.3 and under Section 64 have their respective requisites and terms. GSIS was similarly cagey in its petition before the SEC, it demurring to state whether it was seeking the *CDO* under Section 5.1, Section 53.3, or Section 64. Considering that injunctive relief generally avails upon the showing of a clear legal right to such relief, the inability or unwillingness to lay bare the precise statutory basis for the prayer for injunction is an obvious impediment to a successful application. Nonetheless, the error of the SEC in granting the *CDO* without stating which kind of *CDO* it was issuing is more unpardonable, as it is an act that contravenes due process of law. We have particularly required, in administrative proceedings, that the body or tribunal "in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered." This requirement is vital, as its fulfillment would afford the adverse party the opportunity to interpose a reasoned and intelligent appeal that is responsive to the grounds cited against it. The *CDO* extended by the SEC fails to provide the needed reasonable clarity of the rationale behind its issuance.

12. ID.; ID.; ID.; ANY RESPONDENT TO A CDO WHICH CITES BOTH SECTION 53.3 AND SECTION 64 WOULD NOT HAVE AN INTELLIGENT OR ADEQUATE BASIS TO RESPOND TO THE SAME AS THE RESPONDENT WOULD NOT KNOW WHETHER THE CDO WOULD HAVE A DETERMINATE LIFESPAN OF TEN (10) DAYS, AS IN SECTION 53.3, OR WOULD NECESSITATE A FORMAL REQUEST FOR LIFTING WITHIN FIVE DAYS AS REQUIRED UNDER SECTION 64.1.— The citation in the *CDO* of Section 5.1, Section 53.3 and Section 64 together may leave the impression that it is grounded on all three provisions, and that may very well have been the intention of the SEC. Assuming that is so, it is legally impermissible for the SEC to have utilized both Section 53.3 and Section 64 as basis for the *CDO* at the same time. The *CDO* under Section 53.3 is premised on distinctly different requisites from the *CDO* under Section 64. Even more crucially, the lifetime of the *CDO* under Section 53.3 is confined to a definite span of ten (10) days, which is not the case with the *CDO* under Section 64.

This *CDO* under Section 64 may be the object of a formal request for lifting within five (5) days from its issuance, a remedy not expressly afforded to the *CDO* under Section 53.3. Any respondent to a *CDO* which cites both Section 53.3 and Section 64 would not have an intelligent or adequate basis to respond to the same. Such respondent would not know whether the *CDO* would have a determinate lifespan of ten (10) days, as in Section 53.3, or would necessitate a formal request for lifting within five (5) days, as required under Section 64.1. This lack of clarity is to the obvious prejudice of the respondent, and is in clear defiance of the constitutional right to due process of law. Indeed, the veritable mélange that the assailed *CDO* is, with its jumbled mixture of premises and conclusions, the antithesis of due process. Had the *CDO* issued by the SEC expressed the length of its term, perhaps greater clarity would have been offered on what Section of the SRC it is based. However, the *CDO* is precisely silent as to its lifetime, thereby precluding much needed clarification. In view of the statutory differences among the three *CDO*s under the SRC, it is essential that the SEC, in issuing such injunctive relief, identify the exact provision of the SRC on which the *CDO* is founded. Only by doing so could the adversely affected party be able to properly evaluate whatever his responses under the law.

13. ID.; ID.; ID.; THE FACT THAT THE CDO WAS SIGNED, MUCH LESS APPARENTLY DELIBERATED UPON, BY ONLY ONE COMMISSIONER, CONSIDERING THAT THE SEC IS A COLLEGIAL BODY COMPOSED OF A CHAIRPERSON AND FOUR (4) COMMISSIONERS, RENDERS THE ORDER FATALLY INFIRM.— To make matters worse for the SEC, the fact that the *CDO* was signed, much less apparently deliberated upon, by only by one commissioner likewise renders the order fatally infirm. The SEC is a collegial body composed of a Chairperson and four (4) Commissioners. In order to constitute a quorum to conduct business, the presence of at least three (3) Commissioners is required. In the leading case of *GMCR v. Bell*, we definitively explained the nature of a collegial body, and how the act of one member of such body, even if the head, could not be considered as that of the entire body itself. Thus: We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily,

the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision. Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime. We can adopt a virtually word-for-word observation with respect to former Commissioner Martinez and the SEC. Simply put, Commissioner Martinez is not the SEC. He alone does not speak for and in behalf of the SEC. The SEC acts through a five-person body, and the five members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the SEC.

14. ID.; ID.; THE ISSUANCE OF THE CDO IS AN ACT OF THE SEC ITSELF DONE IN THE EXERCISE OF ITS ORIGINAL JURISDICTION TO REVIEW ACTUAL CASES OR CONTROVERSIES; IF IT IS NOT CLEAR TO THE SEC BEFORE, IT SHOULD BE CLEAR NOW THAT ITS POWER TO ISSUE A CDO CAN NOT, UNDER THE SECURITIES REGULATION CODE, BE DELEGATED TO A SINGLE COMMISSIONER.— It is clear that Martinez was designated as OIC because of the official travel of only one member, Chairperson Fe Barin. Martinez was not commissioned to act as the SEC itself. At most, he was to act in place of Chairperson Barin in the exercise of her duties as Chairperson of the SEC. Under Section 4.3 of the SRC, the Chairperson is the chief executive officer of the SEC, and thus empowered to "execute

and administer the policies, decisions, orders and resolutions approved by the Commission," as well as to "have the general executive direction and supervision of the work and operation of the Commission." It is in relation to the exercise of these duties of the Chairperson, and not to the functions of the Commission, that Martinez was "authorized to sign all documents and papers and perform all other acts and deeds as may be necessary in the day-to-day operation of the Commission." GSIS likewise cites, as authority for Martinez's unilateral issuance of the *CDO*, Section 4.6 of the SRC, which states that the SEC "may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation." Reliance on this provision is inappropriate. First, there is no convincing demonstration that the SEC had delegated to Martinez the authority to issue the *CDO*. The SEC Order designating Martinez as OIC only authorized him to exercise the functions of the absent Chairperson, and not of the Commission. If the Order is read as enabling Martinez to issue the *CDO* in behalf of the Commission, it would be akin to conceding that the SEC Chairperson, acting alone, can issue the *CDO* in behalf of the SEC itself. That again contravenes our holding in *GMCR v. Bell*. In addition, it is clear under Section 4.6 that the ability to delegate functions to a single commissioner does not extend to the exercise of the review or appellate authority of the SEC. The issuance of the *CDO* is an act of the SEC itself done in the exercise of its original jurisdiction to review actual cases or controversies. If it has not been clear to the SEC before, it should be clear now that its power to issue a *CDO* can not, under the SRC, be delegated to an individual commissioner.

15. ID.; ID.; ID.; RELIEFS SOUGHT BY PETITIONER GSIS HAVE NO BASIS IN LAW.— In the end, even assuming that the events narrated in our Resolution in A.M. No. 08-8-11-CA constitute sufficient basis to nullify the assailed decision of the Court of Appeals, still it remains clear that the reliefs GSIS seeks of this Court have no basis in law. Notwithstanding the black mark that stains the appellate court's decision, the first paragraph of its *fallo*, to the extent that it dismissed the complaint of GSIS with the SEC for lack of jurisdiction and

consequently nullified the *CDO* and *SDO*, defies unbiased scrutiny and deserves affirmation.

16. ID.; ID.; ID.; AS A MATTER OF LAW, SANCTIONS ON THE LAWYERS OF PETITIONER GSIS ARE UNWARRANTED; THE LAW CLEARLY VESTS UNTO GSIS, THE DISCRETION, RATHER THAN THE DUTY, TO ASSIGN CASES TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSELS (OGCC) FOR LEGAL ACTION, WHILE DESIGNATING THE PRESENT LEGAL SERVICES GROUP OF PETITIONER GSIS AS "IN HOUSE LEGAL COUNSEL.".— We find that as a matter of law the sanctions are unwarranted. The charter of GSIS is unique among government owned or controlled corporations with original charter in that it allocates a role for its internal legal counsel that is in conjunction with or complementary to the Office of the Government Corporate Counsel (OGCC), which is the statutory legal counsel for GOCCs. Section 47 of GSIS charter reads: SEC. 47. Legal Counsel.—The Government Corporate Counsel shall be the legal adviser and consultant of GSIS, but GSIS may assign to the Office of the Government Corporate Counsel (OGCC) cases for legal action or trial, issues for legal opinions, preparation and review of contracts/ agreements and others, as GSIS may decide or determine from time to time: Provided, however, That the present legal services group in GSIS shall serve as its in-house legal counsel. The GSIS may, subject to approval by the proper court, deputize any personnel of the legal service group to act as special sheriff in the enforcement of writs and processes issued by the court, quasi-judicial agencies or administrative bodies in cases involving GSIS. The designation of the OGCC as the legal counsel for GOCCs is set forth by statute, initially by Rep. Act No. 3838, then reiterated by the Administrative Code of 1987. Given that the designation is statutory in nature, there is no impediment for Congress to impose a different role for the OGCC with respect to particular GOCCs it may charter. Congress appears to have done so with respect to GSIS, designating the OGCC as a "legal adviser and consultant," rather than as counsel to GSIS. Further, the law clearly vests unto GSIS the discretion, rather than the duty, to assign cases to the OGCC for legal action, while designating the present legal services group of GSIS as "in-house legal counsel." This situates GSIS differently from the Land Bank of the Philippines, whose own in-house

lawyers have persistently argued before this Court to no avail on their alleged right to file petitions before us instead of the OGCC. Nothing in the Land Bank charter vested it with the discretion to choose when to assign cases to the OGCC, notwithstanding the establishment of its own Legal Department. Congress is not bound to retain the OGCC as the primary or exclusive legal counsel of GSIS even if it performs such a role for other GOCCs. To bind Congress to perform in that manner would be akin to elevating the OGCC's statutory role to irrepealable status, and it is basic that Congress is barred from passing irrepealable laws.

17. ID.; ID.; ID.; WHILE DUE PUNISHMENT HAS BEEN METED ON THE ERRANT MAGISTRATES, THE CORPORATE WORLD MAY VERY WELL BE REMINDED THAT THE MEMBERS OF THE JUDICIARY ARE NOT TO BE VIEWED OR TREATED AS MERE PAWNS OR PUPPETS IN THE INTERNECINE FIGHTS BUSINESSMEN AND THEIR ASSOCIATES WAGE AGAINST OTHER BUSINESSMEN IN THE QUEST FOR CORPORATE DOMINANCE.— We close by acknowledging that the surrounding circumstances behind these petitions are unfortunate, given the events as narrated in A.M. No. 08-8-11-CA. While due punishment has been meted on the errant magistrates, the corporate world may very well be reminded that the members of the judiciary are not to be viewed or treated as mere pawns or puppets in the internecine fights businessmen and their associates wage against other businessmen in the quest for corporate dominance. In the end, the petitions did afford this Court to clarify consequential points of law, points rooted in principles which will endure long after the names of the participants in these cases have been forgotten.

APPEARANCES OF COUNSEL

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D E C I S I O N

TINGA, *J.*:

These are the undisputed facts.

The annual stockholders' meeting (annual meeting) of the Manila Electric Company (Meralco) was scheduled on 27 May 2008.[1] In connection with the annual meeting, proxies[2] were required to be submitted on or before 17 May 2008, and the proxy validation was slated for five days later, or 22 May.[3]

In view of the resignation of Camilo Quiason,[4] the position of corporate secretary of Meralco became vacant.[5] On 15 May 2008, the board of directors of Meralco designated Jose Vitug[6] to act as corporate secretary for the annual meeting.[7] However, when the proxy validation began on 22 May, the proceedings were presided over by respondent Anthony Rosete (Rosete), assistant corporate secretary and in-house chief legal counsel of Meralco.[8] Private respondents nonetheless argue that Rosete was the acting corporate secretary of Meralco.[9] Petitioner Government Service Insurance System (GSIS), a major shareholder in Meralco, was distressed over the proxy validation proceedings, and the resulting certification of proxies in favor of the Meralco management.[10]

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[1] *Rollo* (G.R. No. 183905) (hereinafter, "*rollo*"), pp. 24, 884.

[2] See CORPORATION CODE, Sec. 58.

[3] *Rollo*, pp. 24, 889.

[4] Retired Associate Justice of the Supreme Court.

[5] *Rollo*, pp. 24, 886.

[6] Also a retired Associate Justice of this Court.

[7] *Rollo*, pp. 24, 886.

[8] *Id.* at 24, 893. Petitioner alleges that Justice Vitug had tendered his resignation on the previous day, 21 May 2008, see *id.* at 24, but that this was not formally accepted by the Meralco board of directors until 26 May 2008, see *id.* at 25.

[9] *Id.* at 893.

[10] *Id.* at 25-26, 893-896.

On 23 May 2008, GSIS filed a complaint with the Regional Trial Court (RTC) of Pasay City, docketed as R-PSY-08-05777-C4 seeking the declaration of certain proxies as invalid.[11] Three days later, on 26 May, GSIS filed a *Notice* with the RTC manifesting the dismissal of the complaint.[12] On the same day, GSIS filed an *Urgent Petition*[13] with the Securities and Exchange Commission (SEC) seeking to restrain Rosete from "recognizing, counting and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner or means, or otherwise honoring the shares covered by" the proxies in favor of respondents Manuel Lopez,[14] Felipe Alfonso,[15] Jesus Francisco,[16] Oscar Lopez, Christian Monsod,[17] Elpidio Ibañez,[18] Francisco Giles-Puno[19] "or any officer representing MERALCO Management," and to annul and declare invalid said proxies.[20] GSIS also prayed for the issuance of a *Cease and Desist Order* (*CDO*) to restrain the use of said proxies during the annual meeting scheduled for the following day.[21] A *CDO*[22] to that effect signed by SEC Commissioner Jesus Martinez was issued

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[11] *Id.* at 26, 896.

[12] *Id.* at 159-160, 899.

[13] The records do not show that the petition was given a docket number.

[14] Chairman of the Board of Directors and Chief Executive Officer of Meralco. See *rollo,* p. 20.

[15] Identified by GSIS in its petition as President and Chief Operating Officer of Meralco, and also a member of the Meralco board of directors. See *id.*

[16] Also identified by GSIS in its petition as President and Chief Operating Officer of Meralco, and also a member of the Meralco board of directors. See *id.*

[17] A member of the board of directors of Meralco. See *id.* at 21.

[18] President and Chief Operating Office of First Philippine Holdings Corporation. See *id.*

[19] Chief Finance Officer, Treasurer, and Executive Vice President, First Philippine Holdings Corporation. See *id.*

[20] *Id.* at 182-183. The available records do not indicate that the petition filed with the SEC was ever supplied its own case number.

[21] *Id.* at 193.

[22] *Id.* at 185-191.

on 26 May 2008, the same day the complaint was filed. During the annual meeting held on the following day, Rosete announced that the meeting would push through, expressing the opinion that the *CDO* is null and void.[23]

On 28 May 2008, the SEC issued a *Show Cause Order* (*SCO*)[24] against private respondents, ordering them to appear before the Commission on 30 May 2008 and explain why they should not be cited in contempt. On 29 May 2008, respondents filed a petition for *certiorari* with prohibition[25] with the Court of Appeals, praying that the *CDO* and the *SCO* be annulled. The petition was docketed as CA-G.R. SP No. 103692.

Many developments involving the Court of Appeals' handling of CA-G.R. SP No. 103692 and the conduct of several of its individual justices are recounted in our Resolution dated 9 September 2008 in A.M. No. 08-8-11-CA (*Re: Letter Of Presiding Justice Conrado M. Vasquez, Jr. On CA-G.R. SP No. 103692*).[26] On 23 July 2008, the Court of Appeals Eighth Division promulgated a decision in the case with the following dispositive portion:

> WHEREFORE, premises considered, the May 26, 2008 complaint filed by GSIS in the SEC is hereby DISMISSED due to SEC's lack of jurisdiction, due to forum shopping by respondent GSIS, and due to splitting of causes of action by respondent GSIS. Consequently, the SEC's undated cease and desist order and the SEC's May 28, 2008 show cause order are hereby DECLARED VOID *AB INITIO* and without legal effect and their implementation are hereby permanently restrained.
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> The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered, out of equitable considerations, as an election contest in the RTC, because the prescriptive period of 15 days from the May 27, 2008 Meralco election to file an election

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[23] *Id.* at 28, 903-905.

[24] *Id.* at 192-193.

[25] *Id.* at 194-251.

[26] See http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/08-8-11-CA.htm for Resolution as published in the Supreme Court website.

contest in the RTC had already run its course, pursuant to Sec. 3, Rule 6 of the interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799, due to deliberate act of GSIS in filing a complaint in the SEC instead of the RTC.

Let seventeen (17) copies of this decision be officially TRANSMITTED to the Office of the Chief Justice and three (3) copies to the Office of the Court Administrator:

(1) for sanction by the Supreme Court against the "GSIS LAW OFFICE" for unauthorized practice of law,

(2) for sanction and discipline by the Supreme Court of GSIS lawyers led by Atty. Estrella Elamparo-Tayag, Atty. Marcial C. Pimentel, Atty. Enrique L. Tandan III, and other GSIS lawyers for violation of Sec. 27 of Rule 138 of the Revised Rules of Court, pursuant to *Santayana v. Alampay,* A.C. No. 5878, March 21, 2005 454 SCRA 1, and pursuant to *Land Bank of the Philippines v. Raymunda Martinez*, G.R. No. 169008, August 14, 2007:

   (a) for violating express provisions of law and defying public policy in deliberately displacing the Office of the Government Corporate Counsel (OGCC) from its duty as the exclusive lawyer of GSIS, a government owned and controlled corporation (GOCC), by admittedly filing and defending cases as well as appearing as counsel for GSIS, without authority to do so, the authority belonging exclusively to the OGCC;

   (b) for violating the lawyer's oath for failing in their duty to act as faithful officers of the court by engaging in forum shopping;

   (c) for violating express provisions of law most especially those on jurisdiction which are mandatory; and

   (d) for violating Sec. 3, Rule 2 of the 1997 Rules of Civil Procedure by deliberately splitting causes of action in order to file multiple complaints: (i) in the RTC of Pasay City and (ii) in the SEC, in order to ensure a favorable order.[27]

The promulgation of the said decision provoked a searing controversy, as detailed in our Resolution in A.M. No. 08-8-

[27] *Rollo*, pp. 141-142.

11-CA. Nonetheless, the appellate court's decision spawned three different actions docketed with their own case numbers before this Court. One of them, G.R. No. 183933, was initiated by a *Motion for Extension of Time to File Petition for Review* filed by the Office of the Solicitor General (OSG) in behalf of the SEC, Commissioner Martinez in his capacity as officer-in-charge of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC.[28] However, the OSG did not follow through with the filing of the petition for review adverted to; thus, on 19 January 2009, the Court resolved to declare G.R. No. 183933 closed and terminated.[29]

The two remaining cases before us are docketed as G.R. No. 183905 and 184275. G.R. No. 183905 pertains to a petition for *certiorari* and prohibition filed by GSIS, against the Court of Appeals, and respondents Rosete, Lopez, Alfonso, Francisco, Monsod, Ibañez and Puno, all of whom serve in different corporate capacities with Meralco or First Philippines Holdings Corporation, a major stockholder of Meralco and an affiliate of the Lopez Group of Companies. This petition seeks of the Court to declare the 23 July 2008 decision of the Court of Appeals null and void, affirm the SEC's jurisdiction over the petition filed before it by GSIS, and pronounce that the *CDO* and the *SCO* orders are valid. This petition was filed in behalf of GSIS by the "GSIS Law Office;" it was signed by the Chief Legal Counsel and Assistant Legal Counsel of GSIS, and three self-identified "Attorney[s]," presumably holding lawyer positions in GSIS.[30]

The OSG also filed the other petition, docketed as G.R. No. 184275. It identifies as its petitioners the SEC, Commissioner Martinez in his capacity as OIC of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC – the same petitioners in the aborted petition for review initially docketed as G.R. No. 183933. Unlike

[28] See *id.* at 2200.

[29] *Id.* at 2201.

[30] *Id.* at 80.

what was adverted to in the motion for extension filed by the same petitioners in G.R. No. 183933, the petition in G.R. No. 184275 is one for *certiorari* under Rule 65 as indicated on page 3 thereof,[31] and not a petition for review. Interestingly, save for the first page which leaves the docket number blank, all 86 pages of this petition for *certiorari* carry a header wrongly identifying the pleading as the non-existent petition for review under G.R. No. 183933. This petition seeks the "reversal" of the assailed decision of the Court of Appeals, the recognition of the jurisdiction of the SEC over the petition of GSIS, and the affirmation of the *CDO* and *SCO*.

II.

Private respondents seek the expunction of the petition filed by the SEC in G.R. No. 184275. We agree that the petitioners therein, namely: the SEC, Commissioner Martinez and Guevarra, are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero.

The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on *certiorari*, but withheld giving due course to it.[32] Under Section 1 of Rule 45, which governs appeals by *certiorari*, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for *certiorari* before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for *certiorari* filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified

[31] "This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court x x x." *Rollo* (G.R. No. 184275), p. 4.

[32] *Id.* at 377.

as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. The provision further states that "public respondents shall not appear in or file an answer or comment to the petition or any pleading therein."[33] Justice Regalado explains:

> [R]ule 65 involves an original special civil action specifically directed against the person, court, agency or party *a quo* which had committed not only a mistake of judgment but an error of jurisdiction, hence should be made public respondents in that action brought to nullify their invalid acts. It shall, however be the duty of the party litigant, whether in an appeal under Rule 45 or in a special civil action in Rule 65, to defend in his behalf and the party whose adjudication is assailed, as he is the one interested in sustaining the correctness of the disposition or the validity of the proceedings.
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> xxx The party interested in sustaining the proceedings in the lower court must be joined as a co-respondent and he has the duty to defend in his own behalf and in behalf of the court which rendered the questioned order. While there is nothing in the Rules that prohibit the presiding judge of the court involved from filing his own answer and defending his questioned order, **the Supreme Court has reminded judges of the lower courts to refrain from doing so unless ordered by the Supreme Court.[34] The judicial norm or mode of conduct to be observed in trial and appellate courts is now prescribed in the second paragraph of this section.**
>
> **x x x x x x x x x**
>
> **A person not a party to the proceedings in the trial court or in the Court of Appeals cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed.**[35]

Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for *certiorari* filed with the Court of Appeals. Yet their involvement

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[33] See Rule 65, Sec. 5.

[34] Citing *Turquenza v. Hernando, et al.*, G.R. No. 51626, 30 April 1980.

[35] F. REGALADO, *I REMEDIAL LAW COMPENDIUM* (1999 ed.) at 723-724.

in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest. Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party in interest, that 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." It would be facetious to assume that the SEC had any real interest or stake in the intra-corporate dispute within Meralco.

We find our ruling in *Hon. Santiago v. Court of Appeals*[36] quite apposite to the question at hand. Petitioner therein, a trial court judge, had presided over an expropriation case. The litigants had arrived at an amicable settlement, but the judge refused to approve the same, even declaring it invalid. The matter was elevated to the Court of Appeals, which promptly reversed the trial court and approved the amicable settlement. The judge took the extraordinary step of filing in his own behalf a petition for review on *certiorari* with this Court, assailing the decision of the Court of Appeals which had reversed him. In disallowing the judge's petition, the Court explained:

> While the issue in the Court of Appeals and that raised by petitioner now is whether the latter abused his discretion in nullifying the deeds of sale and in proceeding with the expropriation proceeding, that question is eclipsed by the concern of whether Judge Pedro T. Santiago may file this petition at all.
>
> **And the answer must be in the negative, Section 1 of Rule 45 allows a party to appeal by *certiorari* from a judgment of the Court of Appeals by filing with this Court a petition for review on *certiorari*. But petitioner judge was not a party either in the expropriation proceeding or in the *certiorari* proceeding in the Court of Appeals. His being named as respondent in the Court of Appeals was merely to comply with the rule that in original petitions for *certiorari*, the court or the judge, in his capacity as such, should be named as party respondent because the question in such a proceeding is the**

[36] G.R. No. 46845, 27 April 1990, 184 SCRA 690.

jurisdiction of the court itself (See *Mayol v. Blanco*, 61 Phil. 547 [19351, cited in Comments on the Rules of Court, Moran, Vol. II, 1979 ed., p. 471). **"In special proceedings, the judge whose order is under attack is merely a nominal party; wherefore, a judge in his official capacity, should not be made to appear as a party seeking reversal of a decision that is unfavorable to the action taken by him. A decent regard for the judicial hierarchy bars a judge from suing against the adverse opinion of a higher court,. . . .**" (*Alcasid v. Samson*, 102 Phil. 785, 740 [1957])

ACCORDINGLY, this petition is DENIED for **lack of legal capacity to sue** by the petitioner.[37]

Justice Isagani Cruz added, in a Concurring Opinion in *Santiago*: "The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation."[38]

Note that in *Santiago*, the Court recognized the good faith of the judge, who perceived the amicable settlement "as a manifestly iniquitous and illegal contract."[39] The SEC could have similarly felt in good faith that the assailed Court of Appeals decision had unduly impaired its prerogatives or caused some degree of hurt to it. Yet assuming that there are rights or prerogatives peculiar to the SEC itself that the appellate court had countermanded, these can be vindicated in the petition for *certiorari* filed by GSIS, whose legal capacity to challenge the Court of Appeals decision is without question. There simply is no plausible reason for this Court to deviate from a time-honored rule that preserves the purity of our judicial and quasi-judicial offices to accommodate the SEC's distrust and resentment of the appellate court's decision. The expunction of the petition in G.R. No. 184275 is accordingly in order.

At this point, only one petition remains—the petition for *certiorari* filed by GSIS in G.R. No. 183905. Casting off the

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

[38] *Id.* at 693, J. CRUZ, concurring.

[39] *Id.* at 692.

uncritical and unimportant aspects, the two main issues for adjudication are as follows: (1) whether the SEC has jurisdiction over the petition filed by GSIS against private respondents; and (2) whether the *CDO* and *SCO* issued by the SEC are valid.

II.

It is our resolute inclination that this case, which raises interesting questions of law, be decided solely on the merits, without regard to the personalities involved or the well-reported drama preceding the petition. To that end, the Court has taken note of reports in the media that GSIS and the Lopez group have taken positive steps to divest or significantly reduce their respective interests in Meralco.[40] These are developments that certainly ease the tension surrounding this case, not to mention reason enough for the two groups to make an internal reassessment of their respective positions and interests in relation to this case. Still, the key legal questions raised in the petition do not depend at all on the identity of any of the parties, and would obtain the same denouement even if this case was lodged by unknowns as petitioners against similarly obscure respondents.

