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FROM

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. RTJ-09-2176. April 20, 2009]

PROSECUTOR JORGE D. BACULI, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, Regional Trial Court, Branch 36, Calamba City, Laguna,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE COMMITTED A SERIOUS BLUNDER WHEN HE CITED COMPLAINANT FOR INDIRECT CONTEMPT.— We agree with the OCA's finding that respondent is guilty of gross ignorance of the law for citing complainant for indirect contempt. In *Re: Conviction of Judge Adoracion G. Angeles, RTC, Br. 121, Caloocan City in Crim. Cases Q-97-69655 to 56 for Child Abuse*, we held: Contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties, litigant or their witnesses during litigation. There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit

or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt. A pleading containing derogatory, offensive or malicious statements submitted before a court or judge where the proceedings are pending constitutes direct contempt, because it is equivalent to misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice. In this regard, respondent committed a serious blunder when he cited complainant for indirect contempt.

2. ID.; ID.; ID.; ID.; ID.; PROCEDURE PROVIDED UNDER SECTION 4 OF RULE 71 OF THE REVISED RULES OF CIVIL PROCEDURE WAS NOT FOLLOWED; RESPONDENT SIMPLY INCORPORATED OR INTEGRATED THE PROCEEDINGS FOR INDIRECT CONTEMPT WITH THE PRINCIPAL CASE WITHOUT ORDERING A SEPARATE DOCKET OR ISSUING AN ORDER CONSOLIDATING THE CHARGE WITH THE PRINCIPAL CASE.— Even if we assume that complainant's unfounded and contumacious statements in his pleadings translate to indirect contempt as respondent mistakenly believed, respondent failed to follow the proper procedure thereof under Section 4 of Rule 71 of the Revised Rules of Civil Procedure. As correctly observed by the OCA, there was no order issued by respondent for the charge of indirect contempt against complainant to be docketed separately; neither was there an order that the said charge be consolidated with the principal action. In sum, respondent simply incorporated or integrated the proceedings for indirect contempt with the principal case. This fortifies the OCA's finding that respondent is grossly ignorant of basic procedure. When the law is so elementary, such as the provisions of the Rules of Court, not to know, or to act as if one does not know the same, constitutes gross ignorance of the law.

3. JUDICIAL ETHICS; JUDGES; RESPONDENT FAILED TO CONFORM TO THE HIGH STANDARDS OF COMPETENCE REQUIRED OF JUDGES UNDER THE CODE OF JUDICIAL CONDUCT; UNFAMILIARITY WITH THE RULES IS A SIGN OF INCOMPETENCE.— Respondent failed to conform to

the high standards of competence required of judges under the Code of Judicial Conduct, which mandates that: Rule 1.01. — A judge should be the embodiment of competence, integrity, and independence. Rule 3.01 — A judge shall x x x maintain professional competence. Time and again, we have held that competence is the 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 the courts. Such is gross ignorance of the law. Having accepted the exalted position of a judge, he owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic procedural rules must be at the palm of his hands. A judge must be acquainted with legal norms and precepts as well as with procedural rules. Thus, this Court has been consistent in ruling that when the law is so elementary, for a judge not to be aware of it constitutes gross ignorance of the law. Verily, failure to follow basic legal commands embodied in the law and the rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge like respondent.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; SOLE PURPOSE IS TO PRESERVE ORDER IN JUDICIAL PROCEEDINGS AND TO UPHOLD THE ORDERLY ADMINISTRATION OF JUSTICE.— It is well settled that the power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the orderly administration of justice. However, judges are enjoined to exercise the power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness. It bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not the vindictive, principle; and on the corrective, not the retaliatory, idea of punishment. Thus, in *Nazareno v. Hon. Barnes*, *etc*., *et al.*, we held: A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may not altogether be flattering to him. After all, what matters is that a judge performs his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by

pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.

5. ID.; ID.; ID.; PENALTY OF SIX (6) MONTHS SUSPENSION WITHOUT SALARY AND BENEFITS IS JUSTIFIED CONSIDERING THE PREVIOUS WARNING AND REPRIMAND BY THE COURT IN ANOTHER ADMINISTRATIVE CASE AGAINST RESPONDENT.— Under Section 8, Rule 140 of the Revised Rules of Civil Procedure, gross ignorance of the law or procedure is classified as a serious offense, punishable by dismissal from the service, suspension from office without salary and other benefits for more than three but not exceeding six months, or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. We take note that in *Mane v. Belen*, respondent was reprimanded for having exhibited conduct unbecoming of a judge. In the said case, respondent went out of bounds when he engaged on a supercilious legal and personal discourse. Thus, respondent appears to be undeterred despite the reprimand and the warning previously given that any repetition of similar infractions shall be dealt with more severely. Given the circumstance, suspension from office for six (6) months without salary and benefits is in order.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a verified Complaint[1] dated May 8, 2008 of Prosecutor Jorge D. Baculi (complainant) charging Judge Medel Arnaldo B. Belen (respondent), Presiding Judge of the Regional Trial Court (RTC) of Calamba City, Laguna, Branch 36, with Grave Misconduct, Misbehavior, Gross Ignorance of the Law, Disbarment, Grave Abuse of Authority, Harassment, Oppressive and Malicious Conduct, and Violation of: (1) Articles 204 and 206 of the Revised Penal Code; (2) Republic

[1] *Rollo,* pp. 1-15.

Act (R.A.) No. 6713; (3) Code of Judicial Conduct; (4) Supreme Court (SC) Administrative Circular No. 1-88; (5) The Anti-Graft and Corrupt Practices Act; and (6) Section 1, Article XI of the 1987 Constitution, relative to Criminal Case No. 13240-2005-C entitled *People of the Philippines v. Jay Ballestrinos* for Frustrated Homicide.

The facts, as summarized by the Office of the Court Administrator (OCA), and which we adopt, are as follows:

> Complainant Prosecutor Baculi states that he is the Provincial Prosecutor of Zambales detailed in Calamba, Laguna. On 1 April 2005, he filed against the accused Jay Ballestrinos [accused] an information for frustrated homicide docketed as Criminal Case No. 13240-2005-C.
>
> In an Order dated 18 May 2005, respondent Judge Medel Arnaldo B. Belen directed the complainant to submit evidence that the notice of preliminary investigation was duly served and received by the accused. On 23 May 2005, complainant Baculi, through a Joint Manifestation/Comment, informed the court that despite several opportunities given, the accused failed to submit his counter-affidavit.
>
> On 7 February 2006, respondent Judge Belen directed herein complainant Baculi to explain why he should not be cited in contempt of court for making unfounded statements in his pleadings.
>
> In the course of the proceedings, complainant Baculi filed several pleadings (*i.e. [1] Motion to Dismiss and/or Cancel Proceedings with Voluntary Inhibition and [2] Urgent Reiterative Motion to Dismiss and/or Hold in Abeyance the Proceedings and/or Resolution of the Citation for Contempt with Voluntary Inhibition and Complaints for Gross Ignorance of the Law, Grave Misconduct, Abuse of Authority and Acts Unbecoming a Lawyer and Member of the Judiciary, Harassment and Oppressive Conduct*.)
>
> In an Order dated 11 December 2006, respondent Judge Belen granted complainant Baculi's motion to reschedule the hearing to 8 and 15 February 2007. In a Decision dated 18 December 2006, respondent Judge Belen found complainant Baculi guilty of direct contempt of court for making scurrilous and contumacious statements in the latter's Urgent Reiterative Motion, the pertinent portion of the decision reads:

WHEREFORE, the Court finds respondent Jorge Baculi GUILTY of direct contempt and sentenced him to pay the fine of ONE THOUSAND FIVE HUNDRED (₱1,500.00) PESOS and to suffer imprisonment of ONE (1) DAY.

The bail for the provisional liberty of the accused is fixed at ₱500.00.

SO ORDERED.

In another Decision dated 7 June 2007, complainant Baculi was cited for indirect contempt of court and sentenced to pay a fine of Twenty Thousand Pesos (₱20,000.00) and to suffer imprisonment of three (3) days. Complainant Baculi filed a Notice of Appeal with Motion and Manifestation dated 5 July 2007 praying that the execution of the decision finding him guilty of indirect contempt be suspended pending his appeal.

Respondent Judge Belen, in an Order dated 6 August 2007, directed complainant Baculi to post, within two (2) days from receipt thereof, a supersedeas bond of Thirty Five Thousand Pesos (₱35,000.00) in order to stay the execution of the Decisions dated 18 December 2006 and 7 June 2007. Complainant Baculi moved for a reduction of the bond but the same was treated as a mere scrap of paper for failure to comply with the notice of hearing under Rule 15 of the Rules of Court.

Respondent Judge Belen, in an Order dated 20 August 2007, directed the clerk of court to issue the Writ of Execution and a Warrant of Arrest to implement the decision of 18 December 2006 and 7 June 207 (sic). Said order also directed the Philippine National Police to assist the branch sheriff in the enforcement of the Warrant.

On 5 October 2007, complainant Baculi filed an *Ex-Parte* Motion to Resolve Motions (*i.e.* [1] Manifestation/Motion and Notice of Appeal with Motion/Manifestation both dated 5 July 2007 and Motion for Reconsideration dated 21 August 2007) which motion was considered *functus officio* in an Order dated 9 October 2007 considering that the subject motions were already resolved in the Order of 6 August 2007.

Complainant Baculi, on 24 October 2007, moved that the Order dated 20 August 2007 be set aside. On 26 October 2007, he again filed a Manifestation with Motion arguing that his motion for

reconsideration dated 21 August 2007 complied with the rules on notice of hearing.

In his twin Orders of 24 March 2008, respondent Judge Belen declared that the Decisions dated 18 December 2006 and 7 June 2007 are final and executory.

On 28 April 2008, complainant Baculi filed a Motion for Reconsideration and to Set Aside Decisions of December 18, 2006 and June 7, 2007 and all Orders of March 24, 2008.

Thereafter, complainant filed the instant Complaint, asseverating, among others, that respondent violated Section 7, Rule 71 of the Rules of Court and prevailing jurisprudence in holding him liable for indirect contempt because the use of contemptuous language in a pleading, if submitted before the same judge, would constitute only direct contempt of court; that complainant's conviction had no basis because the pleadings in question did not contain any vulgar, vile or unethical statements that would be an affront to the dignity of the court; that the supersedeas bond of ₱35,000.00 fixed by the court to stay the execution was excessive, confiscatory and unconscionable; and that respondent was induced by revenge and ill motive, since it was complainant who indicted respondent in a libel case filed by one Prosecutor Ma. Victoria Sunega-Lagman, docketed as Criminal Case No. 15332-SP, now pending before the RTC, Branch 32, San Pablo City. Thus, complainant charges respondent with abuse of the court's power to cite persons for contempt.

Moreover, complainant claims that respondent is suffering from "power complex" and other psychiatric, emotional and mental disorders because the latter has an inordinate feeling of superiority and shows no remorse for his wrongdoings. Complainant also posits that respondent incurred delay when the latter failed to resolve his Manifestations/Motions dated October 23 and 24, 2007 within the reglementary period. Lastly, complainant argues that the twin Orders of March 24, 2008, which declared the Decisions dated December 12, 2006 and June 7, 2007 final and executory, were procedurally infirm

considering that his Manifestations/Motions dated October 23 and 24, 2007 are still pending resolution before the court.

In his Comment[2] dated June 11, 2008, respondent denies that the contempt proceedings against complainant were motivated by revenge. He asserts that he would not have initiated the same, had complainant not filed pleadings that were contemptuous in nature. Respondent presupposes that since complainant did not appeal the Decisions dated December 18, 2006 and June 7, 2007 to the Court of Appeals, the decisions already became final and executory. Respondent claims that he issued the said decisions and orders strictly in the performance of his judicial functions, and cannot be held administratively liable in the absence of a declaration from a competent tribunal that those decisions and orders suffered from legal infirmities or were tainted with grave abuse of authority. Respondent argues that, pursuant to prevailing jurisprudence, complainant should first exhaust judicial remedies before coming to the OCA by way of an administrative complaint.

We fully agree with the submission of the OCA that in the absence of fraud, bad faith, evil intention or corrupt motive, the complainant may not be allowed to question the judiciousness of the decisions rendered and orders issued by the respondent, since the same may only be assailed through the appropriate judicial remedies under the Rules of Court and not through an administrative complaint. In this case, complainant did not exhaust available judicial remedies to challenge the decisions and orders. Moreover, the OCA found that the complainant failed to prove that respondent was guilty of delay in the resolution of pending incidents. Settled is the rule that in administrative proceedings, the burden of showing that the respondent committed the acts complained of devolves 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.[3]

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[2] *Id.* at 214-217.

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

However, we also agree with the OCA's finding that respondent is guilty of gross ignorance of the law for citing complainant for indirect contempt.

In *Re: Conviction of Judge Adoracion G. Angeles, RTC, Br. 121, Caloocan City in Crim. Cases Q-97-69655 to 56 for Child Abuse*,[4] we held:

> Contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties, litigant or their witnesses during litigation.
>
> There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt.[5]

A pleading containing derogatory, offensive or malicious statements submitted before a court or judge where the proceedings are pending constitutes direct contempt, because it is equivalent to misbehavior committed in the presence of or so near a court or judge as to interrupt the administration of justice.[6] In this regard, respondent committed a serious blunder when he cited complainant for indirect contempt.

Compounding this blunder, even if we assume that complainant's unfounded and contumacious statements in his

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[4] A.M. No. 06-9-545-RTC, January 31, 2008, 543 SCRA 196.

[5] *Re: Conviction of Judge Adoracion G. Angeles, RTC, Br. 121, Caloocan City in Crim. Cases Q-97-69655 to 56 for Child Abuse*, *id.* at 212, citing *Barredo-Fuentes v. Albarracin*, 456 SCRA 120, 130-131 (2005).

[6] *Tabao v. Gacott, Jr.*, G.R. No. 170720, November 30, 2006, 509 SCRA 470, 479, citing *Dantes v. Caguioa*, 461 SCRA 236, 244 (2005).

pleadings translate to indirect contempt as respondent mistakenly believed, respondent failed to follow the proper procedure therefor[7] under Section 4 of Rule 71 of the Revised Rules of Civil Procedure, which particularly provides:

> SEC. 4. *How proceedings commenced*. — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. **If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.** (Emphasis supplied.)

As correctly observed by the OCA, there was no order issued by respondent for the charge of indirect contempt against complainant to be docketed separately; neither was there an order that the said charge be consolidated with the principal action. In sum, respondent simply incorporated or integrated the proceedings for indirect contempt with the principal case. This fortifies the OCA's finding that respondent is grossly ignorant of basic procedure.[8] When the law is so elementary, such as the provisions of the Rules of Court, not to know, or to act as if one does not know the same, constitutes gross ignorance of the law.

Correlatively, respondent failed to conform to the high standards of competence required of judges under the Code of Judicial Conduct, which mandates that:

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[7] *Varcas v. Orola, Jr.*, A.M. No. MTJ-05-1615, February 22, 2006, 483 SCRA 1, 8.

[8] *Balayon, Jr. v. Dinopol*, A.M. No. RTJ-06-1969, June 15, 2006, 490 SCRA 547, 555-556.

Rule 1.01. — A judge should be the embodiment of competence, integrity, and independence.

Rule 3.01 — A judge shall x x x maintain professional competence.

Time and again, we have held that competence is the mark of a good judge.[9] When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of the courts. Such is gross ignorance of the law. Having accepted the exalted position of a judge, he owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic procedural rules must be at the palm of his hands. A judge must be acquainted with legal norms and precepts as well as with procedural rules. Thus, this Court has been consistent in ruling that when the law is so elementary, for a judge not to be aware of it constitutes gross ignorance of the law. Verily, failure to follow basic legal commands embodied in the law and the rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge like respondent.[10]

It is well settled that the power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the orderly administration of justice. However, judges are enjoined to exercise the power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness.[11] It bears stressing that the power to declare a person in contempt of court must be exercised on the preservative, not the vindictive, principle; and on the corrective, not the retaliatory, idea of

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[9] *Rockland Construction Co., Inc. v. Singzon, Jr.*, A.M. No. RTJ-06-2002, November 24, 2006, 508 SCRA 1, 9; *Genil v. Rivera*, A.M. No. MTJ-06-1619, January 23, 2006, 479 SCRA 363, 373; *Alcaraz v. Lindo*, A.M. No. MTJ-04-1539, April 14, 2004, 427 SCRA 142, 147; *Vileña v. Judge Mapaye*, 431 Phil. 217, 222 (2002); *Northcastle Properties and Estate Corp. v. Judge Paas*, 375 Phil. 564, 566 (1999).

[10] *Tiongco v. Salao*, A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575, 584-585.

[11] *Ruiz v. Judge How*, 459 Phil. 728, 739 (2003).

punishment.[12] Thus, in *Nazareno v. Hon. Barnes, etc., et al.*,[13] we held:

> A judge, as a public servant, should not be so thin-skinned or sensitive as to feel hurt or offended if a citizen expresses an honest opinion about him which may not altogether be flattering to him. After all, what matters is that a judge performs his duties in accordance with the dictates of his conscience and the light that God has given him. A judge should never allow himself to be moved by pride, prejudice, passion, or pettiness in the performance of his duties. He should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.

Under Section 8, Rule 140 of the Revised Rules of Civil Procedure, gross ignorance of the law or procedure is classified as a serious offense, punishable by dismissal from the service, suspension from office without salary and other benefits for more than three but not exceeding six months, or a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[14]

We take note that in *Mane v. Belen*,[15] respondent was reprimanded for having exhibited conduct unbecoming of a judge. In the said case, respondent went out of bounds when he engaged on a supercilious legal and personal discourse.[16] Thus, respondent appears to be undeterred despite the reprimand and the warning previously given that any repetition of similar infractions shall be dealt with more severely. Given the circumstance, suspension from office for six (6) months without salary and benefits is in order.

WHEREFORE, respondent Judge Medel Arnaldo B. Belen, Presiding Judge of the Regional Trial Court of Calamba City,

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[12] *The Senate Blue Ribbon Committee v. Hon. Majaducon,* 455 Phil. 61, 75 (2003).

[13] 220 Phil. 451, 463 (1985), citing *Austria v. Masaquiel*, 20 SCRA 1247, 1260 (1967).

[14] See RULES OF COURT, Rule 140, Sec. 11.

[15] A.M. No. RTJ-08-2119, June 30, 2008, 556 SCRA 555.

[16] *Mane v. Belen, id.* at 568.

Laguna, Branch 36, is hereby found *GUILTY* of gross ignorance of the law and is hereby *SUSPENDED* from office for a period of six (6) months without salary and other benefits. He is *STERNLY WARNED* that a repetition of the same or similar acts shall merit a more serious penalty.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 7813. April 21, 2009]

CARLITO P. CARANDANG, *complainant, vs.* **ATTY. GILBERT S. OBMINA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; RESPONDENT LAWYER FAILED TO SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.— Canon 18 states that "[a] lawyer shall serve his client with competence and diligence." Rules 18.03 and 18.04 provide that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable" and "[a] lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information." In his Memorandum, Atty. Obmina admitted that he was counsel for Carandang in Civil Case No. B-5109. Atty. Obmina blamed Carandang for the adverse decision in Civil Case No. B-5109 because Carandang did not tell him that there was a Compromise Agreement executed prior to Atty. Obmina's filing of the complaint in Civil Case No. B-5109. Carandang, on the other

hand, stated that Atty. Obmina made him believe that they would win the case. In fact, Carandang engaged the services of Atty. Obmina on a contingent basis. Carandang shall pay Atty. Obmina 40% of the sale proceeds of the property subject matter of the case. Atty. Obmina promised to notify Carandang as soon as the decision of the court was given. Contrary to Atty. Obmina's promise, there is no evidence on record that Atty. Obmina took the initiative to notify Carandang of the trial court's adverse decision. Atty. Obmina again put Carandang at fault for failure to advance the appeal fee. Atty. Obmina's version of Carandang's confrontation with him was limited to this narrative: Sometime in the year 2000, complainant went to respondent's law office. He was fuming mad and was blaming respondent for having lost his case. He asked for the records of the case because according to him, he will refer the case to a certain Atty. Edgardo Salandanan. Respondent gave complainant the case file. Complainant did not return to pursue the appeal or at least had given an appeal fee to be paid to Court in order to perfect the appeal. Atty. Obmina's futile efforts of shifting the blame on Carandang only serve to emphasize his failure to notify Carandang that the trial court already promulgated a decision in Civil Case No. B-5109 that was adverse to Carandang's interests. Atty. Obmina cannot overlook the fact that Carandang learned about the promulgation of the decision not through Atty. Obmina himself, but through a chance visit to the trial court. Instead of letting Carandang know of the adverse decision himself, Atty. Obmina should have immediately contacted Carandang, explained the decision to him, and advised them on further steps that could be taken. It is obvious that Carandang lost his right to file an appeal because of Atty. Obmina's inaction. Notwithstanding Atty. Obmina's subsequent withdrawal as Carandang's lawyer, Atty. Obmina was still counsel of record at the time the trial court promulgated the decision in Civil Case No. B-5109. In *Tolentino v. Mangapit,* we stated that: As an officer of the court, it is the duty of an attorney to inform her client of whatever information she may have acquired which it is important that the client should have knowledge of. She should notify her client of any adverse decision to enable her client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and [loss] of trust and confidence in the attorney.

2. ID.; ID.; THE RELATIONSHIP OF LAWYER-CLIENT BEING ONE OF CONFIDENCE, THERE IS EVER PRESENT THE NEED FOR THE LAWYER TO INFORM TIMELY AND ADEQUATELY THE CLIENT OF IMPORTANT DEVELOPMENTS AFFECTING THE CLIENT'S CASE.— The relationship of lawyer-client being one of confidence, there is ever present the need for the lawyer to inform **timely and adequately** the client of important developments affecting the client's case. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests. The Court finds well-taken the recommendation of the IBP to suspend Atty. Gilbert S. Obmina from the practice of law for one year. In the cases of *Credito v. Sabio* and *Pineda v. Macapagal*, we imposed the same penalty upon attorneys who failed to update their clients on the status of their cases. Considering Atty. Obmina's advanced age, such penalty serves the purpose of protecting the interest of the public and legal profession.

APPEARANCES OF COUNSEL

Ma. Carmencita C. Obmina-Muaña for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a complaint filed by Carlito P. Carandang (Carandang) against Atty. Gilbert S. Obmina (Atty. Obmina). Atty. Obmina was counsel for Carandang in Civil Case No. B-5109 entitled "*Sps. Emilia A. Carandang and Carlito Carandang v. Ernesto Alzona*." Carandang brought suit for Atty. Obmina's failure to inform Carandang of the adverse decision in Civil Case No. B-5109 and for failure to appeal the decision.

The Facts

The facts of CBD Case No. 06-1869 in the Report and Recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) read as follows:

Complainant's Sworn Statement is hereto reproduced as follows:

SWORN STATEMENT

Ako si CARLITO P. CARANDANG, nasa wastong gulang, may asawa't mga anak, at nakatira sa 5450 Alberto Apt., St. Francis Homes, Halang Biñan, Laguna.

Na ako ay may kasong isinampa kay ERNESTO T. ALSONA tungkol sa aming bahay at lupa, at isinampa sa BIÑAN RTC BRANCH 25, CIVIL CASE NO. B-5109.

Na ang naturang kaso ay natapos at nadisisyunan noong Enero 28, 2000 at ako ay natalo sa naturang kaso.

Na ang aking naging abogado ay si ATTY. GILBERT S. OBMINA, tubong Quezon at bilang kababayan ako ay nagtiwala sa kanyang kakayahan upang maipagtanggol sa naturang kaso, ngunit taliwas sa aking pananalig sa kanya ang nasabing kaso ay napabayaan hanggang sa magkaroon ng desisyon ang korte na kunin ang aking lupa't bahay, sa madali't sabi kami ay natalo ng hindi ko man lang nalalaman at huli na ang lahat ng malaman ko dahil hindi na kami pwedeng umapila.

Na nalaman ko lang na may desisyon na pala ang korte pagkatapos ng anim na buwan. Ang aking anak na si ROSEMARIE ay nagpunta sa BIÑAN, sa RTC ay binati at tinatanong kung saan kayo nakatira at ang sagot [ng] aking anak BAKIT? At ang sagot naman [ng] taga RTC, HINDI MO BA ALAM NA ANG INYONG KASO AY TAPOS NA. Nang marinig yon ay umuwi na siya at sinabi agad sa akin. Tapos na daw yung kaso [ng] ating bahay at ako ay pumunta sa opisina ni ATTY. OBMINA at aking tinanong "BAKIT DI MO SINABI SA AKIN NA TAPOS NA ANG KASO?" At ang sagot niya sa akin "AY WALA KANG IBABAYAD SA ABOGADO DAHIL WALA KANG PERA PANG-APILA" dahil sa sagot sa akin ay para akong nawalan [ng] pag-asa sa kaso.

Lumapit ako sa Malacañang at binigay yung sulat pero doon ay aking nakausap yung isang abogado at ako'y kanyang pinakinggan at aking inabot ang papeles at aking pinakita at ang sabi ay hindi na pwede dahil anim na buwan na [nang] lumipas ang kaso. Kaya aking sinabi sa ATTY. ng Malacañang na hindi sinabi sa akin agad ni ATTY. OBMINA na may order na pala ang kaso.

Kaya ang ginawang paraan ay binigyan ako ng sulat para ibigay sa IBP, at nang mabasa ang sulat ay sinabi sa akin na doon sa SAN PABLO ang hearing, at tinanong ako kung nasaan ang ATTORNEY'S WITHDRAWAL NYO? Ang sagot ko ay "WALA HO," kaya inutusan ako na kunin ang ATTORNEY'S WITHDRAWAL at agad akong nagpunta sa opisina ni ATTY. OBMINA at tinanong ko sa sekretarya niya kung nasaan si ATTY. OBMINA ang sagot sa akin ay nasa AMERICA NA! Kaya't aking tinanong kung sinong pwede magbigay sa akin ng attorney's withdrawal at ang sabi ay yung anak nya na si CARMELITSA (sic) *OBMINA. Bumalik ako noong araw ng Biyernes at aking nakuha, pero hindi na ako nakabalik sa IBP dahil noong araw na iyon ay hindi ko na kayang maglakad, kaya hindi na natuloy ang hearing sa SAN PABLO.*

CARLITO P. CARANDANG
Affiant
CTC No. 21185732
Issued on March 7, 2006
At Biñan, Laguna

On November 16, 2006, the Commission on Bar Discipline, through Rogelio A. Vinluan, the then Director for Bar Discipline (now the incumbent Executive Vice President of the Integrated Bar of the Philippines), issued an Order directing respondent Atty. Gilbert S. Obmina to submit his Answer, duly verified, in six (6) copies, and furnish the complainant with a copy thereof, within fifteen (15) days from receipt of the Order.