With the objective to resolve the key questions of law raised in the petition, some of the issues raised diminish as peripheral. For example, petitioners raise arguments tied to the behavior of individual justices of the Court of Appeals, particularly former Justice Vicente Roxas, in relation to this case as it was pending before the appellate court. The Court takes cognizance of our Resolution in A.M. No. 08-8-11-CA dated 9 September 2008, which duly recited the various anomalous or unbecoming acts in relation to this case performed by two of the justices who decided the case in behalf of the Court of Appeals—former Justice Roxas (the *ponente*) and Justice Bienvenido L. Reyes

[40] See *e.g.*, *Philippine Star's and Daily Inquirer's* issues of 28 October 2008, reporting that GSIS had sold its remaining 27% stake in Meralco to San Miguel Corp. for ₱30 billion, and issues of 14 March 2009 reporting that the PLDT Group had acquired a 20% stake of the Lopez Group in Meralco for ₱20.07 billion increasing the former's stake to 30.17% and reducing the latter's stake to 13.4%.

(the Chairman of the 8th Division) – as well as three other members of the Court of Appeals. At the same time, the consensus of the Court as it deliberated on A.M. No. 08-8-11-CA was to reserve comment or conclusion on the assailed decision of the Court of Appeals, in recognition of the reality that however stigmatized the actions and motivations of Justice Roxas are, the decision is still the product of the Court of Appeals as a collegial judicial body, and not of one or some rogue justices. The penalties levied by the Court on these appellate court justices, in our estimation, redress the unwholesome acts which they had committed. At the same time, given the jurisprudential importance of the questions of law raised in the petition, any result reached without squarely addressing such questions would be unsatisfactory, perhaps derelict even.

III.

We now examine whether the SEC has jurisdiction over the petition filed by GSIS. To recall, SEC has sought to enjoin the use and annul the validation, of the proxies issued in favor of several of the private respondents, particularly in connection with the annual meeting.

A.

Jurisdiction is conferred by no other source but law. Both sides have relied upon provisions of Rep. Act No. 8799, otherwise known as the Securities Regulation Code (SRC), its implementing rules (Amended Implementing Rules or AIRR-SRC), and other related rules to support their competing contentions that either the SEC or the trial courts has exclusive original jurisdiction over the dispute.

GSIS primarily anchors its argument on two correlated provisions of the SRC. These are Section 53.1 and Section 20.1, which we cite:

SEC. 53. *Investigations, Injunctions and Prosecution of Offenses*. - 53.1. The Commission may, in its discretion, **make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange,**

registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, **and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates**: xxx (emphasis supplied)

SEC. 20. *Proxy Solicitations*. – 20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the Commission;

The argument, stripped of extravagance, is that since proxy solicitations following Section 20.1 have to be made in accordance with rules and regulations issued by the SEC, it is the SEC under Section 53.1 that has the jurisdiction to investigate alleged violations of the rules on proxy solicitations. The GSIS petition invoked AIRR-AIRR-SRC Rule 20, otherwise known as "The Proxy Rule," which enumerates the requirements as to form of proxy and delivery of information to security holders. According to GSIS, the information statement Meralco had filed with the SEC in connection with the annual meeting did not contain any proxy form as required under AIRR-SRC Rule 20.

On the other hand, private respondents argue before us that under Section 5.2 of the SRC, the SEC's jurisdiction over all cases enumerated in Section 5 of Presidential Decree No. 902-A was transferred to the courts of general jurisdiction or the appropriate regional trial court. The two particular classes of cases in the enumeration under Section 5 of Presidential Decree No. 902-A which private respondents especially refer to are as follows:

x x x x x x x x x

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders,

members, or associates; or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations;

x x x x x x x x x

In addition, private respondents cite the Interim Rules on Intra-Corporate Controversies (Interim Rules) promulgated by this Court in 2001, most pertinently, Section 2 of Rule 6 (on Election Contests), which defines "election contests" as follows:

SEC. 2. *Definition*. – An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, **the validation of proxies**, the manner and validity of elections and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a nonstock corporation where the articles of incorporation or bylaws so provide. (emphasis supplied)

The correct answer is not clear-cut, but there is one. In private respondents' favor, the provisions of law they cite pertain directly and exclusively to the statutory jurisdiction of trial courts acquired by virtue of the transfer of jurisdiction following the passage of the SRC. In contrast, the SRC provisions relied upon by GSIS do not immediately or directly establish that body's jurisdiction over the petition, since it necessitates the linkage of Section 20 to Section 53.1 of the SRC before the point can bear on us.

On the other hand, the distinction between "proxy solicitation" and "proxy validation" cannot be dismissed offhand. The right of a stockholder to vote by proxy is generally established by the Corporation Code,[41] but it is the SRC which specifically regulates the form and use of proxies, more

[41] See CORPORATION CODE, Sec. 24, which reads in part: "xxx In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing xxx," and Section 58, which states: "*Proxies*.—Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies shall be in writing, signed by the stockholder or member and field before the scheduled

particularly the procedure of proxy solicitation, primarily through Section 20.[42] AIRR-SRC Rule 20 defines the terms **solicit** and **solicitation**:

> The terms solicit and solicitation include:
>
> A. any request for a proxy whether or not accompanied by or included in a form of proxy
>
> B. any request to execute or not to execute, or to revoke, a proxy; or
>
> C. the furnishing of a form of proxy or other communication to security holders under circumstance reasonably calculated to result in the procurement, withholding or revocation of a proxy.

It is plain that proxy solicitation is a procedure that antecedes proxy validation. The former involves the securing and submission of proxies, while the latter concerns the validation of such secured and submitted proxies. GSIS raises the sensible point that there was no election yet at the time it filed its petition with the SEC, hence no proper election contest or controversy yet over which the regular courts may have jurisdiction. And the point ties its cause of action to alleged irregularities in the proxy solicitation procedure, a process that precedes either the validation of proxies or the annual meeting itself.

Under Section 20.1, the solicitation of proxies must be in accordance with rules and regulations issued by the SEC, such as AIRR-SRC Rule 4. And by virtue of Section 53.1, the SEC has the discretion "to make such investigations as it deems necessary to determine whether any person has violated" any rule issued by it, such as AIRR-SRC Rule 4. The investigatory power of the SEC established by Section 53.1 is central to its regulatory authority, most crucial to the public interest especially as it may pertain to corporations with publicly traded shares.

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meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time.

[42] The now-abrogated Revised Securities Act had also imposed limitations on the use of proxies. See Sec. 34, Revised Securities Act.

For that reason, we are not keen on pursuing private respondents' insistence that the GSIS complaint be viewed as rooted in an intra-corporate controversy solely within the jurisdiction of the trial courts to decide. It is possible that an intra-corporate controversy may animate a disgruntled shareholder to complain to the SEC a corporation's violations of SEC rules and regulations, but that motive alone should not be sufficient to deprive the SEC of its investigatory and regulatory powers, especially so since such powers are exercisable on a *motu proprio* basis.

At the same time, Meralco raises the substantial point that nothing in the SRC empowers the SEC to annul or invalidate improper proxies issued in contravention of Section 20. It cites that the penalties defined by the SEC itself for violation of Section 20 or AIRR-SRC Rule 20 are limited to a reprimand/ warning for the first offense, and pecuniary fines for succeeding offenses.[43] Indeed, if the SEC does not have the power to invalidate proxies solicited in violation of its promulgated rules, serious questions may be raised whether it has the power to adjudicate claims of violation in the first place, since the relief it may extend does not directly redress the cause of action of the complainant seeking the exclusion of the proxies.

There is an interesting point, which neither party raises, and it concerns Section 6(g) of Presidential Decree No. 902-A, which states:

SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x x x x x x

(g) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members;

x x x x x x x x x

As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy

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[43] *Rollo*, p. 933; citing SEC Memorandum Circular No. 6, Series of 2005, which may also be found at http://www.sec.gov.ph/circulars/cy,2005/sec-memo-6,s2005.pdf (Last visited, 8 April 2009).

solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC.[44]

Yet a closer reading of the provision indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction." Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers.

Based on the foregoing, it is evident that the linchpin in deciding the question is whether or not the cause of action of GSIS before the SEC is intimately tied to an election controversy, as defined under Section 5(c) of Presidential Decree No. 902-A. To answer that, we need to properly ascertain the scope of the power of trial courts to resolve controversies in corporate elections.

B.

Shares of stock in corporations may be divided into voting shares and non-voting shares, which are generally issued as "preferred" or "redeemable" shares.[45] Voting rights are exercised during regular or special meetings of stockholders; regular meetings to be held annually on a fixed date, while special meetings may be held at any time necessary or as provided in the by-laws, upon due notice.[46] The Corporation Code provides for a whole range of matters which can be voted upon by stockholders, including a limited set on which even non-voting stockholders

[44] See SRC, Sec. 76.

[45] CORPORATION CODE, Sec. 6.

[46] CORPORATION CODE, Sec. 50.

are entitled to vote on.[47] On any of these matters which may be voted upon by stockholders, the proxy device is generally available.[48]

Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5(c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.[49]**

This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential

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[47] See *supra* note 45.

[48] See J. CAMPOS & M. CAMPOS, *I CORPORATION CODE OF THE PHILIPPINES* (1990 ed.) at 515.

[49] This observation should be viewed as confined to Section 5(c) of Pres. Decree No. 902-A alone. We are cognizant of potential arguments over the use of proxies in relation to non-election related matters voted upon by the stockholders when such matters concern intra-corporate controversies as defined in Section 5(a) of Pres. Decree No. 902-A. It is apparent that intra-corporate controversies fall within the jurisdiction of the regular trial courts and that issues related to proxy voting that are intimately related to intra-corporate controversies would necessarily fall within such jurisdiction as well. Nonetheless, the precise jurisdictional parameters with respect to Section 5(a) proxy-related issues are not susceptible to allocation through this case, which involves an election-related dispute under Section 5(c), and best await a more suitable case or controversy.

Decree No. 902-A. **However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5(c) of Presidential Decree No. 902-A.**

The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) **the validation of proxies**, (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5(c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases. Questions relating to the proper solicitation of proxies used in such election are indisputably related to such issues, yet if the position of GSIS were to be upheld, they would be resolved by the SEC and not the regular courts, even if they fall within "controversies in the election" of directors.

The Court recognizes that GSIS's position flirts with the abhorrent evil of split jurisdiction,[50] allowing as it does both the SEC and the regular courts to assert jurisdiction over the same controversies surrounding an election contest. Should the argument of GSIS be sustained, we would be perpetually confronted with the spectacle of election controversies being heard and adjudicated by both the SEC and the regular courts, made possible through a mere allegation that the anteceding proxy solicitation process was errant, but the competing cases filed with one objective in mind – to affect the outcome of the election of the board of directors. There is no definitive statutory provision that expressly mandates so untidy a framework, and we are disinclined to construe the SRC in such a manner as to pave the way for the splitting of jurisdiction.

Unlike either Section 20.1 or Section 53.1, which merely alludes to the rule-making or investigatory power of the SEC, Section 5 of Pres. Decree No. 902-A sets forth a definitive rule on jurisdiction, expressly granting as it does "original and exclusive jurisdiction" first to the SEC, and now to the regular courts. The fact that the jurisdiction of the regular courts under Section 5(c) is confined to the voting on election of officers, and not on all matters which may be voted upon by stockholders, elucidates that the power of the SEC to regulate proxies remains extant and could very well be exercised when stockholders vote on matters other than the election of directors.

That the proxy challenge raised by GSIS relates to the election of the directors of Meralco is undisputed. The controversy was engendered by the looming annual meeting, during which the stockholders of Meralco were to elect the directors of the corporation. GSIS very well knew of that fact. On 17 March 2008, the Meralco board of directors adopted a board resolution stating:

RESOLVED that the board of directors of the Manila Electric Company (MERALCO) delegate, as it hereby delegates to the

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[50] "[T]he Court has consistently refused to sanction split jurisdiction." *Southern Cross Cement Corporation v. Philcemcor*, G.R. No. 158540, 8 July 2004; citing *ALU v. Gomez*, 125 Phil. 717, 722 (1967).

Nomination & Governance Committee the authority to approve and adopt appropriate rules on: (1) **nomination of candidates for election to the board of directors; (2) appreciation of ballots during the election of members of the board of directors**; and (3) validation of proxies for regular or special meetings of the stockholders.[51]

In addition, the *Information Statement/Proxy* form filed by First Philippine Holdings Corporation with the SEC pursuant to Section 20 of the SRC, states:

REASON FOR SOLICITATION OF VOTES

The Solicitor is soliciting proxies from stockholders of the Company **for the purpose of electing the directors named under the subject headed 'Directors' in this Statement** as well as to vote the matters in the agenda of the meeting as provided for in the Information Statement of the Company. All of the nominees are current directors of the Company.[52]

Under the circumstances, we do not see it feasible for GSIS to posit that its challenge to the solicitation or validation of proxies bore no relation at all to the scheduled election of the board of directors of Meralco during the annual meeting. GSIS very well knew that the controversy falls within the contemplation of an election controversy properly within the jurisdiction of the regular courts. Otherwise, it would have never filed its original petition with the RTC of Pasay. GSIS may have withdrawn its petition with the RTC on a new assessment made in good faith that the controversy falls within the jurisdiction of the SEC, yet the reality is that the reassessment is precisely wrong as a matter of law.

IV.

The lack of jurisdiction of the SEC over the subject matter of GSIS's petition necessarily invalidates the *CDO* and *SDO* issued by that body. However, especially with respect to the *CDO*, there is need for this Court to squarely rule on the question

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[51] *Rollo*, p. 884. Emphasis supplied.

[52] *Id.* at 889. Emphasis supplied.

pertaining to its validity, if only for jurisprudential value and for the guidance of the SEC.

To recount the facts surrounding the issuance of the *CDO*, GSIS filed its petition with the SEC on 26 May 2008. The *CDO*, six (6) pages in all with three (3) pages devoted to the tenability of granting the injunctive relief, was issued on the very same day, 26 May 2008, without notice or hearing. The *CDO* bore the signature of Commissioner Jesus Martinez, identified therein as "Officer-in-Charge," and nobody else's.

The provisions of the SRC relevant to the issuance of a *CDO* are as follows:

> SEC. 5. Powers and Functions of the Commission.- 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> x x x x x x x x x
>
> (i) Issue cease and desist orders to prevent fraud or injury to the investing public;
>
> x x x x x x x x x
>
> [SEC.] 53.3. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization, it may issue an order to such person to desist from committing such act or practice: Provided, however, That the Commission shall not charge any person with violation of the rules of an Exchange or other self regulatory organization unless it appears to the Commission that such Exchange or other self-regulatory organization is unable or unwilling to take action against such person. After finding that such person has engaged in any such act or practice and that there is a reasonable likelihood of continuing, further or future violations by such person, the Commission may issue *ex-parte* a cease and desist order for a maximum period of ten (10) days,

enjoining the violation and compelling compliance with such provision. The Commission may transmit such evidence as may be available concerning any violation of any provision of this Code, or any rule, regulation or order thereunder, to the Department of Justice, which may institute the appropriate criminal proceedings under this Code.

SEC. 64. Cease and Desist Order. – 64.1. The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.

64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

There are three distinct bases for the issuance by the SEC of the *CDO*. The first, allocated by Section 5(i), is predicated on a necessity "to prevent fraud or injury to the investing public". No other requisite or detail is tied to this *CDO* authorized under Section 5(i).

The second basis, found in Section 53.3, involves a determination by the SEC that "any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization." The

provision additionally requires a finding that "there is a reasonable likelihood of continuing [or engaging in] further or future violations by such person." The maximum duration of the *CDO* issued under Section 53.3 is ten (10) days.

The third basis for the issuance of a *CDO* is Section 64. This *CDO* is founded on a determination of an act or practice, which unless restrained, "will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public". Section 64.1 plainly provides three segregate instances upon which the SEC may issue the *CDO* under this provision: (1) after proper investigation or verification, (2) *motu proprio*, or (3) upon verified complaint by any aggrieved party. While no lifetime is expressly specified for the *CDO* under Section 64, the respondent to the *CDO* may file a formal request for the lifting thereof, which the SEC must hear within fifteen (15) days from filing and decide within ten (10) days from the hearing.

It appears that the *CDO* under Section 5(i) is similar to the *CDO* under Section 64.1. Both require a common finding of a need to prevent fraud or injury to the investing public. At the same time, no mention is made whether the *CDO* defined under Section 5(i) may be issued *ex-parte*, while the *CDO* under Section 64.1 requires "grave and irreparable" injury, language absent in Section 5(i). Notwithstanding the similarities between Section 5(i) and Section 64.1, it remains clear that the *CDO* issued under Section 53.3 is a distinct creation from that under Section 64.

The Court of Appeals cited the *CDO* as having been issued in violation of the constitutional provision on due process, which requires both prior notice and prior hearing.[53] Yet interestingly, the *CDO* as contemplated in Section 53.3 or in Section 64, may be issued "*ex-parte*" (under Section 53.3) or "without necessity of hearing" (under Section 64.1). Nothing in these provisions impose a requisite hearing before the *CDO* may be issued thereunder. Nonetheless, there are identifiable requisite

[53] *Id.* at 131.

actions on the part of the SEC that must be undertaken before the *CDO* may be issued either under Section 53.3 or Section 64. In the case of Section 53.3, the SEC must make two findings: (1) that such person has engaged in any such act or practice, and (2) that there is a reasonable likelihood of continuing, (or engaging in) further or future violations by such person. In the case of Section 64, the SEC must adjudge that the act, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public."

Noticeably, the *CDO* is not precisely clear whether it was issued on the basis of Section 5.1, Section 53.3 or Section 64 of the SRC. The *CDO* actually refers and cites all three provisions, yet it is apparent that a singular *CDO* could not be founded on Section 5.1, Section 53.3 and Section 64 collectively. At the very least, the *CDO* under Section 53.3 and under Section 64 have their respective requisites and terms.

GSIS was similarly cagey in its petition before the SEC, it demurring to state whether it was seeking the *CDO* under Section 5.1, Section 53.3, or Section 64. Considering that injunctive relief generally avails upon the showing of a clear legal right to such relief, the inability or unwillingness to lay bare the precise statutory basis for the prayer for injunction is an obvious impediment to a successful application. Nonetheless, the error of the SEC in granting the *CDO* without stating which kind of *CDO* it was issuing is more unpardonable, as it is an act that contravenes due process of law.

We have particularly required, in administrative proceedings, that the body or tribunal "in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered."[54] This requirement is vital, as its fulfillment would afford the adverse party the opportunity to interpose a reasoned and intelligent appeal that is responsive to the grounds cited against it. The *CDO* extended by the SEC fails to provide the needed reasonable clarity of the rationale behind its issuance.

[54] *Ang Tibay v. CIR*, 69 Phil. 635, 642-644 (1940).

The subject *CDO* first refers to Section 64, citing its provisions, then stating: "[p]rescinding from the aforequoted, there can be no doubt whatsoever that the Commission is in fact mandated to take up, if expeditiously, any verified complaint praying for the provisional remedy of a cease and desist order."[55] The *CDO* then discusses the nature of the right of GSIS to obtain the *CDO*, as well as "the urgent and paramount necessity to prevent serious damage because the stockholders' meeting is scheduled on May 28, 2008 x x x" Had the *CDO* stopped there, the unequivocal impression would have been that the order is based on Section 64.

But the *CDO* goes on to cite Section 5.1, quoting paragraphs (i) and (n) in full, ratiocinating that under these provisions, the SEC had "the power to issue cease and desist orders to prevent fraud or injury to the public and such other measures necessary to carry out the Commission's role as regulator."[56] Immediately thence, the *CDO* cites Section 53.3 as providing "that whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision, any rule, regulation or order thereunder, the Commission may issue *ex-parte* a cease and desist order for a maximum period of ten (10) days, enjoining the violation and compelling compliance therewith."[57]

The citation in the *CDO* of Section 5.1, Section 53.3 and Section 64 together may leave the impression that it is grounded on all three provisions, and that may very well have been the intention of the SEC. Assuming that is so, it is legally impermissible for the SEC to have utilized both Section 53.3 and Section 64 as basis for the *CDO* at the same time. The *CDO* under Section 53.3 is premised on distinctly different requisites than the *CDO* under Section 64. Even more crucially, the lifetime of the *CDO* under Section 53.3 is confined to a definite span of ten (10) days, which is not the case with the *CDO* under Section

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[55] *Rollo*, pp. 186-187.

[56] *Id.* at 187.

[57] *Id.* at 188.

64. This *CDO* under Section 64 may be the object of a formal request for lifting within five (5) days from its issuance, a remedy not expressly afforded to the *CDO* under Section 53.3.

Any respondent to a *CDO* which cites both Section 53.3 and Section 64 would not have an intelligent or adequate basis to respond to the same. Such respondent would not know whether the *CDO* would have a determinate lifespan of ten (10) days, as in Section 53.3, or would necessitate a formal request for lifting within five (5) days, as required under Section 64.1. This lack of clarity is to the obvious prejudice of the respondent, and is in clear defiance of the constitutional right to due process of law. Indeed, the veritable mélange that the assailed *CDO* is, with its jumbled mixture of premises and conclusions, the antithesis of due process.

Had the *CDO* issued by the SEC expressed the length of its term, perhaps greater clarity would have been offered on what Section of the SRC it is based. However, the *CDO* is precisely silent as to its lifetime, thereby precluding much needed clarification. In view of the statutory differences among the three *CDO*s under the SRC, it is essential that the SEC, in issuing such injunctive relief, identify the exact provision of the SRC on which the *CDO* is founded. Only by doing so could the adversely affected party be able to properly evaluate whatever his responses under the law.

To make matters worse for the SEC, the fact that the *CDO* was signed, much less apparently deliberated upon, by only one commissioner likewise renders the order fatally infirm.

The SEC is a collegial body composed of a Chairperson and four (4) Commissioners.[58] In order to constitute a quorum to conduct business, the presence of at least three (3) Commissioners is required.[59] In the leading case of *GMCR v. Bell*,[60] we definitively explained the nature of a collegial body, and how the act of one

[58] See SRC, Sec. 4.1.

[59] See SRC, Sec. 4.5.

[60] G.R. No. 126496, 30 April 1997, 271 SCRA 790.

member of such body, even if the head, could not be considered as that of the entire body itself. Thus:

> We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.
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> Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.[61]

We can adopt a virtually word-for-word observation with respect to former Commissioner Martinez and the SEC. Simply put, Commissioner Martinez is not the SEC. He alone does not speak for and in behalf of the SEC. The SEC acts through a five-person body, and the five members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the SEC.

GSIS attempts to defend former Commissioner Martinez's action, but its argument is without merit. It cites SEC Order No. 169, Series of 2008, whereby Martinez was designated as "Officer-in-Charge of the Commission for the duration of the official travel of the Chairperson to Paris, France, to attend the 33rd Annual Conference of the [IOSCO] from May 26-30,

[61] *Id.* at 804-805.

2008."[62] As officer-in-charge (OIC), Martinez was "authorized to sign all documents and papers and perform all other acts and deeds as may be necessary in the day-to-day operation of the Commission."

It is clear that Martinez was designated as OIC because of the official travel of only one member, Chairperson Fe Barin. Martinez was not commissioned to act as the SEC itself. At most, he was to act in place of Chairperson Barin in the exercise of her duties as Chairperson of the SEC. Under Section 4.3 of the SRC, the Chairperson is the chief executive officer of the SEC, and thus empowered to "execute and administer the policies, decisions, orders and resolutions approved by the Commission," as well as to "have the general executive direction and supervision of the work and operation of the Commission."[63] It is in relation to the exercise of these duties of the Chairperson, and not to the functions of the Commission, that Martinez was "authorized to sign all documents and papers and perform all other acts and deeds as may be necessary in the day-to-day operation of the Commission."

GSIS likewise cites, as authority for Martinez's unilateral issuance of the *CDO*, Section 4.6 of the SRC, which states that the SEC "may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation." Reliance on this provision is inappropriate. First, there is no convincing demonstration that the SEC had delegated to Martinez the authority to issue the *CDO*. The SEC Order designating Martinez as OIC only authorized him to exercise the functions of the absent Chairperson, and not of the Commission. If the Order is read as enabling Martinez to issue the *CDO* in behalf of the Commission, it would be akin to conceding that the SEC Chairperson, acting alone, can issue the *CDO* in behalf of the SEC itself. That again contravenes our holding in *GMCR v. Bell*.

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[62] *Rollo*, p. 63.

[63] SRC, Sec. 4.3.

In addition, it is clear under Section 4.6 that the ability to delegate functions to a single commissioner does not extend to the exercise of the review or appellate authority of the SEC. The issuance of the *CDO* is an act of the SEC itself done in the exercise of its original jurisdiction to review actual cases or controversies. If it has not been clear to the SEC before, it should be clear now that its power to issue a *CDO* can not, under the SRC, be delegated to an individual commissioner.

V.

In the end, even assuming that the events narrated in our Resolution in A.M. No. 08-8-11-CA constitute sufficient basis to nullify the assailed decision of the Court of Appeals, still it remains clear that the reliefs GSIS seeks of this Court have no basis in law. Notwithstanding the black mark that stains the appellate court's decision, the first paragraph of its *fallo*, to the extent that it dismissed the complaint of GSIS with the SEC for lack of jurisdiction and consequently nullified the *CDO* and *SDO*, defies unbiased scrutiny and deserves affirmation.

A.

In its dispositive portion, the Court of Appeals likewise pronounced that the complaint filed by GSIS with the SEC should be barred from being considered "as an election contest in the RTC", given that the fifteen (15) day prescriptive period to file an election contest with the RTC, under Section 3, Rule 6 of the Interim Rules, had already run its course.[64] Yet no such relief was requested by private respondents in their petition for *certiorari* filed with the Court of Appeals.[65] Without disputing the legal predicates surrounding this pronouncement, we note that its tenor, if not the text, unduly suggests an unwholesome pre-emptive strike. Given our observations in A.M. No. 08-8-11-CA of the "undue interest" exhibited by the author of the appellate court decision, such declaration is best deleted. Nonetheless, we do trust that any court or tribunal that may be

[64] *Rollo*, p. 141.

[65] *Id.* at 246.

confronted with that premise adverted to by the Court of Appeals would know how to properly treat the same.

B.

Finally, we turn to the sanction on the lawyers of GSIS imposed by the Court of Appeals.

Nonetheless, we find that as a matter of law the sanctions are unwarranted. The charter of GSIS[66] is unique among government owned or controlled corporations with original charter in that it allocates a role for its internal legal counsel that is in conjunction with or complementary to the Office of the Government Corporate Counsel (OGCC), which is the statutory legal counsel for GOCCs. Section 47 of GSIS charter reads:

> SEC. 47. Legal Counsel.—The Government Corporate Counsel shall be the legal adviser and consultant of GSIS, but GSIS may assign to the Office of the Government Corporate Counsel (OGCC) cases for legal action or trial, issues for legal opinions, preparation and review of contracts/agreements and others, as GSIS may decide or determine from time to time: Provided, however, That the present legal services group in GSIS shall serve as its in-house legal counsel.
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> The GSIS may, subject to approval by the proper court, deputize any personnel of the legal service group to act as special sheriff in the enforcement of writs and processes issued by the court, quasi-judicial agencies or administrative bodies in cases involving GSIS.[67]

The designation of the OGCC as the legal counsel for GOCCs is set forth by statute, initially by Rep. Act No. 3838, then reiterated by the Administrative Code of 1987.[68] Given that the designation is statutory in nature, there is no impediment for Congress to impose a different role for the OGCC with respect to particular GOCCs it may charter. Congress appears to have done so with respect to GSIS, designating the OGCC as a "legal adviser and consultant," rather than as counsel to GSIS. Further, the law clearly vests unto GSIS the discretion, rather than the

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[66] P.D. No. 1146, as amended by Rep. Act No. 8291 (1997).

[67] P.D. No. 1146, Sec. 47, as amended by Rep. Act No. 8291 (1997).

[68] See *Phividec v. Capitol Steel*, 460 Phil. 493, 500-501 (2003).

duty, to assign cases to the OGCC for legal action, while designating the present legal services group of GSIS as "in-house legal counsel." This situates GSIS differently from the Land Bank of the Philippines, whose own in-house lawyers have persistently argued before this Court to no avail on their alleged right to file petitions before us instead of the OGCC.[69] Nothing in the Land Bank charter[70] vested it with the discretion to choose when to assign cases to the OGCC, notwithstanding the establishment of its own Legal Department.[71]

Congress is not bound to retain the OGCC as the primary or exclusive legal counsel of GSIS even if it performs such a role for other GOCCs. To bind Congress to perform in that manner would be akin to elevating the OGCC's statutory role to irrepealable status, and it is basic that Congress is barred from passing irrepealable laws.[72]

C.

We close by acknowledging that the surrounding circumstances behind these petitions are unfortunate, given the events as narrated in A.M. No. 08-8-11-CA. While due punishment has been meted on the errant magistrates, the corporate world may very well be reminded that the members of the judiciary are not to be viewed or treated as mere pawns or puppets in the internecine fights businessmen and their associates wage against other businessmen in the quest for corporate dominance. In the end,

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[69] See *e.g.*, the Resolutions dated 27 April 2005 & 13 July 2005, *Land Bank v. Luciano*, G.R. No. 165428.

[70] Rep. Act No. 3844 (1963).

[71] See Section 91, Rep. Act No. 3844 (1963). "SECTION 91. *Legal Counsel.*—The Secretary of Justice shall be *ex-officio* legal adviser of the Bank. Any provision of law to the contrary notwithstanding, the Land Bank shall have its own Legal Department, the chief and members of which shall be appointed by the Board of Trustees. The composition, budget and operating expenses of the Office of the Legal Counsel and the salaries and traveling expenses of its officers and employees shall be fixed by the Board of Trustees and paid by the Bank."

[72] See *City of Davao v. Regional Trial Court of Davao City, Branch XII*, G.R. No. 127383, 18 August 2005, 467 SCRA 280.

the petitions did afford this Court to clarify consequential points of law, points rooted in principles which will endure long after the names of the participants in these cases have been forgotten.

WHEREFORE, the petition in G.R. No. 184275 is *EXPUNGED* for lack of capacity of the petitioner to bring forth the suit.

The petition in G.R. No. 183905 is *DISMISSED* for lack of merit except that the second and third paragraphs of the *fallo* of the assailed decision dated 23 July 2008 of the Court of Appeals, including subparagraphs (1), (2), 2(a), 2(b), 2(c) and 2(d) under the second paragraph, are hereby *DELETED*.

No pronouncements as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184791. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO NOGPO, JR. a.k.a. "TANDODOY",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; SWEETHEART THEORY; NOT CREDIBLE ON THE BARE TESTIMONY OF THE ACCUSED; SUCH THEORY MUST BE STRONGLY CORROBORATED BY CLEAR AND CONVINCING EVIDENCE.— Not denying having carnal knowledge of private complainant, accused-appellant seeks to establish that said act was free and voluntary on their part, as they were lovers.

Interposing the "sweetheart theory," he claims that he and private complainant were lovers who engaged in consensual sex at dawn on 9 March 2001. From the foregoing arguments, the burden of evidence has shifted to accused-appellant. He should prove with clear and convincing evidence his affirmative defense that it was a consensual sexual intercourse. Accused-appellant's defense, based on the much abused "sweetheart theory" in rape cases, so blandly invoked in the instant case, rashly derides the intelligence of the Court and sorely tests its patience. In *People v. Casao*, the Supreme Court ruled that the "sweetheart theory" in rape is not credible on the bare testimony of the accused. First, accused-appellant's claim that he and the private complainant were lovers is self-serving. Next, the sweetheart theory proffered by accused-appellant deserves scant consideration, considering that such defense needs strong corroboration, which accused-appellant failed to produce in evidence. Accused-appellant's sweetheart theory, which was already weak, became even weaker when supported by a relative, in this case, her own sister. Where nothing supports his sweetheart theory except the testimony of a relative, it deserves but scant consideration. In fact, the alleged "illicit love affair" angle appears to be a mere fabrication of accused-appellant and his sister, to exculpate himself from the rape charges filed against him.

2. ID.; ID.; ID.; A SWEETHEART DEFENSE, TO BE CREDIBLE MUST BE SUBSTANTIATED BY SOME DOCUMENTARY OR OTHER EVIDENCE OF THE RELATIONSHIP, WHICH IS PATENTLY ABSENT IN CASE AT BAR.— Testifying before the trial court, accused-appellant narrated that he and private complainant, a married woman, were in an illicit relationship and had been "sweethearts" since 6 June 1998 or for a period of more than three years already at the time the rape was allegedly committed in March 2001. Being "sweethearts," he and private complainant allegedly rendezvoused at least twice a month, and engaged in sexual intercourse twice. The first time was allegedly on 6 June 1998; the second was on 9 March 2001, the time he was accused of raping private complainant. The Court notes that while accused-appellant adamantly insists that he and private complainant were lovers and had been "sweethearts" since the year 1999, no love letter, memento, or pictures were presented by accused-appellant to prove that such a romantic relationship existed.

A sweetheart defense, to be credible, should be substantiated by some documentary or other evidence of the relationship, which is patently absent here.

3. ID.; ID.; ID.; A SWEETHEART CANNOT BE FORCED TO HAVE SEX AGAINST HER WILL; LOVE IS NOT A LICENSE FOR LUST.— Further weakening accused-appellant's defense, even assuming *arguendo* that they were lovers, is that rape could still have been committed if he had carnal knowledge with private complainant against her will. This Court has consistently ruled that a *"love affair" does not justify rape, for the beloved cannot be sexually violated against her will.* A sweetheart cannot be forced to have sex against her will – love is not a license for lust. The fact, however, is that during her testimony in the trial court, private complainant vehemently denied that she and accused-appellant had ever been lovers. The gravamen of the offense of rape is sexual intercourse without consent. In the instant case, accused-appellant obtained carnal knowledge of private complainant by the use of force, threat, and intimidation. The testimony of private complainant that accused-appellant employed force by restraining her on the neck and punching her on the breast is substantially corroborated by the medical examination conducted on her, the same day of the assault, by Dr. Catherine Buban and Dr. Rico Nebres, who had no interest whatsoever in the outcome of the case. The Medical Certificate indicates that private complainant sustained hematoma in her left mid clavicular line and showed tenderness on the breast.

4. ID.; ID.; ID.; THE LAW DOES NOT IMPOSE ON THE PRIVATE COMPLAINANT TO PROVE RESISTANCE.— The defense blames private complainant for not duly resisting accused-appellant, considering that she was an adult woman of 33 years while accused-appellant was only 22, drunk and unarmed. Suffice it to say that in rape cases, the law does not impose a burden on the private complainant to prove resistance. The degree of force and resistance is relative, depending on the circumstances of each case and on the physical capabilities of each party. It is well settled that the force or violence required in rape cases is relative; when applied, it need not be overpowering or irresistible. When force is an element of the crime of rape, it need not be irresistible; it need but be present, and so long as it brings

about the desired result, all consideration of whether it was more or less irresistible is beside the point.

5. ID.; ID.; ID.; LUST RESPECTS NO TIME AND PLACE.— The incident occurred in a 1½-meter x 2-meter wooden bed with a 3-month-old baby inside a 3-meter x 3-meter room, while the rest of the children were sleeping in the dining room of a small house, which barely had a floor area of 40 square meters. While private complainant was struggling to repel the attack against her honor, her 3-month-old baby was crying loudly. However, this was not impossible, as lust respects no time and place. In *People v. Agbayani*, the Court stated that "(t)he evil in man has no conscience. The beast in him bears no respect for time and place; it drives him to commit rape anywhere — even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants." The crime of rape may be committed even when the rapist and the private complainant are not alone. Rape may take only a short time to consummate, given the anxiety of its discovery, especially when committed near sleeping persons. Oblivious to the goings on, thus, the court has held that rape is not impossible even if committed in the same room while the rapist's spouse is sleeping or in a small room where other family members also sleep. It was not impossible or incredible for the members of the complainant's family to be in deep slumber and not to be awakened while the brutish sexual assault on her was being committed.

6. ID.; ID.; ID.; RAPE IS ESTABLISHED IN CASE AT BAR; IMPOSABLE PENALTY.— After a thorough and intensive review, that the prosecution was able to establish beyond reasonable doubt the rape committed by accused-appellant on private complainant, through her credible testimony corroborated by the medical conclusions of the expert witness for the prosecution, as well as by the testimonies of the other prosecution witnesses. Rape, defined and penalized under paragraph 1(a) of Article 266-A, in relation to Article 266-B, both of the Revised Penal Code, as amended by Republic Act No. 8353, is punishable by *reclusion perpetua*, to wit: ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. Consequently, the penalty of *reclusion perpetua* is proper. The trial court

also ordered accused-appellant to indemnify private complainant in the amount of ₱50,000.00 and to pay her moral damages in the amount of ₱50,000.00. This is in line with prevailing jurisprudence that civil indemnification is mandatory upon the finding of rape. On the other hand, moral damages in rape cases are awarded without need of showing that the private complainant experienced trauma or mental, physical and psychological suffering.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON MINOR DETAILS ARE INSIGNIFICANT; RATHER THAN ERODING CREDIBILITY SUCH DIFFERENCES CONSTITUTE SIGNS OF VERACITY.— Accused-appellant likewise questions the credibility of the prosecution witnesses. The defense points out certain circumstances that would render the charges of private complainant unbelievable. The defense claims glaring lapses and material contradictions in the testimonies of private complainant and her husband. According to accused-appellant, private complainant made conflicting statements as to whether she knew accused-appellant before the incident. Assuming that there were really inconsistencies, the same pertain only to minor and trivial details, not touching on the whys and wherefores of the crime, and strengthen rather than diminish private complainant's credibility, as they erase suspicion of a rehearsed testimony. In fact, such minor inconsistencies do not impair private complainant's credibility. In *People v. Toledo*, correctly cited by the appellate court, this Court ruled that the credibility of a witness is not impaired where there is consistency in relating the principal occurrence and a positive identification of the accused. Inconsistencies on minor details are insignificant. Rather than eroding the credibility of the witness, such differences constitute signs of veracity.

8. ID.; ID.; ID.; CREDIBILITY OF PRIVATE COMPLAINANT, UPHELD.— Accused-appellant also faults private complainant, considering her failure to tell her husband BBB on 9 March 2001 that she was allegedly raped that morning. The records of the case elucidate on this matter. To recall, private complainant kept on crying the entire day of the incident. And while she was not able to tell her husband directly what had happened, probably due to the unbearable pain of personally telling her husband, she did not hesitate to tell his mother that

she was raped. The testimony of private complainant was given in an honest and believable manner, devoid of any hint of falsity or attempt at fabrication. The trial court observed the demeanor and deportment of private complainant when she testified in court and narrated her ordeal, and it noted that she was candid, frank and straightforward in her answers to questions relating to her harrowing experience, but that she felt embarrassed, would often cry and hesitated, or sometimes would not answer some questions even if the case was tried in a closed door hearing, where only the proper parties were allowed inside the court. In several instances, her testimony was interrupted by fits of crying and outbursts of emotion, leaving no room for doubt that she was truthful in her narration of events.

9. ID.; ID.; ID.; PRIVATE COMPLAINANT'S BEHAVIOR AFTER THE SEXUAL ASSAULT COUPLED WITH THE SIMPLE AND DIRECT MANNER IN WHICH PRIVATE COMPLAINANT DESCRIBED HER ORDEAL, CORROBORATED BY THE POLICE RECORDS AND TESTIMONIES OF THE ATTENDING OBSTETRICIAN-GYNECOLOGIST AND SURGEON ARE *INDICIA* OF THRUTHFULNESS.— The conduct of the private complainant immediately following the alleged assault is of utmost importance so as to establish the truth or falsity of the charge of rape. The pattern of private complainant's behavior after the sexual assault was indicative of her resistance to accused-appellant's monstrous acts. After accused-appellant had sexual intercourse with private complainant, she lost no time in asking Rolando Delloro, the first person she saw, to seek help in apprehending him. She then sought help from Merly, her nearest neighbor, and from her mother-in-law. Her mother-in-law then informed her husband, BBB, when he came home at 6:00 o'clock in the morning of 9 March 2001. Immediately thereafter, they proceeded to report the incident to the local police, and she submitted herself for physical examination at the Bicol Medical Center in Naga City. Indeed, private complainant would not have sought police and medical assistance if her claim of rape were a mere fabrication. The foregoing circumstances, coupled with the simple and direct manner in which private complainant described her ordeal, corroborated by the police records and testimonies of the attending obstetrician-gynecologist and surgeon, are *indicia* of truthfulness.

10. ID.; ID.; ID.; ASSESSING CREDIBILITY OF WITNESSES IS THE DOMAIN OF THE TRIAL COURT WHICH HAS OBSERVED THE DEPORTMENT OF THE WITNESSES AS THEY TESTIFIED.— A litany of cases echoes the rule that great respect for the findings of the trial court on the credibility of witnesses and their testimonies is accorded. Assessing credibility of witnesses is the domain of the trial court, which has observed the deportment of the witnesses as they testified. The findings of fact of a trial court, arrived at only after a hearing and an evaluation of what can be usually expected to be conflicting testimonies of witnesses, certainly deserve respect from an appellate court. And as correctly found by the trial court, private complainant's version of sexual violence upon her by accused-appellant is more credible and sounds more real, because it is more in accord with human experience, unlike accused-appellant's sweetheart theory. The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

11. ID.; ID.; ID.; A MAJOR *INDICIUM* OF ACCUSED-APPELLANT'S GUILT IS THE FACT THAT HE TOOK FLIGHT IMMEDIATELY AFTER THE INCIDENT.— A major *indicium* of accused-appellant's guilt is the fact that he took flight immediately after the incident. He was arrested on 3 May 2001 in the remote place of Lopez, Quezon. Accused-appellant initially testified that he had been helping harvest *copra* in Lopez, Quezon, for about two months already at the time of arrest. He later on recanted, stating that he went to Quezon only in April 2001. Flight signifies an awareness of guilt and a consciousness on the part of an accused that he has no tenable defense to the charge of rape against him.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 28 February 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00745, entitled, *People of the Philippines v. Pedro Nogpo, Jr. a.k.a. "Tandodoy*," affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Naga City, Branch 25, in Criminal Case No. 2001-0724, finding accused-appellant guilty beyond reasonable doubt of rape under paragraph (1)(a), Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, sentencing him to *reclusion perpetua* and ordering him to pay Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages and *costs de oficio*.

The following are the factual antecedents:

On 20 August 2001, the Assistant Provincial Prosecutor of Camarines Sur filed rape charges against accused-appellant Pedro Nogpo, Jr. alias "Tandodoy," before the RTC of Naga City, Branch 25, in Criminal Case No. 2001-0724, under paragraph (1)(a), Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353.[3] The Information, charging accused-appellant with rape, reads:

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[1] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca de Guia Salvador and Magdangal M. de Leon, concurring; CA *rollo*, pp. 134-145.

[2] Penned by Judge Jaime E. Contreras; *id.* at 27-34.

[3] The new provisions on rape, provided under Articles 266-A and 266-B of the Revised Penal Code, state:

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 circumstances:

a) Through force, threat, or intimidation;

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

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

That on or about 4:00 a.m. of March 9, 2001, in Barangay XXX, Municipality of XXX, Province of XXX, in Philippines and within the jurisdiction of this Honorable Court, the accused with lewd design, using force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one (AAA),[4] against her will, to her damage and prejudice.[5]

On his arraignment on 15 October 2001, the Information was read to accused-appellant in *Bikol*, a dialect known to him. Duly assisted by counsel, he pleaded not guilty to the offense charged.

Pre-trial was terminated on 23 October 2001, with the parties agreeing to the following stipulations:

1. Identities of the accused and the [private complainant];
2. Presence of the accused at (XXX) on [9 March 2001];
3. The [private complainant] has six (6) minor children;
4. Existence of the medical certificate of the [private complainant];
5. The accused was arrested at Magallanes, Lopez, Quezon on 3 May 2001.[6]

The Prosecution presented six witnesses: private complainant's husband, BBB; Dr. Catherine Buban; Rolando Delloro; Cipriano Palominano, Jr.; private complainant, AAA; and Dr. Rico Nebres, for its evidence-in-chief. It also presented four witnesses on

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;

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

[4] The address of the private victim is withheld to protect her privacy, pursuant to Republic Act No. 9262 (The Anti-Violence Against Women and Their Children Act of 2004) and its implementing rules; and Administrative Matter No. 04-10-11-SC (The Supreme Court Rule on Violence Against Women and their Children), effective 15 November 2004. See also *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[5] Records, p. 1.

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

rebuttal: private complainant, AAA; private complainant's husband, BBB; Jacobo Pasilaban and another witness CCC. On the other hand, the defense presented two witnesses, Ofelia Nogpo and accused-appellant Pedro Nogpo, Jr., for its evidence-in-chief; and two witnesses on sur-rebuttal: Renato Rubio and Domingo Palino.

The prosecution's version of the events is narrated as follows:

Spouses BBB and private complainant AAA, with their six children, ages 12, 10, 7, 5, 2, and 3 mos., resided at XXX, which was approximately 30 meters away from their nearest neighbor. In order to earn a living, BBB would leave his house early every morning to drive the passenger jeepney owned by his sister-in-law plying the Naga-Pasacao route. His wife, AAA, who finished Grade 1 and who was suffering from defective hearing, was a housewife.

On 9 March 2001 at around 3:00 o'clock in the early morning, BBB left their house in order to go to Iraya to haul and transport coconuts to the Naga City Supermarket. When he left, private complainant AAA closed the door of their house and returned to sleep on a wooden bed beside her 3-month-old baby. Private complainant was awakened upon smelling a strong odor of *Ginebra San Miguel* tonic that emanated from accused-appellant, who was then seated on the bed trying to embrace her. Shocked at the events that were transpiring, she shouted for help from her husband, BBB, but accused-appellant punched her on the abdomen. After she shouted for help a second time, accused-appellant punched her again, this time hitting her breast. Accused-appellant locked her neck, mashed her thigh, and warned her not to continue making noises; otherwise she would get killed. Although private complainant tried to put up resistance, she was nevertheless subdued by accused-appellant when her strength gave way, and so he had sexual intercourse with her. At the time accused-appellant was lying on top of her, he covered her mouth because she was shouting for help. Her baby, who was only three months old at that time, was also crying loudly. After accused-appellant was through having carnal knowledge of her, he warned private complainant not to report the incident to the

police authorities; otherwise he would kill all of them. He then exited through their front door and left AAA's residence. At about that time, which was already 5:00 o'clock in the morning, Rolando Delloro (Delloro), who was then fetching water at the back portion of AAA's house, saw accused-appellant at the vicinity, walking away from the house going towards the road leading to the *Barangay* Hall. AAA saw Delloro and asked his help in apprehending accused-appellant for raping her. Delloro's wife, Merly, accompanied AAA to the latter's mother-in-law, CCC, whose house was 100 meters away. Upon learning of what had happened, CCC immediately reported the incident to the *Bgy*. Captain. When BBB returned home at around 6 a.m. of the same day, AAA informed him that she was raped by accused-appellant. They then reported the incident to the police station of Pasacao, Camarines Sur, where AAA gave her statement.

Thereafter, they proceeded to the Bicol Medical Center in Naga City, where private complainant was subjected to a physical examination by Dr. Catherine Buban and Dr. Rico Nebres, who examined her private parts and issued a Medical Certificate with the following diagnosis:

(+) Tenderness left breast in palpation

(+) Hematoma left mid clavicular line 2.0 cm widest laceration is in level of sub-coastal area diameter.

Clinical Microbiological Report: stained smear shows presence of spermatozoa.[7]

Accused-appellant vehemently denied the accusations against him, with the defense presenting a counter-statement of facts.

Accused-appellant admitted having sexual congress with private complainant on 9 March 2001. He testified, however, that he and private complainant had been maintaining illicit relations from 6 June 1998 until 9 March 2001. According to him, the alleged rape imputed to him was consensual sexual intercourse between them. He alleged that on 8 March 2001 at 11:00 o'clock in the morning, he was told by private complainant to go to her

[7] Exhibit A; *id.* at 6.

house on the following day or on March 9, at around 4:00 o'clock in the early morning, because her husband BBB would be away driving a jeepney. Following private complainant's instructions, he went to her house. Upon knocking at the window of private complainant's house and after calling her name, he was allowed by her to enter. Once inside, private complainant led him to the bed and they had sex. After having sex for almost two hours, he decided to leave, fearing that private complainant's husband, BBB, might arrive. She told him to return at around lunchtime the following day. The next day, he returned to private complainant's house and they talked about their relationship. He wanted to put a stop to their relationship, because private complainant was a married woman, but she pleaded with him not to end the affair.

He further testified that he only had sex with private complainant on two occasions. The first was on 6 June 1998, when their relationship started, and the last was on 9 March 2001. Between said dates, they had no sexual intercourse but would meet twice a month.[8]

Ofelia Nogpo, a sister of accused-appellant, corroborated the latter's testimony. She testified that on 8 March 2001 at 10:00 o'clock in the morning, private complainant went to her store looking for accused-appellant. Since her brother was not around, private complainant instructed her to tell him to just go to her house. She later informed accused-appellant about private complainant's visit. Even prior to 9 March 2001, private complainant used to frequent her store looking for her brother.[9]

On sur-rebuttal, Renato Rubio, a driver, testified that accused-appellant worked as an "extra" conductor of BBB in 1996 or 1997. He had seen accused-appellant about three times riding BBB's jeepney and holding money. He likewise saw accused-appellant counting money at the terminal.

Domingo Palino, a baggage carrier, testified that accused-appellant worked as conductor for BBB in 1996 or 1997. He

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[8] TSN, 4 June 2002, pp. 3-11.

[9] TSN, 13 May 2002, pp. 4-5, 11, 17.

used to ride BBB's jeepney whenever his *padyak* developed trouble. He had seen accused-appellant at private complainant's house in 2001 when he went to *Barangay* Odicon to collect money from his brother.

After trial on the merits, the trial court rendered judgment on 12 June 2003, finding accused-appellant guilty of rape, adjudicating as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding the accused, PEDRO NOGPO JR. *alias* "Tandodoy," GUILTY beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*, and is ordered to pay the sum of Fifty Thousand (₱50,000.00) Pesos as civil indemnity, and another Fifty Thousand (₱50,000.00) Pesos as moral damages to the [private] complainant, (AAA). With costs *de oficio*.
>
> Considering that the accused has been undergoing detention during the pendency of the trial of this case, the same is hereby credited in the service of his sentence.[10]

Accused-appellant filed a Notice of Appeal on 3 July 2003. Thereafter, on 28 February 2008, the Court of Appeals affirmed the RTC conviction of accused-appellant in this wise:

> WHEREFORE, the appealed decision of the Regional Trial Court of Naga City, Branch 25, in Criminal Case No. 2001-0724 dated June 12, 2003 is AFFIRMED.[11]

Hence, this appeal.

Accused-appellant, in his brief, ascribes to the trial court the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

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[10] CA *rollo,* p. 34.

[11] *Rollo,* p. 14.

II.

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.[12]

Accused-appellant claims that the trial court gravely erred in finding him guilty beyond reasonable doubt of the crime of rape.

The appeal is bereft of merit.

At the time of the rape, Republic Act No. 8353 or the Anti-Rape Law of 1997, which amended Article 335 of the Revised Penal Code and classified rape as a crime against persons, was already effective. The new provisions on rape, provided under Articles 266-A, state:

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

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

    a) Through force, threat or intimidation; x x x.

In reviewing rape cases, this Court has been guided by the following well-established principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[13]

Private complainant narrated on the witness stand how accused-appellant sexually abused her in a manner reflective of honest and unrehearsed testimony, thus:

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[12] CA *rollo,* p. 65.

[13] *People v. Ruales*, 457 Phil. 160, 169 (2003); *People v. Rizaldo*, 439 Phil. 528, 533 (2002).

PROS. TADEO:

May I proceed. Mrs. AAA, this is a continuation of your direct examination. We are already in the stage where you were awakened. You stated during the previous hearing that when your husband left your house to drive a passenger jeepney, you followed him and after you locked the door, you went to your bed again, were you able to sleep that early morning?

A Yes sir.

Q What awaken[ed] you in that early morning?

A I was awakened when I smelled gin.

Q What else?

A Upon smelling that gin I woke up and I saw him (witness pointing to the accused Pedro Nogpo, Jr.).

Q What was your position when you first saw him, that person whom you pointed a while ago?

A I was lying on my bed.

Q What else did the person you pointed a while go did (sic) to you?

A He was sitting besides (sic) me and tried to embrace me.

Q What else?

COURT:

Q What did Pedro Nogpo do to you in that early morning of March 9, 2001?

A He seated besides (sic) me and tried to embrace me.

Q Was he able to embrace you?

A No sir.

PROS. TADEO:

Q Why?

A I rose up because I was shocked and I shouted thinking that my husband was there.

Q Why did you shout for your husband when you know that at 3:00 in the morning he left your house?

A I was shock[ed] and there was nobody whom I will call.

Q Will you please illustrate to this court how you shouted?
A I called the name of BBB.

Q When you shouted what did Pedro Nogpo do?
A He boxed me.

Q Where, in what part of your body?
A Abdomen.

COURT:

Q How many times did he box you in your abdomen?
A Only one.

PROS. TADEO:

Q What else did Pedro Nogpo did (sic) to you?
A I shouted again but he boxed me on my breast.

Q Then what happened next?
A He tried to twist my neck.

Q Of your knowledge, what hand did the accused use in twisting your neck?
A His right hand.

Q While he was twisting your neck, what else was he doing to you?
A His other hand was trying to mash my thigh.

Q After that what happened?
A He told me that if I continue to make noise he will kill me.

Q Did you heed to these words of the accused not to make noise?
A No sir.