On December 12, 2006, this Commission was in receipt of a Manifestation dated December 11, 2006 filed by a certain Atty. Ma. Carmencita C. Obmina-Muaña. Allegedly, she is the daughter of respondent Atty. Gilbert S. Obmina. She further alleged that [her] father is already a permanent resident of the United States of America since March 2001 and had already retired from the practice of law.

That on February 20, 2007, undersigned Commissioner [Jose I. De La Rama, Jr.] scheduled the Mandatory Conference/Hearing of the case on March 20, 2007 at 9:30 a.m.

On March 19, 2007, Atty. Ma. Carmencita C. Obmina-Muaña filed a Manifestation and Motion reiterating her earlier Manifestation that the respondent, Atty. Gilbert S. Obmina is already a permanent resident of the United States for the last six (6) years and likewise,

she reiterated her request that summons be served on her father thru extraterritorial service. Atty. Muaña likewise requested the cancellation of the mandatory conference and resetting of the same on April 10, 2007.

On the scheduled Mandatory Conference on March 20, 2007, complainant Carlito P. Carandang appeared. The undersigned Commissioner directed Atty. Carmelita Muaña to appear before this Commission on May 18, 2007 at 2:00 p.m. and to bring with her the alleged withdrawal of appearance filed by her father and to bring proof that her father is now really a permanent resident of the United States of America.

That on May 18, 2007, Atty. Muaña again filed a Manifestation and Motion informing this Honorable Commission that she cannot possibly appear for the reason that she is the legal counsel of a candidate in Muntinlupa City and that the canvassing of the election results is not yet finished. She likewise submitted copies of her father's Passport and US Permanent Residence Card. That with respect [to] the Withdrawal of Appearance, Atty. Muaña alleged that copies of the same were all given to complainant Carlito P. Carandang.

That an Order dated May 18, 2007 was issued by the undersigned Commissioner granting the aforesaid Manifestation and Motion. Atty. Muaña was likewise directed to appear before this Office on June 22, 2007 at 2:00 p.m.

On June 22, 2007, in the supposed Mandatory Conference, Atty. Carmencita Obmina Muaña appeared. Likewise presented was Mr. Carlito Carandang who is the complainant against Atty. Gilbert Obmina. In the interest of justice, Atty. Muaña was given a period of ten (10) days within which to file a verified answer. The Mandatory Conference was set on August 3, 2007 at 3:00 o'clock in the afternoon.

On June 29, 2007, Atty. Muaña filed a Motion for Extension of Time to file Answer.

On July 3, 2007, this Commission is in receipt of the verified Answer filed by respondent Atty. Gilbert S. Obmina.

On August 3, 2007, during the Mandatory Conference, complainant Carlito Carandang appeared. Atty. Muaña appeared in behalf of [her] father. After making some admissions, stipulations and some clarificatory matters, the parties were directed to submit their verified position papers within ten (10) days. Thereafter, the case will be submitted on report and recommendation.

On August 10, 2007, complainant, by himself, filed an Urgent Motion for Extension of Time to File Position Paper. Likewise, respondent, through Atty. Muaña, filed a Motion for Extension of Time to File Position Paper on August 13, 2007.

On September 3, 2007, the Commission on Bar Discipline received copy of the Respondent's Memorandum.

On September 12, 2007, this Commission received copy of complainant's Position Paper.[1]

The IBP's Report and Recommendation

In a Report[2] dated 2 October 2007, IBP Commissioner for Bar Discipline Jose I. De La Rama, Jr. (Commissioner De La Rama) found that Atty. Obmina was still counsel of record for complainant at the time the decision was rendered and up to the time of the issuance of the writ of execution. Atty. Obmina received the Decision dated 28 January 2000 on 1 March 2000. Atty. Carmencita Obmina-Muaña manifested in Court that her father has been living in the United States of America since 2001. There is nothing on record that will show that Atty. Obmina notified complainant in any manner about the decision.

Although Commissioner De La Rama observed that complainant is partly to blame for his loss for failure to maintain contact with Atty. Obmina and to inform himself of the progress of his case, Commissioner De La Rama nonetheless underscored the duty of Atty. Obmina to notify his client as to what happened to his case. Thus:

> One cannot escape the fact that the complainant himself failed to communicate with his counsel for quite sometime. There is nothing in the complainant's Sworn Statement that would show that he regularly visited the office of the respondent, Atty. Gilbert S. Obmina. Complainant is partly to blame for his loss and it should not be attributed solely to the respondent.
>
> The Supreme Court held that "*clients should maintain contact with their counsel from time to time and inform themselves of the*

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[1] *Rollo*, pp. 125-129.

[2] *Id*. at 125-135.

progress of their case, thereby exercising that standard of care which an ordinary prudent man bestows upon his business (*Leonardo vs. S.T. Best, Inc*., 422 SCRA 347)

However, the respondent who has in his possession the complete files and address of the complainant, should have exerted efforts to even notify Mr. Carandang as to what happened to his case. Whether the decision is adverse [to] or in favor of his client, respondent is duty bound to notify the clients pursuant to Canon 18 of the Code of Professional Ethics which provides that "*a lawyer shall serve his client with competence and diligence.*" Further under Rule 18.03 of Canon 18, "*a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.*" Lastly, under Rule 18.04, "*a lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information."*

That as a result of the respondent's failure to notify the complainant, the latter lost the case leading to his eviction.

In the case of *Mijares vs. Romana* 425 SCRA 577, the Supreme Court held that *"as an officer of the court, it is the duty of an attorney to inform his client of whatever information he may have acquired which it is important that the client should have knowledge of."* In another case, the Supreme Court held that *"respondent's failure to perfect an appeal within the prescribed period constitutes negligence and malpractice proscribed by the Code of Professional Responsibility"* (*Cheng vs. Agravante*, 426 SCRA 42).

WHEREFORE, in view of the foregoing, with head bowed in sadness, it is respectfully recommended that Atty. Gilbert S. Obmina be suspended from the practice of law for a period of one (1) year.

Although the said respondent is reportedly in the United States of America and accordingly retired from the practice of law, this Commission will not close its eyes on the negligence that he has committed while in the active practice.

SO ORDERED.[3] (Emphasis in the original)

In a Resolution[4] dated 19 October 2007, the IBP Board of Governors adopted and approved the Report and Recommendation

[3] *Id*. at 133-135.

[4] *Id*. at 124.

of Commissioner De La Rama. The Office of the Bar Confidant received the notice of the Resolution and the records of the case on 14 March 2008.

The Ruling of the Court

We sustain the findings of the IBP and adopt its recommendations. Atty. Obmina violated Canon 18, and Rules 18.03 and 18.04 of the Code of Professional Responsibility.

Atty. Obmina Failed to Serve Complainant with Competence and Diligence

Canon 18 states that "[a] lawyer shall serve his client with competence and diligence." Rules 18.03 and 18.04 provide that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable" and "[a] lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."

In his Memorandum, Atty. Obmina admitted that he was counsel for Carandang in Civil Case No. B-5109. Atty. Obmina blamed Carandang for the adverse decision in Civil Case No. B-5109 because Carandang did not tell him that there was a Compromise Agreement executed prior to Atty. Obmina's filing of the complaint in Civil Case No. B-5109. Carandang, on the other hand, stated that Atty. Obmina made him believe that they would win the case. In fact, Carandang engaged the services of Atty. Obmina on a contingent basis. Carandang shall pay Atty. Obmina 40% of the sale proceeds of the property subject matter of the case. Atty. Obmina promised to notify Carandang as soon as the decision of the court was given.

Contrary to Atty. Obmina's promise, there is no evidence on record that Atty. Obmina took the initiative to notify Carandang of the trial court's adverse decision. Atty. Obmina again put Carandang at fault for failure to advance the appeal fee. Atty. Obmina's version of Carandang's confrontation with him was limited to this narrative:

Sometime in the year 2000, complainant went to respondent's law office. He was fuming mad and was blaming respondent for having lost his case. He asked for the records of the case because according to him, he will refer the case to a certain Atty. Edgardo Salandanan. Respondent gave complainant the case file. Complainant did not return to pursue the appeal or at least had given an appeal fee to be paid to Court in order to perfect the appeal.[5]

Atty. Obmina's futile efforts of shifting the blame on Carandang only serve to emphasize his failure to notify Carandang that the trial court already promulgated a decision in Civil Case No. B-5109 that was adverse to Carandang's interests. Atty. Obmina cannot overlook the fact that Carandang learned about the promulgation of the decision not through Atty. Obmina himself, but through a chance visit to the trial court. Instead of letting Carandang know of the adverse decision himself, Atty. Obmina should have immediately contacted Carandang, explained the decision to him, and advised them on further steps that could be taken. It is obvious that Carandang lost his right to file an appeal because of Atty. Obmina's inaction. Notwithstanding Atty. Obmina's subsequent withdrawal as Carandang's lawyer, Atty. Obmina was still counsel of record at the time the trial court promulgated the decision in Civil Case No. B-5109.

In *Tolentino v. Mangapit*, we stated that:

As an officer of the court, it is the duty of an attorney to inform her client of whatever information she may have acquired which it is important that the client should have knowledge of. She should notify her client of any adverse decision to enable her client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and [loss] of trust and confidence in the attorney.[6]

The relationship of lawyer-client being one of confidence, there is ever present the need for the lawyer to inform **timely and adequately** the client of important developments affecting

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[5] *Id*. at 49.

[6] 209 Phil. 607, 611 (1983).

the client's case. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.[7]

The Court finds well-taken the recommendation of the IBP to suspend Atty. Gilbert S. Obmina from the practice of law for one year. In the cases of *Credito v. Sabio*[8] and *Pineda v. Macapagal*,[9] we imposed the same penalty upon attorneys who failed to update their clients on the status of their cases. Considering Atty. Obmina's advanced age, such penalty serves the purpose of protecting the interest of the public and legal profession.

WHEREFORE, the Court *AFFIRMS* the resolution of the IBP Board of Governors approving and adopting the report and recommendation of the Investigating Commissioner. Accordingly, Atty. Gilbert S. Obmina is found *GUILTY* of violation of Canon 18 and of Rules 18.03 and 18.04 of the Code of Professional Responsibility. The Court *SUSPENDS* Atty. Gilbert S. Obmina from the practice of law for one year, and *WARNS* him that a repetition of the same or similar offense will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

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[7] *Mejares v. Atty. Romana,* 469 Phil. 619 (2004).

[8] A.C. No. 4920, 19 October 2005, 473 SCRA 301.

[9] A.C. No. 6026, 29 November 2005, 476 SCRA 292.

FIRST DIVISION

[A.M. No. P-05-1996. April 21, 2009]

ESTELITO R. MARABE, *complainant, vs.* **TYRONE V. TAN, Sheriff IV, OCC, Regional Trial Court, Malaybalay City, Bukidnon,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EXECUTION OF JUDGMENT; SHERIFFS; DUTIES AND RESPONSIBILITIES THEREOF TO SERVE THE WRIT OF EXECUTION, EXPLAINED.—** It is undisputable that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom. x x x Indeed, sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgment is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; SHERIFFS; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; PENALTY.—** The failure to implement a writ of execution may be classified as simple neglect of duty which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Under Rule IV, Section 52, B 1 of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense. Here, not

only was there a long delay in the full implementation of the writs of execution issued in Civil Case Nos. 192-L, 193-L, 194-L and 197-L but there was likewise an utter failure to implement the writs issued in Civil Case Nos. 195-L and 198-L. Hence, the Court deems it appropriate to impose on respondent sheriff a penalty of suspension from office for three (3) months.

APPEARANCES OF COUNSEL

Anastacio C. Rosos, Jr. for complainant.
Public Attorney's Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case arose from a Letter-Complaint[1] dated April 15, 2002 filed with the Court by complainant Estelito R. Marabe, President and Chairman of the Board of Asian Hills Bank at Malaybalay, Bukidnon, charging respondent, Tyrone Tan, Sheriff IV of the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Malaybalay City, Bukidnon with inefficiency and ineffectiveness for failing to implement and execute writs of execution issued in favor of Asian Hills Bank despite having received advanced amounts for expenses to be incurred in the implementation of the said writs.

In his Comment[2] dated July 8, 2002 respondent averred that the six (6) writs of execution subject matter of the complaint were issued in Civil Case Nos. **192-L**, entitled *Asian Hills Bank v. Fe B. Ygot, et al.*; **193-L**, *Asian Hills Bank v. Efren L. Garcia and Josephine Garcia*; **194-L**, *Asian Hills Bank v. Lina M. Castanares, et al.*; **195-L**, *Asian Hills Bank v. Lina M. Castanares, et al.*; and **197-L**, *Asian Hills Bank v. Julieta Omongos, et al.*; and **198-L**, *Asian Hills Bank v. Rosita Argawanon*,[3] *et al.* While he admitted having received six (6)

[1] *Rollo,* p. 142.

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

[3] *Gawanon* in the Investigating Judge's Report; *rollo*, p. 26.

writs of execution for enforcement, respondent pointed out that the Bank's counsel, Atty. Anastacio C. Rosos, Jr., requested him to implement only three (3), *i.e.*, those issued in Civil Case Nos. 193-L, 195-L and 197-L. Respondent claimed that at the time of the implementation of the writs, all the defendants were insolvent. The spouses Efren and Josephine Garcia defendants in Civil Case Nos. 193-L, committed to settle their obligation as soon as they raise the necessary amount while the spouses Efren and Julieta Omongos, defendants in Civil Case No. 197-L, promised to deposit the amount of ₱10,000.00 in March 2002 as partial satisfaction of the judgment debt but reneged on said promise. On the other hand, in the cases against Leonida Orizano, Cynthia Berial, Avelino Labis, Ulysses Bacolod, Severino Auza and Virgie Borres, said defendants refused to acknowledge receipt of the court order and that furthermore, said defendants are all government employees solely dependent on their salaries. Hence, their salaries cannot be garnished. Respondent claimed further that as of his submission of his comment/explanation, he was still monitoring all the defendants in the subject cases for whatever remedies that will finally satisfy the court judgment. Attached to respondent's Comment are the Sheriff's Partial Reports[4] in Civil Case Nos. 192-L, 193-L, 194-L and 197-L all dated December 1, 2003.

Initially referred to then Executive Judge Jesus Barroso, Jr. of the RTC of Malaybalay City, Bukidnon, for investigation, report and recommendation[5], the case was subsequently referred to the new Executive Judge of the same court, Rolando S. Venadas, Sr., on March 31, 2004.[6]

On August 20, 2004, Investigating Judge Venadas, Sr. submitted to the Court his Report and Recommendation[7] dated August 9, 2004 which contains the following findings:

a) Respondent received from Asian Hills Bank, as sheriff's fee, the following:

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[4] *Rollo*, pp. 6-9.

[5] By Resolution dated October 21, 2002; *rollo*, p. 2.

[6] By Resolution dated March 31, 2004; *rollo*, p. 12.

[7] *Id.* at 18-32.

1) ₱2,000.00 evidenced by Cashier Check No. 02572 payable to a certain Arceli Ombos;

2) ₱3,000.00 evidenced by Cashier Check No. 02466 dated January 23, 2002, also payable to Arceli Ombos; and

3) ₱2,000.00 evidenced by Cashier Check No. 0950 dated October 30, 2000, payable to one Eden Acto.

b) Respondent submitted Partial Sheriff's Reports, all dated December 1, 2003, referring to the action he took on the writs of execution which he received in the year 2001, in Civil Case Nos. 192-L, entitled *Asian Hills Bank v. Fe B. Ygot, et. al.*; 193-L, *Asian Hills Bank v. Efren Garcia, et al.*; 194-L, *Asian Hills Bank v. Lina M. Castanares, et al.*; and 197-L, *Asian Hills Bank v. Julieta Omongos*;

c) There was no evidence to show if the complainant and his counsel or the parties were ever furnished copies of the Sheriff's Partial Reports;

d) Respondent did not make any recording or notation of all the proceedings he undertook in the enforcement of the writs of execution;

e) The Partial Sheriff's Reports, which were uniformly dated December 1, 2003, do not state when the writs of execution were actually served upon the respective defendants;

f) The writs of execution in question remained un-acted upon by the respondent for two (2) years with no explanation regarding such inaction; and

g) The veracity of the Partial Sheriff's Reports are doubtful as they appear to be prepared only very recently.

The Investigating Judge found respondent liable for failure to act within a reasonable time on the writs of execution endorsed to him for enforcement without any sufficient justification. Consequently, the Investigating Judge recommended the imposition of the appropriate penalty on respondent.

On October 20, 2004, the Court issued a Resolution[8] referring the case to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

On March 16, 2005, the OCA submitted its Memorandum,[9] wherein it concurred with the findings of the Investigating Judge and accordingly made the following recommendation:

> IN VIEW OF THE FOREGOING, it is respectfully recommended that respondent sheriff Tyrone V. Tan be found guilty of Inefficiency and Ineffectiveness in the Performance of his Duty and be imposed a Fine in the amount of ₱5,000.00 with a STERN WARNING that the same or similar acts in the future will be dealt with more severely.[10]

In the Resolution[11] dated April 6, 2005, the complaint was re-docketed as a regular administrative case.

The Court agrees with the report of the OCA adopting the findings of the Investigating Judge except as to the recommended penalty.

It is undisputable that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom.[12]

Here, respondent sheriff was clearly remiss in the performance of his mandated duties.

Sec. 14, Rule 39 of the Rules of Court provides that:

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[8] *Id.* at 144.

[9] *Id.* at 145-150.

[10] *Id.* at 150.

[11] *Id.* at 151.

[12] *Pesongco v. Estoya,* A.M. No. P-06-213, March 10, 2006, 484 SCRA 239, 254.

Sec. 14. Return of writ of execution. The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or the periodic report shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The six (6) writs of execution subject of this case were admittedly received by respondent in the year 2001, but as shown by the Sheriff's Partial Reports[13] which he submitted, he implemented the same two (2) years later, or on December 1, 2003. Moreover, his partial reports referred only to the writs issued in four (4) cases, namely Civil Case Nos. 192-L, 193-L, 194-L and 197-L with no sufficient and reasonable explanation regarding the non-implementation of the writs in Civil Case Nos. 195-L and 198-L.

Likewise, respondent sheriff did not render periodic reports on the writs of execution pursuant to Section 14, Rule 39 aforecited considering that the only reports he has made and submitted were those dated December 1, 2003.

Undoubtedly, respondent's (1) very long delay in the full implementation of the writs of execution in Civil Case Nos. 192-L, 193-L, 194-L and 197-L; (2) his non-implementation of the writs issued in Civil Case Nos. 195-L and 198-L; and (3) his failure to make the appropriate and periodic reports on the writs as required by the Rules of Court, shows that he has been inefficient and negligent in the performance of his official duties.

Indeed, sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute

[13] *Supra* note 4.

them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.[14]

The failure to implement a writ of execution maybe classified as simple neglect of duty which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[15] Under Rule IV, Section 52, B 1 of the Uniform Rules on Administrative Cases in the Civil Service,[16] simple neglect of duty is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense.

Thus, in *Reyes v. Cabusao*,[17] the Court imposed on the respondent sheriff a one-month suspension from office for simple neglect of duty as the latter implemented the writ of execution more than 17 months from the time of its issuance.

Again, in *Pesongco v. Estoya*,[18] where a complaint for inefficiency was made against the respondent sheriff, we imposed a one-month suspension for simple neglect of duty, said sheriff having delayed the full implementation of a writ of execution and failed to render periodic returns thereof to the court.

But in *Vda. De Escobar v. Luna and Fernandez*,[19] the Court penalized the respondent sheriff with a three-month suspension from office for simple neglect of duty because he failed to implement a writ of execution even after the expiration of the

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[14] *Supra* note 11.

[15] *Vda. De Escobar v. Luna and Fernandez*, A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 278.

[16] In Civil Service Commission Memorandum Circular No. 19, the CSC adopted the new Uniform Rules in Administrative Cases in the Civil Service which became effective on September 26, 1999.

[17] A.M. No. P-03-1676, July 15, 2005, 463 SCRA 433.

[18] *Supra* note 12.

[19] *Supra* note 15.

Temporary Restraining Order issued by the Court of Appeals enjoining the implementation of the writ.

Here, not only was there a long delay in the full implementation of the writs of execution issued in Civil Case Nos. 192-L, 193-L, 194-L and 197-L but there was likewise an utter failure to implement the writs issued in Civil Case Nos. 195-L and 198-L. Hence, the Court deems it appropriate to impose on respondent sheriff a penalty of suspension from office for three (3) months.

WHEREFORE, respondent Tyrone V. Tan, Sheriff IV of the OCC, RTC, Malaybalay City, Bukidnon, is found *GUILTY* of neglect of duty and is *SUSPENDED* for Three (3) Months from office. He is *STERNLY WARNED* that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of the decision be attached to his personal record.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 148263 and 148271-72. April 21, 2009]

ARMANDO DAVID, *petitioner, vs.* **NATIONAL FEDERATION OF LABOR UNIONS and MARIVELES APPAREL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; ABSENCE THEREOF; KNOWLEDGE THAT A CASE IS FILED DOES NOT SERVE THE SAME PURPOSE AS SERVING SUMMONS;

EXEMPLIFIED.— Like Carag, David was "not issued summons, not accorded a conciliatory conference, not ordered to submit a position paper, not accorded a hearing, not given an opportunity to present his evidence, and not notified that the case was submitted for resolution." Unlike Carag, David did not even know that Arbiter Ortiguerra issued a decision against him. David was not even able to file an appeal before the NLRC. David's participation in the present case, albeit belated, questioned his inclusion in the decisions of the tribunals below. David's protestations are not without basis, as can be seen from Sections 2, 3, 4, 5(b), and 11(c) of Rule V of the New Rules of Procedure of the NLRC. The records of the case show that NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. Arbiter Ortiguerra's decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Therefore, at the time of the conference, David was not yet a party to the case. The position paper subsequently filed by MAC was filed at a time when David had already resigned from MAC. David's knowledge of a labor case against MAC did not serve the same purpose as a summons. David did not receive any summons and had no knowledge of the decision against him. The Labor Arbiter and the NLRC did not have jurisdiction over David. This utter lack of jurisdiction voids any liability of David for any monetary award or judgment in favor of MACLU and NAFLU.

2. MERCANTILE LAW; CORPORATION CODE; GOVERNED THE LIABILITY OF CORPORATE OFFICER; SUSTAINED.— Arbiter Ortiguerra held David liable for MAC's debts pursuant to Article 212(e) of the Labor Code, which reads: 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer. However, Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. Section 31 of the Corporation Code provides: *Liability of directors, trustees or officers.* — Directors or trustees who willfully

and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith.

APPEARANCES OF COUNSEL

Carag Caballes Jamora & Somera Law Offices for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Joint Decision[2] dated 29 February 2000 and the Resolution[3] dated 27 March 2001 of the Court of Appeals (appellate court) in CA-G.R. SP Nos. 54404-06. The appellate court affirmed the Decision[4] dated 17 June 1994 of Labor Arbiter Isabel Panganiban-Ortiguerra (Arbiter Ortiguerra) in RAB-III-08-5198-93 where petitioner Armando David (David) was held solidarily liable, along with Mariveles Apparel Corporation (MAC) and MAC Chairman of the Board Antonio Carag (Carag), for money claims of the employees of MAC.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 34-55. Penned by Associate Justice Teodoro P. Regino with Associate Justices Conchita Carpio Morales (now Associate Justice of this Court) and Jose L. Sabio, Jr., concurring.

[3] *Id.* at 57-58. Penned by Associate Justice Teodoro P. Regino with Associate Justices Conchita Carpio Morales (now Associate Justice of this Court) and Jose L. Sabio, Jr., concurring.

[4] *Id.* at 59-65.

The Facts

The present case arose from the same circumstances as *Antonio C. Carag v. National Labor Relations Commission, et al.*[5]

MAC hired David as IMPEX and Treasury Manager on 16 September 1988. David began serving as MAC's President in May 1990. David served as President in the nature of a nominee as he did not own any of MAC's shares. David tendered his irrevocable resignation from MAC on 30 September 1993. David's resignation was made effective on 15 October 1993.

In a complaint for illegal dismissal dated 12 August 1993, National Federation of Labor Unions (NAFLU) and Mariveles Apparel Corporation Labor Union (MACLU) alleged that MAC ceased operations on 8 July 1993 without prior notice to its employees. MAC allegedly gave notice of its closure on the same day that it ceased operations. MACLU and NAFLU further alleged that, at the time of MAC's closure, employees who had rendered one to two weeks work were not paid their corresponding salaries.

Arbiter Ortiguerra immediately summoned the parties for settlement of the case. However, MAC failed to appear before Arbiter Ortiguerra. MAC's non-appearance compelled Arbiter Ortiguerra to declare the case submitted for resolution based on the pleadings.

On 3 January 1994, MACLU and NAFLU filed their position paper wherein MACLU and NAFLU also moved to implead Carag and David to guarantee satisfaction of any judgment award in MACLU and NAFLU's favor.

Atty. Joshua Pastores, as MAC's counsel, submitted a position paper dated 21 February 1994 and argued that Carag and David should not be held liable because MAC is owned by a consortium of banks. Carag's and David's ownership of MAC shares only served to qualify them to serve as officers in MAC.