COURT:

Q Is the accused armed with any weapon at that time?
A None Sir.

PROS. TADEO:

Q All the time the accused was twisting your neck and mashing your thing, what did you do aside from shouting?
A I bad mouthed him telling him to leave and I also tried to fight him back but he was too strong.

Q After the resistance you made, what happened next?
A He choked me.

Q What hand was used by the accused in choking you?
A His right hand.

Q While the accused was choking your neck, what was your position?
A I was standing.

Q How about the accused?
A He was also standing.

Q Then what followed next?
A (No answer)

COURT:

Q Where you wearing panty at that time?
A When I was about to sleep at 8:00 o'clock in the evening, I removed my panty because I was suffering from "*bosiao*."

Q How about in the early morning, do I understand from you, you have not yet put on your panty?
A None yet, sir.

Q What about bra, were you wearing your bra?
A None because I was breastfeeding my child.

Q What did the accused do to your vagina and your breast?
A He used me.

Q What about your lips, did he kiss you?
A (No answer. Witness is crying.)

PROS. TADEO:

May we move for a recess to give way to the crying of this witness.

At the resumption of hearing, the following transpired:

COURT:

There is a pending question from the court.

Q He kept on kissing me on my lips.

PROS. TADEO:

Q You said you were used or raped by the accused Tandodoy, how was he able to succeed in raping you when you said you were resisting him?
A (No answer.)

Q When you said you were used by Nogpo, what was your position then?
A He told me to lie down on the bed.

Q Did you automatically heed the accused?
A No sir.

Q Why?
A He pushed me.

COURT:

Q You said that Pedro Nogpo told you to lie down, however, you did not follow him, so he pushed you, after he pushed you what happened to you?
A I was pushed to sit on the bed.

Q Are you giving us the impression that it was due to the force used by Nogpo that you were made to sit on the bed?
A Yes sir.

PROS. TADEO:

Q While you were pushed to sit on the bed, what else did the accused do to you?
A He came near and used me.

Q When you said he used you, what did he do to you?
A He was choking my neck while using me.

Q When you said used what part of the body of the accused is being used when you said he used you?

COURT:

Q What do you mean when you said he used you?
A (No answer)

PROS. TADEO:

Q What did the accused used (sic) or did the accused insert something in your body?

ATTY. CABRAL:

Leading.

COURT:

Reform.

PROS. TADEO:

Q After you said you were choked, will you illustrate to this honorable court what do you mean by your words that accused used you?
A He fucked me.

Q What did he use in fucking you? You said you were fucked by the accused, what part of his body was used in fucking you?
A His penis.

Q You said you were used, will you please illustrate to this honorable court how did the accused fuck you?
A (No answer)

Q You said he used his penis, definitely it was inserted in your vagina, more or less, how many minutes or seconds was his penis inserted into your vagina?
A Two (2) seconds.

Q By the way, do you know a second?
A No sir.

Q Assuming this 2 seconds, within that period of 2 seconds, what was the motion of the accused while he was fucking you?
A He was on top of me.

Q How about the motion of his body?
A (No answer)

Q You are a married woman, do you know orgasm?
A Yes sir.

Q During the time Pedro Nogpo fucked you, did he reach orgasm?
A Yes sir.

Q How about you?
A No sir.

Q After he reached orgasm, what did he do next?
A He left.

COURT:

Q How about you, what did you do while Pedro Nogpo was on top of you?
A I fought him by resisting but he was strong.

Q What was Pedro Nogpo doing with his 2 hands while on top of you?
A His one hand is covering my mouth.

Q How about his other hand?
A Pressed on the bed.

Q Why was Pedro Nogpo covering your mouth?
A To prevent me from shouting?

Q Why, were you shouting while he was on top of you?
A Yes sir.

Q What did you shout?
A I was asking help from my husband.

Q What were the words you actually shouted calling for your husband?
A Floro help me.

PROS. TADEO:

Q After Pedro Nogpo reached orgasm, did he utter words to you?
A He told me that he will kill all of us if I divulge the matter.[14]

Not denying having carnal knowledge of private complainant, accused-appellant seeks to establish that said act was free and voluntary on their part, as they were lovers. Interposing the "sweetheart theory," he claims that he and private complainant were lovers who engaged in consensual sex at dawn on 9 March 2001. From the foregoing arguments, the burden of evidence

[14] TSN, 29 January 2002, pp. 2-11.

has shifted to accused-appellant. He should prove with clear and convincing evidence his affirmative defense that it was a consensual sexual intercourse.

Accused-appellant's defense, based on the much abused "sweetheart theory" in rape cases, so blandly invoked in the instant case, rashly derides the intelligence of the Court and sorely tests its patience.

In *People v. Casao*,[15] the Supreme Court ruled that the "sweetheart theory" in rape is not credible on the bare testimony of the accused. First, accused-appellant's claim that he and the private complainant were lovers is self-serving. Next, the sweetheart theory proffered by accused-appellant deserves scant consideration, considering that such defense needs strong corroboration, which accused-appellant failed to produce in evidence. Accused-appellant's sweetheart theory, which was already weak, became even weaker when supported by a relative, in this case, her own sister. Where nothing supports his sweetheart theory except the testimony of a relative, it deserves but scant consideration. In fact, the alleged "illicit love affair" angle appears to be a mere fabrication of accused-appellant and his sister, to exculpate himself from the rape charges filed against him.

Testifying before the trial court, accused-appellant narrated that he and private complainant, a married woman, were in an illicit relationship and had been "sweethearts" since 6 June 1998 or for a period of more than three years already at the time the rape was allegedly committed in March 2001. Being "sweethearts," he and private complainant allegedly rendezvoused at least twice a month, and engaged in sexual intercourse twice. The first time was allegedly on 6 June 1998; the second was on 9 March 2001, the time he was accused of raping private complainant. The Court notes that while accused-appellant adamantly insists that he and private complainant were lovers and had been "sweethearts" since the year 1999, no love letter, memento, or pictures were presented by accused-appellant to

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[15] G.R. No. 100913, 23 March 1993, 220 SCRA 362, 366.

prove that such a romantic relationship existed. A sweetheart defense, to be credible, should be substantiated by some documentary or other evidence of the relationship,[16] which is patently absent here.

Third, further weakening accused-appellant's defense, even assuming *arguendo* that they were lovers, is that rape could still have been committed if he had carnal knowledge with private complainant against her will.[17] This Court has consistently ruled that a *"love affair" does not justify rape, for the beloved cannot be sexually violated against her will.*[18]

A sweetheart cannot be forced to have sex against her will – love is not a license for lust.[19]

The fact, however, is that during her testimony in the trial court, private complainant vehemently denied that she and accused-appellant had ever been lovers.

The gravamen of the offense of rape is sexual intercourse without consent. In the instant case, accused-appellant obtained carnal knowledge of private complainant by the use of force, threat, and intimidation. The testimony of private complainant that accused-appellant employed force by restraining her on the neck and punching her on the breast is substantially corroborated by the medical examination conducted on her, the same day of the assault, by Dr. Catherine Buban and Dr. Rico Nebres, who had no interest whatsoever in the outcome of the case. The Medical Certificate[20] indicates that private

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[16] *People v. Garces, Jr.*, 379 Phil. 919, 937 (2000); *People v. Limos*, 465 Phil. 66, 94-95 (2004).

[17] *People v. Vallena*, 314 Phil. 679, 688 (l995).

[18] *People v. Garces, Jr.*, *supra* note 16 at 937.

[19] *People v. Manahan*, 374 Phil. 77, 84 (1999), citing *People v. Tismo*, G.R. No. 44773, 4 December 1991, 204 SCRA 535, 554; *People v. Espiritu,* 375 Phil. 1012, 1020 (1999), citing *People v. Tayaban*, 357 Phil. 494, 510 (1998), in turn citing *People v. Domingo*, G.R. No. 97921, 8 September 1993, 226 SCRA 156, 172.

[20] Exhibit A; records, p. 6.

complainant sustained hematoma in her left mid clavicular line and showed tenderness on the breast.

The defense blames private complainant for not duly resisting accused-appellant, considering that she was an adult woman of 33 years while accused-appellant was only 22, drunk and unarmed. Suffice it to say that in rape cases, the law does not impose a burden on the private complainant to prove resistance. The degree of force and resistance is relative, depending on the circumstances of each case and on the physical capabilities of each party. It is well settled that the force or violence required in rape cases is relative; when applied, it need not be overpowering or irresistible.[21] When force is an element of the crime of rape, it need not be irresistible; it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point.[22]

Accused-appellant likewise questions the credibility of the prosecution witnesses. The defense points out certain circumstances that would render the charges of private complainant unbelievable. The defense claims glaring lapses and material contradictions in the testimonies of private complainant and her husband.

According to accused-appellant, private complainant made conflicting statements as to whether she knew accused-appellant before the incident.Assuming that there were really inconsistencies, the same pertain only to minor and trivial details, not touching on the whys and wherefores of the crime, and strengthen rather than diminish private complainant's credibility, as they erase suspicion of a rehearsed testimony. In fact, such minor inconsistencies do not impair private complainant's credibility. In *People v. Toledo*,[23] correctly cited by the appellate

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[21] *People v. Arenas*, G.R. No. 92068, 5 June 1991, 198 SCRA 172, 183.

[22] *People v. Momo*, 59 Phil. 86, 87 (1931).

[23] *People v. Toledo,* 333 Phil. 261, 270-272 (1996).

court, this Court ruled that the credibility of a witness is not impaired where there is consistency in relating the principal occurrence and a positive identification of the accused. Inconsistencies on minor details are insignificant. Rather than eroding the credibility of the witness, such differences constitute signs of veracity.

Accused-appellant also faults private complainant, considering her failure to tell her husband BBB on 9 March 2001 that she was allegedly raped that morning. The records of the case elucidate on this matter. To recall, private complainant kept on crying the entire day of the incident. And while she was not able to tell her husband directly what had happened, probably due to the unbearable pain of personally telling her husband, she did not hesitate to tell his mother that she was raped. The testimony of private complainant was given in an honest and believable manner, devoid of any hint of falsity or attempt at fabrication. The trial court observed the demeanor and deportment of private complainant when she testified in court and narrated her ordeal, and it noted that she was candid, frank and straightforward in her answers to questions relating to her harrowing experience, but that she felt embarrassed, would often cry and hesitated, or sometimes would not answer some questions even if the case was tried in a closed door hearing, where only the proper parties were allowed inside the court. In several instances, her testimony was interrupted by fits of crying and outbursts of emotion, leaving no room for doubt that she was truthful in her narration of events.

The incident occurred in a 1½-meter x 2-meter wooden bed with a 3-month-old baby inside a 3-meter x 3-meter room, while the rest of the children were sleeping in the dining room of a small house, which barely had a floor area of 40 square meters. While private complainant was struggling to repel the attack against her honor, her 3-month-old baby was crying loudly. However, this was not impossible, as lust respects no time and place. In *People v. Agbayani*,[24] the Court stated that "(t)he evil in man has no conscience. The beast in him bears no

[24] G.R. No. 122770, 16 January 1998, 284 SCRA 315, 340.

respect for time and place; it drives him to commit rape anywhere — even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants." The crime of rape may be committed even when the rapist and the private complainant are not alone. Rape may take only a short time to consummate, given the anxiety of its discovery, especially when committed near sleeping persons. Oblivious to the goings on, thus, the court has held that rape is not impossible even if committed in the same room while the rapist's spouse is sleeping[25] or in a small room where other family members also sleep.[26] It was not impossible or incredible for the members of the complainant's family to be in deep slumber and not to be awakened while the brutish sexual assault on her was being committed.[27]

The conduct of the private complainant immediately following the alleged assault is of utmost importance so as to establish the truth or falsity of the charge of rape. The pattern of private complainant's behavior after the sexual assault was indicative of her resistance to accused-appellant's monstrous acts. After accused-appellant had sexual intercourse with private complainant, she lost no time in asking Rolando Delloro, the first person she saw, to seek help in apprehending him. She then sought help from Merly, her nearest neighbor, and from her mother-in-law. Her mother-in-law then informed her husband, BBB, when he came home at 6:00 o'clock in the morning of 9 March 2001. Immediately thereafter, they proceeded to report the incident to the local police, and she submitted herself for physical examination at the Bicol Medical Center in Naga City. Indeed, private complainant would not have sought police and medical assistance if her claim of rape were a mere fabrication.

The foregoing circumstances, coupled with the simple and direct manner in which private complainant described her ordeal,

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[25] *People v. Ignacio*, G.R. Nos. 106644-45, 7 June 1994, 233 SCRA 1, 7.

[26] *People v. Cervantes*, G.R. No. 90257, 21 May 1993, 222 SCRA 365, 368.

[27] *People v. Mangompit, Jr.*, 406 Phil. 411, 427-428 (2001).

corroborated by the police records and testimonies of the attending obstetrician-gynecologist and surgeon, are *indicia* of truthfulness.

A litany of cases echoes the rule that great respect for the findings of the trial court on the credibility of witnesses and their testimonies is accorded. Assessing credibility of witnesses is the domain of the trial court, which has observed the deportment of the witnesses as they testified. The findings of fact of a trial court, arrived at only after a hearing and an evaluation of what can be usually expected to be conflicting testimonies of witnesses, certainly deserve respect from an appellate court.[28] And as correctly found by the trial court, private complainant's version of sexual violence upon her by accused-appellant is more credible and sounds more real, because it is more in accord with human experience, unlike accused-appellant's sweetheart theory. The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

Finally, a major *indicium* of accused-appellant's guilt is the fact that he took flight immediately after the incident. He was arrested on 3 May 2001 in the remote place of Lopez, Quezon. Accused-appellant initially testified that he had been helping harvest *copra* in Lopez, Quezon, for about two months already at the time of arrest. He later on recanted, stating that he went to Quezon only in April 2001. Flight signifies an awareness of guilt and a consciousness on the part of an accused that he has no tenable defense to the charge of rape against him.

We conclude, after a thorough and intensive review, that the prosecution was able to establish beyond reasonable doubt the rape committed by accused-appellant on private complainant, through her credible testimony corroborated by the medical conclusions of the expert witness for the prosecution, as well as by the testimonies of the other prosecution witnesses.

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[28] *People v. Fabian*, 453 Phil. 328, 338 (2003).

Rape, defined and penalized under paragraph 1(a) of Article 266-A, in relation to Article 266-B, both of the Revised Penal Code, as amended by Republic Act No. 8353, is punishable by *reclusion perpetua*, to wit:

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

Consequently, the penalty of *reclusion perpetua* is proper.

The trial court also ordered accused-appellant to indemnify private complainant in the amount of ₱50,000.00 and to pay her moral damages in the amount of ₱50,000.00. This is in line with prevailing jurisprudence that civil indemnification is mandatory upon the finding of rape.[29] On the other hand, moral damages in rape cases are awarded without need of showing that the private complainant experienced trauma or mental, physical and psychological suffering.[30]

WHEREFORE, premises considered, the decision appealed from finding accused-appellant Pedro Nogpo, Jr. guilty beyond reasonable doubt of the crime of rape under paragraph (1)(a), Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, and sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the offended party, private complainant AAA, the amounts of ₱50,000.000 as civil indemnity, and ₱50,000.00 as moral damages, as well as *costs de oficio*, is hereby *AFFIRMED*.

SO ORDERED.

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

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[29] *People v. Elpedes*, 403 Phil. 676, 692 (2001); *People v. Baway*, 402 Phil. 872, 897-898 (2001).

[30] *People v. Espinosa,* G.R. No. 138742, 15 June 2004, 432 SCRA 86, 103.

THIRD DIVISION

[G.R. No. 157147. April 17, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILFREDO CAWALING,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST DETERMINED BY TRIAL JUDGES.— It is well-settled that the credibility of witnesses is best determined by the trial judge, who has the direct opportunity and unique advantage to observe at close range their conduct and deportment on the witness stand. The general rule is that findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on said finding, are accorded by the appellate court utmost respect, if not conclusive effect, and can only be set aside upon a clear showing that it overlooked, ignored, misconstrued and misinterpreted cogent facts and circumstances which, if considered, would alter the outcome of the case.

2. ID.; ID.; ID.; DELAY IN MAKING A CRIMINAL ACCUSATION DOES NOT NECESSARILY IMPAIR CREDIBILITY IF SUCH DELAY IS SATISFACTORILY EXPLAINED.— We have had occasion to hold that delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained. In this case, Rommel Brigido, on cross examination, explained. Gloria Capispisan likewise satisfactorily explained her failure to include the name of Rommel Brigido in her earlier account of the killing in April 1987, as the latter was the companion of Cawaling. Subsequent thereto, Gloria categorically testified that Rommel was at the side of Cawaling during the incident.

3. ID.; CRIMINAL PROCEDURE; BAIL; PROPERTY BOND POSTED CANNOT BE RELEASED CONSIDERING ACCUSED-APPELLANT'S FLIGHT.— We dispose of a corollary incident – the Manifestation with Motion to withdraw property bond and post cash bond in lieu thereof – filed by

bondsperson Margarita Cruz. In this connection, Section 22 of Rule 114 of the Rules of Court is explicit: SEC. 22. *Cancellation of bail*.— Upon application of the bondsmen with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death. The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction. In all instances, the cancellation shall be without prejudice to any liability on the bail. With the conviction of Cawaling for murder, and the Court's consequent failure to execute the judgment of conviction because of Cawaling's flight, the motion must be denied. The posted property bond cannot be cancelled, much less withdrawn and replaced with a cash bond by movant Cruz, unless Cawaling is surrendered to the Court, or adequate proof of his death is presented. We are not unmindful that Cruz posted the property bond simply to accommodate Cawaling, a relative, obtain provisional liberty. However, under Section 1 of Rule 114, Cruz, as a bondsman, guarantees the appearance of the accused before any court as required under specified conditions. It is beyond cavil that, with the property bond posted by Cruz, Cawaling was allowed temporary liberty, which made it possible, quite easily, to flee and evade punishment. As it stands now, Cawaling, a convicted felon, is beyond reach of the law, and the property bond cannot be released.

4. CRIMINAL LAW; MURDER; APPELLATE COURT DID NOT ERR IN REVERSING THE TRIAL COURT AND CONVICTING ACCUSED-APPELLANT OF MURDER.— We hold that the appellate court did not err in reversing the trial court and convicting Cawaling of murder, as we fully agree with the argument of the OSG that – In this case, the judge who rendered the appealed decision, Judge Francisco F. Fanlo Jr., is not the same judge who heard the prosecution witnesses, namely, Rommel Brigido, who testified on August 23, 1995 and Gloria Capispisan, who testified on August 24, and 25, 1995. When these two witnesses testified in 1995 the presiding Judge was Judge Cesar Maravilla. It was only on January 12, 1998 or three years later when Judge Fanlo, Jr. took over the case and heard these witnesses for additional cross-examination. The additional cross-examination centered on the affidavits executed by these witnesses after the incident and not on the incident itself. The rule on the weight to be given to the findings of the trial court

does not unqualifiedly apply, when the judge who rendered the decision did not hear the principal evidence of the prosecution. For in such, case, his evaluation of the evidence is based on the transcript of stenographic notes, which also forms the basis for the Court of Appeals to review the trial court's decision and render its own decision. Moreover, Rommel Brigido's belated execution of an affidavit does not detract from or diminish the weight of his direct and positive testimony that Cawaling shot Leodegario.

5. ID.; ID.; ADMISSION OF CO-ACCUSED ACKNOWLEDGING COMMISSION OF THE CRIME AND CONVENIENTLY ABSOLVING ACCUSED-APPELLANT PERCEIVED AS A BRAZEN CONSPIRACY TO ESCAPE CRIMINAL LIABILITY FOR MURDER.— The RTC erred in convicting Cawaling merely as an accomplice to homicide, and in giving full faith and credence to Palti Umambong's testimony that he was the one who shot the victim. We have gone through the trial court's lengthy disquisition and tried to find a rational explanation why Palti, who previously pled not guilty to the crime, will now accept responsibility for the murder of Leodegario. Obviously, it is because the case against him had already been dismissed, and he can no longer be successfully prosecuted for the offense without breaching the rule on double jeopardy. Thus, with Palti securely shielded from punishment by the principle of double jeopardy, he was at liberty to own authorship of the crime. Accordingly, Palti's credibility as a witness directly debunking Rommel's testimony is tainted by a serious cloud of doubt. Justice Ricardo J. Francisco, in his treatise on Evidence, writes: "the credibility of a witness depends as much upon himself as upon his testimony, upon his interest as upon his mental cultivation, his conduct before and at the trial, the consistency of his behavior from the time he became aware of the fact to the time he relates it." Not surprisingly, Palti is now motivated to confess to a crime for which he can no longer be held liable because of our rule on double jeopardy. We note that it was only Palti who was arraigned and who pled not guilty to the initial Information for murder. At that time, Cawaling was at large. After the case against Palti was dismissed, and now no longer in peril of punishment, he acknowledges commission of the crime and conveniently absolves Cawaling who had remained at large. We perceive a brazen conspiracy to escape criminal liability for murder. Justice Francisco, in

the same book, states that when there is conflicting evidence, the court is compelled to examine closely the motives of the witnesses for telling the truth or for falsely testifying. As between Rommel and Palti, there is, in the former, an absence of proof, except for the defense's bare allegations of political motivations, of an improper motive that would have impelled him to testify for the prosecution and accuse his former friend and companion, Cawaling, of murder. As no improper motive can be imputed to Rommel, his testimony is entitled to full faith and credence. One other thing has sealed the conviction of Cawaling. We note that he jumped bail and fled. On this score, jurisprudence has consistently held that flight of an accused is indicative of his guilt.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; PROPERLY APPRECIATED IN CASE AT BAR.— As to the propriety of Cawaling's conviction for murder, the CA correctly appreciated the circumstance of treachery. We quote with favor the appellate court's ruling thereon: The Solicitor General submits that the commission of the crime in the present case was attended by treachery as clearly established by Rommel Brigido and Gloria Capispisan, who testified that they saw appellant stand up from where he was seated and without warning, pointed his gun at Leodegario and instantaneously fired the same, thus killing Leodegario on the spot. It is contended that "the attack being sudden and unexpected, Leodegario was not given any chance to retaliate or defend himself from such attack." We agree. Treachery may be appreciated even if the attack was frontal but no less unexpected and sudden, giving the victim no opportunity, to repel it or offer any defense of his person. Frontal attach can be treachery when it is sudden and unexpected and the victim was unarmed.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Padilla Villanueva Marasigan & Associates for accused-appellant.

Glenn Paul D. Armamento for Margarita G. Cruz.

D E C I S I O N

NACHURA, *J.*:

We are confronted with conflicting accounts of the commission of a crime, a reverse *whodunit*[1] rivaling the murder mysteries of Agatha Christie, in this review of the Court of Appeals' (CA's) conviction of accused Wilfredo Cawaling for murder and imposing on him the penalty of *reclusion perpetua*.[2] However, unlike Agatha Christie, we are guided by the test of moral certainty in ascertaining the guilt of the accused.

This legal poser arose because, after the prosecution presented an eyewitness to the crime pointing to Cawaling as the perpetrator thereof, the defense offered the testimony of a person, initially charged with Cawaling in the same Information and who previously pled not guilty to the crime, confessing that it was he, and not Cawaling, who murdered the victim.

Even the two courts below us parleyed and rendered conflicting decisions. The Regional Trial Court (RTC) partially upheld the defense's version of the events, rejected the prosecution's eyewitness account of the murder and convicted Cawaling only as an accomplice to the offense of homicide. In stark contrast, the CA found the eyewitness' testimony credible and convicted Cawaling of murder.

The following are the long and arduous facts, seen and appreciated from two different perspectives by the lower courts.

Cawaling was charged with Murder in an Information which reads:

That on or about the 19th day of April, 1987, in sitio Hinulugan, barangay Agcogon, municipality of San Jose, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspired and

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[1] Who had done it?

[2] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Bernardo P. Abesamis and Josefina Guevara-Salonga, concurring; CA *rollo*, pp. 167-176.

confederated with Palti Umambong whose case was already dismissed after arraignment, did then and there by means of treachery, willfully, unlawfully and feloniously attack, assault and shot with a firearm the late ex-vice mayor Leodegario Capispisan, inflicting upon the latter serious and mortal gunshot wounds in different parts of his body which were the direct and immediately (sic) cause of his instantaneous death, thus causing damage and prejudice to his family.

Contrary to law.[3]

The RTC laid out the facts based on the testimonies of the witnesses, to wit:

The forerunner of the case at bench was OD-275, for murder. It was filed on June 24, 1987.

The respondents were Palti Umambong and Wilfredo Cawaling.

The case against Umambong was dismissed on January 25, 1991 on the basis of an affidavit of desistance.

On February 4, 1991, this Court likewise dismissed the case against Cawaling upon the initiative of the prosecution.

Four (4) years thereafter, specifically on August 17, 1995, Cawaling was arrested, the case against him for murder having been revived and accordingly docketed as OD-852.

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EVIDENCE FOR THE PROSECUTION

The Prosecution presented three (3) witnesses.

Rommel Brigido, 29 years old, married and a resident of Busay, San Jose, Romblon, testified as follows:

That witness was with the accused Wilfredo and Palti in coming from the town of San Jose to barangay Busay.

That they passed by the house of Porferio Bina where they drank the locally fermented "*tuba*."

Later, he saw accused Wilfredo sitting on a bench under the "talisay" tree on the other side of the road.

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[3] CA *rollo*, pp. 27-28.

Thereafter, he saw Leodegario, Gloria, Roberto and Leon passing by the road. When Leodegario got near the bench where Wilfredo was seated, the latter suddenly stood up and pointed his gun to Leodegario saying "who is brave," and two shots rang out and that there was a handkerchief covering the gun (t.s.n., p. 4, 8/23/95).

That the distance between Wilfredo and Leodegario was six (6) meters.

Witness, on direct examination, declared that although he was the companion of Wilfredo in coming from the town, he ran away and that he did not anymore know what happened to Leodegario (t.s.n., p. 5, *supra*).

On cross-examination, witness Rommel admitted that he executed and affixed his signature on an affidavit (Exh. "1" and "1-A") and that the same was executed only on July 27, 1995 narrating therein the incident that happened [in] April 1987.

Asked as to why witness took a long time before executing the affidavit, he commented that the case then was dismissed, and that Wilfredo is a dangerous man having recently killed his uncle Rexinol Brigido.

Rommel elaborated further that he was ten (10) meters away from Wilfredo and also of the same distance to Leodegario.

Rommel declared that Palti was on a stump of a chainsawed coconut tree and about six (6) meters away from Wilfredo (t.s.n., p. 13, August 23, 1995).

Palti did not [run] away (t.s.n., p. 15, *supra*).

When asked what was Wilfredo doing after the shooting of Leodegario, Rommel said that Wilfredo was going around, "pointing his gun and firing out, causing people to scamper away (t.s.n., p. 5, August 25, 1995).

On clarificatory questions of the Court, Rommel admitted that "it was only Wilfredo who pointed a gun towards Leodegario, although Palti was also holding a gun but pointed downward."

Gloria Valentin Capispisan, 34 years old, married and a resident of Busay, San Jose, Romblon, the second witness for the Prosecution testified thus –

She know(s) Wilfredo since childhood and that the victim Leodegario is her father-in-law.

At about six o'clock in the evening of April 19, 1987 she was near the house of Porferio after coming from the political caucus at the house of Romy Roldan who was then the OIC Mayor of San Jose, and a supporter of Natalio Beltran, Jr.

She was in the company of Themestocles Sulat, Jojo Sulat, Noe Antonio, Leon Barrientos, Roberto Capispisan, Leodegario Capispisan and two others, and that she is the wife of Roberto Capispisan.

While negotiating the way home she saw Wilfredo seated on a bench along the road about ten (10) meters away from her and demonstrated that Wilfredo's hands were on his lap, the left covered by a handkerchief and the right over the handkerchief.

Wilfredo, according to witness, suddenly stood up and pointed his gun towards Leodegario and "I heard two shots" with Leodegario falling to the ground on his back (t.s.n. p. 6, 8/24/95).

She attempted to approach Leodegario, her father-in-law but "she saw Palti with a gun" so she ran away (t.s.n. p. 8, *supra*).

On question of the private prosecutor whether she saw the gun while Wilfredo was sitting, she replied that she could not see it because it was covered by a handkerchief.

Asked as to the possible reasons why Wilfredo shot Leodegario, Gloria hinted that her father-in-law left the SAKADA and secondly, because of politics, the victim being the supporter of Natalio Beltran, Jr., while Wilfredo was for Manuel Martinez, candidates then for Congressmen.

Likewise, she testified that the case against Wilfredo relative to the incident of 1987 where Leodegario was the victim was dismissed because of settlement, the accused and Lilia Capispisan, the wife of the victim, are first cousins.

Queried as to whether the agreed settlement came about, Gloria said that the accused was able to produce only one-half of the monetary consideration, and that the condition that Wilfredo will not stay in San Jose, Romblon was not complied with because the latter even ran as *barangay* captain and that accused shot and killed the nephew of her father-in-law, Rexinol Brigido and even pointed the gun to her husband for two (2) times (t.s.n. p. 11, 8/24/95).

In the course of the cross-examination of Gloria she admitted having seen the affidavit of waiver and desistance (Exh. "2" for the defense).

Gloria testified that before the shooting, she "saw Palti Umambong having a gun" (t.s.n. p. 14, *Ibid*).

In the hearing of August 25, 1995, Gloria admitted that she saw Palti when Leodegario was already dead and that "he chased us."

After the shooting, Gloria testified that she saw Wilfredo [run] after her companions, firing a gun (t.s.n. p. 7, *supra*)

Elaborating further, Gloria testified that she "saw Palti who had a gun" and Palti chased her with a gun on his hand (t.s.n. p. 17, *supra*) and that Palti was near Leodegario lying on the ground, about three (3) meters.

On additional cross-examination of Gloria, she admitted that she executed an affidavit, regarding the incident on May 5, 1987 (Exh. "2" and "2-A" for the defense), while the signatures of the witnesses on the first and second pages were marked as Exhibit "2-B" and "2-C".

Relative to her affidavit, Gloria narrated in her sworn affidavit that "without any reason he just shot my father-in-law."

As to why she did not include the name Rommel in her affidavit, she said it was because Rommel was the companion of Wilfredo (t.s.n. p. 10, 1/12/98)

To establish the presence of Rommel during the incident, Gloria categorically stated that Rommel was at the side of Wilfredo.

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EVIDENCE FOR THE DEFENSE

Palti Umambong, 53 years old, married, farmer, and resident of Hinulogan, San Jose, Romblon narrated thus –

That it was him who shot and killed Leodegario.

On April 19, 1987, he was in the cockpit of San Jose, and that his fighting cock was pitted against that being handled by Leodegario.

He bet ₱100.00 and referee Pedro Venus declared his cock as the winner. He demanded his winning from the one listing the bets

but was told that the bettor on the losing side did not pay, and when he demanded from Leodegario his winning bet, he was told by the latter that he will not pay because the decision of the referee was unfair (t.s.n., p. 6, 7/17/98).

Leodegario stood up and swung his right arm forward with a clenched fist and because of this Palti got angry prompting him to go home, but passed by the house of Porferio.

Near the house of Porferio he shot Leodegario because the latter did not pay him.

When he reached the road fronting that of Porferio, he stopped because he was called by Wilfredo who was seated on a bench beside the road and asked as to what happened in the cockpit and told the latter that he won except that he was not paid by Leodegario (t.s.n., pp. 11 and 12, *supra*).

Later on, as witness testified, Leodegario passed by near the house of Porferio and Palti accosted him and demanded payment, but Leodegario retreated two steps backward and was getting something from his waist as if drawing a gun and then he shot the victim twice resulting to Leodegario falling down on his back (t.s.n., pp. 3-4, *supra*).

After the shooting he walked towards his house, and told his wife that he'd done something wrong, that is, that he killed a person – a certain Leodegario and that he (witness) will go away. He looked for a sailboat and found one at Pinamihagan. He hired the sailboat and reached Aklan (t.s.n., pp. 16, 17, *supra*).

He stayed in Aklan for three years.

Palti, on redirect and recross examination, testified that he hid his gun before proceeding to the cockpit and retrieved the same on his way from the cockpit and before he met Wilfredo (t.s.n., p. 34, 8/24/98).

x x x x x x x x x

Wilfredo Cawaling, 56 years old, married, a resident of Nabas, Aklan, and the accused in this case testified as follows:

He testified that noontime of April 19, 1987 he was at Poblacion, San Jose, Romblon at the residence of his sister, Heide Casimero where he took his lunch.

Thereafter, accused went to his parents[']s house at Hinulugan, Busay, San Jose, in the company of Rommel and Rudy de Villa, and that while walking towards Hinulugan they passed by the house of Porferio where he bought "*tuba*." All the time, he was with Rommel except for Rudy de Villa who proceeded to Busay.

While waiting for the "*tuba*," Rommel went to the back of the house of Porferio where he played volleyball together with Ricky and the latters[‘] brothers.

At the time he was waiting for the "*tuba*" he saw Palti walking along the road towards the house of Porferio. Thereafter, he beckoned Palti to come to him and asked him about the cockfight. Palti informed him that the latter's fighting cock won but that he was not paid his wining bet (t.s.n., p. 8, 10/24/98).

That while he was conversing with Palti, he saw Leodegario on the road walking towards them in the company of Leon. Immediately, Palti turned his back and faced Leodegario and demanded again his winnings (t.s.n., p. 18, 10/14/98). Thereafter, he heard, Leodegario shouting "*bakit ka makulit*" and Palti retort[ed] by saying, "manloloko ka." At this point in time, with Palti pointing his three fingers to Leodegario, the latter retreated two steps backward and acted as if to draw something from his right waist which prompted Palti to raise his t-shirt and draw a revolver and fired at the victim. (t.s.n., p. 19, *supra*). As a result of which the victim fell down on his back. Leon who was in the company of the victim ran away after the shooting incident.

And that Rommel who was at the back of the house of Porferio also ran away (t.s.n., p. 22, 10/14/98).

After the incident he stayed in his parents[']s residence at sitio Hinulugan and the following day the 23rd of May, he returned to Nabas, Aklan where he resides.

Failing to get his visa for Saudi Arabia, accused looked for a job in Manila, and finally worked at a logging company in Baler, Quezon where he was the operations manager. He worked in that logging company for almost two years, and after his work was terminated he went back to Nabas, Aklan.

In 1998 he returned again to Manila. While in the city he received a letter from his father informing him that he together with Palti

were charged of murder before this Court and that there will be a hearing of their case and so he attended the same.

The case against him was dismissed [in] February 1991 (Exhibit "2") because the complainant, the wife of the victim, executed an affidavit of waiver (Exhibit "1").

After the dismissal of the case, accused went to Papua, New Guinea and upon his return in 1992 he ran and was elected as *barangay* captain of Busay, San Jose, Romblon.

In 1995 he ran for mayor but lost the election to Mayor Filipino Tandog. He then filed an election protest in this Court. On the scheduled hearing of his protest, he was arrested and upon inquiry with the arresting officer he was told that the dismissed case was refiled, by the same prosecutor who dismissed the original case.

Accused denied the assertion of Rommel that he shot the victim contending this witness was at the back portion of the house of Porferio at the time of the incident (t.s.n., p. 30, 10/14/98).

That when Palti confronted Leodegario about the former's winning bet in the cockfight he was five (5) meters distant from them and that he not only heard Palti saying "*manloloko ka*" but pointed his fingers to the victim.

At that instant, witness continued, the victim withdrew by about two (2) steps and appeared to be pulling out something.

Thereafter, Palti raised his t-shirt, drew his gun and shot the victim (t.s.n., p. 6, 11/4/98).

Accused could determine the distance of Palti from where he was but Palti's back was facing towards him and Leodegario was in front of Palti.

Thereafter, he saw Palti [run] towards Busay and found himself running too in the direction of his father's house, also in Busay.[4]

On the other hand, the findings of fact of the CA are set forth, as follows:

The version of the prosecution is narrated in good detail in the People's Brief submitted by the Office of the Solicitor General:

[4] *Id.* at 28-43.

> At about six o'clock in the evening of April 19, 1987, at Hinulugan, San Jose, Romblon while on their way home from the town proper, Wilfredo Cawaling, Palti Umambong and Rommel Brigido passed-by (sic) the house of Porferia Vina to have a drink of *tuba*. While drinking *tuba*, Leodegario Capispisan, Gloria Capispisan, Roberto Capispisan, Leon Barrientos, Themosticles Sulat, Jojo Sulat, Noe Antonio and two others came heading toward their direction (pp. 2-4, tsn, August 23, 1995). When Leodegario Capispisan was about two meters near appellant, who was seated on the bench by the road, appellant stood up, pointed his gun to (sic) Leodegario and taunted the latter for his bravery. Thereafter, two (2) gun shots were heard (p. 4, tsn, August 23, 1995). All the while, Brigido was seated on the table fronting the road drinking *tuba* with the others. He was about ten (10) meters from the talisay tree where appellant was seated. Palti Umambong, on the other hand, was standing on the stump of the coconut tree at about six (6) meters distance from appellant (pp. 7-8, tsn, August 23, 1995). From said distance, he saw Leodegario step back by about one (1) meter, raising his hand in surrender. Brigido then heard two (2) gunshots. Brigido also saw Palti Umambong holding a gun but the same was pointed downward (p. 4, Records; pp. 23-24, tsn, August 23, 1995).
>
> Upon hearing the shots, the people scampered away, including Brigido and Gloria, who also panicked and ran, leaving appellant and Umambong behind Leodegario Capispisan sprawled on the ground dead (p. 25, tsn, August 23, 1995; see also pp. 3-8, tsn, August 24, 1995).

The defendant, for his part, understandably presented a different version.

Accused claimed that about four o'clock in the afternoon of April 19, 1987, he left his sister's house to go to Barangay Busay together with Rommel Brigido and Rudy de Villa who happened to pass by his sister's house on their way to Hinulugan where they also reside; that on their way to Hinulugan he and Brigido stopped to buy *tuba* at the house of Porfiria Bina while Rudy de Villa continued on his way home; that while he was sitting in front of the house of Porfirio Bina, Palti Umambong came walking along the road and he asked Palti about the cockfight that afternoon; that Palti told him that he was not paid his winning bet of ₱100.00 by Leodegario when his

(Palti's) cock won; that Leodegario refused to pay him alleging that the decision of the referee was unfair; that when he insisted to collect from Leodegario the amount he won, Leodegario got angry at him and wanted to punch him.

Appellant at this time saw Leodegario and Lean Barrientos walking along the road towards their direction. When the two came upon them, Palti stopped Leodegario and asked him again to pay him what he won; that Leodegario remarked "*bakit ka makulit*?"; that Palti reacted by shouting "*manloloko ka*" at the same time pointing a finger at Leodegario.

At this point, Leodegario moved two steps backward and acted as if to draw something from his waist which prompted Palti to fire his revolver at the victim.

Leodegario then fell down on his back.

The widow and the children of Leodegario Capispisan executed an Affidavit of Waiver and Desistance dated January 24, 1991 signed by Lilia M. Capispisan and her eight (8) children praying the authorities concerned "to consider the investigation of the criminal case against Wilfredo Cawaling, *et al*., terminated or caused to be terminated."

Accordingly, Judge Cezar R. Maravilla issued the Order dated February 4, 1991 dismissing the case against Wilfredo Cawaling without cost.

Four (4) years later, an Information charging Cawaling with murder was refiled.

On December 15, 1999, following the submission of the case for decision, the Regional Trial Court, Branch 82, Odiongan, Romblon, rendered judgment.

> WHEREFORE, premises considered, **WILFREDO CAWALING** is hereby found guilty beyond reasonable doubt as an accomplice to the offense of homicide and is hereby sentenced to an indeterminate penalty of *prision correccional* as minimum to *prision mayor* medium as maximum there being no mitigating nor aggravating circumstances, or, from 4 years and 2 months to 8 years and 1 day with all its accessory penalties.
>
> The accused shall be entitled to the benefits of Art. 29 of the Revised Penal Code on preventive imprisonment.

Accused, in case of appeal of the Decision, may apply for bail pursuant to Sec. 5, Rule 114 of the Revised Rules on Criminal Procedure, as amended.

With costs.

SO ORDERED.[5]

Consistent with paragraph 2,[6] Section 13 of Rule 124, the CA certified the case and elevated the records to us for review.

Cawaling, in his Appellant's Brief, posits the following assignment of errors:

1. The Court of Appeals seriously erred when it convicted the herein accused-appellant of Murder without sufficient and credible evidence.

2. The Court of Appeals seriously erred when it disregarded the findings of the trial court on the aspect of the credibility of the prosecution's witnesses and their testimonies, despite well-established jurisprudence on the matter.[7]

As the assigned errors are intertwined, we shall discuss and resolve both simultaneously.

Cawaling maintains that the prosecution failed to discharge the requisite burden of proof in criminal cases because the eyewitness testimony of Rommel Brigido, as corroborated by Gloria Capispisan, is not credible. He asserts that the RTC's findings on the credibility of the witnesses should not have been disregarded by the CA. Specifically, Cawaling points out that, as held by the RTC, the testimony of Palti Umambong, the self-confessed killer of the victim, was more worthy of

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[5] CA *Rollo*, pp. 168-170.

[6] Whenever the Court of Appeals finds that the penalty of death, *reclusion perpetua*, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, *reclusion perpetua*, or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

[7] *Rollo*, p. 32.

credence. As such, Cawaling prays that the decision of the CA be reversed and set aside, and a new one issued, acquitting and exonerating him of the crime charged.

Conversely, the Office of the Solicitor General (OSG) argues that the RTC overlooked facts and circumstances when it found Cawaling liable merely as an accomplice to the crime of homicide. The OSG avers that the delay in the execution of Rommel Brigido's affidavit and the failure of the witnesses to identify the gun used by Cawaling do not diminish their credibility. In all, the OSG insists that the CA's reversal of the RTC decision was warranted.

Consequently, we juxtapose the conflicting findings of the two lower courts.

The RTC's findings zero in on Rommel Brigido's belated execution of an affidavit which, for the lower court, completely diminished his credibility, to wit:

FINDINGS OF THE COURT

On the third issue, the Court painstakingly perused the record of the case with objectivity and an open mind, probing and analyzing the pros and cons so as to arrive at a definitive conclusion thus eliminating the possibility of error and misjudgment.

In the testimony of Rommel in 1995 during the hearing of the petition for bail, the following incidents came into light.

Rommel asseverated that he was the companion of Wilfredo and Palti when they came from the town of San Jose, Romblon.

When Leodegario got near the bench where Wilfredo was seated, the latter "pointed his gun towards Leodegario and two shots rang out" and that there was a handkerchief covering the gun (t.s.n., p. 4, 9/28).

When he saw Wilfredo pointing his gun towards Leodegario, he also "saw Palti holding a gun pointing downward."

By a simple process of mathematical computation Rommel who initially testified in 1995 at age 29 was only 20 or 21 at the time of the incident in 1987. For one to remember the minutest details

of events that happened eight years ago, merits the Court's attention why it is so.

When the witness testified that the gun which Wilfredo was holding was covered with a handkerchief, it is crystal clear that he did not see the gun itself but probably the likeness of a gun, or, after the death of Leodegario his mind had been conditioned to conclude that what was covered by the handkerchief was a gun.

By testifying that he saw "Palti holding a gun" at the time that Wilfredo was pointing his gun towards Leodegario, a disquieting poser comes up: Why was Palti holding a gun? Did he fire his gun? Or did he not?

Although Rommel said Palti did not fire his gun, it cannot be the gospel truth. It does not mean that Palti did not fire his gun, those critical moments of April 19, 1987.

Remember that Rommel categorically stated that he was ten (10) meters distant from Wilfredo when the incident happened. Six o'clock in the afternoon, the beginning of nighttime and the end of daytime, is "*nag-aagaw ang liwanag at dilim*." And with the distance mentioned by Rommel it is hard to say with definiteness as to whose gun the shot came from, unless there is only one person in the vicinity. It could be from the gun of Palti who was visibly seen by Gloria and Rommel as holding a gun and not Wilfredo because his hand allegedly with a gun was covered by a handkerchief thus impairing their vision of the firearm.

The squeezing of a trigger requires only a fraction of a second, without unnecessary movement of body. For one to say he saw someone pulling the trigger of a gun at a distance of ten (10) meters and at a semi-darkness of the day is stretching the mind too far. One may hear the report of a gun but not the pulling of the trigger at the distance aforestated.

A presumption thus arises that a person allegedly holding a gun covered by a handkerchief, if said person is the only one in the premises, the report of a gun could be attributed to him.

But what if there were two persons? As in this case?

As to the credibility of Rommel, it may be stated that when the case originally filed against Wilfredo and Palti on June 24, 1987 and docketed as OD-275, Rommel was not listed as a witness for the prosecution. It was only in 1995 when the case was revived that

he gave his testimony for the prosecution. So, it took him eight (8) years after 1987 to air his side of the incident. Like in the case filed in 1987 Rommel was also not listed in the information filed in 1995 as a witness for the prosecution. This creates a [sic] serious doubts in the mind of the Court.

A surprise witness.

The explanation for the delay was because the case was dismissed. Yes, the explanation seems plausible but one cannot disregard the fact that Rommel never did execute an affidavit or sworn statement inculpating Wilfredo as the assailant of Leodegario from 1987 to the early part of 1995.

He only surfaced in 1995.

Whatever is in the mind of Rommel, is beyond this Court's comprehension, although such state of mind and the forces at work can be reasonably inferred from the acts and submission of the witness.

What, therefore, prompted Rommel to come out of his self-imposed silence for eight years and [give] his testimony in this case?

First of all, as the record would show Rommel was more or less, an "*alalay*" or friend of Wilfredo. For short, they are in good terms with one another. In 1987 and prior to that.

This harmonious relationship may have ended when Rommel was not taken in as a candidate for vice mayor by Wilfredo when the latter ran for mayor.

As things go by, Rommel instead ran for vice mayor as an independent, but lost. With this, it means a break-up in their personal relationship.

Politics had taken a toll.

Finally, Rommel emerged as a winner in the last political exercise where he was elected to the Sangguniang Bayan of San Jose, under another political patronage.

The testimony of Rommel, therefore, remains suspect considering that he testified that (a) Wilfredo is a dangerous man and had killed his uncle Rexinel Brigido, (b) he saw a gun in the hand of Wilfredo "but covered by handkerchief, (c) he saw Palti at that critical moment holding a gun, (d) the long delay in giving his testimony, and (e) the

supervening events after 1987.

These circumstances have created doubts in the mind of the Court.

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The undisputed assertion of Gloria and Rommel that Palti was holding a gun pointed downward (Rommel) and that she saw before the shooting Palti holding a gun (Gloria) are proof enough that Palti was holding a gun before, during and after the killing of Leodegario. Coupled by the admission in open Court by Palti that it was him who shot the victim, these pieces of evidence bear the earmarks of truth, no evidence to the contrary having been proved and established by the prosecution.

Why was Palti holding a gun at the crucial minutes of the incident? Did he or did not fire his gun?

What had motivated Palti to shoot Leodegario as alleged by him? What possible reason would it be?

Remember that he was not paid his winning bet of ₱100.00 by Leodegario despite his repeated demands. The words "*manloloko*" (Palti) and "*makulit ka*" (Leodegario) are expletives bordering on violence.

What did the prosecution witnesses say about Palti? As pointed out by this court Palti's participation was downgraded to the point that Palti was merely "holding a gun." The heat was on Wilfredo not Palti. It is understandable because it would be an exercise in futility to pin down Palti in the killing because he cannot anymore be proceeded against in view of the double jeopardy rule.

These circumstances amply suffice [to support] the Court's findings that Palti committed the offense.

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Be that as it may, circumstances are aplenty – by Palti's admission and the testimony of Rommel and Gloria that he (Palti) was holding a gun – that if put on the dock Palti would have been found culpable for homicide and not murder. The lesser offense of homicide because the prosecution failed to establish and prove that the qualifying circumstance of evident premeditation existed in the commission of the offense. Three requisites must be duly proved before evident premeditation may be appreciated as a qualifying circumstance, namely: (a) the time when the accused determined to commit the

crime, (b) an act manifestly indicating that the accused clung to his determination, and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.

The killing of Leodegario was at the spur of the moment. An unpremeditated killing.

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The question to be asked: Could an accomplice be convicted even if the principal has not been tried and convicted? The answer is yes. If principal is at large, still an accomplice can be convicted so long as the crime is fully established and the requisites for conviction as an accomplice are present.

Again, reliance on the autopsy report of Dr. Edmundo Reloj (Exh. "A") is necessary if only to determine the number of bullet wounds the victim sustained. The doctor mentioned of two (2) wounds, entrance and exit. In other words, only one bullet entered the body of the victim, resulting however to two (2) wounds, the entrance and the exit. Therefore, there as only one assailant, contrary to the allegation in the information that the victim suffered "serious and mortal gunshot wounds in different part[s] of his body" and the testimony of Rommel and Gloria that "two shots rang out."

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Wilfredo, on the other hand, cannot be faulted for the killing of Leodegario, but is found, on the basis of the evidence, as an accomplice in that Wilfredo according to Rommel was "going around pointing his gun to different directions," and Gloria testifying that "Wilfredo ran after her companions, firing a gun."

The case of *People v. Crisostomo*, 46 Phil. 775 where the accused prevented others in helping the victim by scaring them away is deemed an accomplice only.

In case of doubt the Court must lean to the milder form of penalty, that of an accomplice. (*People v. Manlangit,* 73 SCRA 49).[8]

Cawaling took exception to the portion of the RTC decision that convicted him as accomplice to homicide, and appealed to the CA. But as previously mentioned, the CA reversed the RTC

[8] CA *rollo*, pp. 44-53.

decision, convicted Cawaling of murder, and sentenced him to *reclusion perpetua*. The CA found that:

Scrutinizing the evidence on record, this Court is convinced that the prosecution has successfully overthrown the constitutional presumption of innocence of the accused.

Primarily, the appellant questions the credibility of Gloria Capispisan and prosecution rebuttal witness Rommel Brigido who were present at the time of the commission of the offense. We find no reason, however, why they would lie to implicate the accused. We find their testimonies straightforward, unhesitating and sincere. Between the self-serving testimonies of the accused and the positive identification of the assailant made by prosecution witnesses, the latter deserves greater credence.

As correctly pointed out by the appellee, herein appellant was positively identified by the prosecution witnesses as the one who shot the victim, as follows:

Testimony of Rommel Brigido

Q: When Leodegario Capispisan came near Wilfredo Cawaling, who was seated on the bench by the road, what happen? (*sic*)

A: Wilfredo Cawaling suddenly stood up and pointed his gun to Leodegario Capispisan saying: "Who is brave", and two shots rung out.

Q: You have demonstrated that the gun came from the lap of Wilfredo Cawaling, what if any covers that gun?

A: There was a handkerchief covering that gun.

Q: How far was Leodegario Capispisan when Wilfredo Cawaling stood up and fired against Leodegario Capispisan?

A: Witness pointing at the door with a distance of six (6) meters.

Q: What happen (sic) to Leodegario Capispisan when two shots rung out?

A: He fall (sic) down.

Q: Under this set up, was there an opportunity for Leodegario Capispisan to be avoiding (sic) the hit?

A: No, sir, because he has no chance to avoid that incident, he raised his two hands, (witness demonstrating by raising his right and left hands) and moreover the other side of the road is a cliff.

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Q: What did the accused Cawaling do, the first time that you saw Capispisan approaching on April 19, 1987?
A: Wilfredo Cawaling suddenly stood up and pointed his gun and two shots rung out.

x x x x x x x x x

Testimony of Gloria Capispisan

Q: Mrs. Capispisan, do you know the accused, Wilfredo Cawaling in this case?
A: Yes, sir, I know.

Q: Since when have you known him?
A: I know him since I was a child, since childhood because he was engage (sic) in buying fish.

Q: Where were you residing at the time when you knew Wilfredo Cawaling?
A: Sta. Fe, Romblon.

Q: And where was he buying fish during your younger days?
A: He is buying fish from the fishermen at Cabalian, Sta. Fe, Romblon.

Q: Now, since you have known Wilfredo Cawaling for long, please look around and point to him if he is in the courtroom this morning?
A: I can see him (witness pointing to somebody in the courtroom who when asked his name, replied that he is Wilfredo Cawaling).

Q: Do you know Leodegario Capispisan?
A: Yes, sir.

Q: How are you related to the late Leodegario Capispisan?
A: Leodegario Capispisan is my father-in-law.

Q: And where is Leodegario Capispisan now?
A: He is already dead, he was shot by Wilfredo Cawaling.

Q: On April 19, 1987, about six o'clock in the evening, where were you?
A: We were near Porferio Vina.

Q: Where did you come from?
A: We came from the caucus of Romy Roldan.

x x x x x x x x x

Q: According to you, you attended a caucus in the house of Romy Roldan, who were your companions in going home from there?
A: My companions were: Themosticles Sulat, Jojo Sulat, Noe Antonio, Leon Barrientos, Roberto Capispisan, Leodegario Capispisan and two other tagalogs and myself.

x x x x x x x x x

Q: Now, who was ahead while you were on your way home?
A: We were ahead.

Q: When you reached near the place of Porferio Vina, do you know where was Wilfredo Cawaling?
A: I saw him sir.

Q: Where was he?
A: He is sitting in the bench near the street.

Q: Why were you passing the street?
A: That is the only road that we will be passing to Busay.

Q: You claimed that you saw Wilfredo Cawaling seated on a bench, how was he seated, will you demonstrate that to this Honorable Court?
A: (Witness demonstrating by putting her two hands over her lap with her hand covered by her handkerchief and the right hand over the handkerchief).