The Ruling of the Labor Arbiter

Arbiter Ortiguerra proceeded to render her Decision on 17 June 1994 without further proceedings or submissions from

[5] G.R. No. 147590, 2 April 2007, 520 SCRA 28.

the parties. Arbiter Ortiguerra granted MACLU and NAFLU's motion to implead Carag and David, as well as declared Carag and David solidarily liable with MAC to complainants. Pertinent portions of Arbiter Ortiguerra's decision are quoted below:

> The complainants claim that Atty. Antonio Carag and Mr. Armando David should be held jointly and severally liable with respondent corporation [MAC]. This bid is premised on the belief that the impleader of the aforesaid officers will guarantee payment of whatever may be adjudged in complainants' favor by virtue of this case. It is a basic principle in law that corporations have personality [sic] distinct and separate from the stockholders. This concept is known as corporate fiction. Normally, officers acting for and in behalf of a corporation are not held personally liable for the obligation of the corporation. In instances where corporate officers dismissed employees in bad faith or wantonly violate labor standard laws or when the company had already ceased operations and there is no way by which a judgment in favor of employees could be satisfied, corporate officers can be held jointly and severally liable with the company. This Office after a careful consideration of the factual backdrop of the case is inclined to grant complainants' prayer for the impleader of Atty. Antonio Carag and Mr. Armando David, to assure that valid claims of employees would not be defeated by the closure of [MAC].
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> x x x x x x x x x
>
> WHEREFORE, premises considered, judgment is hereby rendered declaring respondents jointly and severally guilty of illegal closure and they are hereby ordered as follows:
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> 1. To pay complainants' separation pay computed on the basis of one (1) month for every year of service, a fraction of six (6) months to be considered as one (1) year in the total amount of ₱49,101,621.00; and
>
> 2. To pay complainants attorney's fees in an amount equivalent to 10% of the judgment award.
>
> The claims for moral, actual and exemplary damages are dismissed for lack of evidence.
>
> SO ORDERED.[6]

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[6] *Rollo,* pp. 63-64.

David claimed that he was not notified of Arbiter Ortiguerra's decision. David alleged that it was only during a chance encounter with Carag that he learned of Arbiter Ortiguerra's decision against him. Neither did David know that MAC filed an appeal on his behalf before the NLRC.

David then filed a petition for *certiorari* under Rule 65, docketed as G.R. No. 118880, before this Court. We also consolidated David's petition with that of MACLU and NAFLU (G.R. No. 118880) and of MAC and Carag (G.R. No. 118820). On 12 July 1999, after all the parties had filed their memoranda, we referred the consolidated cases to the appellate court in accordance with our decision in *St. Martin Funeral Home v. NLRC*.[7] MAC, Carag, and David filed separate petitions before the appellate court.

David asked the appellate court to rule on whether the labor arbiter acquired jurisdiction over his person. David emphasized that he was impleaded as a party respondent not in a separate order prior to the promulgation of the decision, but in the decision itself. David also questioned his solidary liability with his co-respondents.

The Ruling of the Appellate Court

In its Joint Decision dated 29 February 2000, the appellate court affirmed the decision of Arbiter Ortiguerra and the resolution of the NLRC. The appellate court stated that "petitioner DAVID cannot just evade his liability by the simple expedien[ce] of alleging that he had not affirmed nor adopted the position paper filed by petitioner MAC."[8] David's resignation from MAC took place only on 15 October 1993, long after MAC's closure took place. According to the appellate court, this meant that David willfully and knowingly assented to the unlawful closure of the company without any notice to the employees. David was thus solidarily liable, along with MAC and Carag, for the unpaid wages of MAC's employees.

The dispositive portion of the appellate court's decision reads as follows:

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[7] 356 Phil. 811 (1998).

[8] *Id.* at 46.

IN VIEW WHEREOF, the petitions are DISMISSED. The decision of Labor Arbiter Isabel Panganiban-Ortiguerra dated June 17, 1994, and the Resolution dated January 5, 1995, issued by the National Labor Relations Commission are hereby AFFIRMED. As a consequence of dismissal, the temporary restraining order issued on March 2, 1995, by the Third Division of the Supreme Court is LIFTED. Costs against petitioners.

SO ORDERED.[9]

The appellate court denied David's motion for reconsideration in a Resolution promulgated on 27 March 2001.

The Issues

David raises the following issues before this Court:

1. Whether or not in finding petitioner guilty of illegal closure and making him personally liable for payment of private respondent's claims, petitioner had been afforded due process of law as guaranteed by the 1987 Constitution?
2. Whether or not the Labor Court has acquired jurisdiction over the person of petitioner by ordering him to be impleaded as a party respondent in the course of the proceedings not through a separate order prior to the promulgation of its decision, but through the decision itself, under which, petitioner was adjudged to be jointly and severally liable to pay the monetary award with the original respondent?
3. Whether or not the Labor Arbiter has acted with grave abuse of discretion in adjudging petitioner to be jointly and severally liable with his co-respondents on the sole ground that the valid claims of the employees should not be defeated by the closure of the corporation?[10]

The Ruling of the Court

The petition has merit. The issues raised by David can be limited to denial of due process and the propriety of David's solidary liability.

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[9] *Id.* at 54.

[10] *Id.* at 11.

Denial of Due Process

The proceedings before the Labor Arbiter deprived David of due process. MACLU and NAFLU filed their complaint against MAC on 12 August 1993. Arbiter Ortiguerra's decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Because of MAC's failure to appear, Arbiter Ortiguerra deemed the case submitted for resolution. David's resignation from MAC took effect on 15 October 1993. NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. David did not receive any summons and had no knowledge of the decision against him. The records of the present case fail to show any order from Arbiter Ortiguerra summoning David to attend the preliminary conference. Despite this lack of summons, in her Decision dated 17 June 1994, Arbiter Ortiguerra not only granted MACLU and NAFLU's motion to implead Carag and David, she also held Carag and David solidarily liable with MAC.

Arbiter Ortiguerra's zeal to rule in favor of MACLU and NAFLU should have been tempered by observance of due process. Like Carag, David was "not issued summons, not accorded a conciliatory conference, not ordered to submit a position paper, not accorded a hearing, not given an opportunity to present his evidence, and not notified that the case was submitted for resolution."[11] Unlike Carag, David did not even know that Arbiter Ortiguerra issued a decision against him. David was not even able to file an appeal before the NLRC. David's participation in the present case, albeit belated, questioned his inclusion in the decisions of the tribunals below. David's protestations are

[11] *Supra* note 5 at 47-48.

not without basis, as can be seen from Sections 2,[12] 3,[13] 4,[14] 5(b),[15] and 11(c)[16] of Rule V of the New Rules of Procedure of the NLRC.[17]

[12] Section 2. *Mandatory Conference/Conciliation.* — Within two (2) days from receipt of an assigned case, the Labor Arbiter shall summon the parties to a conference for the purpose of amicably settling the case upon a fair compromise or determining the real parties in interest, defining and simplifying the issues in the case, entering into admissions and/or stipulations of facts, and threshing out all other preliminary matters. The notice or summons shall specify the date, time and place of the preliminary conference/pretrial and shall be accompanied by a copy of the complaint.

Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing and signed by the parties and their respective counsels, if any, before the Labor Arbiter. The settlement shall be approved by the Labor Arbiter after being satisfied that it was voluntarily entered into by the parties and after having explained to them the terms and consequences thereof.

A compromise agreement entered into by the parties not in the presence of the Labor Arbiter before whom the case is pending shall be approved by him if, after confronting the parties, particularly the complainants, he is satisfied that they understand the terms and conditions of the settlement and that it was entered into freely and voluntarily by them and the agreement is not contrary to law, morals, and public policies.

A compromise agreement duly entered into in accordance with this Section shall be final and binding upon the parties and the Order approving it shall have the effect of a judgment rendered by the Labor Arbiter in the final disposition of the case.

The number of conferences shall not exceed three (3) settings and shall be terminated within thirty (30) calendar days from the date of the first conference.

[13] Section 3. *Submission of Position Papers/Memorandum.* — Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/memorandum with the supporting

The records of the case show that NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. Arbiter Ortiguerra's decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Therefore, at the time of the conference, David was not yet a party to the case. The position paper subsequently filed by MAC was filed at a time when David had already resigned from MAC. David's knowledge of a labor case against MAC did not serve the same purpose as a summons. David did not receive any summons and had no knowledge of the decision against him.

The Labor Arbiter and the NLRC did not have jurisdiction over David. This utter lack of jurisdiction voids any liability of David for any monetary award or judgment in favor of MACLU and NAFLU.

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documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

[14] Section 4. *Determination of Necessity of Hearing.* — Immediately after the submission by the parties of their position papers/memorandum, the Labor Arbiter shall *motu proprio* determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

[15] Section 5. *Period to Decide Case.* — x x x

b) If the Labor Arbiter finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall issue an Order to that effect and shall inform the parties, stating the reasons therefor. In any event, he shall render his decision in the case within the same period provided in paragraph (a) hereof.

[16] Section 11. *Non-appearance of Parties at Conference/Hearings.* — x x x x x x x x x

c) In case of two (2) successive unjustified non-appearances by the respondent during his turn to present evidence, despite due notice, the case shall be considered submitted for decision on the basis of the evidence so far presented.

[17] Promulgated on 31 August 1990 and took effect on 9 October 1990.

Corporate President's Solidary Liability

Assuming *arguendo* that the NLRC and the Labor Arbiter had jurisdiction over David, we rule that it was still improper to hold David liable for MAC's obligations to its employees.

Arbiter Ortiguerra held David liable for MAC's debts pursuant to Article 212(e) of the Labor Code, which reads:

> 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

However, Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. Section 31 of the Corporation Code provides:

> *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x

There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Joint Decision dated 29 February 2000 and the Resolution dated 27 March 2001 of the Court of Appeals in CA-G.R. SP Nos. 54404-06.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161827. April 21, 2009]

SESINANDO POLINTAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEAL TO THE COURT OF APPEALS; DISMISSAL OF APPEAL FOR FAILURE TO FILE BRIEF WITHIN THE PRESCRIBED TIME; WHEN PROPER; RATIONALE.— Paragraph 1, Section 8, Rule 124 of the Rules of Court states that: **The Court of Appeals may**, upon motion of the appellee or ***motu proprio* and with notice to the appellant** in either case, **dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio***. Section 8 is clear — the Court of Appeals may, *motu proprio* and with notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed, except where the appellant is represented by a counsel *de oficio*. The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege and must be exercised in accordance with the law. In *Spouses Ortiz v. Court of Appeals*, the Court held that: [T]he right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules, Failing [sic] to do so, the right to appeal is lost. Rules of Procedure are required to be followed.

2. ID.; RULES OF COURT; COMPLIANCE THEREOF IS INDESPENSABLE FOR THE ORDERLY AND SPEEDY DISPOSITION OF JUSTICE; APPLICATION IN CASE AT BAR.— The negligence and mistakes of counsel are binding on the client. The Court cannot tolerate Polintan's habitual failure to follow the Rules of Court and his flimsy excuses. First, Polintan failed to appear before the RTC during the presentation of evidence. He alleged that he was not duly notified

of the hearing because he had moved from the address on record. However, when members of the Criminal Intelligence Division of Camp Crame apprehended him, he gave the same address. Second, Polintan failed to file his notice of appeal within the time prescribed. He alleged that his counsel was in Naga City. Third, Polintan failed to file his appellant's brief within the time prescribed. He alleged that his counsel was in Camarines Sur. Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless.

APPEARANCES OF COUNSEL

Roberto S. Federis for petitioner.
The Solicitor General for respondent.

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 21 October 2003 and 21 January 2004 Resolutions[2] of the Court of Appeals in CA-G.R. CR No. 26859. The Court of Appeals dismissed the appeal of Sesinando Polintan (Polintan) for failure to file appellant's brief within the time prescribed.

The Facts

Assistant City Prosecutor Ralph S. Lee filed two informations[3] dated 29 June 1993 with the Regional Trial Court (RTC), National Capital Judicial Region, Branch 224, Quezon City, charging Polintan with violation of Batas Pambansa Bilang 22. The two cases were docketed as Criminal Case Nos. Q-93-46199 and

[1] *Rollo*, pp. 11-30.

[2] *Id.* at 33 and 35-37, respectively.

[3] *Id.* at 38-41.

Q-93-46200. During his arraignment on 28 August 1993, Polintan pleaded not guilty to both charges.

On 14 September 1993, the RTC provisionally dismissed the two cases because Polintan agreed to settle the civil aspect of the cases. On 30 August 1994, the RTC granted the motion to revive the two cases.

On 9 November 1994, the RTC set the presentation of evidence. The prosecution presented several pieces of evidence: (1) testimonies of Dolores Cajucom and Luisito Rivera; (2) photographs of Polintan; (3) cash vouchers of David Motors and Marketing Corporation; (4) signatures of Polintan; (5) chattel mortgages; (6) promissory notes; (7) City Trust Banking Corporation Check Nos. 441615 and 618149; (8) drawn against insufficient funds notations; (9) demand letters; (10) memorandum of preliminary investigation, and (11) complaint-affidavit.

Polintan failed to appear during the presentation of evidence. The records showed that a notice of hearing was mailed to Polintan on 8 March 1995 and that the notice was not returned to the RTC. Thus, the RTC considered the two cases submitted for decision based on the evidence presented by the prosecution.

In a Decision[4] dated 17 January 1996, the RTC found Polintan guilty beyond reasonable doubt of two counts of violation of Batas Pambansa Bilang 22. The RTC held that:

> [T]he case of the prosecution is air tight and conclusive to convict the accused. The inability and/or failure of the accused to appear and testify in these two (2) cases must be probably due to his belief and conviction that he could not rebut the incontrovertible testimonial and documentary evidence of the prosecution. The accused must have realized the futility of disproving prosecution evidence.
>
> The prosecution has proved and established the guilt of the accused Sesinando Polintan beyond reasonable doubt. The prosecution has established that the accused issued and has drawn the two (2) subject checks of City Trust Banking Corp. against insufficient funds (DAIF) which were dishonored when presented for payment and encashment at the bank as evidenced by the notation — DAIF — on the dorsal

[4] *Id.* at 42-46.

side of the said two (2) checks. The accused could not therefore escape from his culpability and liability to the private complainant for the issuance of the two (2) dishonored checks.[5]

Polintan filed an omnibus motion[6] for new trial and reconsideration of the 17 January 1996 Decision. In an Order[7] dated 24 May 2002, the RTC denied the omnibus motion. On 3 July 2002, Polintan filed a notice[8] of appeal. In an Order[9] dated 14 August 2002, the RTC denied the notice of appeal for being filed out of time. Polintan filed a motion[10] for reconsideration of the 14 August 2002 Order. In an Order[11] dated 18 November 2002, the RTC, "[i]n the higher interest of justice," granted the motion for reconsideration.

The Ruling of the Court of Appeals

In a Resolution[12] dated 8 August 2003, the Court of Appeals granted Polintan's three motions for extension of time to file his appellant's brief and directed Polintan to show cause why his appeal should not be dismissed. In a Resolution dated 21 October 2003, the Court of Appeals considered the appeal abandoned and dismissed it. In a very urgent *ex-parte* motion[13] dated 27 October 2003, Polintan prayed, "in the broader interest of justice and fair play," that his brief be admitted. Polintan filed a motion[14] for reconsideration of the 21 October 2003 Resolution. In a Resolution dated 21 January 2004, the Court of Appeals denied the motion. The Court of Appeals held that:

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[5] *Id.* at 46.

[6] *Id.* at 47-55.

[7] *Id.* at 58.

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

[9] *Id.* at 61-62.

[10] *Id.* at 63-66.

[11] *Id.* at 67.

[12] *Id.* at 68.

[13] *Id.* at 69-71.

[14] *Id.* at 87-93.

In his Very Urgent *Ex-Parte* Motion to Admit Appellant's Brief, accused-appellant's counsel stated that he instructed Mr. Perez to file said brief on June 11, 2003 before he left for Camarines Sur. However, when he reported to the law firm on October 22, 2003, he learned that Mr. Perez failed to file it.

Granting that Mr. Perez overlooked such responsibility, and, if indeed said appellant's brief was ready and about to be filed on June 11, 2003, this Court is in a quandary why the appellant's brief was only filed on October 29, 2003, a week after appellant's counsel allegedly reported back to the law firm, when said law firm is just a few meters away from this Court.

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Records show that the accused-appellant was granted by this Court a total of seventy-five (75) days extension, from March 30, 2003 or until June 13, 2003. Yet, he failed to do so, which failure can only be construed as lack of interest to pursue his appeal.[15]

Hence, the instant petition. Polintan claims that the Rules of Court, specifically Section 8 of Rule 124, should not be followed.

The Ruling of this Court

The petition is unmeritorious.

Paragraph 1, Section 8, Rule 124 of the Rules of Court states that:

The Court of Appeals may, upon motion of the appellee or ***motu proprio*** **and with notice to the appellant** in either case, **dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio***. (Emphasis supplied)

Section 8 is clear — the Court of Appeals may, *motu proprio* and with notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed, except where the appellant is represented by a counsel *de oficio*.

In the present case, (1) the Court of Appeals, *motu proprio*, dismissed the appeal; (2) the Court of Appeals furnished Polintan

[15] *Id.* at 35-36.

with notice to show cause why his appeal should not be dismissed; (3) Polintan failed to file his brief within the time prescribed; and (4) Polintan was not represented by a counsel *de oficio*.

The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege and must be exercised in accordance with the law. In *Spouses Ortiz v. Court of Appeals*,[16] the Court held that:

> [T]he right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules, Failing [sic] to do so, the right to appeal is lost. Rules of Procedure are required to be followed.

The negligence and mistakes of counsel are binding on the client.[17] The Court cannot tolerate Polintan's habitual failure to follow the Rules of Court and his flimsy excuses. First, Polintan failed to appear before the RTC during the presentation of evidence. He alleged that he was not duly notified of the hearing because he had moved from the address on record. However, when members of the Criminal Intelligence Division of Camp Crame apprehended him, he gave the same address. Second, Polintan failed to file his notice of appeal within the time prescribed. He alleged that his counsel was in Naga City. Third, Polintan failed to file his appellant's brief within the time prescribed. He alleged that his counsel was in Camarines Sur.

Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice.[18] The Rules must be followed, otherwise, they will become meaningless and useless.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 21 October 2003 and 21 January 2004 Resolutions of the Court of Appeals in CA-G.R. CR No. 26859.

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[16] 360 Phil. 95, 100-101 (1998).

[17] *Sapad v. Court of Appeals*, 401 Phil. 478, 483 (2000).

[18] *Trans International v. CA*, 348 Phil. 830, 837 (1998).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 162370. April 21, 2009]

DAVID TIU, *petitioner, vs.* **COURT OF APPEALS and EDGARDO POSTANES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ONLY THE SOLICITOR GENERAL MAY BRING OR DEFEND ACTIONS ON BEHALF OF THE REPUBLIC OF THE PHILIPPINES.— Settled is the rule that only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before this Court and the Court of Appeals. Tiu, the offended party in Criminal Case No. 96-413 is without legal personality to appeal the decision of the Court of Appeals before this Court. Nothing shows that the Office of the Solicitor General represents the People in this appeal before this Court.

2. ID.; ID.; DOUBLE JEOPARDY; ELEMENTS.— The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without his express consent.

3. ID.; REVISED RULES ON SUMMARY PROCEDURE; NO PROHIBITION ON THE MeTC's APPRECIATION OF

EVIDENCE PRESENTED AND FORMERLY OFFERED; APPLICATION IN CASE AT BAR.— There is nothing in the Revised Rules on Summary Procedure prohibiting the MeTC from appreciating the evidence presented and formally offered in Criminal Case No. 96-412 in resolving Criminal Case No. 96-413, inasmuch as these two criminal cases were properly consolidated and jointly tried. In fact, the MeTC's act of assessing the evidence in Criminal Case No. 96-412 in deciding Criminal Case No. 96-413 is consistent with the avowed objective of the Revised Rules on Summary Procedure **"to achieve an expeditious and inexpensive determination of the cases"** covered by these Rules. Besides, the testimonies of Postanes, Aynaga, and Samson were properly offered at the time when these witnesses were called to testify. Hence, while the affidavits as documentary evidence were not formally offered, there were testimonial evidences supporting Postanes' defense in Criminal Case No. 96-413. Contrary to the RTC's finding, there is nothing capricious or whimsical in the act of the MeTC of considering the evidence formally offered in Criminal Case No. 96-412 in resolving the consolidated Criminal Case No. 96-413. Therefore, the MeTC committed no grave abuse of discretion in dismissing Criminal Case No. 96-413 for insufficient evidence.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.

Gonzales Batiller Bilog Reyes & Associates 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 29 October 2003 Decision[2] and 24 February 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 64783. The Court of Appeals annulled the 6 November 2000 Decision[4] of the Regional Trial Court (RTC), Branch 115, Pasay City on the ground of violation of the right of the accused against double jeopardy. The RTC declared void the acquittal by the Metropolitan Trial Court (MeTC), Branch 44, Pasay City, of respondent Edgardo Postanes for the crime of grave threats.

The Facts

The instant controversy stemmed from a criminal charge for slight physical injuries filed by respondent Edgardo Postanes (Postanes) against Remigio Pasion (Pasion). On the other hand, petitioner David Tiu (Tiu) filed a criminal charge for grave threats against Postanes.

Consequently, an Information for Slight Physical Injuries, docketed as Criminal Case No. 96-412, and an Information for Grave Threats, docketed as Criminal Case No. 96-413, were filed with the Metropolitan Trial Court (MeTC) of Pasay City. The Informations read as follows:

Criminal Case No. 96-412 (Slight Physical Injuries)

That on or about the 2nd day of November 1995, in Pasay City Metro Manila, Philippines and within the jurisdiction of this

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

[2] *Rollo*, pp. 34-42. Penned by Associate Justice B.A. Adefuin-Dela Cruz, with Associate Justices Eliezer R. Delos Santos and Jose C. Mendoza, concurring.

[3] *Id.* at 43. Penned by Associate Justice B.A. Adefuin-Dela Cruz, with Associate Justices Jose C. Mendoza and Fernanda L. Peralta, concurring.

[4] *Id.* at 216-220. Penned by Judge Francisco G. Mendiola.

Honorable Court, the above-named accused, Remegio Pasion, there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Edgardo Postanes *y* Talara thereby inflicting physical injuries to the latter, which injuries required and will require medical attendance for a period of less than nine (9) days and incapacitated and will incapacitate him from performing his habitual work and/or activities during the same period of time.

Contrary to law.[5]

Criminal Case No. 96-413 (Grave Threats)

That on or about the 2nd day of November 1995, in Pasay City Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Edgardo Postanes *y* Talara, without justifiable cause, by creating in the minds of the complainants Genes Carmen *y* Motita and David S. Tiu that the threats will be carried out, did then and there willfully, unlawfully and feloniously threatened to inflict bodily harm on the latter's person by poking a gun and uttering the following threatening words, to wit:

"PUTANG INA NINYO MGA HINDOT KAYO PAGBABABARILIN KO KAYO."

Contrary to law.[6]

Upon motion of Pasion, Criminal Case Nos. 96-412 and 96-413 were consolidated and jointly heard before the MeTC of Pasay City, Branch 44.

During the trial, Postanes testified as a witness, together with his eyewitnesses Jose Aynaga (Aynaga) and Aristotle Samson (Samson). Postanes' testimony was also offered to prove his innocence as the accused in Criminal Case No. 96-413, thus:

ATTY. VALDEZ: The purposes in presenting the testimony of this witness your Honor, is [sic] to affirm and confirm his Affidavit or Sworn Statement earlier submitted to this Honorable Court as his direct testimony pursuant to the Rules of Summary Procedure; second, **to affirm and confirm his Affidavit or his Sworn**

[5] Records, Folder One, p. 1.

[6] *Id.* at 7.

Statement as part of his controverting evidence on the counter charge on Criminal Case No. 96-413 also pursuant to the Rules on Summary Procedure; third, to identify the accused; and [fourth] to prove that the accused is guilty of the crime charged; and [fifth] **to prove that the witness Edgardo Postanes is innocent in the charges in Criminal Case No. 96-413**.[7] (Emphasis supplied)

On 3 April 1997, Postanes formally offered his evidence, as the private complainant in Criminal Case No. 96-412. Postanes offered, among others, his affidavit and the affidavits of his witnesses, Aynaga and Samson, which were correspondingly marked as Exhibits "A", "C", and "D".

On 17 April 1997, the MeTC admitted all of Postanes' documentary evidences.

In Criminal Case No. 96-413, where he stood as the accused, Postanes adopted his testimony and his witnesses' testimonies which were formally offered and admitted in Criminal Case No. 96-412. Accordingly, the MeTC issued an Order dated 13 October 1998, which pertinently states:

Atty. Paul Edwin D.S. Bautista, counsel for the accused manifested that the witness to be presented today in the person of Norlie B. Ubay cannot be located by Mr. Postanes. **Atty. Bautista further manifested that he is adopting the testimonies of their witnesses, Aristotle Samson and Jose Aynaga in Criminal Case No. 96-412 for Slight Physical Injuries wherein Edgardo Postanes is the private complainant against Remigio Pasion, Jr., their testimonies and other evidences introduced as evidence for the accused.**[8] (Emphasis supplied)

Postanes requested more time to submit a formal offer of evidence in Criminal Case No. 96-413. However, Postanes' counsel filed a formal offer of evidence belatedly. In its Order dated 22 December 1998, the MeTC denied Postanes' motion to admit formal offer of evidence and ordered it expunged from the records.[9]

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[7] *Id.* at 132-133 (TSN, 24 July 1996, pp. 4-5).

[8] *Rollo*, p. 120.

[9] *Id.* at 121.

In its Decision dated 26 January 1999,[10] the MeTC dismissed both Criminal Case Nos. 96-412 and 96-413. The dispositive portion of the MeTC Decision reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered declaring the charge for Slight Physical Injuries against Remegio Pasion, Jr. and the counter-charge of Grave Threats against Edgardo Postanes DISMISSED for insufficiency of evidence.
>
> SO ORDERED.[11]

Tiu filed a motion for reconsideration which was denied by the MeTC in its Order dated 11 March 1999.

On 29 March 1999, Tiu, through his counsel, filed a petition for *certiorari* with the RTC of Pasay City.

On 6 November 2000, the RTC, Branch 115, Pasay City rendered a Decision declaring void the judgment of the MeTC. The dispositive portion of the RTC Decision reads:

> WHEREFORE, granting *certiorari*, the Decision of Acquittal dated January 26, 1999 of the respondent judge in Criminal Case No. 96-413, with respect to accused Edgardo Postanes, is declared NULL AND VOID.
>
> This case is remanded to the Court of origin for reconsideration of its Decision.[12]

Postanes moved for reconsideration, which was denied by the RTC in its Order dated 3 April 2001.[13]

On 22 May 2001, Postanes filed with the Court of Appeals a petition for *certiorari* (with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order), challenging the decision of the RTC which annulled the judgment of the MeTC dismissing Criminal Case Nos. 96-412 and 96-413.

In a Resolution promulgated on 5 January 2001, the Court of Appeals directed respondents (Tiu and Judge Francisco G.

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[10] *Id.* at 50-56.