Q: About how far were you from Wilfredo Cawaling when you noticed his sitting in a manner you have portrayed?
A: About ten (10) meters, sir.

Q: Now, when you were near the place already where he was sitting, what happened?
A: Wilfredo Cawaling suddenly stood up and he pointed his gun and saying who is brave, by dropping the handkerchief.

Q: Now, when Wilfredo Cawaling pointed his gun, to whom was it pointed?
A: To Leodegario Capispisan, sir.

Q: When Wilfredo said who is brave, what did he do with his gun which he was pointing to Leodegario Capispisan?
A: It was pointed to Leodegario Capispisan and simultaneously I heard two shots.

Q: Did he fell (sic) down with his back or his stomach?
A: He fell down on his back with blood oozing from his breast.

x x x x x x x x x

Q: What did Wilfredo Cawaling do after firing his gun and after Leodegario Capispisan fell?
A: He pointed his gun towards me.

Q: What else?
A: After telling him that I did not know this man, referring to my father-in-law, he ran after my companions firing his gun.[9]

From the foregoing contradictory findings, it is obvious that the resolution of this case hinges on which version of the case is more worthy of credence. In other words, we must rule on whether the prosecution's belatedly proffered eyewitness testimony of Rommel Brigido trumps the similarly belated testimony of Palti Umambong who now claims authorship of the crime.

It is well-settled that the credibility of witnesses is best determined by the trial judge, who has the direct opportunity and unique advantage to observe at close range their conduct and deportment on the witness stand.[10] The general rule is that findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on said finding, are accorded by the appellate court utmost respect, if not conclusive effect, and can only be set aside upon a clear showing that it overlooked, ignored, misconstrued and misinterpreted cogent facts and circumstances which, if considered, would alter the outcome of the case.[11]

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[9] *Id.* at 171-175.

[10] *People v. Vasquez*, G.R. No. 123939, May 28, 2004, 430 SCRA 52; *People v. Pacuancuan*, G.R. No. 144589, June 16, 2003, 404 SCRA 58; 452 Phil. 72, (2003).

[11] *Supra.*

This principle notwithstanding, we hold that the appellate court did not err in reversing the trial court and convicting Cawaling of murder, as we fully agree with the argument of the OSG that –

> In this case, the judge who rendered the appealed decision, Judge Francisco F. Fanlo Jr., is not the same judge who heard the prosecution witnesses, namely, Rommel Brigido, who testified on August 23, 1995 and Gloria Capispisan, who testified on August 24, and 25, 1995. When these two witnesses testified in 1995 the presiding Judge was Judge Cesar Maravilla. It was only on January 12, 1998 or three years later when Judge Fanlo, Jr. took over the case and heard these witnesses for additional cross-examination. The additional cross-examination centered on the affidavits executed by these witnesses after the incident and not on the incident itself. The rule on the weight to be given to the findings of the trial court does not unqualifiedly apply, when the judge who rendered the decision did not hear the principal evidence of the prosecution. For in such, case, his evaluation of the evidence is based on the transcript of stenographic notes, which also forms the basis for the Court of Appeals to review the trial court's decision and render its own decision.[12]

Moreover, Rommel Brigido's belated execution of an affidavit does not detract from or diminish the weight of his direct and positive testimony that Cawaling shot Leodegario, *viz*:

> Q: Do you know Wilfredo Cawaling?
> A: Yes, sir.
>
> Q: Since when have you known him?
> A: Since I was born because we were neighbor[s].
>
> x x x x x x x x x
>
> Q: In the afternoon of April 19, 1987, did you see Wilfredo Cawaling?
> A: Yes, sir.
>
> Q: Where for the first time did you see him that afternoon of April 19, 1987?
> A: In sitio Hinulugan, Brgy. Busay.

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[12] *Rollo,* pp. 74-75.

Q: Where did you come from that afternoon?
A: We came from the town.

Q: The town of what?
A: San Jose.

Q: Aside from Wilfredo Cawaling, do you have any companion in going to the town of San Jose, Romblon?
A: Yes, sir.

Q: Who were your companion (sic)?
A: Palti Umambong.

x x x x x x x x x

Q: Now, on your way home, where did you go?
A: We passed by Porferia Vina coming from the town.

Q: What did you do in the place of Porferia Vina?
A: We were together in drinking two (2) balls of *tuba*.

x x x x x x x x x

Q: Now, while drinking *tuba*, what happen[ed]?
A: While our drinking is not yet finished, I saw Wilfredo Cawaling sitting along the other side of the road.

x x x x x x x x x

Q: How far was Wilfredo Cawaling sitting on the bench from the road where Leodegario Capispisan and his group were passing?
A: It was near, because the bench was just along the side of the road.

Q: When Leodegario Capispisan came near Wilfredo Cawaling, who was [seated] on the bench by the road, what happen[ed]?
A: Wilfredo Cawaling suddenly stood up and pointed his gun to Leodegario Capispisan saying: "Who is brave," and two shots [rang] out.

x x x x x x x x x

Q: How far was Leodegario Capispisan when Wilfredo Cawaling stood up and fired against Leodegario Capispisan?

A: Witness pointing at the door, with a distance of six (6) meters.[13]

We have had occasion to hold that delay in making a criminal accusation will not necessarily impair the credibility of a witness if such delay is satisfactorily explained.[14] In this case, Rommel Brigido, on cross examination, explained, thus:

Q: Why did it take you so long to execute this affidavit where the incident took place way back on April [19] 1987 and you only executed your affidavit in support of this information on July 27, 1995?

A: Because that case was dismissed and [Wilfredo] Cawaling was at large at that time and I was asked to execute an affidavit.

x x x x x x x x x

Q: Why did you say that [Cawaling] is a dangerous man?

A: He killed so many people and recently also shot my uncle, Rexinol Brigido.[15]

Gloria Capispisan likewise satisfactorily explained her failure to include the name of Rommel Brigido in her earlier account of the killing in April 1987, as the latter was the companion of Cawaling. Subsequent thereto, Gloria categorically testified that Rommel was at the side of Cawaling during the incident.

The RTC erred in convicting Cawaling merely as an accomplice to homicide, and in giving full faith and credence to Palti Umambong's testimony that he was the one who shot the victim.

We have gone through the trial court's lengthy disquisition and tried to find a rational explanation why Palti, who previously pled not guilty to the crime, will now accept responsibility for the murder of Leodegario. Obviously, it is because the case against him had already been dismissed, and he can no longer

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[13] TSN, August 23, 1995, Records pp. 2-4.

[14] *People v. Abendan*, 412 Phil. 531, 549 (2001); *People v. Cabebe*, 352 Phil. 1155, 1168 (1998).

[15] TSN, August 28, 1995, pp. 7-9.

be successfully prosecuted for the offense without breaching the rule on double jeopardy. Thus, with Palti securely shielded from punishment by the principle of double jeopardy, he was at liberty to own authorship of the crime. Accordingly, Palti's credibility as a witness directly debunking Rommel's testimony is tainted by a serious cloud of doubt.

Justice Ricardo J. Francisco, in his treatise on Evidence, writes: "the credibility of a witness depends as much upon himself as upon his testimony, upon his interest as upon his mental cultivation, his conduct before and at the trial, the consistency of his behavior from the time he became aware of the fact to the time he relates it."[16] Not surprisingly, Palti is now motivated to confess to a crime for which he can no longer be held liable because of our rule on double jeopardy.[17]

We note that it was only Palti who was arraigned and who pled not guilty to the initial Information for murder. At that time, Cawaling was at large. After the case against Palti was dismissed, and now no longer in peril of punishment, he acknowledges commission of the crime and conveniently absolves Cawaling who had remained at large. We perceive a brazen conspiracy to escape criminal liability for murder.

Justice Francisco, in the same book, states that when there is conflicting evidence, the court is compelled to examine closely the motives of the witnesses for telling the truth or for falsely testifying.[18] As between Rommel and Palti, there is, in the former, an absence of proof, except for the defense's bare allegations of political motivations, of an improper motive that would have impelled him to testify for the prosecution and accuse his former friend and companion, Cawaling, of murder.[19] As no improper motive can be imputed to Rommel, his testimony is entitled to full faith and credence.

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[16] EVIDENCE by Ricardo J. Francisco, Third Edition, p. 563.

[17] See: Section 21, Article III, Philippine Constitution, and Section 7 Rule 117 of the Rules of Court.

[18] *Id.* at 573.

[19] See: *United States v. Pajarillo*, 19 Phil. 288 (1911).

One other thing has sealed the conviction of Cawaling. We note that he jumped bail and fled. On this score, jurisprudence has consistently held that flight of an accused is indicative of his guilt.[20]

As to the propriety of Cawaling's conviction for murder, the CA correctly appreciated the circumstance of treachery.[21] We quote with favor the appellate court's ruling thereon:

> The Solicitor General submits that the commission of the crime in the present case was attended by treachery as clearly established by Rommel Brigido and Gloria Capispisan, who testified that they saw appellant stand up from where he was seated and without warning, pointed his gun at Leodegario and instantaneously fired the same, thus killing Leodegario on the spot.
>
> It is contended that "the attack being sudden and unexpected, Leodegario was not given any chance to retaliate or defend himself from such attack."
>
> We agree.
>
> Treachery may be appreciated even if the attack was frontal but no less unexpected and sudden, giving the victim no opportunity, to repel it or offer any defense of his person. Frontal attach can be treachery when it is sudden and unexpected and the victim was unarmed.[22]

We likewise agree with the OSG that the heirs of the victim must be awarded moral damages in the amount of ₱50,000.00 consistent with prevailing jurisprudence.[23]

Lastly, we dispose of a corollary incident – the Manifestation with Motion to withdraw property bond and post cash bond in lieu thereof – filed by bondsperson Margarita Cruz. In this connection, Section 22 of Rule 114 of the Rules of Court is explicit:

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[20] *People v. Ambrocio*, G.R. No. 140267, June 29, 2004, 433 SCRA 67, 82; *People v. Del Mundo*, 418 Phil. 740, 753 (2001)

[21] See: Article 248 of the Revised Penal Code.

[22] CA *rollo*, p. 175.

[23] *People v. De Castro,* 451 Phil. 664, 682 (2003); *People v. Valdez*, 403 Phil. 62 (2001)

SEC. 22. *Cancellation of bail.*— Upon application of the bondsmen with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

With the conviction of Cawaling for murder, and the Court's consequent failure to execute the judgment of conviction because of Cawaling's flight, the motion must be denied. The posted property bond cannot be cancelled, much less withdrawn and replaced with a cash bond by movant Cruz, unless Cawaling is surrendered to the Court, or adequate proof of his death is presented.

We are not unmindful that Cruz posted the property bond simply to accommodate Cawaling, a relative, obtain provisional liberty. However, under Section 1[24] of Rule 114, Cruz, as a bondsman, guarantees the appearance of the accused before any court as required under specified conditions.

It is beyond cavil that, with the property bond posted by Cruz, Cawaling was allowed temporary liberty, which made it possible, quite easily, to flee and evade punishment. As it stands now, Cawaling, a convicted felon, is beyond reach of the law, and the property bond cannot be released.

IN LIGHT OF ALL THE FOREGOING, the decision of the Court of Appeals is *AFFIRMED*. Accused-appellant Wilfredo Cawaling is found *GUILTY* of Murder and ordered to pay, ₱50,000.00 as indemnity and another ₱50,000.00 as moral damages, to the heirs of the victim. The Manifestation with Motion of Movant Cruz is *DENIED*.

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[24] Sec. 1. *Bail defined.* — Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160132. April 17, 2009]

SERAFIN, RAUL, NENITA, NAZARETO, NEOLANDA, all surnamed NARANJA, AMELIA NARANJA-RUBINOS, NILDA NARANJA-LIMANA, and NAIDA NARANJA-GICANO, *petitioners, vs.* **COURT OF APPEALS, LUCILIA P. BELARDO, represented by her Attorney-in-Fact, REBECCA CORDERO, and THE LOCAL REGISTER OF DEEDS, BACOLOD CITY,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; REQUISITES FOR VALIDITY.— To be valid, a contract of sale need not contain a technical description of the subject property. Contracts of sale of real property have no prescribed form for their validity; they follow the general rule on contracts that they may be entered into in whatever form, provided all the essential requisites for their validity are present. The requisites of a valid contract of sale under Article 1458 of the Civil Code are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent. The failure of the parties to specify with absolute clarity the object of a contract by including its technical description is of no moment. What is important is that there is, in fact, an object that is determinate or at least determinable, as subject of the contract of sale. The form of a deed of sale provided in Section 127 of Act No. 496 is only a suggested form. It is not a mandatory form that must be strictly followed by the parties to a contract.

2. REMEDIAL LAW; EVIDENCE; EVIDENTIARY WEIGHT OF NOTARIZED DOCUMENT.— A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. It must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law.

3. CIVIL LAW; CONTRACTS; UNDUE INFLUENCE; WHEN PRESENT.— There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. One who alleges any defect, or the lack of consent to a contract by reason of fraud or undue influence, must establish by full, clear and convincing evidence, such specific acts that vitiated the party's consent; otherwise, the latter's presumed consent to the contract prevails. For undue influence to be present, the influence exerted must have so overpowered or subjugated the mind of a contracting party as to destroy his free agency, making him express the will of another rather than his own.

4. ID.; ID.; ID.; THE PRESUMPTION THAT A CONTRACT HAS SUFFICIENT CONSIDERATION CANNOT BE OVERTHROWN BY MERE ASSERTION THAT IT HAS NO CONSIDERATION.— Petitioners argue that the Deed of Sale was not supported by a consideration since no receipt was shown, and it is incredulous that Roque, who was already weak, would travel to Bacolod City just to be able to execute the Deed of Sale. The Deed of Sale which states "receipt of which in full I hereby acknowledge to my entire satisfaction" is an acknowledgment receipt in itself. Moreover, the presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration.

APPEARANCES OF COUNSEL

Ivan M. Solidum, Jr. for petitioners.
Edmundo G. Manlapao for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition seeks a review of the Court of Appeals (CA) Decision[1] dated September 13, 2002 and Resolution[2] dated September 24, 2003 which upheld the contract of sale executed by petitioners' predecessor, Roque Naranja, during his lifetime, over two real properties.

Roque Naranja was the registered owner of a parcel of land, denominated as Lot No. 4 in Consolidation-Subdivision Plan (LRC) Pcs-886, Bacolod Cadastre, with an area of 136 square meters and covered by Transfer Certificate of Title (TCT) No. T-18764. Roque was also a co-owner of an adjacent lot, Lot No. 2, of the same subdivision plan, which he co-owned with his brothers, Gabino and Placido Naranja. When Placido died, his one-third share was inherited by his children, Nenita, Nazareto, Nilda, Naida and Neolanda, all surnamed Naranja, herein petitioners. Lot No. 2 is covered by TCT No. T-18762 in the names of Roque, Gabino and the said children of Placido. TCT No. T-18762 remained even after Gabino died. The other petitioners — Serafin Naranja, Raul Naranja, and Amelia Naranja-Rubinos — are the children of Gabino.[3]

The two lots were being leased by Esso Standard Eastern, Inc. for 30 years from 1962-1992. For his properties, Roque was being paid ₱200.00 per month by the company.[4]

In 1976, Roque, who was single and had no children, lived with his half sister, Lucilia P. Belardo (Belardo), in Pontevedra,

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[1] Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Edgardo P. Cruz and Amelita G. Tolentino, concurring; *rollo,* pp. 62-72.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Edgardo P. Cruz and Sergio L. Pestaño, concurring; *rollo*, pp. 31-32.

[3] CA *rollo*, p. 90.

[4] *Id.* at 91.

Negros Occidental. At that time, a catheter was attached to Roque's body to help him urinate. But the catheter was subsequently removed when Roque was already able to urinate normally. Other than this and the influenza prior to his death, Roque had been physically sound.[5]

Roque had no other source of income except for the ₱200.00 monthly rental of his two properties. To show his gratitude to Belardo, Roque sold Lot No. 4 and his one-third share in Lot No. 2 to Belardo on August 21, 1981, through a Deed of Sale of Real Property which was duly notarized by Atty. Eugenio Sanicas. The Deed of Sale reads:

> I, ROQUE NARANJA, of legal age, single, Filipino and a resident of Bacolod City, do hereby declare that I am the registered owner of Lot No. 4 of the Cadastral Survey of the City of Bacolod, consisting of 136 square meters, more or less, covered by Transfer Certificate of Title No. T-18764 and a co-owner of Lot No. 2, situated at the City of Bacolod, consisting of 151 square meters, more or less, covered by Transfer Certificate of Title No. T-18762 and my share in the aforesaid Lot No. 2 is one-third share.
>
> That for and in consideration of the sum of TEN THOUSAND PESOS (₱10,000.00), Philippine Currency, and other valuable consideration, receipt of which in full I hereby acknowledge to my entire satisfaction, by these presents, I hereby transfer and convey by way of absolute sale the above-mentioned Lot No. 4 consisting of 136 square meters covered by Transfer Certificate of Title No. T-18764 and my one-third share in Lot No. 2, covered by Transfer Certificate of Title No. T-18762, in favor of my sister LUCILIA P. BELARDO, of legal age, Filipino citizen, married to Alfonso D. Belardo, and a resident of Pontevedra, Negros Occidental, her heirs, successors and assigns.
>
> IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 1981 at Bacolod City, Philippines.
>
> (SGD.)
> ROQUE NARANJA[6]

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[5] *Id.* at 90-91.

[6] Records, p. 22.

Roque's copies of TCT No. T-18764 and TCT No. T-18762 were entrusted to Atty. Sanicas for registration of the deed of sale and transfer of the titles to Belardo. But the deed of sale could not be registered because Belardo did not have the money to pay for the registration fees.[7]

Belardo's only source of income was her store and coffee shop. Sometimes, her children would give her money to help with the household expenses, including the expenses incurred for Roque's support. At times, she would also borrow money from Margarita Dema-ala, a neighbor.[8] When the amount of her loan reached ₱15,000.00, Dema-ala required a security. On November 19, 1983, Roque executed a deed of sale in favor of Dema-ala, covering his two properties in consideration of the ₱15,000.00 outstanding loan and an additional ₱15,000.00, for a total of ₱30,000.00. Dema-ala explained that she wanted Roque to execute the deed of sale himself since the properties were still in his name. Belardo merely acted as a witness. The titles to the properties were given to Dema-ala for safekeeping.[9]

Three days later, or on December 2, 1983, Roque died of influenza. The proceeds of the loan were used for his treatment while the rest was spent for his burial.[10]

In 1985, Belardo fully paid the loan secured by the second deed of sale. Dema-ala returned the certificates of title to Belardo, who, in turn, gave them back to Atty. Sanicas.[11]

Unknown to Belardo, petitioners, the children of Placido and Gabino Naranja, executed an Extrajudicial Settlement Among Heirs[12] on October 11, 1985, adjudicating among themselves Lot No. 4. On February 19, 1986, petitioner Amelia Naranja-Rubinos, accompanied by Belardo, borrowed the two TCTs,

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[7] CA *rollo,* p. 91.

[8] *Id.*

[9] *Id.* at 92.

[10] *Id.*

[11] *Id.*

[12] Records, p. 19.

together with the lease agreement with Esso Standard Eastern, Inc., from Atty. Sanicas on account of the loan being proposed by Belardo to her. Thereafter, petitioners had the Extrajudicial Settlement Among Heirs notarized on February 25, 1986. With Roque's copy of TCT No. T-18764 in their possession, they succeeded in having it cancelled and a new certificate of title, TCT No. T-140184, issued in their names.[13]

In 1987, Belardo decided to register the Deed of Sale dated August 21, 1981. With no title in hand, she was compelled to file a petition with the RTC to direct the Register of Deeds to annotate the deed of sale even without a copy of the TCTs. In an Order dated June 18, 1987, the RTC granted the petition. But she only succeeded in registering the deed of sale in TCT No. T-18762 because TCT No. T-18764 had already been cancelled.[14]

On December 11, 1989, Atty. Sanicas prepared a certificate of authorization, giving Belardo's daughter, Jennelyn P. Vargas, the authority to collect the payments from Esso Standard Eastern, Inc. But it appeared from the company's Advice of Fixed Payment that payment of the lease rental had already been transferred from Belardo to Amelia Naranja-Rubinos because of the Extrajudicial Settlement Among Heirs.

On June 23, 1992, Belardo,[15] through her daughter and attorney-in-fact, Rebecca Cordero, instituted a suit for reconveyance with damages. The complaint prayed that judgment be rendered declaring Belardo as the sole legal owner of Lot No. 4, declaring null and void the Extrajudicial Settlement Among Heirs, and TCT No. T-140184, and ordering petitioners to reconvey to her the subject property and to pay damages. The case was docketed as Civil Case No. 7144.

Subsequently, petitioners also filed a case against respondent for annulment of sale and quieting of title with damages, praying,

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[13] CA *rollo,* p. 92.

[14] *Id.* at 93.

[15] Lucilia Belardo died on November 11, 1993.

among others, that judgment be rendered nullifying the Deed of Sale, and ordering the Register of Deeds of Bacolod City to cancel the annotation of the Deed of Sale on TCT No. T-18762. This case was docketed as Civil Case No. 7214.

On March 5, 1997, the RTC rendered a Decision in the consolidated cases in favor of petitioners. The trial court noted that the Deed of Sale was defective in form since it did not contain a technical description of the subject properties but merely indicated that they were Lot No. 4, covered by TCT No. T-18764 consisting of 136 square meters, and one-third portion of Lot No. 2 covered by TCT No. T-18762. The trial court held that, being defective in form, the Deed of Sale did not vest title in private respondent. Full and absolute ownership did not pass to private respondent because she failed to register the Deed of Sale. She was not a purchaser in good faith since she acted as a witness to the second sale of the property knowing that she had already purchased the property from Roque. Whatever rights private respondent had over the properties could not be superior to the rights of petitioners, who are now the registered owners of the parcels of land. The RTC disposed, thus:

> IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:
>
> 1. Dismissing Civil Case No. 7144.
>
> 2. Civil Case No. 7214.
>
> a) Declaring the Deed of Sale dated August 21, 1981, executed by Roque Naranja, covering his one-third (1/3) share of Lot 2 of the consolidation-subdivision plan (LRC) Pcs-886, being a portion of the consolidation of Lots 240-A, 240-B, 240-C and 240-D, described on plan, Psd-33443 (LRC) GLRO Cad. Rec. No. 55 in favor of Lucilia Belardo, and entered as Doc. No. 80, Page 17, Book No. XXXVI, Series of 1981 of Notary Public Eugenio Sanicas of Bacolod City, as null and void and of no force and effect;
>
> b) Ordering the Register of Deeds of Bacolod City to cancel Entry No. 148123 annotate at the back of Transfer Certificate of Title No. T-18762;
>
> c) Ordering Lucilia Belardo or her successors-in-interest to pay plaintiffs the sum of ₱20,000.00 as attorney's fees, the amount of ₱500.00 as appearance fees.

Counterclaims in both Civil Cases Nos. 7144 and 7214 are hereby DISMISSED.

SO ORDERED.[16]

On September 13, 2002, the CA reversed the RTC Decision. The CA held that the unregisterability of a deed of sale will not undermine its validity and efficacy in transferring ownership of the properties to private respondent. The CA noted that the records were devoid of any proof evidencing the alleged vitiation of Roque's consent to the sale; hence, there is no reason to invalidate the sale. Registration is only necessary to bind third parties, which petitioners, being the heirs of Roque Naranja, are not. The trial court erred in applying Article 1544 of the Civil Code to the case at bar since petitioners are not purchasers of the said properties. Hence, it is not significant that private respondent failed to register the deed of sale before the extrajudicial settlement among the heirs. The dispositive portion of the CA Decision reads:

WHEREFORE, the decision dated March 5, 1997 in Civil Cases Nos. 7144 and 7214 is hereby REVERSED and SET ASIDE. In lieu thereof, judgment is hereby rendered as follows:

1. Civil Case No. 7214 is hereby ordered DISMISSED for lack of cause of action.

2. In Civil Case No. 7144, the extrajudicial settlement executed by the heirs of Roque Naranja adjudicating among themselves Lot No. 4 of the consolidation-subdivision plan (LRC) Pcs – 886 of the Bacolod Cadastre is hereby declared null and void for want of factual and legal basis. The certificate of title issued to the heirs of Roque Naranja (Transfer Certificate of [T]i[t]le No. T-140184) as a consequence of the void extra-judicial settlement is hereby ordered cancelled and the previous title to Lot No. 4, Transfer Certificate of Title No. T-18764, is hereby ordered reinstated. Lucilia Belardo is hereby declared the sole and legal owner of said Lot No. 4, and one-third of Lot No. 2 of the same consolidation-subdivision plan, Bacolod Cadastre, by virtue of the deed of sale thereof in her favor dated August 21, 1981.

SO ORDERED.[17]

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[16] *Rollo,* p. 179.

[17] *Id.* at 71-72.

The CA denied petitioners' motion for reconsideration on September 24, 2003.[18] Petitioners filed this petition for review, raising the following issues:

1. WHETHER OR NOT THE HONORABLE RESPONDENT COURT OF APPEALS IS CORRECT IN IGNORING THE POINT RAISED BY [PETITIONERS] THAT THE DEED OF SALE WHICH DOES NOT COMPL[Y] WITH THE PROVISIONS OF ACT NO. 496 IS [NOT] VALID.

2. WHETHER OR NOT THE ALLEGED DEED OF SALE [OF REAL PROPERTIES] IS VALID CONSIDERING THAT THE CONSENT OF THE LATE ROQUE NARANJA HAD BEEN VITIATED; x x x THERE [IS] NO CONCLUSIVE SHOWING THAT THERE WAS CONSIDERATION AND THERE [ARE] SERIOUS IRREGULARITIES IN THE NOTARIZATION OF THE SAID DOCUMENTS.[19]

In her Comment, private respondent questioned the Verification and Certification of Non-Forum Shopping attached to the Petition for Review, which was signed by a certain Ernesto Villadelgado without a special power of attorney. In their reply, petitioners remedied the defect by attaching a Special Power of Attorney signed by them.

Pursuant to its policy to encourage full adjudication of the merits of an appeal, the Court had previously excused the late submission of a special power of attorney to sign a certification against forum-shopping.[20] But even if we excuse this defect, the petition nonetheless fails on the merits.

The Court does not agree with petitioners' contention that a deed of sale must contain a technical description of the subject property in order to be valid. Petitioners anchor their theory on Section 127 of Act No. 496,[21] which provides a sample form

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[18] *Supra* note 2.

[19] *Rollo*, p. 141.

[20] *St. Michael School of Cavite, Inc. v. Masaito Development Corporation,* G.R. No. 166301, February 29, 2008, 547 SCRA 263; *Novelty Phils., Inc. v. Court of Appeals,* 458 Phil. 36 (2003).