[11] *Id.* at 56.

[12] *Id.* at 219-220.

[13] *Id.* at 237-239.

Mendiola of RTC Pasay, Branch 115) to file their Comment on the petition. The Court of Appeals found no reason to justify the issuance of a temporary restraining order.[14]

Meanwhile, Tiu, through his counsel, filed with the MeTC a Motion for Compliance asking the MeTC to enforce the RTC decision. He also filed a motion to inhibit MeTC Presiding Judge Estrellita M. Paas. Postanes, on the other hand, filed a motion to suspend the proceedings and an Opposition to the motion for compliance.

On 3 September 2001, the MeTC issued an Order[15] granting Postanes' motion to suspend the proceedings. Presiding Judge Estrellita M. Paas also inhibited herself from further hearing the case.

On 3 January 2002, Tiu filed with the Court of Appeals a Motion to Dismiss Petition[16] on the ground of forum shopping.

In a Resolution promulgated on 16 September 2003, the Court of Appeals stated that "action on the Motion to Dismiss Petition filed by the private respondents, together with the petitioner's Opposition thereto, and private respondents' Reply to Opposition shall be included in the preparation of the decision in the present petition."[17]

On 29 October 2003, the Court of Appeals rendered the assailed Decision, reversing the RTC Decision and affirming the dismissal of Criminal Case No. 96-413. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, premises considered, the assailed Decision dated November 6, 2000 and the Order dated April 3, 2001 of the public respondent judge are hereby ANNULLED and SET ASIDE.
>
> SO ORDERED.[18]

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[14] *Id.* at 329.

[15] *Id.* at 344-346.

[16] CA *rollo*, pp. 222-225.

[17] *Id.* at 260.

[18] *Rollo*, p. 42.

On 24 February 2004, the Court of Appeals denied Tiu's motion for reconsideration.[19]

Hence, this petition.

The Court of Appeals' Ruling

In annulling the RTC decision, the Court of Appeals held that the RTC "has granted upon the State, through the extraordinary remedy of *certiorari*, the right to appeal the decision of acquittal which right the government does not have."

The Court of Appeals stated that the prosecution had not been denied by the MeTC of its right to due process. Hence, it was wrong for the RTC to declare the findings of the MeTC as having been arrived at with grave abuse of discretion, thereby denying Postanes of his Constitutional right against double jeopardy.

The Court of Appeals opined that the MeTC evaluated and passed upon the evidence presented both by the prosecution and the defense. The MeTC, however, believed that the evidence of the prosecution was not sufficient to overcome the constitutional presumption of innocence of Postanes, thus acquitted him based on reasonable doubt.

The Issues

The main issues in this case are:

1. Whether there was double jeopardy when Tiu filed a petition for *certiorari* questioning the acquittal of Postanes by the MeTC; and
2. Whether there was forum shopping when Postanes filed a Motion to Suspend Proceedings in the MeTC when the Court of Appeals already denied Postanes' prayer for a temporary restraining order to enjoin the enforcement of the decision of the RTC.

The Ruling of this Court

The petition lacks merit.

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[19] *Id.* at 43.

At the outset, the Court finds that the petition is defective since it was not filed by the Solicitor General. Instead, it was filed by Tiu, the private complainant in Criminal Case No. 96-413, through his counsel. Settled is the rule that only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before this Court and the Court of Appeals.[20] Tiu, the offended party in Criminal Case No. 96-413 is without legal personality to appeal the decision of the Court of Appeals before this Court. Nothing shows that the Office of the Solicitor General represents the People in this appeal before this Court. On this ground alone, the petition must fail.

However, the Court opts to resolve the question of double jeopardy to finally put an end to this controversy.

The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without his express consent.[21]

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[20] Section 35, Chapter 12, *Title III, Book IV* of the Administrative Code of 1987. *People v. Nano*, G.R. No. 94639, 13 January 1992, 205 SCRA 155, 159; *People v. Mendoza*, G.R. No. 80845, 14 March 1994, 231 SCRA 264, 268. See *Perez v. Hagonoy Rural Bank, Inc.*, 384 Phil. 322, 335 (2000); *Columbia Pictures Entertainment, Inc. v. Court of Appeals*, G.R. No. 111267, 20 September 1996, 262 SCRA 219, 224; *People v. Calo*, G.R. No. 88531, 18 June 1990, 186 SCRA 620, 624; *People v. Eduarte*, G.R. No. 88232, 26 February 1990, 182 SCRA 750, 753.

[21] Paragraph 1, Section 7, Rule 117 of the Rules of Court provides:

SEC. 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

These elements are present here: (1) the Information filed in Criminal Case No. 96-413 against Postanes was sufficient in form and substance to sustain a conviction; (2) the MeTC had jurisdiction over Criminal Case No. 96-413; (3) Postanes was arraigned and entered a non-guilty plea;[22] and (4) the MeTC dismissed Criminal Case No. 96-413 on the ground of insufficiency of evidence amounting to an acquittal from which no appeal can be had.[23] Clearly, for this Court to grant the petition and order the MeTC to reconsider its decision, just what the RTC ordered the MeTC to do, is to transgress the Constitutional proscription not to put any person "twice x x x in jeopardy of punishment for the same offense."[24] Further, as found by the Court of Appeals, there is no showing that the prosecution or the State was denied of due process resulting in loss or lack of jurisdiction on the part of the MeTC, which would have allowed an appeal by the prosecution from the order of dismissal of the criminal case.[25]

Tiu also contends that since the defense in Criminal Case No. 96-413 failed to submit a formal of evidence, the defense in effect had no evidence to dispute the charge against Postanes. Tiu insists that though Criminal Case Nos. 96-412 and 96-413 were consolidated, the MeTC should not have considered the evidence offered in Criminal Case No. 96-412 to dismiss Criminal Case No. 96-413. In doing so, the MeTC allegedly committed grave abuse of discretion rendering its dismissal of Criminal Case No. 96-413 (grave threats case) void.

Tiu's arguments fail to convince us. There is nothing in the Revised Rules on Summary Procedure prohibiting the MeTC from appreciating the evidence presented and formally offered in Criminal Case No. 96-412 in resolving Criminal Case

[22] Records, Folder One, p. 43.

[23] Section 1 of Rule 122 provides: "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy."

[24] Section 21, Article III.

[25] *People v. Hernandez*, G.R. Nos. 154218 and 154372, 28 August 2006, 499 SCRA 688, 706, citing *Heirs of Tito Rillorta v. Firme*, G.R. No. 54904, 29 January 1988, 157 SCRA 518, 523.

No. 96-413, inasmuch as these two criminal cases were properly consolidated and jointly tried. In fact, the MeTC's act of assessing the evidence in Criminal Case No. 96-412 in deciding Criminal Case No. 96-413 is consistent with the avowed objective of the Revised Rules on Summary Procedure **"to achieve an expeditious and inexpensive determination of the cases"** covered by these Rules. Besides, the testimonies of Postanes, Aynaga,[26] and Samson[27] were properly offered at the time when these witnesses were called to testify.[28] Hence, while the affidavits as documentary evidence were not formally offered, there were testimonial evidences supporting Postanes' defense in Criminal Case No. 96-413.

Contrary to the RTC's finding, there is nothing capricious or whimsical in the act of the MeTC of considering the evidence formally offered in Criminal Case No. 96-412 in resolving the consolidated Criminal Case No. 96-413. Therefore, the MeTC committed no grave abuse of discretion in dismissing Criminal Case No. 96-413 for insufficient evidence.

In view of the foregoing, the Court finds no need to discuss the forum shopping issue.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 29 October 2003 Decision and 24 February 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 64783. Costs against petitioner.

SO ORDERED.

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

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[26] Records, Folder One, p. 188 (TSN, 17 September 1996, p. 3).

[27] *Id.* at 162 (TSN, 29 October 1996, p. 4).

[28] *Id.* at 132-133 (TSN, 24 July 1996, pp. 4-5). This is in accordance with Section 35 of Rule 132 which states: "*When to make offer*. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing."

FIRST DIVISION

[G.R. No. 164213. April 21, 2009]

VALENTIN CABRERA, MANUEL CABRERA, and REBECCA LESLIE CABRAS, *petitioners, vs.* **ELIZABETH GETARUELA, EULOGIO ABABON, LEONIDA LIGAN, MARIETTO ABABON, GLORIA PANAL, LEONORA OCARIZA, SOTERO ABABON, JR., and JOSEPH ABABON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ELEMENTS.— It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

2. ID.; ID.; ID.; ISSUE TO BE RESOLVED; CONSTRUED.— It should be stressed that the allegations in the complaint and the character of the relief sought determine the nature of the action and the court with jurisdiction over it. The defenses set up in an answer are not determinative of jurisdiction. The jurisdiction of the court cannot be made to depend on the exclusive characterization of the case by one of the parties. Thus: In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. However, where the issue of ownership is raised, the courts may pass upon the issue of ownership in order to determine who has the right to possess the property. We stress, however, that this adjudication is only an initial determination of ownership for the purpose of settling the issue of possession,

the issue of ownership being inseparably linked thereto. The lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property. It is, therefore, not conclusive as to the issue of ownership x x x.

APPEARANCES OF COUNSEL

Delfin V. Nacua for petitioners.
Florido & Largo Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 22 January 2004 Decision[2] and 3 May 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 80062.

The Antecedent Facts

Lot Nos. 3635-CC and 3635-Y, located in Inayawan, Pardo, Cebu City were covered by Tax Declaration Nos. GR2K-12-078-02409 and GR2K-12-078-02431 in the name of Arcadio Jaca (Arcadio). The heirs of Arcadio executed a notarized document known as "*Kasabutan nga Hinigala*" dated 25 July 1951 which stipulated that all the inherited properties of Arcadio, including Lot No. 3635, would go to Peregrina Jaca Cabrera (Peregrina). However, in a Repartition Project approved on 21 November 1956 by Judge Jose M. Mendoza of the Court of First Instance of Cebu City, Branch 6 in Special Proceedings No. 211-V, Lot Nos. 3635-CC and 3635-Y were given to Urbana Jaca Ababon (Urbana), mother of Elizabeth Getaruela, Eulogio Ababon,

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 55-63. Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr., concurring.

[3] *Id.* at 78-79.

Leonida Ligan, Marietto Ababon, Gloria Panal, Leonora Ocariza, Sotero Ababon, Jr., and Joseph Ababon (respondents). Upon Urbana's death in 1997, respondents inherited the lots.

Valentin Cabrera (Valentin), Manuel Cabrera (Manuel), and Rebecca Leslie Cabras (Cabras), Peregrina's adopted daughter, occupied the lots with the knowledge and consent of respondents.

Respondents alleged that Valentin, Manuel, and Cabras (collectively, petitioners) were occupying portions of the lots without paying any rentals, but with an agreement that they would vacate the premises and demolish their houses at their expense should respondents need the property. In 2001, respondents personally notified petitioners that they would repossess the property. Respondents asked petitioners to vacate the premises and remove the houses they built on the lots. However, despite repeated demands, petitioners refused to vacate the premises. The matter was referred to the *Lupong Tagapamayapa* of Barangay Inayawan, Cebu for possible amicable settlement but petitioners still refused to vacate the premises. Thus, respondents filed an action for ejectment against petitioners, docketed as Civil Case No. R-45280.

Petitioners assailed the Project of Partition as incredible because its first page was missing and it lacked the signatures of the parties who executed it. Petitioners asserted the validity of the "*Kasabutan nga Hinigala*." Cabras alleged that as owner of Lot No. 3635 upon Peregrina's death, she could not be ejected from the premises. Valentin and Manuel alleged that they could not be ejected because they built their houses with Peregrina's knowledge and consent.

The Rulings of the MTCC and RTC

In its Decision[4] dated 4 April 2002, the Municipal Trial Court in Cities, Branch 7, Cebu City (MTCC) ruled in favor of respondents, as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the latter to vacate

[4] *Id.* at 41-44. Penned by Presiding Judge Francisco A. Seville, Jr.

the premises in question and to demolish whatever improvements introduced thereon and surrender complete control and possession thereof to the plaintiffs, and to jointly and severally pay the latter:

1) the amount of ₱15,000.00 for and as attorney's fees;

2) litigation expenses in the sum of ₱5,000.00; and cost of suit.

SO ORDERED.[5]

The MTCC ruled that the "*Kasabutan nga Hinigala*" was superseded by the court-approved Repartition Project. The MTCC noted that in the Repartition Project, Lot Nos. 3635-CC and 3635-Y were given to Urbana, respondents' predecessor-in-interest. The MTCC ruled that while the lots were still in Urbana's name, respondents were not barred from judicially ejecting petitioners from the premises.

Petitioners appealed from the MTCC's Decision.

In its 19 May 2003 Decision,[6] the Regional Trial Court of Cebu City, Branch 7 (RTC) reversed the MTCC's Decision. The RTC ruled that the Project of Partition showed that Lot No. 3635-Y was co-owned by Urbana (251 sq. m.), Peregrina (863 sq. m.), and Andres Jaca (251 sq. m.). The RTC ruled that as Peregrina's heir, Cabras became a co-owner of Lot No. 3635-Y and she could not be ejected from the property. The RTC ruled that Valentin and Manuel could not likewise be ejected from the property as they were allowed by Cabras to occupy the lot.

The RTC ruled that the Project of Partition also showed that Urbana's total share of 1,499 sq. m., covering 1,248 sq. m. of Lot No. 3635-CC and 251 sq. m. of Lot No. 3635-Y, was sold to one Josefina Asas (Asas). As such, respondents had no cause of action against petitioners.

The dispositive portion of the RTC's Decision reads:

Wherefore, the judgment in the Decision dated April 4, 2002, of the Municipal Trial Court in Cities, Branch 7, Cebu City, in Civil

[5] *Id.* at 44.

[6] *Id.* at 45-50. Penned by Judge Simeon P. Dumdum, Jr.

Case No. R-45280, is REVERSED, and another one is entered DISMISSING the case against defendants-appellants.

Plaintiffs-appellees are directed to compensate defendants-appellants attorney's fees in the amount of ₱15,000.00, and litigation expenses in the amount of ₱5,000.00, as well as to pay the costs.

SO ORDERED.[7]

Respondents filed a motion for reconsideration. In its 29 July 2003 Order, the RTC partially granted respondents' motion. The RTC ruled that it erred in finding that Urbana sold her share to Asas. The RTC ruled that the Project of Partition showed that it was Panfilo Jaca who sold his share to Asas. The RTC modified its 19 May 2003 Decision as follows:

Wherefore, the judgment in the Decision dated April 4, 2002, of the Municipal Trial Court in Cities, Branch 7, Cebu City, in Civil Case No. R-45280, is MODIFIED, as follows:

1) Dismissing the complaint as regards Lot 3655-Y; and

2) Ordering defendants-appellants to vacate Lot No. 3655-CC, demolish whatever improvements they may have introduced thereon and surrender complete control and possession thereof to plaintiffs-appellees.

No pronouncement as to costs.

SO ORDERED.[8]

Petitioners moved for reconsideration of the RTC's 29 July 2003 Order, assailing the Project of Partition. In its 3 September 2003 Order,[9] the RTC denied petitioners' motion. The RTC ruled that petitioners failed to present any evidence supporting the purported falsity of the Project of Partition. The RTC upheld the jurisdiction of the MTCC and further ruled that respondents' action was an ejectment case.

Petitioners filed a petition for review before the Court of Appeals.

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[7] *Id.* at 49-50.

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

[9] CA *rollo*, pp. 103-104.

The Ruling of the Court of Appeals

In its 22 January 2004 Decision, the Court of Appeals affirmed the 29 July 2003 and 3 September 2003 Orders of the RTC.

The Court of Appeals held that the jurisdiction of the court is determined by the allegations in the complaint. The Court of Appeals held that a complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal to vacate is unlawful. The Court of Appeals ruled that prior physical possession is indispensable only in actions for forcible entry but not in unlawful detainer. The Court of Appeals further ruled that occupation of the premises must be tolerated by the owners right from the start of the possession of the property sought to be recovered.

The Court of Appeals found that in this case, petitioners were occupying the lots without rentals upon agreement with respondents that they would relinquish possession once respondents need the property. However, petitioners refused to vacate the premises despite demands by respondents. The Court of Appeals ruled that the allegations were sufficient to confer jurisdiction upon the MTCC where the ejectment suit was instituted and tried.

The Court of Appeals noted that petitioners challenged respondents' claim of ownership of the property. The Court of Appeals ruled that the only issue involved in an ejectment case is possession *de facto*. However, when the issue of possession could not be resolved without resolving the issue of ownership, the court may receive evidence upon the question of title to the property but solely for the purpose of determining the issue of possession. Hence, the MTCC acted correctly when it received evidence on the issue of ownership. The Court of Appeals further noted that the RTC upheld the MTCC's finding that the Project of Partition superseded the "*Kasabutan nga Hinigala.*" The Court of Appeals sustained the RTC in refusing to admit documents submitted by petitioners which they failed to present before the MTCC. The Court of Appeals stressed that the MTCC's finding on the issue of ownership was merely provisional.

Thus, petitioners were not legally barred from filing the proper action to settle the question of title.

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED. The assailed Orders dated July 29, 2003 and September 3, 2003 of the court *a quo* are hereby both AFFIRMED.
>
> No pronouncement as to costs.
>
> SO ORDERED.[10]

Petitioners filed a motion for reconsideration. In its 3 May 2004 Resolution, the Court of Appeals denied the motion.

The Court of Appeals ruled that a complaint for unlawful detainer must be filed within one year from demand and not from the start of possession as claimed by petitioners. The Court of Appeals reiterated that in cases of forcible entry and unlawful detainer, the issue is pure physical or *de facto* possession and pronouncements made on the question of ownership are provisional in nature. The Court of Appeals further ruled that all cases of forcible entry and unlawful detainer shall be filed before the proper Municipal Trial Court, there being no jurisdictional amount involved, even with respect to damages or unpaid rentals sought.

Hence, the petition before this Court.

The Issues

Petitioners raise the following issues in their Memorandum:[11]

1. Whether the MTCC had jurisdiction to entertain the ejectment case considering the absence of a contract, written or oral, entered into by respondents and petitioners as lessors and lessees, respectively;

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[10] *Rollo*, pp. 62-63.

[11] *Id.* at 138-148.

2. Whether tolerance as a ground for ejectment is tenable in this case; and

3. Whether the Project of Partition superseded the *"Kasabutan nga Hinigala."*

The Ruling of this Court

The petition has no merit.

Petitioners insist that the MTCC had no jurisdiction to entertain respondents' complaint because there was no contract, oral or written, between the parties. Petitioners allege that the proper action should have been one for recovery of possession and not for unlawful detainer.

We do not agree.

It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

(1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[12]

In this case, the complaint alleged that petitioners were occupying the property, with agreement that should respondents need the property, petitioners would relinquish possession of the lots and demolish their houses at their expense. Respondents personally notified petitioners to vacate the premises and to demolish their houses but petitioners refused to vacate the lots. The complaint established that petitioners' possession was by

[12] *Fernando v. Lim,* G.R. No. 176282, 22 August 2008, 563 SCRA 147.

tolerance of respondents, and their possession became illegal when they refused to vacate the premises upon demand by respondents. Here, the possession became illegal not from the time petitioners started occupying the property but from the time demand was made for them to vacate the premises. In short, the complaint sufficiently established a case for unlawful detainer.

Contrary to petitioners' contention, the issue in this case is not the ownership of the lots. It should be stressed that the allegations in the complaint and the character of the relief sought determine the nature of the action and the court with jurisdiction over it.[13] The defenses set up in an answer are not determinative of jurisdiction.[14] The jurisdiction of the court cannot be made to depend on the exclusive characterization of the case by one of the parties.[15] Thus:

> In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. However, where the issue of ownership is raised, the courts may pass upon the issue of ownership in order to determine who has the right to possess the property. We stress, however, that this adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. The lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property. It is, therefore, not conclusive as to the issue of ownership x x x.[16]

The MTCC, the RTC, and the Court of Appeals all held that the Repartition Project superseded the "*Kasabutan nga Hinigala*." We sustain their factual finding as this Court gives substantial weight to the factual finding of the trial court, particularly if this factual finding is sustained by appellate courts.

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[13] *Id*.

[14] *Id*.

[15] *Larano v. Calendacion*, G.R. No. 158231, 19 June 2007, 525 SCRA 57.

[16] *Pascual v. Coronel*, G.R. No. 159292, 12 July 2007, 527 SCRA 474, 482.

However, we also reiterate that this resolution on the issue of ownership is only provisional for the purpose of settling the issue of possession.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 22 January 2004 Decision and 3 May 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 80062.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173637. April 21, 2009]

DANTE T. TAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ACTIONS; CERTIFICATION AGAINST FORUM SHOPPING; THE DEPARTMENT OF JUSTICE SECRETARY HAS AUTHORITY TO SIGN THE CERTIFICATE OF NON-FORUM SHOPPING; RATIONALE.— It must be stressed that the certification against forum shopping is required to be executed by the plaintiff. Although the complaint-affidavit was signed by the Prosecution and Enforcement Department of the SEC, the petition before the Court of Appeals originated from Criminal Case No. 119830, where the plaintiff or the party instituting the case was the People of the Philippines. Section 2, Rule 110 of the Rules of Court leaves no room for doubt and establishes that criminal cases are prosecuted in the name of the People of the Philippines, the offended party in criminal cases. Moreover,

pursuant to Section 3, paragraph (2) of the Revised Administrative Code, the DOJ is the executive arm of the government mandated to investigate the commission of crimes, prosecute offenders and administer the probation and correction system. It is the DOJ, through its prosecutors, which is authorized to prosecute criminal cases on behalf of the People of the Philippines. Prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. Since it is the DOJ which is the government agency tasked to prosecute criminal cases before the trial court, the DOJ is best suited to attest whether a similar or related case has been filed or is pending in another court of tribunal. Acting DOJ Secretary Merceditas N. Gutierrez, being the head of the DOJ, therefore, had the authority to sign the certificate of non-forum shopping for Criminal Case No. 119830, which was filed on behalf of the People of the Philippines.

2. ID.; APPEALS; FACTUAL ISSUES ARE BEYOND THE PROVINCE OF THE SUPREME COURT; EXCEPTION.— It is a basic rule that factual issues are beyond the province of this Court in a petition for review, for it is not our function to review evidence all over again. Rule 45 of the Rules of Court provides that only questions of law may be raised in this Court in a petition for review on *certiorari*. The reason is that the Court is not a trier of facts. However, the rule is subject to several exceptions. Under these exceptions, the Court may delve into and resolve factual issues, such as in cases where the findings of the trial court and the Court of Appeals are absurd, contrary to the evidence on record, impossible, capricious or arbitrary, or based on a misappreciation of facts.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY TRIAL; CONSTRUED.— An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its "salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating

historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.

4. ID.; ID.; ID.; ID.; WHEN VIOLATED.— Exhaustively explained in *Corpuz v. Sandiganbayan*, an accused's right to speedy trial is deemed violated only when the proceeding is attended by *vexatious, capricious, and oppressive delays*. In determining whether petitioner was deprived of this right, the factors to consider and balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay.

5. ID.; ID.; ID.; DOUBLE JEOPARDY; PROTECTION OF RIGHT AGAINST DOUBLE JEOPARDY, DEFINED.— The constitutional protection against double jeopardy shields one from a second or later prosecution for the same offense. Article III, Section 21 of the 1987 Constitution declares that no person shall be twice put in jeopardy of punishment for the same offense, providing further that if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

6. ID.; ID.; ID.; ID.; ELEMENTS.— For double jeopardy to attach then, the following elements in the first criminal case must be present: (a) The complaint or information or other formal charge was sufficient in form and substance to sustain a conviction; (b) The court had jurisdiction; (c) The accused had been arraigned and had pleaded; and (d) He was convicted or acquitted or the case was dismissed or otherwise terminated without the express consent of the accused.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; DISMISSAL OF CASE RESULTING IN ACQUITTAL WITH THE EXPRESS CONSENT OF THE ACCUSED WILL NOT PLACE THE ACCUSED IN DOUBLE JEOPARDY; EXCEPTION.— As a general rule, the dismissal of a criminal case resulting in acquittal, made with the express consent of the accused or upon his own motion, will not place the accused in double jeopardy. This rule, however, admits of two exceptions, namely: insufficiency of evidence and denial of the right to speedy trial. While indeed

petitioner was in fact the one who filed the Motion to Dismiss Criminal Case No. 119830, the dismissal thereof was due to an alleged violation of his right to speedy trial, which would otherwise put him in double jeopardy should the same charges be revived. Petitioner's situation is different. Double jeopardy has not attached, considering that the dismissal of Criminal Case No. 119830 on the ground of violation of his right to speedy trial was without basis and issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Where the right of the accused to speedy trial has not been violated, there is no reason to support the initial order of dismissal.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Revised Rules of Court seeking the reversal and setting aside of the Decision[1] dated 22 February 2006 and Resolution[2] dated 17 July 2006 issued by the Court of Appeals in CA-G.R. SP No. 83068 entitled, *"People of the Philippines v. Hon. Briccio C. Ygana, in his capacity as Presiding Judge of Branch 153, Regional Trial Court, Pasig City and Dante Tan."*

The assailed Decision reinstated Criminal Case No. 119830, earlier dismissed by the trial court due to an alleged violation of petitioner Dante T. Tan's right to speedy trial. The assailed Resolution denied his Motion for Reconsideration and Motion to Inhibit.

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[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Josefina Guevara-Salonga and Sesinando E. Villon, concurring; *rollo*, pp. 90-100.

[2] *Id.* at 102-112.

The factual and procedural antecedents of the instant petition are as follows:

On 19 December 2000, a Panel of Prosecutors of the Department of Justice (DOJ), on behalf of the *People of the Philippines* (People), filed three Informations against Dante T. Tan (petitioner) before the Regional Trial Court (RTC) of Pasig City. The cases were docketed as Criminal Cases No. 119830, No. 119831 and No. 119832, all entitled, "*People of the Philippines v. Dante Tan*."

Criminal Case No. 119830[3] pertains to allegations that petitioner employed manipulative devises in the purchase of Best World Resources Corporation (BW) shares. On the other hand, Criminal Cases No. 119831[4] and No. 119832[5] involve the alleged failure of petitioner to file with the Securities and Exchange Commission (SEC) a sworn statement of his beneficial ownership of BW shares.

In two other related cases, two Informations were filed against a certain Jimmy Juan and Eduardo G. Lim for violation of the Revised Securities Act involving BW shares of stock. These were docketed as Criminal Cases No. 119828 and No. 119829.

On the same day, the DOJ, through Assistant Chief State Prosecutor Nilo C. Mariano, filed a Motion for Consolidation praying that Criminal Cases No. 119830, No. 119831 and No. 119832 be consolidated together with Criminal Cases No. 119828 and No. 119829, which the trial court granted.

On 21 December 2000, Criminal Cases No. 119830, No. 119831 and No. 119832 were raffled off to the Pasig RTC, Branch 153, presided by Judge Briccio C. Ygana. Criminal Cases No. 119828 and No. 119829 also went to the same court.

Petitioner was arraigned on 16 January 2001, and pleaded not guilty to the charges.[6]

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[3] *Id.* at 228-230.

[4] *Id.* at 231-232.

[5] *Id.* at 233-235.

[6] Records, p. 194.

On 6 February 2001, the pre-trial was concluded, and a pre-trial order set, among other things, the first date of trial on 27 February 2001.[7]

Atty. Celia Sandejas of the Securities and Exchange Commission (SEC), under the direct control and supervision of Public Prosecutor Nestor Lazaro, entered her appearance for the People; Atty. Agnes Maranan for petitioner Dante Tan; Atty. Sigfrid Fortun for Eduardo Lim, Jr.; and Atty. Rudolf Brittanico for Jimmy Juan. State Prosecutors Susan Dacanay and Edna Villanueva later on took over as lawyers for the People.

The People insists that during the pendency of the initial hearing on 27 February 2001, the parties agreed that Criminal Cases No. 119831 and No. 119832 would be tried ahead of Criminal Case No. 119830, and that petitioner would not interpose any objection to its manifestation, nor would the trial court disapprove it.

Thereafter, the People presented evidence for Criminal Cases No. 119831 and No. 119832. On 18 September 2001, the prosecution completed the presentation of its evidence and was ordered by the RTC to file its formal offer of evidence within thirty days.

After being granted extensions to its filing of a formal offer of evidence, the prosecution was able to file said formal offer for Criminal Cases No. 119831 and No. 119832 on 25 November 2003.[8]

On 2 December 2003, petitioner moved to dismiss Criminal Case No. 119830 due to the People's alleged failure to prosecute. Claiming violation of his right to speedy trial, petitioner faults the People for failing to prosecute the case for an unreasonable length of time and without giving any excuse or justification for the delay. According to petitioner, he was persistent in asserting his right to speedy trial, which he had allegedly done on several instances. Finally, he claimed to have been substantially prejudiced by this delay.

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[7] *Id.* at 253-259.

[8] *Rollo*, pp. 247-253.

The prosecution opposed the Motion, insisting on its claim that the parties had an earlier agreement to defer the trial of Criminal Case No. 119830 until after that of Criminal Cases No. 119831-119832, as the presentation of evidence and prosecution in each of the five cases involved were to be done separately. The presentation of evidence in Criminal Cases No. 119831-119832, however, were done simultaneously, because they involved similar offenses of non-disclosure of beneficial ownership of stocks proscribed under Rule 36(a)-1[9] in relation to Sections 32(a)-1[10] and 56[11] of Batas Pambansa Bilang 178,

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[9] Section 36. *Directors, officers and principal stockholders*.—

(a) Every person who is directly or indirectly the beneficial owner of more than ten per centum of any class of any equity security which is registered pursuant to this Act, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a securities exchange or by the effective date of a registration statement or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is registered on a securities exchange, also with the exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is registered on a securities exchange, shall also file with the exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

[10] Section 32. *Reports*. – (a) (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to this Act, is directly or indirectly the beneficial owner of more than ten (10%) *per centum* of such class shall, within ten days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the stock exchanges where the security is traded, and to the Commission a sworn statement x x x.

[11] *Penalties*. Any person who violates any of the provisions of this Act, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Act, makes any untrue statement of a material fact of omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than five thousand (₱5,000.00) pesos nor more than five hundred thousand (₱500,000.00) pesos or imprisonment of not less than seven (7) years nor more than twenty one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty shall be imposed

otherwise known as the "Revised Securities Act." Criminal Case No. 119830 pertains to alleged violation of Section 27 (b),[12] in relation to Section 56 of said act.

On 22 December 2003, Judge Briccio C. Ygana of the Pasig RTC, Branch 153, ruled that the delays which attended the proceedings of petitioner's case (Criminal Case No. 119830) were vexatious, capricious and oppressive, resulting in violation of petitioner's right to speedy trial. The RTC ordered[13] the dismissal of Criminal Case No. 119830, disposing as follows:

> WHEREFORE, foregoing premises duly considered and finding the motion to dismiss to be meritorious, the Court hereby orders Criminal Case No. 119830 DISMISSED.

On motion for reconsideration, the prosecution insisted that the parties agreed to hold separate trials of the BW cases, with petitioner acquiescing to the prosecution of Criminal Cases No. 119831 and No. 119832 ahead of Criminal Case No. 119830. In an Order dated 20 January 2004, the RTC denied the Motion for Reconsideration for lack of merit.

The RTC's order of dismissal was elevated to the Court of Appeals *via* a petition for *certiorari*, with the People contending that:

> RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN RULING THAT THE PEOPLE VIOLATED DANTE TAN'S RIGHT TO SPEEDY TRIAL, ALBEIT, THE LATTER AND RESPONDENT JUDGE HIMSELF HAVE CONFORMED TO THE DEFERMENT OF CRIMINAL CASE NO. 119830 PENDING HEARING OF THE TWO OTHER RELATED CASES.

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upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

[12] Section 27. *Manipulative and deceptive devices.* It shall be unlawful for any person, directly or indirectly, by the use of any facility of any exchange –

x x x x x x x x x

(b) To use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance.

[13] *Rollo*, pp. 835-855.

Setting aside the trial court's order of dismissal, the Court of Appeals granted the petition for *certiorari* in its Decision dated 22 February 2006. In resolving the petition, the appellate court reinstated Criminal Case No. 119830 in this wise:

> WHEREFORE, the petition is granted and the assailed Orders dated December 22, 2003 and January 20, 2004 are set aside. Criminal Case No. 119830 is reinstated and the trial court is ordered to conduct further proceedings in said case immediately.[14]

Petitioner moved for a reconsideration of the Decision and filed a motion for inhibition of the Justices who decided the case.

On 17 July 2006, the Court of Appeals denied both motions.

Petitioner Dante Tan, henceforth, filed the instant petition for review on *certiorari*, raising the following issues:

I.

WHETHER OR NOT THE ACTING SECRETARY OF JUSTICE MAY VALIDLY EXECUTE THE CERTIFICATE OF NON-FORUM SHOPPING ATTACHED TO THE PETITION FOR *CERTIORARI* FILED BY THE PEOPLE WITH THE COURT OF APPEALS EVEN THOUGH THE CRIMINAL ACTION WAS INSTITUTED BY A COMPLAINT SUBSCRIBED BY THE AUTHORIZED OFFICERS OF THE SECURITIES AND EXCHANGE COMMISSION.

II.

WHETHER OR NOT THE PETITION FOR *CERTIORARI* VIOLATED TAN'S RIGHT AGAINST DOUBLE JEOPARDY.

III.

WHETHER OR NOT CRIMINAL CASE NO. 119830 WAS CORRECTLY DISMISSED BY THE TRIAL COURT ON THE GROUND OF VIOLATION OF TAN'S RIGHT TO SPEEDY TRIAL.

IV.

WHETHER OR NOT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION.

We first resolve the preliminary issues.

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[14] *Id.* at 99-100.

In an attempt at having the instant petition dismissed, petitioner contends that the certificate of non-forum shopping attached to the People's appeal before the Court of Appeals should have been signed by the Chairman of the SEC as complainant in the cases instead of Acting DOJ Secretary Merceditas N. Gutierrez.

Petitioner's argument is futile. The Court of Appeals was correct in sustaining the authority of Acting DOJ Secretary Merceditas Gutierrez to sign the certificate of non-forum shopping of the petition for *certiorari* before said court. It must be stressed that the certification against forum shopping is required to be executed by the plaintiff.[15] Although the complaint-affidavit was signed by the Prosecution and Enforcement Department of the SEC, the petition before the Court of Appeals originated from Criminal Case No. 119830, where the plaintiff or the party instituting the case was the People of the Philippines. Section 2, Rule 110 of the Rules of Court leaves no room for doubt and establishes that criminal cases are prosecuted in the name of the People of the Philippines, the offended party in criminal cases. Moreover, pursuant to Section 3, paragraph (2) of the Revised Administrative Code, the DOJ is the executive arm of the government mandated to investigate the commission of crimes, prosecute offenders and administer the probation and correction system. It is the DOJ, through its prosecutors, which is authorized to prosecute criminal cases on behalf of the People of the Philippines.[16] Prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. Since it is the DOJ which is the government agency tasked to prosecute criminal cases before the trial court, the DOJ is best suited to attest whether a similar or related case has been filed or is pending in another court of tribunal. Acting DOJ Secretary Merceditas N. Gutierrez, being the head of the DOJ, therefore, had the authority to sign the certificate of non-forum shopping for Criminal Case No. 119830, which was filed on behalf of the People of the Philippines.

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[15] Regalado, *REMEDIAL LAW*, p. 729.

[16] Revised Administrative Code, Section 3(2).

The preliminary issues having been resolved, the Court shall proceed to discuss the main issues.

At the crux of the controversy is the issue of whether there was a violation of petitioner Dante Tan's right to speedy trial.

Petitioner Dante Tan assails the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 83068. The appellate court determined that he "impliedly agreed" that Case No. 119830 would not be tried until after termination of Criminal Cases No. 119831-119832, which finding was grounded entirely on speculations, surmises and conjectures.

Both parties concede that this issue is factual. It is a basic rule that factual issues are beyond the province of this Court in a petition for review, for it is not our function to review evidence all over again.[17] Rule 45 of the Rules of Court provides that only questions of law may be raised in this Court in a petition for review on *certiorari*.[18] The reason is that the Court is not a trier of facts.[19] However, the rule is subject to several exceptions.[20] Under these exceptions, the Court may delve into and resolve factual issues, such as in cases where the findings of the trial court and the Court of Appeals are absurd, contrary to the evidence on record, impossible, capricious or arbitrary, or based on a misappreciation of facts.

In this case, the Court is convinced that the findings of the Court of Appeals on the substantial matters at hand, while conflicting with those of the RTC, are adequately supported by the evidence on record. We, therefore, find no reason to deviate from the jurisprudential holdings and treat the instant case differently.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its

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[17] *Centeno v. Viray*, 440 Phil. 881, 887 (2002).

[18] *Busmente, Jr. v. National Labor Relations Commission,* G.R. No. 73647, 8 April 1991, 195 SCRA 710, 713.

[19] *Tad-y v. People*, G.R. No. 148862, 11 August 2005, 466 SCRA 474, 492; *Romago Electric Co., Inc. v. Court of Appeals*, 388 Phil. 964, 975 (2000).

[20] *Palon v. Nino,* 405 Phil. 670, 681 (2001).

"salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose.[21] Intimating historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.[22]

Following the policies incorporated under the 1987 Constitution, Republic Act No. 8493, otherwise known as "The Speedy Trial Act of 1998," was enacted, with Section 6 of said act limiting the trial period to 180 days from the first day of trial.[23] Aware of problems resulting in the clogging of court dockets, the Court implemented the law by issuing Supreme Court Circular No. 38-98, which has been incorporated in the 2000 Rules of Criminal Procedure, Section 2 of Rule 119.[24]

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[21] *Acebedo v. Sarmiento*, 146 Phil. 820, 823 (1970).

[22] PHILIPPINE CONSTITUTION, Art. III, Sec. 14(2).

[23] SECTION 6. *Time Limit for Trial*. – In criminal cases involving persons charged of a crime, except those subject to the Rules on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of One thousand pesos (₱1,000.00) or both, irrespective of other imposable penalties, the justice or judge shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Section 3, Rule 22 of the Rules of Court.

[24] SEC. 2. *Continuous trial until terminated; postponements*.—Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.

The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court.

In *Corpuz v. Sandiganbayan*,[25] the Court had occasion to state –

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. *Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.*
>
> While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

The Court emphasized in the same case that:

> A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.
>
> In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. x x x.
>
> Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. x x x.[26]

The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

[25] G.R. No. 162214, 11 November 2004, 442 SCRA 294, 312-313.

[26] *Id.* at 313-314.

Exhaustively explained in *Corpuz v. Sandiganbayan*, an accused's right to speedy trial is deemed violated only when the proceeding is attended by *vexatious, capricious, and oppressive delays*. In determining whether petitioner was deprived of this right, the factors to consider and balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay.[27]

From the initial hearing on 27 February 2001 until the time the prosecution filed its formal offer of evidence for Criminal Cases No. 119831-119832 on 25 November 2003, both prosecution and defense admit that no evidence was presented for Criminal Case No. 119830. Hence, for a period of almost two years and eight months, the prosecution did not present a single evidence for Criminal Case No. 119830.

The question we have to answer now is whether there was vexatious, capricious, and oppressive delay. To this, we apply the four-factor test previously mentioned.

We emphasize that in determining the right of an accused to speedy trial, courts are required to do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. A mere mathematical reckoning of the time involved is clearly insufficient,[28] and particular regard must be given to the facts and circumstances peculiar to each case.[29]

In *Alvizo v. Sandiganbayan*,[30] the Court ruled that there was no violation of the right to speedy trial and speedy disposition. The Court took into account the reasons for the delay, *i.e.*, the frequent amendments of procedural laws by presidential decrees, the structural reorganizations in existing prosecutorial agencies

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[27] *Abardo v. Sandiganbayan*, 407 Phil. 985, 999-1000 (2001); *Dela Pena v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

[28] *Socrates v. Sandiganbayan*, 324 Phil. 151, 170 (1996); *Tai Lim v. Court of Appeals*, 375 Phil. 971, 977 (1999).

[29] *Santiago v. Garchitorena*, G.R. No. 109266, 2 December 1993, 228 SCRA 214, 221.

[30] G.R. No. 101689, 17 March 1993, 220 SCRA 55.

and the creation of new ones by executive fiat, resulting in changes of personnel, preliminary jurisdiction, and the functions and powers of prosecuting agencies. The Court also considered the failure of the accused to assert such right, and the lack of prejudice caused by the delay to the accused.

In *Defensor-Santiago v. Sandiganbayan*,[31] the complexity of the issues and the failure of the accused to invoke her right to speedy disposition at the appropriate time spelled defeat for her claim to the constitutional guarantee.

In *Cadalin v. Philippine Overseas Employment Administration's Administrator*,[32] the Court, considering also the complexity of the cases and the conduct of the parties' lawyers, held that the right to speedy disposition was not violated therein.

Petitioner's objection to the prosecution's stand that he gave an implied consent to the separate trial of Criminal Case No. 119830 is belied by the records of the case. No objection was interposed by his defense counsel when this matter was discussed during the initial hearing.[33] Petitioner's conformity thereto can be deduced from his non-objection at the preliminary hearing when the prosecution manifested that the evidence to be presented would be only for Criminal Cases No. 119831-119832. His failure to object to the prosecution's manifestation that the cases be tried separately is fatal to his case. The acts, mistakes and negligence of counsel bind his client, except only when such mistakes would result in serious injustice.[34] In fact, petitioner's acquiescence is evident from the transcript of stenographic notes during the initial presentation of the People's evidence in the five BW cases on 27 February 2001, herein quoted below:

COURT:

Atty. Sandejas, call your witness.

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[31] 408 Phil. 767 (2001).

[32] G.R. No. 104776, 5 December 1994, 238 SCRA 721.

[33] TSN, 27 February 2001.

[34] *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812, 823 (2002); *People v. Hernandez*, 328 Phil. 1123, 1143 (1996).

ATTY. SANDEJAS [SEC Prosecuting Lawyer]: May we make some manifestation first, your Honor, before we continue presenting our witness. First of all, this witness will only be ***testifying as to two (2) of the charges: non-disclosure of beneficial ownership of Dante Tan*** x x x.

x x x x x x x x x

COURT: (to Atty. Sandejas) Call your witness.

ATTY. SANDEJAS: Our witness is Mr. Wilfredo Baltazar of the Securities and Exchange Commission, your Honor. We are presenting this witness for the purpose of non-disclosure of beneficial ownership case…

COURT: I would advise the counsel from the SEC to make it very clear your purpose in presenting your first witness.

ATTY. SANDEJAS: Yes, your Honor. Can I borrow the file?

COURT: Show it to counsel.

ATTY. SANDEJAS: Crim. Case Nos. 119831 and 119832, for Violation of RA Rule 36(a)1, in relation to Sec. 32 (a)-1 of the Revised Securities Act when he failed to disclose his beneficial ownership amounting to more than 10% which requires disclosure of such fact.[35]

During the same hearing, the People manifested in open court that the parties had agreed to the separate trials of the BW Cases:

PROSECUTOR LAZARO:

May we be allowed to speak, your Honor?

Your Honor please, as we x x x understand, this is not a joint trial but a separate trial x x x so as manifested by the SEC lawyer, the witness is being presented insofar as 119831 and 119832 as against Dante Tan only x x x.[36]

The transcript of stenographic notes taken from the 3 April 2001 hearing further clarifies that only the two cases against Dante Tan were being prosecuted:

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[35] TSN, 27 February 2001, pp. 3-7; CA *rollo*, pp. 87-91.

[36] *Id.* at 71-74; *id.* at 155-156.

ATTY. DE LA CRUZ [new counsel for accused Eduardo Lim, Jr.]:

Your Honor, please, may I request clarification from the prosecutors regarding the purpose of the testimony of the witness in the stand. While the Private Prosecutor stated the purpose of the testimony of the witness. . .

x x x x x x x x x

PROSECUTOR LAZARO:

I was present during the last hearing. I was then going over the transcript of this case, well, I believe the testimony x x x mainly [is] on accused Dante Tan, your Honor. As a matter of fact, there was a clarification made by the parties and counsels after the witness had testified that the hearing in these cases is not a joint trial because it involves separate charges, involving different documents, your Honor. That is why the witness already testified only concerning Dante Tan. Per the query made by Atty. Fortun, because at that time, Atty. Fortun was still representing Mr. Lim, I believe, your Honor, then I understand that the testimony of this witness cannot just be adopted insofar as the other accused, your Honor.

ATTY. MARANAN:

We confirm that, your Honor, since x x x particularly since this is already cross, it is clear that the direct examination dealt exclusively with Mr. Dante Tan.

PROS. LAZARO:

Mr. Dante Tan, involving the 2 (two) cases.[37]

Moreover, although periods for trial have been stipulated, these periods are not absolute. Where periods have been set, certain exclusions are allowed by law.[38] After all, this Court and the law recognize that it is but a fact that judicial proceedings do not exist in a vacuum and must contend with the realities of everyday life. In spite of the prescribed time limits, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial is a relative term and must necessarily be a flexible concept.[39]

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[37] TSN, 3 April 2001, pp. 5-10; *id.* at 225-230.

[38] *Solar Team Entertainment, Inc. v. Judge How*, 393 Phil. 172, 184 (2000).

[39] *Id.*

As to the assertion that delay in the presentation of evidence for Criminal Case No. 119830 has prejudiced petitioner because the witnesses for the defense may no longer be available at this time, suffice it to say that the burden of proving his guilt rests upon the prosecution.[40] Should the prosecution fail for any reason to present evidence sufficient to show his guilt beyond reasonable doubt, petitioner will be acquitted. It is safely entrenched in our jurisprudence that unless the prosecution discharges its burden to prove the guilt of an accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.[41]

In the cases involving petitioner, the length of delay, complexity of the issues and his failure to invoke said right to speedy trial at the appropriate time tolled the death knell on his claim to the constitutional guarantee.[42] More importantly, in failing to interpose a timely objection to the prosecution's manifestation during the preliminary hearings that the cases be tried separately, one after the other, petitioner was deemed to have acquiesced and waived his objection thereto.

For the reasons above-stated, there is clearly insufficient ground to conclude that the prosecution is guilty of violating petitioner's right to speedy trial. Grave abuse of discretion defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Any capricious or whimsical exercise of judgment in dismissing a criminal case is equivalent to lack of jurisdiction. This is true in the instant case.

There is also no merit to petitioner's claim that a reversal of the RTC's Order dismissing Criminal Case No. 119830 is a violation of his constitutional right against double jeopardy which dismissal was founded on an alleged violation of his right to speedy trial.

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[40] *Republic v. Sandiganbayan and Marcos*, 461 Phil. 598, 615 (2003).

[41] *People v. Ganguso*, G.R. No 115430, 23 November 1995, 250 SCRA 268, 274-275; *People v. Abellanosa*, 332 Phil. 760, 788 (1996), citing *People v. Baclayon*, G.R. No. 110837, 29 March 1994, 231 SCRA 578, 584, citing *People v. Garcia*, G.R. No. 94187, 4 November 1992, 215 SCRA 349, 358-359.

[42] *Santiago v. Garchitorena*, *supra* note 29.

The constitutional protection against double jeopardy shields one from a second or later prosecution for the same offense. Article III, Section 21 of the 1987 Constitution declares that no person shall be twice put in jeopardy of punishment for the same offense, providing further that if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Following the above constitutional provision, Section 7, Rule 117 of the Revised Rules of Court found it apt to stipulate:

> SEC. 7. *Former conviction or acquittal; double jeopardy*. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

For double jeopardy to attach then, the following elements in the first criminal case must be present:

> (a) The complaint or information or other formal charge was sufficient in form and substance to sustain a conviction;
>
> (b) The court had jurisdiction;
>
> (c) The accused had been arraigned and had pleaded; and
>
> (d) He was convicted or acquitted or the case was dismissed or otherwise terminated without the express consent of the accused.[43]

Among the above-cited elements, we are concerned with the fourth element, conviction or acquittal, or the case was dismissed or otherwise terminated without the express consent of the accused. This element is crucial since, as a general rule, the dismissal of a criminal case resulting in acquittal, made with the express consent of the accused or upon his own motion,

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[43] *Condrada v. People*, 446 Phil. 635, 641 (2003).

will not place the accused in double jeopardy.[44] This rule, however, admits of two exceptions, namely: insufficiency of evidence and denial of the right to speedy trial.[45] While indeed petitioner was in fact the one who filed the Motion to Dismiss Criminal Case No. 119830, the dismissal thereof was due to an alleged violation of his right to speedy trial, which would otherwise put him in double jeopardy should the same charges be revived. Petitioner's situation is different. Double jeopardy has not attached, considering that the dismissal of Criminal Case No. 119830 on the ground of violation of his right to speedy trial was without basis and issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Where the right of the accused to speedy trial has not been violated, there is no reason to support the initial order of dismissal.

Following this Court's ruling in *Almario v. Court of Appeals*,[46] as petitioner's right to speedy trial was not transgressed, this exception to the fourth element of double jeopardy – that the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused – was not met. Where the dismissal of the case was allegedly capricious, *certiorari* lies from such order of dismissal and does not involve double jeopardy, as the petition challenges not the correctness but the validity of the order of dismissal; such grave abuse of discretion amounts to lack of jurisdiction, which prevents double jeopardy from attaching.[47]

As this Court ruled in *People v. Tampal*,[48] reiterated in *People v. Leviste*,[49] where we overturned an order of dismissal by the trial court predicated on the right to speedy trial –

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[44] *Id.*

[45] *Id.*; *Philippine Savings Bank v. Bermoy*, G.R. No. 151912, 26 September 2005, 471 SCRA 94, 106, citing *People v. Bans*, G.R. No. 104147, 8 December 1994, 239 SCRA 48, 55.

[46] 407 Phil. 279 (2002).

[47] Regalado, *REMEDIAL LAW COMPENDIUM* (Vol. II, 2001), p. 503.

[48] 314 Phil. 35, 45 (1995).

[49] 325 Phil. 525, 537 (1996).

It is true that in an unbroken line of cases, we have held that dismissal of cases on the ground of failure to prosecute is equivalent to an acquittal that would bar further prosecution of the accused for the same offense. It must be stressed, however, that these dismissals were predicated on the clear right of the accused to speedy trial. These cases are not applicable to the petition at bench considering that the right of the private respondents to speedy trial has not been violated by the State. x x x.

From the foregoing, it follows that petitioner cannot claim that double jeopardy attached when said RTC order was reversed by the Court of Appeals. Double jeopardy does not apply to this case, considering that there is no violation of petitioner's right to speedy trial.

The old adage that justice delayed is justice denied has never been more valid than in our jurisdiction, where it is not a rarity for a case to drag in our courts for years and years and even decades. It was this difficulty that inspired the constitutional requirement that the rules of court to be promulgated by the Supreme Court shall provide for a simplified and inexpensive procedure for the speedy trial and disposition of cases.[50] Indeed, for justice to prevail, the scales must balance, for justice is not to be dispensed for the accused alone.[51]

Evidently, the task of the pillars of the criminal justice system is to preserve our democratic society under the rule of law, ensuring that all those who appear before or are brought to the bar of justice are afforded a fair opportunity to present their side. As correctly observed by the Court of Appeals, Criminal Case No. 119830 is just one of the many controversial cases involving the BW shares scam where public interest is undoubtedly at stake. The State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal, instead of unclogging dockets, has actually

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[50] Justice Isagani Cruz, *PHILIPPINE POLITICAL LAW,* p. 292.

[51] *Dimatulac v. Villon,* 358 Phil. 328, 366 (1998); *People v. Subida,* G.R. No. 145945, 27 June 2006, 493 SCRA 125, 137.

increased the workload of the justice system and unwittingly prolonged the litigation.[52]

Finally, we reiterate that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons. Courts are tasked to give meaning to that intent. There being no capricious, vexatious, oppressive delay in the proceedings, and no postponements unjustifiably sought, we concur in the conclusions reached by the Court of Appeals.

WHEREFORE, the petition is *DISMISSED*. The assailed 22 February 2006 Decision and 17 July 2006 Resolution issued by the Court of Appeals in CA-G.R. SP No. 83068 are hereby *AFFIRMED*.

The instant case is *REMANDED* to the Regional Trial Court, Branch 153, Pasig City for further proceedings in Criminal Case No. 119830 with reasonable dispatch.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales, Velasco, Jr.,*** and *Leonardo-de Castro,*** JJ.,* concur.

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[52] *People v. Leviste*, *supra* note 49.

[*] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

[**] Associate Justice Presbitero J. Velasco, Jr. was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 14 January 2008.