[21] LAND REGISTRATION ACT.

of a deed of sale that includes, in particular, a technical description of the subject property.

To be valid, a contract of sale need not contain a technical description of the subject property. Contracts of sale of real property have no prescribed form for their validity; they follow the general rule on contracts that they may be entered into in whatever form, provided all the essential requisites for their validity are present.[22] The requisites of a valid contract of sale under Article 1458 of the Civil Code are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.

The failure of the parties to specify with absolute clarity the object of a contract by including its technical description is of no moment. What is important is that there is, in fact, an object that is determinate or at least determinable, as subject of the contract of sale. The form of a deed of sale provided in Section 127 of Act No. 496 is only a suggested form. It is not a mandatory form that must be strictly followed by the parties to a contract.

In the instant case, the deed of sale clearly identifies the subject properties by indicating their respective lot numbers, lot areas, and the certificate of title covering them. Resort can always be made to the technical description as stated in the certificates of title covering the two properties.

On the alleged nullity of the deed of sale, we hold that petitioners failed to submit sufficient proof to show that Roque executed the deed of sale under the undue influence of Belardo or that the deed of sale was simulated or without consideration.

A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. It must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law.[23]

[22] CIVIL CODE, Art. 1356.

[23] *Herbon v. Palad,* G.R. No. 149542, July 20, 2006, 495 SCRA 544, 556.

Petitioners allege that Belardo unduly influenced Roque, who was already physically weak and senile at that time, into executing the deed of sale. Belardo allegedly took advantage of the fact that Roque was living in her house and was dependent on her for support.

There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice.[24] One who alleges any defect, or the lack of consent to a contract by reason of fraud or undue influence, must establish by full, clear and convincing evidence, such specific acts that vitiated the party's consent; otherwise, the latter's presumed consent to the contract prevails.[25] For undue influence to be present, the influence exerted must have so overpowered or subjugated the mind of a contracting party as to destroy his free agency, making him express the will of another rather than his own.[26]

Petitioners adduced no proof that Roque had lost control of his mental faculties at the time of the sale. Undue influence is not to be inferred from age, sickness, or debility of body, if sufficient intelligence remains.[27] The evidence presented pertained more to Roque's physical condition rather than his mental condition. On the contrary, Atty. Sanicas, the notary public, attested that Roque was very healthy and mentally sound and sharp at the time of the execution of the deed of sale. Atty. Sanicas said that Roque also told him that he was a Law graduate.[28]

Neither was the contract simulated. The late registration of the Deed of Sale and Roque's execution of the second deed of sale in favor of Dema-ala did not mean that the contract was simulated. We are convinced with the explanation given by respondent's witnesses that the deed of sale was not

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[24] CIVIL CODE, Art. 1337.

[25] *Heirs of Sevilla v. Sevilla,* 450 Phil. 598, 603 (2003).

[26] *Carpo v. Chua*, G.R. Nos. 150773 and 153599, September 30, 2005, 471 SCRA 471, 482.

[27] *Loyola v. Court of Appeals,* 383 Phil. 171, 185 (2000).

[28] TSN, December 7, 1993, pp. 28-29.

immediately registered because Belardo did not have the money to pay for the fees. This explanation is, in fact, plausible considering that Belardo could barely support herself and her brother, Roque. As for the second deed of sale, Dema-ala, herself, attested before the trial court that she let Roque sign the second deed of sale because the title to the properties were still in his name.

Finally, petitioners argue that the Deed of Sale was not supported by a consideration since no receipt was shown, and it is incredulous that Roque, who was already weak, would travel to Bacolod City just to be able to execute the Deed of Sale.

The Deed of Sale which states "receipt of which in full I hereby acknowledge to my entire satisfaction" is an acknowledgment receipt in itself. Moreover, the presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration.[29]

Heirs are bound by contracts entered into by their predecessors-in-interest.[30] As heirs of Roque, petitioners are bound by the contract of sale that Roque executed in favor of Belardo. Having been sold already to Belardo, the two properties no longer formed part of Roque's estate which petitioners could have inherited. The deed of extrajudicial settlement that petitioners executed over Lot No. 4 is, therefore, void, since the property subject thereof did not become part of Roque's estate.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated September 13, 2002 and Resolution dated September 24, 2003 are *AFFIRMED*.

SO ORDERED.

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

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[29] *Saguid v. Security Finance, Inc.,* G.R. No. 159467, December 9, 2005, 477 SCRA 256, 270.

[30] CIVIL CODE, Art. 1311; *Santos v. Lumbao,* G.R. No. 169129, March 28, 2007, 519 SCRA 408, 430.

THIRD DIVISION

[G.R. No. 167768. April 17, 2009]

MALAYAN INSURANCE COMPANY, INC., *petitioner, vs.* **VICTORIAS MILLING COMPANY, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; (P.D. 902-A) SECURITIES AND EXCHANGE COMMISSION REORGANIZATION ACT; AS DEFINED IN P.D. NO. 902-A *INTERM RULES* OF PROCEDURE ON CORPORATE REHABILITATION, AND JURISPRUDENCE.— In *Finasia Investments and Finance Corp. v. Court of Appeals,* we construed "claim" to refer to debts or demands of a pecuniary nature. It means the assertion of a right to have money paid. Also in *Arranza v. B.F. Homes, Inc.*, we referred to it as an action involving monetary considerations. And in *Philippine Airlines v. Kurangking,* we said it is a right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. More importantly, the *Interim Rules of Procedure on Corporate Rehabilitation* provides an all-encompassing definition of the term and thus includes all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

2. ID.; ID.; THE SUSPENSION OF ACTIONS FOR CLAIMS AGAINST A CORPORATION UNDER REHABILITATION RECEIVER OR MANAGEMENT COMMITTEE EMBRACES ALL PHASES OF THE SUIT, AND COVERS ALL CLAIMS AGAINST A DISTRESSED CORPORATION.— The suspension of action for claims against a corporation under rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court. Otherwise stated, what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims. Furthermore, the actions that are suspended cover all claims against a distressed

corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature. The indiscriminate suspension of actions for claims is intended to expedite the rehabilitation of the distressed corporation. As this Court held in *Rubberworld,* the automatic stay of actions is designed "to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the 'rescue' of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation."

3. ID.; ID.; AS LONG AS THE CORPORATION IS UNDER A MANAGEMENT COMMITTEE OR REHABILITATION RECEIVER, ALL ACTIONS FOR CLAIMS AGAINST IT, FOR MONEY OR OTHERWISE, MUST YIELD TO THE GREATER IMPERATIVE OF CORPORATE REHABILITATION.— As long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it — for money or otherwise — must yield to the greater imperative of corporate rehabilitation, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business, Enforcement of writs of execution issued by judicial or quasi-judicial tribunals, since such writs emanate from "actions for claims," must, likewise, be suspended.

APPEARANCES OF COUNSEL

Sobreviñas Diaz Hayudini & Bodegon for petitioner.
Villanueva Gabionza & De Santos for respondent.

D E C I S I O N

NACHURA, *J.*:

Petitioner Malayan Insurance Company, Inc. assails the Court of Appeals' Decision[1] dated May 21, 2004 and Resolution[2] dated April 11, 2005, which affirmed the suspension of the proceedings on its claim for reimbursement against the respondent Victorias Milling Company, Inc.

The case arose from the following antecedents:

On July 8, 1997, acting on the verified petition for declaration of a state of suspension of payments, for the approval of a rehabilitation plan and the appointment of a management committee, the Securities and Exchange Commission (SEC) issued an order suspending all pending actions for claims against respondent, thus:

> As a consequence of the filing of the instant petition for suspension of payments, all actions for claims against VICTORIAS MILLING COMPANY, INC., pending before any court, [t]ribunal, [o]ffice, [b]oard, body, and/or [c]ommission are deemed SUSPENDED immediately until further order from this Hearing Panel. (*RCBC v. IAC, et al.*, 213 [SCRA] 830; *BPI vs. CA*, 229 SCRA 223)
>
> Likewise, petitioner [herein respondent] is hereby enjoined from disposing of any and all of its properties in any manner whatsoever, except in the ordinary course of its business and from making any payment outside of the legitimate expenses of its business during the pendency of the proceedings.[3]

A month later, SEC constituted a Management Committee.

On May 31, 1999, the Labor Arbiter rendered a decision in RAB Case No. 06-08-10553-98 entitled *"Dominador P. Abelido*

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[1] Penned by Bienvenido L. Reyes, with the concurrence of Associate Justices Ruben T. Reyes (Retired Associate Justice of the Supreme Court) and Jose C. Mendoza; *rollo*, pp. 46-56.

[2] *Id.* at 58-59.

[3] *Id.* at 179-180.

v. Victorias Milling Co., Inc.," ordering respondent to pay ₱6,605,275.24 to Abelido.

To comply with the requisite bond for an appeal to the National Labor Relations Commission (NLRC), respondent procured from the petitioner a surety bond (MICO Bond No. 070117) on July 16, 1999, to secure the satisfaction of the judgment rendered against it. Under the said surety bond, petitioner bound itself to be jointly and severally liable with respondent for the sum of ₱6,605,275.24 in the event judgment in the labor case is affirmed in whole or in part.[4]

In consideration of the execution of the surety bond, respondent, through its Chief Financial Officer Romeo Hermoso, executed in favor of petitioner an Indemnity Agreement[5] dated July 16, 1999. In said agreement, respondent bound itself to indemnify petitioner and to keep it harmless from all damages, costs, penalties, taxes and other expenses that petitioner may, at any time, incur as a consequence of having become surety.

As security for its obligation under the Indemnity Agreement, respondent executed a Deed of Assignment[6] dated July 15, 1999 wherein respondent assigned in favor of the petitioner all of its funds on deposit with the Bank of the Philippine Islands (BPI), equivalent to the amount of the supersedes bond.

On September 7, 2000, the NLRC rendered a decision affirming the May 31, 1999 Decision of the Labor Arbiter. Consequently, a writ of execution was issued on April 4, 2001.[7]

On April 10, 2001, Executive Labor Arbiter Oscar Uy issued an order, directing petitioner to immediately turn over to the NLRC the amount of ₱6,605,275.24 on account of the writ of execution.[8] On April 17, 2001, the Labor Arbiter issued another

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[4] *Id.* at 76.

[5] *Id.* at 79-80.

[6] *Id.* at 80-81.

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

[8] *Id.* at 84.

order requiring petitioner to explain why it should not be cited for contempt for failure to comply with its previous order.[9] When petitioner failed to comply, the Labor Arbiter issued a third order dated May 7, 2001, which ordered petitioner to immediately turn over to the NLRC the garnished amount equivalent to the amount covered by the surety bond.[10]

On May 11, 2001, petitioner served a demand upon BPI for the release of the bank deposits that respondent had assigned in its favor.[11] BPI rejected the demand because respondent was still challenging the validity of the execution award [in the CA]; and the validity of the Deed of Assignment may be questioned on the ground that it was executed without the requisite authority of the Management Committee.[12]

In a Letter[13] dated May 16, 2001, respondent advised petitioner that the issuance and enforcement of the writ of execution is premature, void and illegal, for which reason, respondent disavowed any liability liable for whatever consequences resulting from the premature execution of the decision.

Petitioner replied that it had raised before the NLRC the issues cited in the May 16, 2001 Letter, but the latter was bent on enforcing the writ of execution. Thus, petitioner requested from respondent a copy of the temporary restraining order (TRO) that it allegedly procured from the Court of Appeals (CA), with a reminder that, without a TRO, it would be compelled to comply with the writ of execution to avoid being held in contempt.[14]

On May 18, 2001, petitioner released ₱6,605,275.24 to the NLRC.[15] Thereafter, petitioner made a series of demands

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[9] *Id.* at 87.

[10] *Id.* at 89.

[11] *Id.* at 90.

[12] *Id.* at 91.

[13] *Id.* at 92-93.

[14] *Id.* at 94-95.

[15] *Id.* at 96.

for reimbursement against respondent and BPI but to no avail.[16]

On January 15, 2003, petitioner filed a complaint for sum of money and damages against respondent and BPI. BPI filed a motion to dismiss the complaint. Respondent also filed a motion to dismiss on the ground that it is the SEC that has jurisdiction over the claim considering that it is under a state of suspension of payments.

Meanwhile, with the approval of the rehabilitation plan, SEC issued an order appointing a rehabilitation receiver on January 27, 2003.[17]

Thus, on July 2, 2003, the Regional Trial Court (RTC) issued an order denying BPI's motion to dismiss while suspending the proceedings as against respondent, thus:

> WHEREFORE, co-defendant BPI's motion to dismiss dated March 4, 2003 is denied for lack of merit.
>
> Insofar as co-defendant VMC [Victorias Milling Company, Inc.] is concerned, the herein proceeding is suspended.
>
> SO ORDERED.[18]

Petitioner moved for the partial reconsideration of the order insofar as it suspended the proceedings against respondent. On October 7, 2004, the RTC denied the motion.[19]

Subsequently, petitioner filed a petition for *certiorari* with the CA assailing the said orders. On May 21, 2004, the CA agreed with the RTC that petitioner's claim is covered by the Stay Order; consequently, it dismissed the petition. It stressed that, as held in *Rubberworld (Phils.), Inc. v. NLRC*,[20] Sec.6(c) of P.D. 902-A does not make any distinction as to what claims

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[16] *Id.* at 98-100.

[17] *Id.* at 53.

[18] *Id.* at 183.

[19] *Id.* at 209.

[20] G.R. No. 126773, April 14, 1999, 305 SCRA 721.

are covered. The appellate court noted that the law provides that actions for claims shall be suspended "upon appointment of a management committee or a rehabilitation receiver." It then concluded that, even if the claim were not covered by the said stay order, the suspension of petitioner's claim would still be inevitable considering that at the time the rehabilitation receiver was appointed by the SEC on January 27, 2003, petitioner's complaint was already pending before the trial court. According to the CA, to rule otherwise would defeat the very purpose of suspension of payments and render inutile the rescue functions of the management committee.

On April 11, 2005, the CA denied the petitioner's motion for reconsideration. Dissatisfied with the CA's ruling, petitioner now comes to this Court raising the following issues:

I

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT BY VIRTUE OF SECTION 6 (C) OF P.D. 902-A, "ALL ACTIONS FOR CLAIMS" AGAINST RESPONDENT VICTORIAS MILLING, CO., INC. ("VMC"), WITHOUT ANY DISTINCTION, ARE SUSPENDED UPON THE APPOINTMENT BY THE SECURITIES AND EXCHANGE COMMISSION ("SEC") OF A MANAGEMENT COMMITTEE FOR RESPONDENT VMC.

II

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT SINCE THE ACTION OF PETITIONER MICI AGAINST RESPONDENT VMC IN THE CASE BELOW WAS ALREADY PENDING WHEN THE SEC APPOINTED A REHABILITATION RECEIVER FOR RESPONDENT VMC, ITS SUSPENSION "WOULD STILL BE INEVITABLE" AS THE LAW PROVIDES THAT "SUSPENSION OF ACTIONS COMMENCES UPON APPOINTMENT OF A MANAGEMENT COMMITTEE OR A REHABILITATION RECEIVER."

III

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN FINDING THAT THE PAYMENT OF THE INSTANT CLAIM OF PETITIONER MICI WOULD "DEFEAT THE VERY PURPOSE" OF

THE STAY ORDER ISSUED BY THE SEC FOLLOWING THE APPOINTMENT OF THE MANAGEMENT COMMITTEE FOR RESPONDENT VMC.[21]

Petitioner maintains that the Stay Order applies only to claims existing prior to or at the time of the issuance of the said order. It avers that Sec. 6(c) of P.D. No. 902-A is clear and categorical that the suspension covers *actions for claims* which are *pending* before any court at the time of the appointment of the management committee or rehabilitation receiver.[22] And, not being a pre-existing claim, payment of petitioner's claim will not result in undue preference which is the mischief sought to be prevented by a stay order.

The CA allegedly erred in citing *Rubberworld* which declared that the suspension is deemed to cover "all claims" since the law made no distinction or exemption. Petitioner posits that such pronouncement referred to claims in general, as opposed to labor claims.[23]

Petitioner further contends that the suspension of actions commences either upon the appointment of a management receiver or rehabilitation receiver, not successively as interpreted by the CA. It argues that the use of the disjunctive word "or" in Sec. 6(c) signifies that suspension of actions commences either upon appointment of a management committee or a rehabilitation receiver.

Citing *Philippine Blooming Mills, Inc. v. Court of Appeals*,[24] petitioner submits that, as surety, it is separately liable for the satisfaction of the judgment award rendered against the respondent in the labor case. Petitioner lays the blame on the respondent for its failure to avert the execution of the NLRC Decision.

For its part, respondent posits that it is immaterial when the actions were commenced as Sec. 6(c) of P.D. 902-A is clear

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[21] *Rollo,* p. 22.

[22] *Id.* at 446.

[23] *Id.* at 439-440.

[24] G.R. No. 142381, October 15, 2003, 413 SCRA 445.

that *all* actions standing before a court against a corporation under a management committee must be stayed; hence, even actions for claims instituted after the appointment of the management committee are covered by the stay.[25] It avers that the stay order is not limited to the claims stated in the Schedule of Debts and Liabilities.

Respondent counters that, in *Rubberworld*, this Court applied Sec. 6(c) of P.D. 902-A and suspended the proceedings in the labor case even if the complaint for illegal dismissal was filed after the issuance of the stay order.[26] Respondent also cited *Arranza v. B.F. Homes, Inc.*[27] wherein the class suit was filed 10 years after the management committee was appointed. Respondent avers that in said case, this Court did not consider the time of the filing of the claim or when the cause of action accrued. It points out that, in a later case,[28] the Court even concluded that had the claim in *Arranza* been for monetary awards, the proceedings to enforce such claim would have been suspended.

Respondent emphasizes that the petitioner's claim is for reimbursement of the monetary award it paid to Abelido in the labor case, which was later ordered suspended by the CA in CA-GR SP No. 64467. Having originated from an action for a claim that has been suspended, petitioner's claim should also be deemed suspended. The suspension of the labor proceedings by the CA rendered moot the petitioner's cause of action; its remedy is now to go against the bond posted by Abelido in the NLRC.

Finally, respondent contends that claims not arising from the operation of the corporation's business, whether filed before or after the petition for suspension of payments, are covered by the SEC Stay Order.[29]

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[25] *Rollo,* pp. 482-484.

[26] *Id.* at 485-486.

[27] 389 Phil. 318 (2000).

[28] *Sobrejuanite v. ASB Development Corporation,* G.R. No. 165675, September 30, 2005, 471 SCRA 763.

[29] *Rollo,* p. 500.

The petition is bereft of merit.

For our resolution of the instant case, we briefly revisit the following undisputed facts:

On July 8, 1997, the SEC issued a Stay Order, suspending all actions for claims against respondent pending before any court, tribunal, office, board, body or commission. On August 8, 1997, the SEC constituted a Management Committee. On May 31, 1999, the Labor Arbiter rendered a decision in *"Abelido v. Victorias Milling",* ordering respondent to pay Abelido the sum of ₱6,605,275.24. On July 16, 1999, respondent procured from the petitioner a surety bond as a requisite to the filing of an appeal with the NLRC from the Labor Arbiter's decision. On September 7, 2000, the NLRC affirmed the decision of the Labor Arbiter, and a writ of execution was issued on April 4, 2001.

The Executive Labor Arbiter issued three orders (dated April 10, 2001, April 17, 2001, and May 7, 2001, respectively) directing the petitioner to turn over to the NLRC the amount of ₱6,605,275.24, on pain of contempt. On May 11, 2001, petitioner served a demand upon BPI for the release of the bank deposits that respondent had assigned in its favor, but BPI refused. On May 16, 2001, respondent advised petitioner that the enforcement of the writ of execution was premature and without legal basis. The following day, petitioner replied that the NLRC was bent on enforcing the writ, and sought from the respondent a copy of a TRO, if any, issued by the Court of Appeals. On May 18, 2001, petitioner released the amount to the NLRC.

Failing to obtain reimbursement from the respondent despite a series of demands, petitioner, on January 15, 2003, filed a complaint for sum of money with the RTC. On January 27, 2003, SEC issued an order appointing a rehabilitation receiver for respondent. On July 2, 2003, the RTC suspended the proceedings against respondent, and subsequently denied the petitioner's motion for reconsideration.

Petitioner then went to the CA on a petition for *certiorari* which the CA dismissed on May 21, 2004, concurring with the

RTC that the SEC Stay Order covered petitioner's claim. On April 11, 2005, the CA denied the petitioner's motion for reconsideration.

Meanwhile, on June 5, 2003, the CA resolved the petition for *certiorari* filed by the respondent assailing the NLRC decision. The appellate court, while affirming the NLRC decision, set aside the latter's resolution on the respondent's motion for reconsideration, and remanded the case to the NLRC for suspension of the proceedings, ruling that the NLRC decision cannot be enforced while [the respondent] is under a management committee.[30]

Petitioner now comes to us, insisting that since its claim (for reimbursement of the amount it released to NLRC to satisfy the judgment on the labor claims of Abelido) arose after the respondent was placed under a management committee, such claim should not be suspended nor covered by the SEC Stay Order.

The argument must fall.

It must be noted that petitioner's claim is for reimbursement of whatever it may have paid to the NLRC as full and final settlement of the award rendered against respondent in the *Abelido* case, secured by Security Bond No. 070117.[31] In order to resolve whether said proceedings should be suspended, it is necessary to determine whether the complaint for sum of money with damages is a "claim" within the contemplation of P.D. No. 902-A.

In *Finasia Investments and Finance Corp. v. Court of Appeals,*[32] we construed "claim" to refer to debts or demands of a pecuniary nature. It means the assertion of a right to have money paid. Also in *Arranza v. B.F. Homes, Inc.*,[33] we

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[30] Embodied in a Decision dated June 5, 2003, in CA-G.R. SP. No. 64467; *rollo,* pp. 527-532.

[31] *Rollo*, p. 70.

[32] G.R. No. 107002, October 7, 1994, 237 SCRA 446, 450-451.

[33] *Supra*. note 27.

referred to it as an action involving monetary considerations. And in *Philippine Airlines v. Kurangking,*[34] we said it is a right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. More importantly, the *Interim Rules of Procedure on Corporate Rehabilitation* provides an all-encompassing definition of the term and thus includes all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

Clearly then, the complaint filed by petitioner against respondent falls under the category of "claim" whether under our rulings in *Finasia, Arranza* or *Kurangking*, or as defined in the *Interim Rules,* considering that it is for pecuniary considerations.[35]

We have consistently held in *Rubberworld (Phils.) Inc. v. NLRC,*[36] in *Sobrejuanite v. ASB Development Corporation,*[37] and in *Garcia v. Philippine Airlines,*[38] that the suspension of proceedings referred to in Section 6 (c) of Presidential Decree No. 902-A, which pertinently provides –

x x x Provided, finally, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, **all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body, shall be suspended accordingly.**[39]

uniformly applies to "all actions for claims" filed against a corporation, partnership or association under management or receivership, without distinction.[40]

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[34] 438 Phil. 375 (2002).

[35] See: *Sobrejuanite v. ASB Development Corporation*, G.R. No. 165675, September 30, 2005, 471 SCRA 763, 772.

[36] *Supra*. Note 20.

[37] *Supra*.

[38] G.R. No. 164856, August 29, 2007, 531 SCRA 574.

[39] Emphasis supplied.

[40] Except for expenses incurred in the ordinary course of its business.

Aptly cited in the assailed Court of Appeals decision is our pronouncement in *Rubberworld, viz*:

> x x x The law is clear: upon the creation of a management committee or the appointment of a rehabilitation receiver, all claims for actions "shall be suspended accordingly." x x x Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.*

Along the same vein, in *Sobrejuanite,* we enunciated:

> x x x The interim rules define a claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions.

Similarly, in *Garcia v. Philippine Airlines,* we said:

> Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the NLRC, the same should have been suspended pending the rehabilitation proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claims before PAL's receiver.

and, very recently, in this Court's *en banc* Decision in the same *Garcia v. Philippine Airlines,*[41] we had the occasion to restate this oft-repeated verdict, thus:

> It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended. As stated early on, during the pendency of petitioners' complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

The suspension of action for claims against a corporation under rehabilitation receiver or management committee embraces

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[41] G.R. No. 164856, January 20, 2009.

all phases of the suit, be it before the trial court or any tribunal or before this Court. Otherwise stated, what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims. Furthermore, the actions that are suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature.[42]

The indiscriminate suspension of actions for claims is intended to expedite the rehabilitation of the distressed corporation. As this Court held in *Rubberworld,*[43] the automatic stay of actions is designed "to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the 'rescue' of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation." Thus, in Section 6 (d) of P.D. 902-A, the management committee or rehabilitation receiver is given the following powers:

(d) To create and appoint a management committee, board, or body upon petition or *motu proprio* to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public: *Provided, further,* That the Commission may create or appoint a management committee, board or body to undertake the management of corporations, partnerships

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[42] *Philippine Airlines, Incorporated v. Zamora,* G.R. No. 166996, February 6, 2007, 514 SCRA 584.

[43] See: *Philippine Airlines, Incorporated v. Philippine Airlines Employees Association (PALEA)*, G.R. No. 142399, June 19, 2007, 525 SCRA 29.

or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.

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

x x x x x x x x x

Given these premises, it is not difficult to understand why actions for claims against the ailing enterprise have to be suspended. It then becomes easy to accept the hypothesis that the date when the claim arose, or when the action is filed, is of no moment. As long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it — for money or otherwise — must yield to the greater imperative of corporate rehabilitation, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business. Enforcement of writs of execution issued by judicial or quasi-judicial tribunals,

since such writs emanate from "actions for claims," must, likewise, be suspended.

If we allow the reimbursement action to proceed, and if petitioner's claim is granted, it would be in a position to assert a preference over other creditors. Worse, respondent would be compelled to dispose of its properties in order to satisfy the claim of petitioner. It would in effect be a clear defiance of the proscription set forth in the *Interim Rules* on "selling, encumbering, transferring, or disposing in any manner any of its (respondent's) properties except in the ordinary course of business."[44] Certainly, petitioner's claim for reimbursement did not arise from the usual operations of respondent's business. Neither can we consider it as an ordinary expense for the conduct of its operations.

All told, the suspension of the proceedings before the trial court is therefore imperative.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Decision of the Court of Appeals dated May 21, 2004 and its Resolution dated April 11, 2005, are *AFFIRMED*.

SO ORDERED.

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

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[*] Designated as additional member per raffle dated November 26, 2007.

[44] Section 6, Interim Rules of Procedure on Corporate Rehabilitation.