[***] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Antonio T. Carpio per Raffle dated 15 April 2009.

FIRST DIVISION

[G.R. No. 175320. April 21, 2009]

PEOPLE OF THE PHILPPINES, *appellee, vs.* **ERNESTO PEÑA *y* SARMIENTO,** *appellant.*

SYLLABUS

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); POSSESSION OF DANGEROUS DRUGS; PENALTY.— Nonetheless, we modify the penalty in Criminal Case No. 03-3300 (for violation of Section 11 of RA 9165) since the courts *a quo* failed to apply the Indeterminate Sentence Law and imposed a straight penalty of 12 years and 1 day on appellant. The said provision provides that: Section 11. Possession of Dangerous Drugs. x x x Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows: x x x (3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000) to Four hundred thousand pesos (₱400,000), if the quantities of dangerous drugs are less than five (5) grams of** opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **metamphetamine hydrochloride or *"shabu"*** or other dangerous drugs such as, but not limited to MDMA or "ecstacy," PMA, TMA, LSD, GHB and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possesses is far behind therapeutic requirements; or less than three hundred (300) grams of marijuana. Appellant should suffer imprisonment for a minimum of 12 years and 1 day to a maximum of 20 years.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CORONA, *J.*:

On August 28, 2003, appellant Ernesto Peña *y* Sarmiento was charged with violation of Sections 5 and 11 of RA[1] 9165[2] in the Regional Trial Court (RTC) of Makati City, Branch 64[3] under the following Informations:

Criminal Case No. 03-3299

That on or about the 27th day of August 2003 in the City of Makati, Philippines, a place under the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute [0.04] gram of metamphetamine hydrochloride (commonly known as *shabu*), a dangerous drug in consideration of ₱200, Philippine Currency.

CONTRARY TO LAW.

Criminal Case No. 03-3300

That on or about the 27th day of August 2003 in the City of Makati, Philippines, a place under the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control [0.3] gram of metamphetamine hydrochloride known as *shabu*, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty.

During trial, the prosecution presented Rogelio Patacsil, Rommel Villarente and PO1 Herbert Ibias, members of the Makati Anti-Drug Abuse Council (MADAC) Cluster 6, who conducted the buy-bust operation resulting in appellant's arrest.

An informant reported to the MADAC Cluster 6 head and Barangay Rizal *barangay* chairperson Ric Mandayu that a certain

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[1] Republic Act.

[2] The Comprehensive Dangerous Drugs Act of 2002.

[3] Docketed as Criminal Case Nos. 03-3299 and 03-3300, respectively.

"Gabby" was selling *shabu* at E. Aguinaldo St. Pursuant to this tip, the MADAC surveyed the area and eventually identified Gabby to be appellant. Thus, Patacsil, Villarente and Ibias conducted a buy-bust operation on August 27, 2003.

Patacsil (acting as poseur-buyer) and the informant approached the appellant somewhere in E. Aguinaldo St. The latter introduced the former as one in need of *shabu*. Appellant then asked Patacsil how much he wanted to buy. Patacsil answered "*dalawang piso*" and gave appellant two marked ₱100 bills. Appellant then handed him a sachet containing a white crystalline substance.

Thereafter, Patacsil signaled Villarente and PO1 Ibias that the transaction had been consummated. Thus, they approached Patacsil and appellant. PO1 Ibias apprehended appellant and informed him of his rights. Thereafter, he asked appellant to empty his pocket and consequently recovered a sachet containing a crystalline substance and the marked ₱100 bills.

Appellant was thereafter brought to the MADAC office in Barangay Rizal. PO1 Ibias then turned over the sachets and marked bills to the investigator. Subsequently, the Philippine National Police crime laboratory confirmed that the crystalline substance from the sachets was indeed metamphetamine hydrocholoride (or *shabu*).

For his defense, appellant insisted that he was merely framed up. While he and his family were having lunch on August 27, 2003, Patacsil (accompanied by an unidentified person) barged into his home and "invited" him to the *barangay* hall. Approximately 100 meters from his house, Patacsil asked him to identify the persons whom he knew sold *shabu*. Because he was unable to point to anyone, he was the one arrested.

In a decision dated January 26, 2005, the RTC held that the prosecution proved appellant violated Sections 5 and 11 of RA 9165 beyond reasonable doubt.[4] The MADAC operatives established the identities of the poseur buyer and appellant and that an illegal drug was sold by appellant to the poseur buyer for a certain consideration. Moreover, they were able to show

[4] Penned by Judge Delia H. Panganiban. CA *rollo*, pp. 18-29.

that appellant was not authorized to possess the illegal drug. Thus:

> WHEREFORE, in view of the foregoing, judgment is rendered against [appellant] ERNESTO PEÑA *y* SARMIENTO *alias* "GABBY" as follows:
>
> 1. Finding him, GUILTY beyond reasonable doubt of the crime of violation of Section 5 of RA 9165 (Criminal Case No. 03-3299) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000;
>
> 2. Finding him, GUILTY beyond reasonable doubt of the crime of violation of Section 11 of RA 9165 (Criminal Case No. 03-3300) and considering that miniscule quantity of *shabu* involved which is 0.03 grams sentencing him to suffer the penalty of twelve years and 1 day and a fine of ₱300,000.
>
> The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one plastic sachet of *shabu* (0.04) gram subject matter of Criminal Case No. 03-3299 and the one plastic sachet (0.03) gram subject of Criminal Case No. 03-3300 for said agency's appropriate disposition.
>
> SO ORDERED.

The Court of Appeals (CA), on intermediate appellate review,[5] affirmed the RTC decision *in toto*.[6]

We affirm the findings of the RTC and the CA but modify the penalty in Criminal Case No. 03-3300.

There is no reason to disturb the factual findings of the RTC as affirmed by the CA. The prosecution established beyond doubt that appellant sold *shabu* to the poseur buyer for a consideration and that he had another sachet of the said substance in his possession.

Nonetheless, we modify the penalty in Criminal Case No. 03-3300 (for violation of Section 11 of RA 9165) since the

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[5] Docketed as CA-G.R. CR-H.C. No. 00710.

[6] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin of the Eighth Division of the Court of Appeals. Dated July 25, 2006. *Rollo*, pp. 2-35.

courts *a quo* failed to apply the Indeterminate Sentence Law and imposed a straight penalty of 12 years and 1 day on appellant. The said provision provides that:

> Section 11. Possession of Dangerous Drugs.
>
> x x x x x x x x x
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> x x x x x x x x x
>
> (3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000) to Four hundred thousand pesos (₱400,000), if the quantities of dangerous drugs are less than five (5) grams of** opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **metamphetamine hydrochloride or** "***shabu***" or other dangerous drugs such as, but not limited to MDMA or "ecstacy," PMA, TMA, LSD, GHB and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possesses is far behind therapeutic requirements; or less than three hundred (300) grams of marijuana. (emphasis supplied)

Appellant should suffer imprisonment for a minimum of 12 years and 1 day to a maximum of 20 years.

WHEREFORE, the July 25, 2006 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00710 is hereby *MODIFIED*. Appellant Ernesto Peña *y* Sarmiento is sentenced to suffer the penalty of life imprisonment and pay a fine of ₱500,000 in Criminal Case No. 03-3299. He is sentenced to suffer imprisonment for a minimum of 12 years and 1 day to a maximum of 20 years and to pay a fine of ₱300,000 in Criminal Case No. 03-3300.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177346. April 21, 2009]

GUILLERMO PERCIANO, JR., *petitioner, vs.* **HEIRS OF PROCOPIO TUMBALI, represented by LYDIA TUMBALI,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COMPROMISE AGREEMENT; WHEN PROPER; PRESENT IN CASE AT BAR.— Attached to the Compromise Agreement is a Deed of Reconveyance executed by Lydia Tumbali, as the registered owner of the property, acknowledging and recognizing the absolute ownership of petitioner over 208 square meters of the southern portion thereof. The deed also "cedes, transfers and reconveys" said portion to petitioner. Before acting on the Compromise Agreement, the Court required Tumbali to submit her written authority to enter into the Compromise Agreement on behalf of the other respondents. Tumbali then filed a Manifestation and Motion on February 27, 2009, asking that the submission of said authority be dispensed with inasmuch as the property subject of the Compromise Agreement had already been titled and registered in her name (TCT No. T-67236) as early as June 2, 1986 by virtue of an extrajudicial settlement of estate by and among the heirs of Procopio Tumbali, attaching therewith a certified true copy of TCT No. T-67236. Given the foregoing, and finding the Compromise Agreement to be in order and not contrary to law, morals, good customs and public policy, judicial approval thereof is in order.

APPEARANCES OF COUNSEL

Macpaul B. Soriano for petitioner.
Romeo I. Calubaquib for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

In Civil Case No. 2603 for Reconveyance with Damages, the Regional Trial Court (RTC) of Tuguegarao City, Branch IV, rendered a decision dismissing the complaint filed therein by the plaintiffs Enrica and Sofia Garunay. The RTC also rendered judgment on the counter-claim of the defendants, the heirs of the spouses Vicente Coballes and Juana Matammu, and ordered the plaintiffs to vacate the property subject of the dispute, which is situated in Buntun, Tuguegarao City and contains an area of 9,394 square meters.[1]

The defendants attempted execution of the decision, but it turned out that herein petitioner, Guillermo Perciano, Jr. who is not a party to Civil Case No. 2603, was occupying a portion of the subject property.

Petitioner then filed a special civil action for *certiorari* with the Court of Appeals (CA) praying for the issuance of a temporary restraining order and a writ of preliminary injunction. The CA, however, denied the petition for lack of merit.[2]

This prompted petitioner to file the present petition for review on *certiorari*. Pending resolution of the case, the parties submitted a Compromise Agreement dated September 2008,[3] which reads as follows:

COMPROMISE AGREEMENT

The undersigned parties assisted by their respective counsel and to this Honorable Court most respectfully manifest that they have finally settled their herein dispute in the following manner:

1. That petitioner Guillermo Perciano, Jr. acknowledges and recognizes the absolute ownership and right of possession

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[1] *Rollo*, pp. 47-54.

[2] *Rollo*, p. 72.

[3] The Compromise Agreement does not bear a specific date. See *rollo*, p. 96.

of respondent Lydia Tumbali on that parcel of land involved in this case which is covered by TCT No. T-67236.

2. That, however, pursuant to their property arrangement, respondent Lydia Tumbali hereby cedes, transfers and conveys as she by these compromise agreement have ceded, transferred and conveyed unto petitioner Guillermo Perciano, Jr. 208 square meters southern portion of the above-mentioned parcel of land.

3. That respondent Lydia Tumbali shall cause the transfer, at her expense, of the title of the aforementioned 208 square meters southern portion in the name of petitioner Guillermo Perciano, Jr.

4. Petitioner shall relocate and transfer his house erected on the said land as soon as the title of the said 208 square meters southern portion of the land is transferred in his name and the owner's duplicate copy of the certificate of title of the land is surrendered and delivered to him.

5. The parties have waived and renounced their claim for damages in their respective pleadings.

WHEREFORE, it is most respectfully prayed of this Honorable Court to approve the foregoing Compromise Agreement and that a decision be rendered on the basis thereof.[4]

Attached to the Compromise Agreement is a Deed of Reconveyance executed by Lydia Tumbali, as the registered owner of the property, acknowledging and recognizing the absolute ownership of petitioner over 208 square meters of the southern portion thereof. The deed also "cedes, transfers and reconveys" said portion to petitioner.

Before acting on the Compromise Agreement, the Court required Tumbali to submit her written authority to enter into the Compromise Agreement on behalf of the other respondents.[5]

Tumbali then filed a Manifestation and Motion on February 27, 2009, asking that the submission of said authority be dispensed with inasmuch as the property subject of the

[4] *Rollo,* pp. 96-97.

[5] *Id*. at 103-104, Resolution dated January 14, 2009.

Compromise Agreement had already been titled and registered in her name (TCT No. T-67236) as early as June 2, 1986 by virtue of an extrajudicial settlement of estate by and among the heirs of Procopio Tumbali, attaching therewith a certified true copy of TCT No. T-67236.[6]

Given the foregoing, and finding the Compromise Agreement to be in order and not contrary to law, morals, good customs and public policy, judicial approval thereof is in order.

WHEREFORE, judgment is hereby rendered in accordance with the Compromise Agreement dated September 2008, and the parties are enjoined to comply strictly and in good faith as well as with sincerity and honesty of purpose, with the terms, conditions and stipulations therein contained.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178763. April 21, 2009]

PETER PAUL PATRICK LUCAS, FATIMA GLADYS LUCAS, ABBEYGAIL LUCAS, and GILLIAN LUCAS, *petitioners, vs.* **DR. PROSPERO MA. C. TUAÑO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED ON APPEAL, AS A RULE; EXCEPTION.— Elementary is the principle that this Court is not a trier of facts; only errors of law are generally reviewed in petitions

[6] *Id*. at 105-110.

for review on *certiorari* criticizing decisions of the Court of Appeals. Questions of fact are not entertained. Nonetheless, the general rule that only questions of law may be raised on appeal in a petition for review under Rule 45 of the Rules of Court admits of certain exceptions, including the circumstance when the finding of fact of the Court of Appeals is premised on the supposed absence of evidence, but is contradicted by the evidence on record. Although petitioners may not explicitly invoke said exception, it may be gleaned from their allegations and arguments in the instant Petition.

2. CIVIL LAW; DAMAGES; CLAIMS THEREOF; ELEMENTS; APPLICATION TO MEDICAL MALPRACTICE SUITS.— For lack of a specific law geared towards the type of negligence committed by members of the medical profession, such claim for damages is almost always anchored on the alleged violation of Article 2176 of the Civil Code, which states that: ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* and is governed by the provisions of this Chapter. In medical negligence cases, also called medical malpractice suits, there exist a physician-patient relationship between the doctor and the victim. But just like any other proceeding for damages, four (4) essential elements *i.e.*, (1) duty; (2) breach; (3) injury; and (4) proximate causation, must be established by the plaintiff/s. All the four (4) elements must co-exist in order to find the physician negligent and, thus, liable for damages. When a patient engages the services of a physician, a physician-patient relationship is generated. And in accepting a case, the physician, for all intents and purposes, represents that he has the needed training and skill possessed by physicians and surgeons practicing in the same field; and that he will employ such training, care, and skill in the treatment of the patient. Thus, in treating his patient, a physician is under a ***duty*** to [the former] to exercise that degree of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases. Stated otherwise, the physician has the duty to use at least the same level of care that any other reasonably competent physician would use to treat the condition under similar

circumstances. This standard level of care, skill and diligence is a matter best addressed by expert medical testimony, because the standard of care in a medical malpractice case is a matter peculiarly within the knowledge of experts in the field.

3. ID.; ID.; PHYSICIAN-PATIENT RELATIONS; BREACH OF DUTY; WHEN PRESENT.— There is ***breach*** of duty of care, skill and diligence, or the improper performance of such duty, by the attending physician when the ***patient is injured*** in body or in health [and this] constitutes the actionable malpractice. Proof of such breach must likewise rest upon the testimony of an expert witness that the treatment accorded to the patient failed to meet the standard level of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases. Even so, proof of breach of duty on the part of the attending physician is insufficient, for there must be a causal connection between said breach and the resulting injury sustained by the patient. Put in another way, in order that there may be a recovery for an injury, it must be shown that the "injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes"; that is, the negligence must be the ***proximate cause*** of the injury. And the proximate cause of an injury is that cause, which, in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. Just as with the elements of duty and breach of the same, in order to establish the proximate cause [of the injury] by a preponderance of the evidence in a medical malpractice action, [the patient] must similarly use expert testimony, because the question of whether the alleged professional negligence caused [the patient's] injury is generally one for specialized expert knowledge beyond the ken of the average layperson; using the specialized knowledge and training of his field, the expert's role is to present to the [court] a realistic assessment of the likelihood that [the physician's] alleged negligence caused [the patient's] injury.

4. ID.; ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR.— However, as correctly pointed out by the Court of Appeals,

"[t]he *onus probandi* was on the patient to establish before the trial court that the physicians ignored standard medical procedure, prescribed and administered medication with recklessness and exhibited an absence of the competence and skills expected of general practitioners similarly situated." Unfortunately, in this case, there was absolute failure on the part of petitioners to present any expert testimony to establish: (1) the standard of care to be implemented by competent physicians in treating the same condition as Peter's under similar circumstances; (2) that, in his treatment of Peter, Dr. Tuaño failed in his duty to exercise said standard of care that any other competent physician would use in treating the same condition as Peter's under similar circumstances; and (3) that the injury or damage to Peter's right eye, *i.e.*, his glaucoma, was the result of his use of *Maxitrol*, as prescribed by Dr. Tuaño. Petitioners' failure to prove the first element alone is already fatal to their cause.

5. ID.; ID.; MEDICAL NEGLIGENCE; WHEN ESTABLISHED; APPLICATION IN CASE AT BAR.— The critical and clinching factor in a medical negligence case is proof of the causal connection between the negligence which the evidence established and the plaintiff's injuries. The plaintiff must plead and prove not only that he has been injured and defendant has been at fault, but also that the defendant's fault caused the injury. A verdict in a malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony. The causation between the physician's negligence and the patient's injury may only be established by the presentation of proof that Peter's glaucoma would not have occurred but for Dr. Tuaño's supposed negligent conduct. Once more, petitioners failed in this regard. x x x It seems basic that what constitutes proper medical treatment is a medical question that should have been presented to experts. If no standard is established through expert medical witnesses, then courts have no standard by which to gauge the basic issue of breach thereof by the physician or surgeon. The RTC and Court of Appeals, and even this Court, could not be expected to determine on its own what medical technique should have been utilized for a certain disease or injury. Absent expert medical opinion, the courts would be dangerously engaging in speculations. All told,

we are hard pressed to find Dr. Tuaño liable for any medical negligence or malpractice where there is no evidence, in the nature of expert testimony, to establish that in treating Peter, Dr. Tuaño failed to exercise reasonable care, diligence and skill generally required in medical practice. Dr. Tuaño's testimony, that his treatment of Peter conformed in all respects to standard medical practice in this locality, stands unrefuted. Consequently, the RTC and the Court of Appeals correctly held that they had no basis at all to rule that petitioners were deserving of the various damages prayed for in their *Complaint*.

6. REMEDIAL LAW; EVIDENCE; PREPONDERANCE OF EVIDENCE; DEFINED AND CONSTRUED.— The concept of "preponderance of evidence" refers to evidence which is of greater weight or more convincing than that which is offered in opposition to it; in the last analysis, it means probability of truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Rule 133, Section 1 of the Revised Rules of Court provides the guidelines for determining preponderance of evidence, thus: In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

APPEARANCES OF COUNSEL

Fortun and Narvasa Law Offices for petitioners.

K.V. Faylona and Associates and/or *Donato T. Faylona* for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court, petitioners Peter Paul Patrick Lucas, Fatima Gladys Lucas, Abbeygail Lucas and Gillian Lucas seek the reversal of the 27 September 2006 *Decision*[2] and 3 July 2007 *Resolution*,[3] both of the Court of Appeals in CA-G.R. CV No. 68666, entitled *"Peter Paul Patrick Lucas, Fatima Gladys Lucas, Abbeygail Lucas and Gillian Lucas v. Prospero Ma. C. Tuaño."*

In the questioned decision and resolution, the Court of Appeals affirmed the 14 July 2000 *Decision* of the Regional Trial Court (RTC), Branch 150, Makati City, dismissing the complaint filed by petitioners in a civil case entitled, *"Peter Paul Patrick Lucas, Fatima Gladys Lucas, Abbeygail Lucas and Gillian Lucas v. Prospero Ma. C. Tuaño,"* docketed as Civil Case No. 92-2482.

From the record of the case, the established factual antecedents of the present petition are:

Sometime in August 1988, petitioner Peter Paul Patrick Lucas (Peter) contracted "sore eyes" in his right eye.

On 2 September 1988, complaining of a red right eye and swollen eyelid, Peter made use of his health care insurance issued by Philamcare Health Systems, Inc. (Philamcare), for a possible consult. The Philamcare Coordinator, Dr. Edwin Oca, M.D., referred Peter to respondent, Dr. Prospero Ma. C. Tuaño, M.D. (Dr. Tuaño), an ophthalmologist at St. Luke's Medical Center, for an eye consult.

Upon consultation with Dr. Tuaño, Peter narrated that it had been nine (9) days since the problem with his right eye

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[1] *Rollo*, pp. 9-48.

[2] Penned by Court of Appeals Associate Justice Marina L. Buzon with Associate Justices Regalado E. Maambong and Japar B. Dimaampao concurring; Annex "A" of the Petition; *id.* at 49-69.

[3] Annex "B" of the Petition; *id.* at 70-72.

began; and that he was already taking *Maxitrol* to address the problem in his eye. According to Dr. Tuaño, he performed "ocular routine examination" on Peter's eyes, wherein: (1) a gross examination of Peter's eyes and their surrounding area was made; (2) Peter's visual acuity were taken; (3) Peter's eyes were palpated to check the intraocular pressure of each; (4) the motility of Peter's eyes was observed; and (5) the ophthalmoscopy[4] on Peter's eyes was used. On that particular consultation, Dr. Tuaño diagnosed that Peter was suffering from *conjunctivitis*[5] or "sore eyes." Dr. Tuaño then prescribed *Spersacet-C*[6] eye drops for Peter and told the latter to return for follow-up after one week.

As instructed, Peter went back to Dr. Tuaño on 9 September 1988. Upon examination, Dr. Tuaño told Peter that the "sore eyes" in the latter's right eye had already cleared up and he could discontinue the *Spersacet-C*. However, the same eye developed *Epidemic Kerato Conjunctivitis* (EKC),[7] a viral infection. To address the new problem with Peter's right eye, Dr. Tuaño prescribed to the former a steroid-based eye drop called *Maxitrol*,[8] a dosage of six (6) drops per day.[9] To

[4] Ophthalmoscopy is a test that allows a health professional to see inside the back of the eye (called the fundus) and other structures using a magnifying instrument (ophthalmoscope) and a light source. It is done as part of an eye examination and may be done as part of a routine physical examination (http://www.webmd.com/eye-health/ophthalmoscopy).

[5] Conjunctivitis, also known as pinkeye, is an inflammation of the conjunctiva, the thin, clear tissue that lies over the white part of the eye and lines the inside of the eyelid (http://www.webmd.com/eye-health/eye-health-conjunctivitis).

[6] The generic name of *Spersacet-C* ophthalmic drops is *Sulfacetamide*. It is prescribed for the treatment and prophylaxis of conjunctivitis due to susceptible organisms; corneal ulcers; adjunctive treatment with systemic sulfonamides for therapy of trachoma (http://www.merck.com/mmpe/lexicomp/sulfacetamide.html).

[7] *Epidemic kerato conjunctivitis* is a type of adenovirus ocular infection. (http://emedicine.medscape.com/article/1192751-overview).

[8] *Neomycin/polymyxin B sulfates/dexamethasone* is the generic name of Maxitrol Ophthalmic Ointment. It is a multiple dose anti-infective steroid combination in sterile form for topical application (http://www.druglib.com/druginfo/maxitrol/).

[9] Exhibit "A"; records, p. 344.

recall, Peter had already been using *Maxitrol* prior to his consult with Dr. Tuaño.

On 21 September 1988, Peter saw Dr. Tuaño for a follow-up consultation. After examining both of Peter's eyes, Dr. Tuaño instructed the former to taper down[10] the dosage of *Maxitrol,* because the EKC in his right eye had already resolved. Dr. Tuaño specifically cautioned Peter that, being a steroid, *Maxitrol* had to be withdrawn gradually; otherwise, the EKC might recur.[11]

Complaining of feeling as if there was something in his eyes, Peter returned to Dr. Tuaño for another check-up on 6 October 1988. Dr. Tuaño examined Peter's eyes and found that the right eye had once more developed EKC. So, Dr. Tuaño instructed Peter to resume the use of *Maxitrol* at six (6) drops per day.

On his way home, Peter was unable to get a hold of *Maxitrol,* as it was out of stock. Consequently, Peter was told by Dr. Tuano to take, instead, *Blephamide*[12] another steroid-based medication, but with a lower concentration, as substitute for the unavailable *Maxitrol*, to be used three (3) times a day for five (5) days; two (2) times a day for five (5) days; and then just once a day.[13]

Several days later, on 18 October 1988, Peter went to see Dr. Tuaño at his clinic, alleging severe eye pain, feeling as if his eyes were about to "pop-out," a headache and blurred vision. Dr. Tuaño examined Peter's eyes and discovered that the EKC was again present in his right eye. As a result, Dr. Tuaño told Peter to resume the maximum dosage of *Blephamide*.

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[10] Apply 5-6 drops for 5 days; then 3 drops for 3 days; and then a minimum of 1 drop per day.

[11] TSN, 27 September 1993, pp. 18-19.

[12] *Blephamide* Ophthalmic Suspenion contains *Sulfacetamide/ Prednisolone.* This medication contains an antibiotic (*sulfacetamide*) that stops the growth of bacteria and a corticosteroid (*prednisolone*) that reduces inflammation (http://www.webmd.com/drugs/drug-6695-Blephamide+Opht.aspx?drugid=6695&drugname=Blephamide+Opht).

[13] Exhibit "H"; records, p. 346.

Dr. Tuaño saw Peter once more at the former's clinic on 4 November 1988. Dr. Tuaño's examination showed that only the periphery of Peter's right eye was positive for EKC; hence, Dr. Tuaño prescribed a lower dosage of *Blephamide*.

It was also about this time that Fatima Gladys Lucas (Fatima), Peter's spouse, read the accompanying literature of *Maxitrol* and found therein the following warning against the prolonged use of such steroids:

WARNING:

Prolonged use may result in glaucoma, with damage to the optic nerve, defects in visual acuity and fields of vision, and posterior, subcapsular cataract formation. Prolonged use may suppress the host response and thus increase the hazard of secondary ocular infractions, in those diseases causing thinning of the cornea or sclera, perforations have been known to occur with the use of topical steroids. In acute purulent conditions of the eye, steroids may mask infection or enhance existing infection. If these products are used for 10 days or longer, intraocular pressure should be routinely monitored even though it may be difficult in children and uncooperative patients.

Employment of steroid medication in the treatment of herpes simplex requires great caution.

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ADVERSE REACTIONS:

Adverse reactions have occurred with steroid/anti-infective combination drugs which can be attributed to the steroid component, the anti-infective component, or the combination. Exact incidence figures are not available since no denominator of treated patients is available.

Reactions occurring most often from the presence of the anti-infective ingredients are allergic sensitizations. The reactions due to the steroid component in decreasing order to frequency are elevation of intra-ocular pressure (IOP) with possible development of glaucoma, infrequent optic nerve damage; posterior subcapsular cataract formation; and delayed wound healing.

Secondary infection: The development of secondary has occurred after use of combination containing steroids and antimicrobials. Fungal

infections of the correa (sic) are particularly prone to develop coincidentally with long-term applications of steroid. The possibility of fungal invasion must be considered in any persistent corneal ulceration where steroid treatment has been used.

Secondary bacterial ocular infection following suppression of host responses also occurs.

On 26 November 1988, Peter returned to Dr. Tuaño's clinic, complaining of "feeling worse."[14] It appeared that the EKC had spread to the whole of Peter's right eye yet again. Thus, Dr. Tuaño instructed Peter to resume the use of *Maxitrol*. Petitioners averred that Peter already made mention to Dr. Tuaño during said visit of the above-quoted warning against the prolonged use of steroids, but Dr. Tuaño supposedly brushed aside Peter's concern as mere paranoia, even assuring him that the former was taking care of him (Peter).

Petitioners further alleged that after Peter's 26 November 1988 visit to Dr. Tuaño, Peter continued to suffer pain in his right eye, which seemed to "progress," with the ache intensifying and becoming more frequent.

Upon waking in the morning of 13 December 1988, Peter had no vision in his right eye. Fatima observed that Peter's right eye appeared to be bloody and swollen.[15] Thus, spouses Peter and Fatima rushed to the clinic of Dr. Tuaño. Peter reported to Dr. Tuaño that he had been suffering from constant headache in the afternoon and blurring of vision.

Upon examination, Dr. Tuaño noted the hardness of Peter's right eye. With the use of a *tonometer*[16] to verify the exact *intraocular pressure*[17] (IOP) of Peter's eyes, Dr. Tuaño discovered

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[14] TSN, 27 September 1993, p. 40.

[15] TSN, 3 May 1995, p. 14.

[16] A tonometer is an instrument for measuring the tension or pressure, particularly intraocular pressure (http://medical-dictionary.thefreedictionary.com/tonometer).

[17] Intraocular Pressure (IOP) is the pressure created by the continual renewal of fluids within the eye (http://www.medterms.com/script/main/art.asp?articlekey=4014).

that the tension in Peter's right eye was **39.0 Hg**, while that of his left was 17.0 Hg.[18] Since the tension in Peter's right eye was way over the **normal IOP**, which merely ranged from **10.0 Hg to 21.0 Hg**,[19] Dr. Tuaño ordered[20] him to immediately discontinue the use of *Maxitrol* and prescribed to the latter *Diamox*[21] and *Normoglaucon*, instead.[22] Dr. Tuaño also required Peter to go for daily check-up in order for the former to closely monitor the pressure of the latter's eyes.

On 15 December 1988, the tonometer reading of Peter's right eye yielded a **high normal level,** *i.e.*, **21.0 Hg**. Hence, Dr. Tuaño told Peter to continue using *Diamox* and *Normoglaucon*. But upon Peter's complaint of "stomach pains and tingling sensation in his fingers,"[23] Dr. Tuaño discontinued Peter's use of *Diamox*.[24]

Peter went to see another ophthalmologist, Dr. Ramon T. Batungbacal (Dr. Batungbacal), on 21 December 1988, who allegedly conducted a complete ophthalmological examination of Peter's eyes. Dr. Batungbacal's diagnosis was *Glaucoma*[25]

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[18] Exhibit "1-a"; records, p. 618-A.

[19] Normal IOP is measured in millimeters of Mercury (Hg).

[20] See note 19.

[21] The generic name of Diamox, for oral administration, is *acetazolamide*. This medication is a potent carbonic anhydrase inhibitor, effective in the control of fluid secretion (http://www.drugs.com/pro/diamox.html).

[22] The active ingredient of Normoglaucon is *Metipranolol hydrochloride*. It is used for the reduction of intraocular pressure in patients with glaucoma (open, closed angle) in situations in which monotherapy with pilocarpine or beta-blockers are insufficient (http://www.angelini.it/public/schedepharma/normoglaucon.htm).

[23] TSN, 11 October 1993, p. 7.

[24] Exhibit "1-a"; records, p. 618-A.

[25] Glaucoma is an eye condition which develops when too much fluid pressure builds up inside of the eye. The increased pressure, called the intraocular pressure, can damage the optic nerve, which transmits images to the brain. If the damage to the optic nerve from high eye pressure continues, glaucoma will cause loss of vision (http://www.webmd.com/eye-health/glaucoma-eyes).

O.D.[26] He recommended *Laser Trabeculoplasty*[27] for Peter's right eye.

When Peter returned to Dr. Tuaño on 23 December 1988,[28] the tonometer measured the IOP of Peter's right eye to be **41.0 Hg**,[29] again, way above normal. Dr. Tuaño addressed the problem by advising Peter to resume taking *Diamox* along with *Normoglaucon*.

During the Christmas holidays, Peter supposedly stayed in bed most of the time and was not able to celebrate the season with his family because of the debilitating effects of *Diamox*.[30]

On 28 December 1988, during one of Peter's regular follow-ups with Dr. Tuaño, the doctor conducted another ocular routine examination of Peter's eyes. Dr. Tuaño noted the recurrence of EKC in Peter's right eye. Considering, however, that the IOP of Peter's right eye was still quite high at **41.0 Hg**, Dr. Tuaño was at a loss as to how to balance the treatment of Peter's EKC *vis-à-vis* the presence of *glaucoma* in the same eye. Dr. Tuaño, thus, referred Peter to Dr. Manuel B. Agulto, M.D. (Dr. Agulto), another ophthalmologist specializing in the treatment of glaucoma.[31] Dr. Tuaño's letter of referral to Dr. Agulto stated that:

Referring to you Mr. Peter Lucas for evaluation & possible management. I initially saw him Sept. 2, 1988 because of

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[26] O.D. is the abbreviation for ***oculus dexter***, a Latin phrase meaning "***right eye***" (http://medical-dictionary.thefreedictionary.com/O.D).

[27] *Laser Trabeculoplasty* is a kind of surgery which uses a very focused beam of light to treat the drainage angle of the eye. This surgery makes it easier for fluid to flow out of the front part of the eye, decreasing pressure in the eye (http://www.med.nyu.edu/healthwise).

[28] According to Peter, after seeing Dr. Tuaño on the 15th of December 1988, he next saw him on the 17th of the same month. Per Exhibit 1-a, the patient's index card, however, after the 15th of December 1988, Peter's next visit was on the 23rd of the same month.

[29] Exhibit "1-a"; records, p. 618-A.

[30] TSN, 11 October 1993, pp. 16-17.

[31] *Id.* at 18.

conjunctivitis. The latter resolved and he developed EKC for which I gave Maxitrol. The EKC was recurrent after stopping steroid drops. Around 1 month of steroid treatment, he noted blurring of vision & pain on the R. however, I continued the steroids for the sake of the EKC. A month ago, I noted iris atrophy, so I took the IOP and it was definitely elevated. I stopped the steroids immediately and has (sic) been treating him medically.

It seems that the IOP can be controlled only with oral Diamox, and at the moment, the EKC has recurred and I'm in a fix whether to resume the steroid or not considering that the IOP is still uncontrolled.[32]

On 29 December 1988, Peter went to see Dr. Agulto at the latter's clinic. Several tests were conducted thereat to evaluate the extent of Peter's condition. Dr. Agulto wrote Dr. Tuaño a letter containing the following findings and recommendations:

Thanks for sending Peter Lucas. On examination conducted vision was 20/25 R and 20/20L. Tension curve 19 R and 15 L at 1210 H while on Normoglaucon BID OD & Diamox ½ tab every 6h po.

Slit lamp evaluation[33] disclosed subepithelial corneal defect outer OD. There was circumferential peripheral iris atrophy, OD. The lenses were clear.

Funduscopy[34] showed vertical cup disc of 0.85 R and 0.6 L with temporal slope R>L.

Zeiss gonioscopy[35] revealed basically open angles both eyes with occasional PAS,[36] OD.

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[32] Exhibit "C"; records, p. 352.

[33] The slit-lamp evaluation/examination looks at structures that are at the front of the eye using a *slit-lamp*, a low-powered microscope combined with a high-intensity light source that can be focused to shine in a thin beam (http://www.nlm.nih.gov/medlineplus/ency/article/003880.htm).

[34] *Funduscopy* is the examination of the back part of the eye's interior (fundus); also known as ophthalmoscopy.

[35] *Zeiss Gonioscopy* (indirect gonioscopy) is the visualization of the anterior chamber angle of the eyes undertaken using a Zeiss lens. It is essential to determine the mechanism responsible for impeding aqueous flow (http://www.glaucomaworld.net/english/019/e019a01.html).

[36] Peripheral Anterior Synechiae.

Rolly, I feel that Peter Lucas has really sustained significant glaucoma damage. I suggest that we do a baseline visual fields and push medication to lowest possible levels. If I may suggest further, I think we should prescribe Timolol[37] BID[38] OD in lieu of Normoglaucon. If the IOP is still inadequate, we may try D'epifrin[39] BID OD (despite low PAS). I'm in favor of retaining Diamox or similar CAI.[40]

If fields show further loss in say – 3 mos. then we should consider trabeculoplasty.

I trust that this approach will prove reasonable for you and Peter.[41]

Peter went to see Dr. Tuaño on 31 December 1988, bearing Dr. Agulto's aforementioned letter. Though Peter's right and left eyes then had normal IOP of **21.0 Hg** and 17.0 Hg, respectively, Dr. Tuaño still gave him a prescription for *Timolol* B.I.D. so Peter could immediately start using said medication. Regrettably, *Timolol* B.I.D. was out of stock, so Dr. Tuaño instructed Peter to just continue using *Diamox* and *Normoglaucon* in the meantime.

Just two days later, on 2 January 1989, the IOP of Peter's right eye remained elevated at **21.0 Hg,**[42] as he had been without *Diamox* for the past three (3) days.

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[37] *Timolol Maleate* is a generic name of a drug in ophthalmic dosage form used in treatment of elevated intraocular pressure by reducing aqueous humor production or possibly outflow (http://www.umm.edu/altmed/drugs/timolol-125400.htm).

[38] B.I.D. is the abbreviation of the Latin phrase ***bis in di´e***, meaning "***twice a day***" (http://medical-dictionary.thefreedictionary.com/B.I.D).

[39] The generic name of the medication D'epifrin is *dipivefrin ophthalmic*. It is used to treat open-angle glaucoma or ocular hypertension by reducing the amount of fluid in the eye thereby decreasing intraocular pressure (http://www.drugs.com/mtm/dipivefrin-ophthalmic.html).

[40] Carbon Anhydrase Inhibitor.

[41] Exhibit "D"; records, pp. 356-357.

[42] Exhibit "1-a"; *id* at 618-A.

On 4 January 1989, Dr. Tuaño conducted a *visual field study*[43] of Peter's eyes, which revealed that the latter had *tubular vision*[44] in his right eye, while that of his left eye remained normal. Dr. Tuaño directed Peter to religiously use the *Diamox* and *Normoglaucon,* as the tension of the latter's right eye went up even further to **41.0 Hg** in just a matter of two (2) days, in the meantime that *Timolol* B.I.D. and *D'epifrin* were still not available in the market. Again, Dr. Tuaño advised Peter to come for regular check-up so his IOP could be monitored.

Obediently, Peter went to see Dr. Tuaño on the 7th, 13th, 16th and 20th of January 1989 for check-up and IOP monitoring.

In the interregnum, however, Peter was prodded by his friends to seek a second medical opinion. On 13 January 1989, Peter consulted Dr. Jaime Lapuz, M.D. (Dr. Lapuz), an ophthalmologist, who, in turn, referred Peter to Dr. Mario V. Aquino, M.D. (Dr. Aquino), another ophthalmologist who specializes in the treatment of glaucoma and who could undertake the long term care of Peter's eyes.

According to petitioners, after Dr. Aquino conducted an extensive evaluation of Peter's eyes, the said doctor informed Peter that his eyes were relatively normal, though the right one sometimes manifested maximum borderline tension. Dr. Aquino also confirmed Dr. Tuaño's diagnosis of tubular vision in Peter's right eye. Petitioners claimed that Dr. Aquino essentially told Peter that the latter's condition would require lifetime medication and follow-ups.

In May 1990 and June 1991, Peter underwent two (2) procedures of laser trabeculoplasty to attempt to control the high IOP of his right eye.

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[43] A test to determine the total area in which objects can be seen in the peripheral vision while the eye is focused on a central point (http://www.healthline.com/ adamcontent/visual-field).

[44] A centrally constricted field of vision that is like what you can see through a tube (http://www.medterms.com/script/main/art.asp?articlekey=24516).

Claiming to have *steroid-induced glaucoma*[45] and blaming Dr. Tuaño for the same, Peter, joined by: (1) Fatima, his spouse;[46] (2) Abbeygail, his natural child;[47] and (3) Gillian, his legitimate child[48] with Fatima, instituted on 1 September 1992, a civil complaint for damages against Dr. Tuaño, before the RTC, Branch 150, Quezon City. The case was docketed as Civil Case No. 92-2482.

In their *Complaint*, petitioners specifically averred that as the "direct consequence of [Peter's] prolonged use of *Maxitrol*, [he] suffered from steroid induced glaucoma which caused the elevation of his intra-ocular pressure. The elevation of the intra-ocular pressure of [Peter's right eye] caused the impairment of his vision which impairment is not curable and may even lead to total blindness."[49]

Petitioners additionally alleged that the visual impairment of Peter's right eye caused him and his family so much grief. Because of his present condition, Peter now needed close medical supervision forever; he had already undergone two (2) laser surgeries, with the possibility that more surgeries were still needed in the future; his career in sports casting had suffered and was continuing to suffer;[50] his anticipated income had been greatly reduced as a result of his "limited" capacity; he continually suffered from "headaches, nausea, dizziness, heart palpitations, rashes, chronic rhinitis, sinusitis,"[51] *etc*.; Peter's relationships

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[45] A form of open-angle glaucoma that usually is associated with topical steroid use, but it may develop with inhaled, oral, intravenous, periocular, or intravitreal steroid administration (http://emedicine.medscape.com/article/1205298-print).

[46] As evidenced by a Marriage Contract between Peter and Fatima; records, p. 340.

[47] As evidenced by the child's Certificate of Live Birth; *id.* at 341.

[48] As evidenced by the child's Certificate of Live Birth; *id.* at 342.

[49] Amended Complaint, p. 4; *id.* at 79.

[50] Peter alleged that due to his impaired vision, he was 'forced' to decline several opportunities to cover international and regional sports events, *i.e.*, the 1988 and 1992 Olympics as well as various Asian Games; and he could not cover fast-paced games, *i.e.*, basketball.

[51] Amended Complaint, p. 4; records, p. 79.

with his spouse and children continued to be strained, as his condition made him highly irritable and sensitive; his mobility and social life had suffered; his spouse, Fatima, became the breadwinner in the family;[52] and his two children had been deprived of the opportunity for a better life and educational prospects. Collectively, petitioners lived in constant fear of Peter becoming completely blind.[53]

In the end, petitioners sought pecuniary award for their supposed pain and suffering, which were ultimately brought about by Dr. Tuaño's grossly negligent conduct in prescribing to Peter the medicine *Maxitrol* for a period of three (3) months, without monitoring Peter's IOP, as required in cases of prolonged use of said medicine, and notwithstanding Peter's constant complaint of intense eye pain while using the same. Petitioners particularly prayed that Dr. Tuaño be adjudged liable for the following amounts:

1. The amount of ₱2,000,000.00 to plaintiff Peter Lucas as and by way of compensation for his impaired vision.
2. The amount of ₱300,000.00 to spouses Lucas as and by way of actual damages plus such additional amounts that may be proven during trial.
3. The amount of ₱1,000,000.00 as and by way of moral damages.
4. The amount of ₱500,000.00 as and by way of exemplary damages.
5. The amount of ₱200,000.00 as and by way of attorney's fees plus costs of suit.[54]

In rebutting petitioners' complaint, Dr. Tuaño asserted that the "treatment made by [him] more than three years ago has no causal connection to [Peter's] present glaucoma or condition."[55]

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[52] *Id.*

[53] *Id.*

[54] *Id.* at 82.

[55] Answer, p. 6; *id.* at 38.

Dr. Tuaño explained that "[d]rug-induced glaucoma is temporary and curable, steroids have the side effect of increasing intraocular pressure. Steroids are prescribed to treat Epidemic Kerato Conjunctivitis or EKC which is an infiltration of the cornea as a result of conjunctivitis or sore eyes."[56] Dr. Tuaño also clarified that (1) "[c]ontrary to [petitioners'] fallacious claim, [he] did NOT continually prescribe the drug Maxitrol which contained steroids for any prolonged period"[57] and "[t]he truth was the Maxitrol was discontinued x x x as soon as EKC disappeared and was resumed only when EKC reappeared";[58] (2) the entire time he was treating Peter, he "continually monitored the intraocular pressure of [Peter's eyes] by palpating the eyes and by putting pressure on the eyeballs," and no hardening of the same could be detected, which meant that there was no increase in the tension or IOP, a possible side reaction to the use of steroid medications; and (3) it was only on 13 December 1988 that Peter complained of a headache and blurred vision in his right eye, and upon measuring the IOP of said eye, it was determined for the first time that the IOP of the right eye had an elevated value.

But granting for the sake of argument that the "steroid treatment of [Peter's] EKC caused the steroid induced glaucoma,"[59] Dr. Tuaño argued that:

> [S]uch condition, *i.e.*, elevated intraocular pressure, is temporary. As soon as the intake of steroids is discontinued, the intraocular pressure automatically is reduced. Thus, [Peter's] glaucoma can only be due to other causes not attributable to steroids, certainly not attributable to [his] treatment of more than three years ago x x x.
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> From a medical point of view, as revealed by more current examination of [Peter], the latter's glaucoma can only be long standing glaucoma, open angle glaucoma, because of the large C:D ratio. The steroids provoked the latest glaucoma to be revealed earlier as [Peter]

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[56] *Id*.

[57] *Id*.

[58] *Id*.

[59] Answer, p. 13; *id.* at 45.

remained asymptomatic prior to steroid application. Hence, the steroid treatment was in fact beneficial to [Peter] as it revealed the incipient open angle glaucoma of [Peter] to allow earlier treatment of the same.[60]

In a *Decision* dated 14 July 2000, the RTC dismissed Civil Case No. 92-2482 "for insufficiency of evidence."[61] The decretal part of said *Decision* reads:

> Wherefore, premises considered, the instant complaint is dismissed for insufficiency of evidence. The counter claim (sic) is likewise dismissed in the absence of bad faith or malice on the part of plaintiff in filing the suit.[62]

The RTC opined that petitioners failed to prove by preponderance of evidence that Dr. Tuaño was negligent in his treatment of Peter's condition. In particular, the record of the case was bereft of any evidence to establish that the steroid medication and its dosage, as prescribed by Dr. Tuaño, caused Peter's glaucoma. The trial court reasoned that the "recognized standards of the medical community has not been established in this case, much less has causation been established to render [Tuaño] liable."[63] According to the RTC:

> [Petitioners] failed to establish the duty required of a medical practitioner against which Peter Paul's treatment by defendant can be compared with. They did not present any medical expert or even a medical doctor to convince and expertly explain to the court the established norm or duty required of a physician treating a patient, or whether the non taking (sic) by Dr. Tuaño of Peter Paul's pressure a deviation from the norm or his non-discovery of the glaucoma in the course of treatment constitutes negligence. It is important and indispensable to establish such a standard because once it is established, a medical practitioner who departed thereof breaches his duty and commits negligence rendering him liable. Without such testimony or enlightenment from an expert, the court is at a loss as

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[60] *Id.*

[61] *Id.* at 722-734.

[62] *Id.* at 734.

[63] *Id.*

to what is then the established norm of duty of a physician against which defendant's conduct can be compared with to determine negligence.[64]

The RTC added that in the absence of "any medical evidence to the contrary, this court cannot accept [petitioners'] claim that the use of steroid is the proximate cause of the damage sustained by [Peter's] eye."[65]

Correspondingly, the RTC accepted Dr. Tuaño's medical opinion that "Peter Paul must have been suffering from normal tension glaucoma, meaning, optic nerve damage was happening but no elevation of the eye pressure is manifested, that the steroid treatment actually unmasked the condition that resulted in the earlier treatment of the glaucoma. There is nothing in the record to contradict such testimony. In fact, plaintiff's Exhibit 'S' even tends to support them."

Undaunted, petitioners appealed the foregoing RTC decision to the Court of Appeals. Their appeal was docketed as CA-G.R. CV No. 68666.

On 27 September 2006, the Court of Appeals rendered a decision in CA-G.R. CV No. 68666 denying petitioners' recourse and affirming the appealed RTC *Decision*. The *fallo* of the judgment of the appellate court states:

WHEREFORE, the Decision appealed from is AFFIRMED.[66]

The Court of Appeals faulted petitioners because they –

[D]id not present any medical expert to testify that Dr. Tuano's prescription of Maxitrol and Blephamide for the treatment of EKC on Peter's right eye was not proper and that his palpation of Peter's right eye was not enough to detect adverse reaction to steroid. Peter testified that Dr. Manuel Agulto told him that he should not have used steroid for the treatment of EKC or that he should have used it only for two (2) weeks, as EKC is only a viral infection which

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[64] *Id.* at 731.

[65] *Id.*

[66] *Rollo,* p. 68.

will cure by itself. However, Dr. Agulto was not presented by [petitioners] as a witness to confirm what he allegedly told Peter and, therefore, the latter's testimony is hearsay. Under Rule 130, Section 36 of the Rules of Court, a witness can testify only to those facts which he knows of his own personal knowledge, x x x. Familiar and fundamental is the rule that hearsay testimony is inadmissible as evidence.[67]

Like the RTC, the Court of Appeals gave great weight to Dr. Tuaño's medical judgment, specifically the latter's explanation that:

[W]hen a doctor sees a patient, he cannot determine whether or not the latter would react adversely to the use of steroids, that it was only on December 13, 1989, when Peter complained for the first time of headache and blurred vision that he observed that the pressure of the eye of Peter was elevated, and it was only then that he suspected that Peter belongs to the 5% of the population who reacts adversely to steroids.[68]

Petitioners' *Motion for Reconsideration* was denied by the Court of Appeals in a Resolution dated 3 July 2007.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court premised on the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE TRIAL COURT DISMISSING THE PETITIONERS' COMPLAINT FOR DAMAGES AGAINST THE RESPONDENT ON THE GROUND OF INSUFFICIENCY OF EVIDENCE;

II.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN DISMISSING THE PETITIONERS' COMPLAINT FOR DAMAGES AGAINST THE RESPONDENT ON THE GROUND THAT NO MEDICAL EXPERT WAS PRESENTED BY THE PETITIONERS

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[67] *Id.* at 67.

[68] *Id.* at 66.

TO PROVE THEIR CLAIM FOR MEDICAL NEGLIGENCE AGAINST THE RESPONDENT; AND

III.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN NOT FINDING THE RESPONDENT LIABLE TO THE PETITIONERS' FOR ACTUAL, MORAL AND EXEMPLARY DAMAGES, ASIDE FROM ATTORNEY'S FEES, COSTS OF SUIT, AS A RESULT OF HIS GROSS NEGLIGENCE.[69]

A reading of the afore-quoted reversible errors supposedly committed by the Court of Appeals in its *Decision* and *Resolution* would reveal that petitioners are fundamentally assailing the finding of the Court of Appeals that the evidence on record is insufficient to establish petitioners' entitlement to any kind of damage. Therefore, it could be said that the sole issue for our resolution in the Petition at bar is whether the Court of Appeals committed reversible error in affirming the judgment of the RTC that petitioners failed to prove, by preponderance of evidence, their claim for damages against Dr. Tuaño.

Evidently, said issue constitutes a question of fact, as we are asked to revisit anew the factual findings of the Court of Appeals, as well as of the RTC. In effect, petitioners would have us sift through the evidence on record and pass upon whether there is sufficient basis to establish Dr. Tuaño's negligence in his treatment of Peter's eye condition. This question clearly involves a factual inquiry, the determination of which is not within the ambit of this Court's power of review under Rule 45 of the 1997 Rules of Civil Procedure, as amended.[70]

Elementary is the principle that this Court is not a trier of facts; only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the Court of Appeals. Questions of fact are not entertained.[71]

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[69] *Id.* at 23.

[70] *Civil Service Commission v. Maala*, G.R. No. 165253, 18 August 2005, 467 SCRA 390, 398.

[71] *Alfaro v. Court of Appeals*, 416 Phil. 310, 317 (2001).

Nonetheless, the general rule that only questions of law may be raised on appeal in a petition for review under Rule 45 of the Rules of Court admits of certain exceptions, including the circumstance when the finding of fact of the Court of Appeals is premised on the supposed absence of evidence, but is contradicted by the evidence on record. Although petitioners may not explicitly invoke said exception, it may be gleaned from their allegations and arguments in the instant Petition.

Petitioners contend, that "[c]ontrary to the findings of the Honorable Court of Appeals, [they] were more than able to establish that: Dr. Tuaño ignored the standard medical procedure for ophthalmologists, administered medication with recklessness, and exhibited an absence of competence and skills expected from him."[72] Petitioners reject the necessity of presenting expert and/or medical testimony to establish (1) the standard of care respecting the treatment of the disorder affecting Peter's eye; and (2) whether or not negligence attended Dr. Tuaño's treatment of Peter, because, in their words –

> That Dr. Tuaño was grossly negligent in the treatment of Peter's simple eye ailment *is a simple case of cause and effect*. With mere documentary evidence and based on the facts presented by the petitioners, respondent can readily be held liable for damages even without any expert testimony. In any case, however, and contrary to the finding of the trial court and the Court of Appeals, there was a medical expert presented by the petitioner showing the recklessness committed by [Dr. Tuaño] – Dr. Tuaño himself. [Emphasis supplied.]

They insist that Dr. Tuaño himself gave sufficient evidence to establish his gross negligence that ultimately caused the impairment of the vision of Peter's right eye,[73] *i.e.*, that "[d]espite [Dr. Tuaño's] knowledge that 5% of the population reacts adversely to *Maxitrol*, [he] had no qualms whatsoever in prescribing said steroid to Peter without first determining whether or not the *(sic)* Peter belongs to the 5%."[74]

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[72] Petition, p. 16; *rollo*, p. 24.