THIRD DIVISION

[G.R. Nos. 179307-09. April 17, 2009]

DINAH C. BARRIGA, *petitioner, vs.* **SANDIGANBAYAN (4th Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MINUTE RESOLUTION OF DISMISSAL OF A PETITION FOR REVIEW ON *CERTIORARI* CONSTITUTES AN ADJUDICATION ON THE MERITS OF THE CONTROVERSY OR SUBJECT MATTER OF THE PETITION.— In *Smith Bell & Co. (Phils.), Inc., et al. v. Court of Appeals, et al.,* we held that a minute resolution of dismissal of a petition for review on *certiorari* constitutes an *adjudication on the merits* of the controversy or subject matter of the petition: Private respondent's argument must be rejected. That this Court denied Go Thong's Petition for Review in a minute Resolution did not in any way diminish the legal significance of the denial so decreed by this Court. The Supreme Court is not compelled to adopt a definite and stringent rule on how its judgment shall be framed. It has long been settled that this Court has discretion to decide whether a "minute resolution" should be used in lieu of a full-blown decision in any particular case and that a minute Resolution of dismissal of a Petition for Review on *Certiorari* constitutes an *adjudication on the merits* of the controversy or subject matter of the Petition. It has been stressed by the Court that the grant of due course to a Petition for Review is "not a matter of right, but of sound judicial discretion; and so there is no need to fully explain the Court's denial. For one thing, the facts and law are already mentioned in the Court of Appeals' opinion." A minute Resolution denying a Petition for Review of a Decision of the Court of Appeals can only mean that the Supreme Court agrees with or adopts the findings and conclusions of the Court of Appeals, in other words, that the Decision sought to be reviewed and set aside is correct.

2. ID.; THE SANDIGANBAYAN IS A SPECIAL COURT OF THE SAME LEVEL AS THE COURT OF APPEALS AND

POSSESSING ALL THE INHERENT POWERS OF A COURT OF JUSTICE; RULING IN *PAJARO V. SANDIGANBAYAN* TO THE EFFECT THAT THE SANDIGANBAYAN, BEING A COURT OF SPECIAL AND LIMITED JURISDICTION, IS INFERIOR TO THE COURT OF APPEALS, AND AS SUCH, MAY NOT REVIEW, REVISE OR REVERSE THE FINDINGS OF THE LATTER, IS NO LONGER CONTROLLING.— On the applicability of *Pajaro v. Sandiganbayan* ubiquitously invoked by petitioner, we quote with favor the Sandiganbayan's holding: [3] Accused Barriga's reliance on the case of *Pajaro v. Sandiganbayan* to bolster her argument that the supposed dismissal of the administrative aspect of these cases by the Court of Appeals has effectively deprived the Sandiganbayan of its jurisdiction to entertain and try these criminal cases is clearly misplaced and fails to take into account relevant legal developments. The **ruling in *Pajaro v. Sandiganbayan*** to the effect that the Sandiganbayan, being a court of special and limited jurisdiction, is *inferior* to the Court of Appeals, and as such, may not review, revise or reverse the findings of the latter, **is no longer controlling.** Under Section 1, P.D. No. 1606, as amended by R.A. No. 8249, the Sandiganbayan has been declared by law as a **"special court of the same level as the Court of Appeals and possessing all the inherent powers of a court of justice."** Thus, to turn *Pajaro v. Sandiganbayan* on its head, the Court of Appeals, being merely of equal rank to the Sandiganbayan, the same may not review, revise, reverse or even control its findings. In fact, decisions and final orders of the Sandiganbayan are reviewable only by the Supreme Court. x x x Neither can the Court of Appeals impose its findings and conclusions upon the Sandiganbayan, as accused Barriga implies, as only the rulings and decisions of the Supreme Court can serve as binding precedents to the determinations to be made by the Sandiganbayan.

3. ID.; THE ASSAILED RESOLUTION OF THE COURT OF APPEALS DOES NOT STATE THAT THE ADMINISTRATIVE ASPECT OF THE CASE AGAINST PETITIONER HAS BEEN DISMISSED.— Nowhere in the Court of Appeals (CA) resolution, which petitioner harps on, does it state that the administrative aspect of the case against her has been dismissed. The slight modification accorded by the CA of its decision was strictly confined to the Ombudsman's authority to directly dismiss or

suspend petitioner. This was explicitly set forth in the dispositive portion of the CA resolution, to wit: WHEREFORE, the Decision in the instant case is MODIFIED in that the **Orders of the Office of the Ombudsman dated August 10, 2004 and September 3, 2004 in so far as it directed the implementation of the suspension of petitioner is declared null and void having been made beyond its authority and prematurely.** Consequently, the letter of the municipal mayor of Carmen, Cebu dated November 2, 2004 implementing said order is also **nullified.** Petitioner's immediate reinstatement is in order. No pronouncement as to costs.

APPEARANCES OF COUNSEL

Lawrence L. Fernandez for petitioner.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a Motion to Resolve Petitioner's Motion for Reconsideration on the Merits[1] filed by petitioner Dinah C. Barriga.

In the foregoing motion, petitioner insists on the resolution on the merits of her Petition for *Certiorari* and alleges the following:

1. In a Minute Resolution x x x[,] this Honorable Court denied Petitioner's x x x motion for reconsideration.

2. It may be noted that the Petition as well as Petitioner's motion for reconsideration were summarily denied by this Honorable Court through Minute Resolutions.

3. It is respectfully submitted that the Petition as well as the motions for reconsideration should be resolved on the merits and not summarily denied via Minute Resolutions as the legal principle relied upon by the Petition as well as the motions for reconsiderations was the very decision of this Honorable Court in *Pajaro v. Sandiganbayan,* x x x which squarely held that the dismissal by the

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

Honorable Court of Appeals of the administrative case which is based on the same question of facts as that of the criminal aspect takes away from the Honorable Sandiganbayan the jurisdiction to entertain and try the criminal aspect. The issue here is jurisdiction and the Honorable Sandiganbayan will take its bearings from the Decision of this Honorable Court on the merits in this case.

4. Inasmuch as the Honorable Court of Appeals has already dismissed the administrative aspect against herein Petitioner in CA-G.R. SP No. 00079, this Honorable Court ought to enforce its decision in *Pajaro v. Sandiganbayan* x x x, on the Honorable Sandiganbayan in this case.

5. At the very least, with all due respect, this Honorable Court must demonstrate in an extended decision why it chooses not to enforce its decision in *Pajaro v. Sandiganbayan* to this case. At least, for the guidance of the Bench and the Bar, with all due respect, it behooves upon this Honorable Court as the bastion of last resort to elucidate why *Pajaro* is not controlling in this case, if said Decision should command the respect of all and sundry. After all, the decision of this Honorable Court is a law to all citizens of this country which ought to be respected and observed.[2]

We shall first dispose of petitioner's erroneous contention that the summary denial of her petition and her subsequent motions for reconsideration in minute resolutions were not resolved by the Court on the merits.

In *Smith Bell & Co. (Phils.), Inc., et al. v. Court of Appeals, et al.,*[3] we held that a minute resolution of dismissal of a petition for review on *certiorari* constitutes an *adjudication on the merits* of the controversy or subject matter of the petition:

Private respondent's argument must be rejected. That this Court denied Go Thong's Petition for Review in a minute Resolution did not in any way diminish the legal significance of the denial so decreed by this Court. The Supreme Court is not compelled to adopt a definite and stringent rule on how its judgment shall be framed. It has long been settled that this Court has discretion to decide whether a "minute resolution" should be used in lieu of a full-blown decision in any

[2] *Id.* at 115-116.

[3] 274 Phil. 472 (1991).

particular case and that a minute Resolution of dismissal of a Petition for Review on *Certiorari* constitutes an *adjudication on the merits* of the controversy or subject matter of the Petition. It has been stressed by the Court that the grant of due course to a Petition for Review is "not a matter of right, but of sound judicial discretion; and so there is no need to fully explain the Court's denial. For one thing, the facts and law are already mentioned in the Court of Appeals' opinion." A minute Resolution denying a Petition for Review of a Decision of the Court of Appeals can only mean that the Supreme Court agrees with or adopts the findings and conclusions of the Court of Appeals, in other words, that the Decision sought to be reviewed and set aside is correct.[4]

We elaborated on this further in *Komatsu Industries (Phils.) Inc. v. CA*:[5]

As early as *Novino, et al. v. Court of Appeals, et al.,* it has been stressed that these "resolutions" are not "decisions" within the above constitutional requirements; they merely hold that the petition for review should not be entertained and even ordinary lawyers have all this time so understood it; and the petition to review the decision of the Court of Appeals is not a matter of right but of sound judicial discretion, hence there is no need to fully explain the Court's denial since, for one thing, the facts and the law are already mentioned in the Court of Appeals' decision.

This was reiterated in *Que v. People, et al.,* and further clarified in *Munal v. Commission on Audit, et al.* that the constitutional mandate is applicable only in cases "submitted for decision," *i.e.,* given due course and after the filing of briefs or memoranda and/or other pleadings, but not where the petition is refused due course, with the resolution therefore stating the legal basis thereof. Thus, when the Court, after deliberating on a petition and subsequent pleadings, decides to deny due course to the petition and states that the questions raised are factual or there is no reversible error in the respondent court's decision, there is sufficient compliance with the constitutional requirement.

For, as expounded more in detail in *Borromeo v. Court of Appeals, et al.*

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[4] *Id.* at 479-480. (Citations omitted.)

[5] 352 Phil. 440 (1998).

> The Court reminds all lower courts, lawyers, and litigants that it disposes of the bulk of its cases by minute resolutions and decrees them as final and executory, as where a case is patently without merit, where the issues raised are factual in nature, where the decision appealed from is supported by substantial evidence and is in accord with the facts of the case and the applicable laws, where it is clear from the records that the petition is filed merely to forestall the early execution of judgment and for non-compliance with the rules. The resolution denying due course or dismissing the petition always gives the legal basis. As emphasized in *In Re: Wenceslao Laureta* x x x, "[T]he Court is not 'duty bound' to render signed Decisions all the time. It has ample discretion to formulate Decisions and/or Minute Resolutions, *provided a legal basis is given*, depending on its evaluation of a case." This is the only way whereby it can act on all cases filed before it and, accordingly discharge its constitutional functions.[6]

From the foregoing rulings, it is beyond cavil that the denial of petitioner's petition and her subsequent motions for reconsideration were adjudication upon merits.

On the applicability of *Pajaro v. Sandiganbayan*[7] ubiquitously invoked by petitioner, we quote with favor the Sandiganbayan's holding:

> [3] Accused Barriga's reliance on the case of *Pajaro v. Sandiganbayan* to bolster her argument that the supposed dismissal of the administrative aspect of these cases by the Court of Appeals has effectively deprived the Sandiganbayan of its jurisdiction to entertain and try these criminal cases is clearly misplaced and fails to take into account relevant legal developments. The **ruling in *Pajaro v. Sandiganbayan*** to the effect that the Sandiganbayan, being a court of special and limited jurisdiction, is *inferior* to the Court of Appeals, and as such, may not review, revise or reverse the findings of the latter, **is no longer controlling.** Under Section 1, P.D. No. 1606, as amended by R.A. No. 8249, the Sandiganbayan has been declared by law as a **"special court of the same level as the Court of Appeals and possessing all the inherent powers of a court of justice."** Thus,

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[6] *Id.* at 446-447. (Citations omitted.)

[7] No. 82001, April 15, 1988, 160 SCRA 763.

to turn *Pajaro v. Sandiganbayan* on its head, the Court of Appeals, being merely of equal rank to the Sandiganbayan, the same may not review, revise, reverse or even control its findings. In fact, decisions and final orders of the Sandiganbayan are reviewable only by the Supreme Court. x x x Neither can the Court of Appeals impose its findings and conclusions upon the Sandiganbayan, as accused Barriga implies, as only the rulings and decisions of the Supreme Court can serve as binding precedents to the determinations to be made by the Sandiganbayan.[8]

Lastly, nowhere in the Court of Appeals (CA) resolution, which petitioner harps on, does it state that the administrative aspect of the case against her has been dismissed. The slight modification accorded by the CA of its decision was strictly confined to the Ombudsman's authority to directly dismiss or suspend petitioner. This was explicitly set forth in the dispositive portion of the CA resolution, to wit:

> WHEREFORE, the Decision in the instant case is MODIFIED in that the **Orders of the Office of the Ombudsman dated August 10, 2004 and September 3, 2004 in so far as it directed the implementation of the suspension of petitioner is declared null and void having been made beyond its authority and prematurely.** Consequently, the letter of the municipal mayor of Carmen, Cebu dated November 2, 2004 implementing said order is also **nullified.** Petitioner's immediate reinstatement is in order. No pronouncement as to costs.[9]

WHEREFORE, petitioner's motion to resolve her motion for reconsideration on the merits, which is in reality a third motion for reconsideration, is *DENIED* for lack of merit. This third motion for reconsideration is *EXPUNGED* as an unauthorized pleading. This resolution is immediately final and executory, and no further pleadings or motions will be entertained.

SO ORDERED.

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

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[8] *Rollo,* pp. 24-25.

[9] *Id*. at 49.

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Exercise of power by the state — Constitutional requirements. (Metropolitan Cebu Water District *vs*. J. King and Sons Co., Inc., G.R. No. 175983, April 16, 2009) p. 471

— While the power to expropriate pertains to the legislature, Congress may validly delegate the exercise of the power to government agencies, public officials and quasi-public entities like a local water utility. *(Id.)*

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogative to transfer employees — Generally recognized provided there is no demotion in rank or diminution in salary, benefits and other privileges, and the action is not motivated by discrimination. (Herida *vs*. F & C Pawnshop, G.R. No. 172601, April 16, 2009) p. 385

— Objection thereto grounded on personal inconvenience is not valid. *(Id.)*

EMPLOYMENT, TERMINATION OF

Dismissal of employees — Proper remedy for a serious misconduct of a grave and aggravated character that directly violated the personal security of another employee due to an employment-related cause. (Gatus *vs*. Quality House, Inc. G.R. No. 156766, April 16, 2009) p. 176

Due process requirement — Absence of formal or actual hearing is not a violation thereof provided a party is given the opportunity to be heard. (Gatus *vs*. Quality House, Inc. G.R. No. 156766, April 16, 2009) p. 176

— "Ample opportunity to be heard and defend himself"; elucidated. *(Id.; Velasco, Jr., J., concurring and dissenting opinion)*

— Implementing rules and regulations by the Department of Labor and Employment prescribing the due procedural standards in termination cases should be liberally construed in favor of workers. *(Id.)*

Loss of trust and confidence as a ground — Must be based on willful breach and founded on clearly established facts. (Garcia *vs*. NLRC, G.R. No. 172854, April 16, 2009) p. 426

Resignation — Its voluntary execution may be gleaned from the letter of employee to his crewing manager. (Virjen Shipping Corp. *vs*. Barnaquio, G.R. No. 178127, April 16, 2009) p. 534

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Principle — The State cannot be put in estoppel by mistake or errors of its officials or agents. (British American Tobacco *vs*. Sec. Camacho, G.R. No. 163583, April 15, 2009) p. 38

EVIDENCE

Burden of proof — In administrative proceedings, the burden of proof rests on the complainant; mere allegation is not evidence and is not equivalent to proof. (De Chavez-Blanco *vs*. Atty. Lumasag, Jr., A.C. No. 5195, April 16, 2009) p. 59

Chain of custody rule in dangerous drugs case — Application. (People *vs.* Gum-oyen, G.R. No. 182231, April 16, 2009) p. 665

(People *vs*. Agojo, G.R. No. 181318, April 16, 2009) p. 649

Defense of frame-up — Viewed with disfavor since it is easily concocted and is a common ploy of the accused. (People *vs*. Agojo, G.R. No. 181318, April 16, 2009) p. 649

Demurrer to evidence — Application. (New Regent Sources, Inc. *vs.* Tanjuatco, Jr., G.R. No. 168800, April 16, 2009) p. 321

Denial of accused — Cannot prevail over the positive and categorical statements of the witnesses. (Coscolla *vs*. People, G.R. No. 176566, April 16, 2009) p. 504

— Finds its special place and assumes primacy when the case for the prosecution is at margin of sufficiency in establishing proof beyond reasonable doubt. (People *vs*. Fabito, G.R. No. 179933, April 16, 2009) p. 584

— Must certainly fail when unsubstantiated and uncorroborated by clear and convincing evidence. (Pacasum *vs*. People, G.R. No. 180314, April 16, 2009) p. 612

DNA evidence — Application of the new Rule in rape cases. (People *vs.* Umanito, G.R. No. 172607, April 16, 2009) p. 398

"Fall-guy" theory — When rejected. (Coscolla *vs*. People, G.R. No. 176566, April 16, 2009) p. 504

Non-flight of the accused — Cannot be singularly considered as evidence or as manifestation determinative of innocence. (Coscolla *vs*. People, G.R. No. 176566, April 16, 2009) p. 504

Preponderance of evidence — Elucidated. (Beltran *vs*. Villarosa, G.R. No. 165376, April 16, 2009) p. 279

— How determined. *(Id.)*

EXECUTIVE DEPARTMENT

Doctrine of qualified political agency — As Department Secretaries are alter egos of the President, their decisions,

as a rule, need not be appealed to the Office of the President. (Manubay *vs*. Hon. Garilao, G.R. No. 140717, April 16, 2009) p. 135

EXEMPLARY DAMAGES

Award of — Justified when the killing of the victim was attended by treachery. (People *vs*. Obligado, G.R. No. 171735, April 16, 2009) p. 371

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine/Principle — A party aggrieved by an order of an administrative official should first appeal to the higher administrative authority before seeking judicial relief. (Manubay *vs*. Hon. Garilao, G.R. No. 140717, April 16, 2009) p. 135

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Expropriation proceedings — Stages. (Metropolitan Cebu Water District *vs*. J. King and Sons Co., Inc., G.R. No. 175983, April 16, 2009) p. 471

FALSIFICATION BY PUBLIC OFFICERS

Making untruthful statements in a "narration of facts" — Certification of time elapsed and work accomplished are considered. (Bartolo *vs*. Sandiganbayan, G.R. No. 172123, April 16, 2009) p. 377

FALSIFICATION OF PUBLIC DOCUMENTS

Commission of — Elements. (Pacasum *vs*. People, G.R. No. 180314, April 16, 2009) p. 612

— Imposable penalty. *(Id.)*

— It is not necessary that there be present the idea of gain or the intent to injure a third person for the reason that the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. *(Id.)*

Presumption — In the absence of satisfactory explanation, one who is found in possession of, and who has used, a

forged document, is the forger and, therefore guilty of falsification. (Pacasum *vs*. People, G.R. No. 180314, April 16, 2009) p. 612

FOREIGN INVESTMENT, PROMOTION OF (R.A. NO. 7042)

Corporation organized under the laws of the Philippines — May acquire disposable land in the Philippines provided at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines. (Unchuan *vs*. Lozada, G.R. No. 172671, April 16, 2009) p. 410

FORESTRY CODE (P.D. NO. 705)

Arrest and institution of action against violator of — May be done without warrant. (Revaldo *vs*. People, G.R. No. 170589, April 16, 2009) p. 332

Cutting, gathering, collecting timber or other forest products without license — Imposable penalty. (Revaldo *vs*. People, G.R. No. 170589, April 16, 2009) p. 332

— Violation is qualified theft with penalties imposed under the Revised Penal Code; rule in case of absence of proof as to the value of lumber taken. *(Id.)*

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Application — Does not require a deposit with a government bank but requires the government to immediately pay the property owner to obtain a writ of possession. (Metropolitan Cebu Water District *vs*. J. King and Sons Co., Inc., G.R. No. 175983, April 16, 2009) p. 471

— Does not take away from the courts the power to judicially determine the amount of just compensation. *(Id.)*

— Proper in case of water supply, sewerage and waste management facilities. *(Id.)*

National Government Project — Defined. (Metropolitan Cebu Water District *vs*. J. King and Sons Co., Inc., G.R. No. 175983, April 16, 2009) p. 471

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Concept — General obligations under the law for every person to act fairly and in good faith towards one another is applicable to a corporation and its members. (Calatagan Golf Club, Inc. *vs*. Clemente, Jr., G.R. No. 165443, April 16, 2009) p. 295

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Conduct — A judge must be the embodiment of competence, integrity and independence. (Victorio *vs*. Judge Rosete, A.M. No. MTJ-08-1706, April 16, 2009) p. 68

Duties — Judges are mandated by the Constitution to decide or resolve all matters filed before their courts within 90 days from the time the case is submitted for decision; effect of non-compliance. (Dee C. Chuan & Sons, Inc. *vs*. Judge Peralta, A.M. No. RTJ-05-1917, April 16, 2009) p. 94

Gross ignorance of the law — Classified as a serious charge. (Victorio *vs*. Judge Rosete, A.M. No. MTJ-08-1706, April 16, 2009) p. 68

— Committed in case of judge's disregard of the rules and settled jurisprudence. *(Id.)*

— Elucidated. *(Id.)*

— Imposable penalty. *(Id.)*

Gross inefficiency — Committed in case of failure to resolve motions and incidents within the prescribed period of three months. (Dee C. Chuan & Sons, Inc. *vs.* Judge Peralta, A.M. No. RTJ-05-1917, April 16, 2009) p. 94

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Immutability of — A final judgment of the Supreme Court cannot be altered or modified, except for clerical errors, misprisions or omissions. (Victorio *vs.* Judge Rosete, A.M. No. MTJ-08-1706, April 16, 2009) p. 68

Validity of — Decision rendered must express clearly and distinctly the facts and the law on which it is based. (Unchuan *vs.* Lozada, G.R. No. 172671, April 16, 2009) p. 410

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Self-defense — Distinguished from retaliation. (People *vs.* Aleta, G.R. No. 179708, April 16, 2009) p. 571

— When not appreciated. *(Id.)*

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Construction — The Code should be construed to promote social justice and full protection to labor. (Gatus *vs*. Quality House, Inc. G.R. No. 156766, April 16, 2009) p. 176

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— Not proper when the action is filed in good faith. (Unchuan *vs*. Lozada, G.R. No. 172671, April 16, 2009) p. 410

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Lack of cause of action as a ground — It must be shown that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain. (Luistro *vs*. CA, G.R. No. 158819, April 16, 2009) p. 243

Resolution of motion — After the hearing, the court may dismiss the action or claim, deny the motion for the reason that the ground relied upon is not indubitable. (Luistro *vs*. CA, G.R. No. 158819, April 16, 2009) p. 243

MOTION TO QUASH

Filing of — Requires that the accused should be under the custody of the law prior to the filing of a motion to quash based on the ground that the officer filing the information had no authority to do so. (Alawiya *vs*. CA, G.R. No. 164179, April 16, 2009)

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Civil indemnity ex delicto — Rule. (People *vs*. Obligado, G.R. No. 171735, April 16, 2009) p. 371

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Termination of membership — Generally, a non-stock corporation has the power to effect the termination of a member without having to constitute a lien on the membership share or to undertake the elaborate process of selling the same at public auction. (Valley Golf & Country Club, Inc. *vs. Vda. de* Caram, G.R. No. 158805, April 16, 2009) p. 219

— May be provided in the articles of incorporation or the by-laws. (Calatagan Golf Club, Inc. *vs*. Clemente, Jr., G.R. No. 165443, April 16, 2009) p. 295

(Valley Golf & Country Club, Inc. *vs*. *Vda*. *de* Caram, G.R. No. 158805, April 16, 2009) p. 219

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— The mere assertion of a right and claim of an obligation in an initiatory pleading without identifying the basis or source thereof is merely a conclusion of fact and law. *(Id.)*

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— Employee must comply with the three (3) day requirement to seek the services of a company physician for purposes of post-employment medical examination. (Virjen Shipping Corp. *vs*. Barnaquio, G.R. No. 178127, April 16, 2009) p. 534

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Date of the commission of the offense — The precise date need not be stated in the complaint or information except when it is a material ingredient of the offense. (People *vs*. Aboganda, G.R. No. 183565, April 08, 2009) p. 1

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— Not a transgression of the constitutional provisions on regressive and inequitable taxation. *(Id.)*

— Not violative of the constitutional prohibition on unfair competition. *(Id.)*

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— Does not take away from the courts the power to judicially determine the amount of just compensation. *(Id.)*

— Proper in case of water supply, sewerage and waste management facilities. *(Id.)*

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Commission of — Date or time of commission is not an essential ingredient of the crime. (People *vs*. Aboganda, G.R. No. 183565, April 08, 2009) p. 1

— Imposable penalty. (People *vs*. Nogpo, Jr., G.R. No. 184791, April 16, 2009) p. 722

— Lust respects no time and place. *(Id.)*

— Not disproved by absence of fresh hymenal lacerations. (People *vs*. Cabudbod, G.R. No. 176348, April 16, 2009) p. 489

— When not established. (People *vs*. Fabito, G.R. No. 179933, April 16, 2009) p. 584

Element of force and violence — Need not be irresistible; it need not be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point. (People *vs*. Nogpo, Jr., G.R. No. 184791, April 16, 2009) p. 722

Prosecution for — Application of the new Rules on DNA Evidence. (People *vs*. Umanito, G.R. No. 172607, April 16, 2009) p. 398

— Medical evidence is merely corroborative and is even dispensable in proving rape. (People *vs*. Cabudbod, G.R. No. 176348, April 16, 2009) p. 489

"Sweetheart theory" — Love is not a license for lust. (People *vs*. Nogpo, Jr., G.R. No. 184791, April 16, 2009) p. 722

— Must be strongly corroborated by clear and convincing evidence. *(Id.)*

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— Imposable penalty. *(Id.)*

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Deed of sale — Not invalid if it does not contain a technical description of the property; the form provided in Sec. 127 of Act 496 is merely suggestive and not mandatory that must be strictly followed by parties to the contract. (Naranja *vs*. CA, G.R. No. 160132, April 17, 2009) p. 779

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— The presumption that a contract has sufficient consideration cannot be overthrown by mere assertion that it has no consideration. *(Id.)*

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Election contest arising from election of corporate officers — Defined. (GSIS *vs.* CA, G.R. No. 183905, April 16, 2009) p. 676

— Proper forum. *(Id.)*

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— In relation to the Securities Regulation Code (R.A. No. 8799), the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." (GSIS *vs*. CA, G.R. No. 183905, April 16, 2009) p. 676

SECURITIES REGULATION CODE (R.A. NO. 8799)

Proxy solicitation — A procedure that antecedes proxy validation; the proxy solicitation involves the securing and submission of proxies, while the proxy validation concerns the validation of such secured and submitted proxies. (GSIS *vs*. CA, G.R. No. 183905, April 16, 2009) p. 676

— When proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC Rules on proxy solicitation should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts. *(Id.)*

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— Test of suability in case of government agencies. *(Id.)*

— The fact that a foreign state entered into a contract with private party did not disqualify it from invoking the doctrine of immunity from suit. *(Id.)*

— When a state or international agency wishes to plead sovereign or diplomatic immunity in a foreign court, it requests the foreign office of the state where it is sued to convey to the court that said defendant is entitled to immunity. *(Id.)*

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— Not affected by minor discrepancies and inconsistencies in the testimony. (People *vs*. Nogpo, Jr., G.R. No. 184791, April 16, 2009) p. 722

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