[73] *Id.*

[74] *Id.* at 26.

We are not convinced. The judgments of both the Court of Appeals and the RTC are in accord with the evidence on record, and we are accordingly bound by the findings of fact made therein.

Petitioners' position, in sum, is that Peter's glaucoma is the direct result of Dr. Tuaño's negligence in his improper administration of the drug *Maxitrol*; "thus, [the latter] should be liable for all the damages suffered and to be suffered by [petitioners]."[75] Clearly, the present controversy is a classic illustration of a medical negligence case against a physician based on the latter's professional negligence. In this type of suit, the patient or his heirs, in order to prevail, is required to prove by preponderance of evidence that the physician failed to exercise that degree of skill, care, and learning possessed by other persons in the same profession; and that as a proximate result of such failure, the patient or his heirs suffered damages.

For lack of a specific law geared towards the type of negligence committed by members of the medical profession, such claim for damages is almost always anchored on the alleged violation of Article 2176 of the Civil Code, which states that:

> ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* and is governed by the provisions of this Chapter.

In medical negligence cases, also called medical malpractice suits, there exist a physician-patient relationship between the doctor and the victim. But just like any other proceeding for damages, four (4) essential elements *i.e.*, (1) duty; (2) breach; (3) injury; and (4) proximate causation,[76] must be established by the plaintiff/s. All the four (4) elements must co-exist in order to find the physician negligent and, thus, liable for damages.

When a patient engages the services of a physician, a physician-patient relationship is generated. And in accepting a case, the

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[75] Amended Complaint, p. 6; records, p. 81.

[76] *Garcia-Rueda v. Pascasio, et al.*, 278 SCRA 769, 778 (1997).

physician, for all intents and purposes, represents that he has the needed training and skill possessed by physicians and surgeons practicing in the same field; and that he will employ such training, care, and skill in the treatment of the patient.[77] Thus, in treating his patient, a physician is under a ***duty*** to [the former] to exercise that degree of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases.[78] Stated otherwise, the physician has the duty to use at least the same level of care that any other reasonably competent physician would use to treat the condition under similar circumstances.

This standard level of care, skill and diligence is a matter best addressed by expert medical testimony, because the standard of care in a medical malpractice case is a matter peculiarly within the knowledge of experts in the field.[79]

There is ***breach*** of duty of care, skill and diligence, or the improper performance of such duty, by the attending physician when the ***patient is injured*** in body or in health [and this] constitutes the actionable malpractice.[80] Proof of such breach must likewise rest upon the testimony of an expert witness that the treatment accorded to the patient failed to meet the standard level of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases.

Even so, proof of breach of duty on the part of the attending physician is insufficient, for there must be a causal connection between said breach and the resulting injury sustained by the patient. Put in another way, in order that there may be a recovery for an injury, it must be shown that the "injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening

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[77] *Id*.

[78] *Snyder v. Pantaleo* (1956), 143 Conn 290, 122 A2d 21.

[79] *Johnson v. Superior Court,* 49 Cal. Rptr. 3d 52 (Cal. App. 3d Dist. 2006).

[80] *Garcia-Rueda v. Pascasio, supra* note 76 at 779.

efficient causes";[81] that is, the negligence must be the ***proximate cause*** of the injury. And the proximate cause of an injury is that cause, which, in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[82]

Just as with the elements of duty and breach of the same, in order to establish the proximate cause [of the injury] by a preponderance of the evidence in a medical malpractice action, [the patient] must similarly use expert testimony, because the question of whether the alleged professional negligence caused [the patient's] injury is generally one for specialized expert knowledge beyond the ken of the average layperson; using the specialized knowledge and training of his field, the expert's role is to present to the [court] a realistic assessment of the likelihood that [the physician's] alleged negligence caused [the patient's] injury.[83]

From the foregoing, it is apparent that medical negligence cases are best proved by opinions of expert witnesses belonging in the same general neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the expert opinion of qualified physicians [or surgeons] stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating;[84] hence, the indispensability of expert testimonies.

In the case at bar, there is no question that a physician-patient relationship developed between Dr. Tuaño and Peter when Peter went to see the doctor on 2 September 1988, seeking a consult for the treatment of his sore eyes. Admittedly, Dr. Tuaño, an ophthalmologist, prescribed *Maxitrol* when Peter

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[81] *Chan Lugay v. St. Luke's Hospital, Inc.*, 10 CA Reports 415 (1966).

[82] *Calimutan v. People of the Philippines*, G.R. No. 152133, 9 February 2006, 482 SCRA 44, 60, citing *Vda. de Bataclan v. Medina*, 102 Phil. 181, 186 (1957).

[83] *Barngrover v. Hins*, 657 S.E.2d 14 (Ga. Ct. App. 2008).

[84] *Dr. Cruz v. Court of Appeals*, 346 Phil. 872, 884-885 (1997).

developed and had recurrent EKC. *Maxitrol* or *neomycin/ polymyxin B sulfates/dexamethasone* ophthalmic ointment is a multiple-dose anti-infective steroid combination in sterile form for topical application.[85] It is the drug which petitioners claim to have caused Peter's glaucoma.

However, as correctly pointed out by the Court of Appeals, "[t]he *onus probandi* was on the patient to establish before the trial court that the physicians ignored standard medical procedure, prescribed and administered medication with recklessness and exhibited an absence of the competence and skills expected of general practitioners similarly situated."[86] Unfortunately, in this case, there was absolute failure on the part of petitioners to present any expert testimony to establish: (1) the standard of care to be implemented by competent physicians in treating the same condition as Peter's under similar circumstances; (2) that, in his treatment of Peter, Dr. Tuaño failed in his duty to exercise said standard of care that any other competent physician would use in treating the same condition as Peter's under similar circumstances; and (3) that the injury or damage to Peter's right eye, *i.e.*, his glaucoma, was the result of his use of *Maxitrol*, as prescribed by Dr. Tuaño. Petitioners' failure to prove the first element alone is already fatal to their cause.

Petitioners maintain that Dr. Tuaño failed to follow in Peter's case the required procedure for the prolonged use of *Maxitrol*. But what is actually the required procedure in situations such as in the case at bar? To be precise, what is the standard operating procedure when ophthalmologists prescribe steroid medications which, admittedly, carry some modicum of risk?

Absent a definitive standard of care or diligence required of Dr. Tuaño under the circumstances, we have no means to determine whether he was able to comply with the same in his diagnosis and treatment of Peter. This Court has no yardstick upon which to evaluate or weigh the attendant facts of this case to be able to state with confidence that the acts complained

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[85] http://www.druglib.com/druginfo/maxitrol/.

[86] Court of Appeals *Decision*, p. 17; *rollo*, p. 66.

of, indeed, constituted negligence and, thus, should be the subject of pecuniary reparation.

Petitioners assert that prior to prescribing *Maxitrol*, Dr. Tuaño should have determined first whether Peter was a "steroid responder.[87] Yet again, petitioners did not present any convincing proof that such determination is actually part of the standard operating procedure which ophthalmologists should unerringly follow prior to prescribing steroid medications.

In contrast, Dr. Tuaño was able to clearly explain that what is only required of ophthalmologists, in cases such as Peter's, is the conduct of standard tests/procedures known as "ocular routine examination,"[88] composed of five (5) tests/procedures – specifically, gross examination of the eyes and the surrounding area; taking of the visual acuity of the patient; checking the intraocular pressure of the patient; checking the motility of the eyes; and using ophthalmoscopy on the patient's eye – and he did all those tests/procedures every time Peter went to see him for follow-up consultation and/or check-up.

We cannot but agree with Dr. Tuaño's assertion that when a doctor sees a patient, he cannot determine immediately whether the latter would react adversely to the use of steroids; all the doctor can do is map out a course of treatment recognized as correct by the standards of the medical profession. It must be remembered that a physician is not an insurer of the good result of treatment. The mere fact that the patient does not get well or that a bad result occurs does not in itself indicate failure to exercise due care.[89] The result is not determinative of the performance [of the physician] and he is not required to be infallible.[90]

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[87] Steroid responders are people whose intraocular pressure (IOP) goes up very high when they use steroids (http://www.willsglaucoma.org/supportgroup/20030827.php).

[88] TSN, 7 February 1997, p. 17; *rollo*, p. 66.

[89] Solis, Pedro P., *Medical Jurisprudence*, 1988, Garcia Publishing, Co., Philippines.

[90] *Domina v. Pratt*, 13 A 2d 198 Vt. 1940.

Moreover, that Dr. Tuaño saw it fit to prescribe *Maxitrol* to Peter was justified by the fact that the latter was already using the same medication when he first came to see Dr. Tuaño on 2 September 1988 and had exhibited no previous untoward reaction to that particular drug.[91]

Also, Dr. Tuaño categorically denied petitioners' claim that he never monitored the tension of Peter's eyes while the latter was on *Maxitrol*. Dr. Tuaño testified that he palpated Peter's eyes every time the latter came for a check-up as part of the doctor's ocular routine examination, a fact which petitioners failed to rebut. Dr. Tuaño's regular conduct of examinations and tests to ascertain the state of Peter's eyes negate the very basis of petitioners' complaint for damages. As to whether Dr. Tuaño's actuations conformed to the standard of care and diligence required in like circumstances, it is presumed to have so conformed in the absence of evidence to the contrary.

Even if we are to assume that Dr. Tuaño committed negligent acts in his treatment of Peter's condition, the causal connection between Dr. Tuaño's supposed negligence and Peter's injury still needed to be established. The critical and clinching factor in a medical negligence case is proof of the causal connection between the negligence which the evidence established and the plaintiff's injuries.[92] The plaintiff must plead and prove not only that he has been injured and defendant has been at fault, but also that the defendant's fault caused the injury. A verdict in a malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony.[93]

The causation between the physician's negligence and the patient's injury may only be established by the presentation of proof that Peter's glaucoma would not have occurred but for Dr. Tuaño's supposed negligent conduct. Once more, petitioners failed in this regard.

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[91] TSN, 7 February 1997, pp. 18-19.

[92] 61 Am. Jur. 2d. §359, p. 527.

[93] *Id*.

Dr. Tuaño does not deny that the use of *Maxitrol* involves the risk of increasing a patient's IOP. In fact, this was the reason why he made it a point to palpate Peter's eyes every time the latter went to see him — so he could monitor the tension of Peter's eyes. But to say that said medication conclusively caused Peter's glaucoma is purely speculative. Peter was diagnosed with *open-angle* glaucoma. This kind of glaucoma is characterized by an almost complete absence of symptoms and a chronic, insidious course.[94] In open-angle glaucoma, halos around lights and blurring of vision do not occur unless there has been a sudden increase in the intraocular vision.[95] Visual acuity remains good until late in the course of the disease.[96] Hence, Dr. Tuaño claims that Peter's glaucoma "can only be long standing x x x because of the large C:D[97] ratio," and that "[t]he steroids provoked the latest glaucoma to be revealed earlier" was a blessing in disguise "as [Peter] remained asymptomatic prior to steroid application."

Who between petitioners and Dr. Tuaño is in a better position to determine and evaluate the necessity of using *Maxitrol* to cure Peter's EKC *vis-à-vis* the attendant risks of using the same?

That Dr. Tuaño has the necessary training and skill to practice his chosen field is beyond cavil. Petitioners do not dispute Dr. Tuaño's qualifications – that he has been a physician for close to a decade and a half at the time Peter first came to see him; that he has had various medical training; that he has authored numerous papers in the field of ophthalmology, here and abroad; that he is a *Diplomate* of the Philippine Board of Ophthalmology; that he occupies various teaching posts (at the time of the filing of the present complaint, he was the Chair of the Department of Ophthalmology and an Associate Professor at the University of the Philippines-Philippine General Hospital and St. Luke's

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[94] Newell, Frank W., *Ophthalmology, Principles and Concepts*, 6th ed., 1986, C.V. Mosby Company, Missouri.

[95] *Id.*

[96] *Id.*

[97] Cup to Disc ratio.

Medical Center, respectively); and that he held an assortment of positions in numerous medical organizations like the Philippine Medical Association, Philippine Academy of Ophthalmology, Philippine Board of Ophthalmology, Philippine Society of Ophthalmic Plastic and Reconstructive Surgery, Philippine Journal of Ophthalmology, Association of Philippine Ophthalmology Professors, *et al.*

It must be remembered that when the qualifications of a physician are admitted, as in the instant case, there is an inevitable presumption that in proper cases, he takes the necessary precaution and employs the best of his knowledge and skill in attending to his clients, unless the contrary is sufficiently established.[98] In making the judgment call of treating Peter's EKC with *Maxitrol*, Dr. Tuaño took the necessary precaution by palpating Peter's eyes to monitor their IOP every time the latter went for a check-up, and he employed the best of his knowledge and skill earned from years of training and practice.

In contrast, without supporting expert medical opinions, petitioners, bare assertions of negligence on Dr. Tuaño's part, which resulted in Peter's glaucoma, deserve scant credit.

Our disposition of the present controversy might have been vastly different had petitioners presented a medical expert to establish their theory respecting Dr. Tuaño's so-called negligence. In fact, the record of the case reveals that petitioners' counsel recognized the necessity of presenting such evidence. Petitioners even gave an undertaking to the RTC judge that Dr. Agulto or Dr. Aquino would be presented. Alas, no follow-through on said undertaking was made.

The plaintiff in a civil case has the burden of proof as he alleges the affirmative of the issue. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of plaintiff.[99] The party having the

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[98] *Dr. Cruz v. Court of Appeals*, *supra* note 84 at 884-885.

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

burden of proof must establish his case by a preponderance of evidence.[100] The concept of "preponderance of evidence" refers to evidence which is of greater weight or more convincing than that which is offered in opposition to it;[101] in the last analysis, it means probability of truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[102] Rule 133, Section 1 of the Revised Rules of Court provides the guidelines for determining preponderance of evidence, thus:

> In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Herein, the burden of proof was clearly upon petitioners, as plaintiffs in the lower court, to establish their case by a preponderance of evidence showing a reasonable connection between Dr. Tuaño's alleged breach of duty and the damage sustained by Peter's right eye. This, they did not do. In reality, petitioners' complaint for damages is merely anchored on a statement in the literature of *Maxitrol* identifying the risks of its use, and the purported comment of Dr. Agulto – another doctor not presented as witness before the RTC – concerning the prolonged use of *Maxitrol* for the treatment of EKC.

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[100] *Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, 21 July 2008, 559 SCRA 207, 215.

[101] *Jison v. Court of Appeals*, 350 Phil. 138, 173 (1998), citing Vicente J. Francisco, *Revised Rules of Court in the Philippines*, *Evidence* (Part II, Rules 131-134).

[102] *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001), citing 20 Am. Jur. 1100-1101 as cited in Francisco, *Revised Rules of Court*.

It seems basic that what constitutes proper medical treatment is a medical question that should have been presented to experts. If no standard is established through expert medical witnesses, then courts have no standard by which to gauge the basic issue of breach thereof by the physician or surgeon. The RTC and Court of Appeals, and even this Court, could not be expected to determine on its own what medical technique should have been utilized for a certain disease or injury. Absent expert medical opinion, the courts would be dangerously engaging in speculations.

All told, we are hard pressed to find Dr. Tuaño liable for any medical negligence or malpractice where there is no evidence, in the nature of expert testimony, to establish that in treating Peter, Dr. Tuaño failed to exercise reasonable care, diligence and skill generally required in medical practice. Dr. Tuaño's testimony, that his treatment of Peter conformed in all respects to standard medical practice in this locality, stands unrefuted. Consequently, the RTC and the Court of Appeals correctly held that they had no basis at all to rule that petitioners were deserving of the various damages prayed for in their *Complaint*.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The assailed *Decision* dated 27 September 2006 and *Resolution* dated 3 July 2007, both of the Court of Appeals in CA-G.R. CV No. 68666, are hereby *AFFIRMED*. No cost.

SO ORDERED.

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

EN BANC

[G.R. No. 179271. April 21, 2009]

BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT), *petitioner, vs.* **COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers),** *respondent.*

ARTS BUSINESS AND SCIENCE PROFESSIONALS, *intervenor.*

AANGAT TAYO, *intervenor.*

COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. (SENIOR CITIZENS), *intervenor.*

[G.R. No. 179295. April 21, 2009]

BAYAN MUNA, ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION, COOPERATION AND HARMONY TOWARDS EDUCATIONAL REFORMS, INC., and ABONO, *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM ACT; TWO PER CENT THRESHOLD FOR ADDITIONAL SEATS, UNCONSTITUTIONAL; RATIONALE.— Section 11(a) of R.A. No. 7941 prescribes the ranking of the participating parties from the highest to the lowest based on the number of votes they garnered during the elections. x x x The first clause of Section 11(b) of R.A. No. 7941 states that "parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each." This

clause guarantees a seat to the two-percenters. x x x The second clause of Section 11(b) of R.A. No. 7941 provides that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes**." This is where petitioners' and intervenors' problem with the formula in *Veterans* lies. *Veterans* interprets the clause "in proportion to their total number of votes" to be **in proportion to the votes of the first party**. This interpretation is contrary to the express language of R.A. No. 7941. We rule that, in computing the allocation of **additional seats**, the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941 is **unconstitutional**. This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives. To illustrate: There are 55 available party-list seats. Suppose there are 50 million votes cast for the 100 participants in the party list elections. A party that has two percent of the votes cast, or one million votes, gets a guaranteed seat. Let us further assume that the first 50 parties all get one million votes. Only 50 parties get a seat despite the availability of 55 seats. Because of the operation of the two percent threshold, this situation will repeat itself even if we increase the available party-list seats to 60 seats and even if we increase the votes cast to 100 million. Thus, even if the maximum number of parties get two percent of the votes for every party, it is always impossible for the number of occupied party-list seats to exceed 50 seats as long as the two percent threshold is present. We therefore strike down the two percent threshold only in relation to the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941. The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives."

2. ID.; ID.; ID.; COMPUTATION OF THE ADDITIONAL SEATS, PRESENTED AND SUSTAINED.— In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats. In declaring the two percent threshold unconstitutional, we do not limit our allocation of additional seats in Table 3 to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by 15,950,900, the total number of votes cast for party-list candidates. There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats, 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. We distributed all of the remaining 38 seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled. x x x Under Section 9 of R.A. No. 7941, it is not necessary that the party-list organization's nominee "wallow in poverty, destitution and infirmity" as there is no financial status required in the law. It is enough that the nominee of the sectoral party/organization/coalition belongs to the marginalized and underrepresented sectors, that is, if the nominee represents the fisherfolk, he or she must be a fisherfolk, or if the nominee represents the senior citizens, he or she must be a senior citizen. Neither the Constitution nor R.A. No. 7941 mandates the filling-up of the entire 20% allocation of party-list representatives found in the Constitution. The Constitution, in paragraph 1, Section 5 of Article VI, left the determination of the number of the members of the House of Representatives to Congress: "The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law,

x x x." The 20% allocation of party-list representatives is merely a ceiling; party-list representatives cannot be more than 20% of the members of the House of Representatives. However, we cannot allow the continued existence of a provision in the law which will systematically prevent the constitutionally allocated 20% party-list representatives from being filled. The three-seat cap, as a limitation to the number of seats that a qualified party-list organization may occupy, remains a valid statutory device that prevents any party from dominating the party-list elections. Seats for party-list representatives shall thus be allocated in accordance with the procedure used in Table 3.

NACHURA, *J., separate opinion:*

POLITICAL LAW; LEGISLATIVE DEPARTMENT; REPUBLIC ACT NO. 7941 (PARTY-LIST SYSTEM ACT); 2% THRESHOLD VOTE, UNCONSTITUTIONAL; RATIONALE.— However, I wish to add a few words to support the proposition that the inflexible 2% threshold vote required for entitlement by a party-list group to a seat in the House of Representatives in Republic Act (R.A.) No. 7941 is unconstitutional. This minimum vote requirement — fixed at 2% of the total number of votes cast for the party list system — presents an unwarranted obstacle to the full implementation of Section 5 (2), Article VI, of the Philippine Constitution. As such, it effectively defeats the declared constitutional policy, as well as the legislative objective expressed in the enabling law, to allow the people's broadest representation in Congress, the *raison d'etre* for the adoption of the party-list system. x x x This party-list provision in the Constitution intends to open the system of representation by allowing different sectors, parties, organizations and coalitions to win a legislative seat. It diversifies the membership in the legislature and "gives genuine power to the people." As aforesaid, the Constitution desires the people's widest representation in Congress. x x x This, to my mind, stigmatizes the 2% minimum vote requirement in R.A. 7941. A legal provision that poses an insurmountable barrier to the full implementation and realization of the constitutional provision on the party-list system should be declared void. As Chief Justice Reynato S. Puno says in his Concurring and Dissenting Opinion, *"(W)e should strive to make every word*

of the fundamental law operative and avoid rendering some word idle and nugatory." x x x It is correct to say, and I completely agree with *Veterans Federation Party*, that Section 5 (2), Article VI of the Constitution, is not mandatory, that it merely provides a ceiling for the number of party-list seats in Congress. But when the enabling law, R.A. 7941, enacted by Congress for the precise purpose of implementing the constitutional provision, contains a condition that places the constitutional ceiling completely beyond reach, totally impossible of realization, then we must strike down the offending condition as an affront to the fundamental law. This is not simply an inquiry into the wisdom of the legislative measure; rather it involves the duty of this Court to ensure that constitutional provisions remain effective at all times. No rule of statutory construction can save a particular legislative enactment that renders a constitutional provision inoperative and ineffectual.

PUNO, *C.J., concurring and dissenting opinion:*

POLITICAL LAW; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM; LIMITED TO THE MARGINALIZED AND EXCLUDING THE MAJOR POLITICAL PARTIES; RATIONALE.— Everybody agrees that the best way to interpret the Constitution is to harmonize the whole instrument, its every section and clause. We should strive to make every word of the fundamental law operative and avoid rendering some words idle and nugatory. The harmonization of Article VI, Section 5 with related constitutional provisions will better reveal the intent of the people as regards the party-list system. Thus, under Section 7 of the Transitory Provisions, the President was permitted to fill by appointment the seats reserved for sectoral representation under the party-list system from a list of nominees submitted by the respective sectors. This was the result of historical precedents that saw how the elected Members of the interim Batasang Pambansa and the regular Batasang Pambansa tried to torpedo sectoral representation and delay the seating of sectoral representatives on the ground that they could not rise to the same levelled status of dignity as those elected by the people. To avoid this bias against sectoral representatives, the President was given all the leeway to "break new ground and precisely plant the seeds for sectoral

representation so that the sectoral representatives will take roots and be part and parcel exactly of the process of drafting the law which will stipulate and provide for the concept of sectoral representation." Similarly, limiting the party-list system to the marginalized and excluding the major political parties from participating in the election of their representatives is aligned with the constitutional mandate to "reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good"; the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making; the right of women to opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation; the right of labor to participate in policy and decision-making processes affecting their rights and benefits in keeping with its role as a primary social economic force; the right of teachers to professional advancement; the rights of indigenous cultural communities to the consideration of their cultures, traditions and institutions in the formulation of national plans and policies, and the indispensable role of the private sector in the national economy. x x x In sum, the evils that faced our marginalized and underrepresented people at the time of the framing of the 1987 Constitution still haunt them today. It is through the party-list system that the Constitution sought to address this systemic dilemma. In ratifying the Constitution, our people recognized how the interests of our poor and powerless sectoral groups can be frustrated by the traditional political parties who have the machinery and chicanery to dominate our political institutions. If we allow major political parties to participate in the party-list system electoral process, we will surely suffocate the voice of the marginalized, frustrate their sovereignty and betray the democratic spirit of the Constitution. That opinion will serve as the graveyard of the party-list system. **IN VIEW WHEREOF**, I dissent on the ruling allowing the entry of major political parties into the party-list system.

APPEARANCES OF COUNSEL

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Amado D. Valdez for Intervenors AANGAT TAYO and Senior Citizens.

Salacnib F. Baterina and *Mark L. Perete* for Arts Business & Science Professionals.

Godofredo V. Arquiza for Associations of Senior Citizens in the Philippines.

D E C I S I O N

CARPIO, *J.*:

The Case

Petitioner in G.R. No. 179271 — Barangay Association for National Advancement and Transparency (BANAT) — in a petition for *certiorari* and *mandamus*,[1] assails the Resolution[2] promulgated on 3 August 2007 by the Commission on Elections (COMELEC) in NBC No. 07-041 (PL). The COMELEC's resolution in NBC No. 07-041 (PL) approved the recommendation of Atty. Alioden D. Dalaig, Head of the National Board of Canvassers (NBC) Legal Group, to deny the petition of BANAT for being moot. BANAT filed before the COMELEC *En Banc*, acting as NBC, a *Petition to Proclaim the Full Number of Party-List Representatives Provided by the Constitution*.

The following are intervenors in G.R. No. 179271: Arts Business and Science Professionals (ABS), Aangat Tayo (AT), and Coalition of Associations of Senior Citizens in the Philippines, Inc. (Senior Citizens).

Petitioners in G.R. No. 179295 — Bayan Muna, Abono, and Advocacy for Teacher Empowerment Through Action, Cooperation and Harmony Towards Educational Reforms (A

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 179271), pp. 86-87. Signed by Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer.

Teacher) — in a petition for *certiorari* with *mandamus* and prohibition,[3] assails NBC Resolution No. 07-60[4] promulgated on 9 July 2007. NBC No. 07-60 made a partial proclamation of parties, organizations and coalitions that obtained at least two percent of the total votes cast under the Party-List System. The COMELEC announced that, upon completion of the canvass of the party-list results, it would determine the total number of seats of each winning party, organization, or coalition in accordance with *Veterans Federation Party v. COMELEC*[5] (*Veterans*).

Estrella DL Santos, in her capacity as President and First Nominee of the Veterans Freedom Party, filed a motion to intervene in both G.R. Nos. 179271 and 179295.

The Facts

The 14 May 2007 elections included the elections for the party-list representatives. The COMELEC counted 15,950,900 votes cast for 93 parties under the Party-List System.[6]

On 27 June 2002, BANAT filed a *Petition to Proclaim the Full Number of Party-List Representatives Provided by the Constitution*, docketed as NBC No. 07-041 (PL) before the NBC. BANAT filed its petition because "[t]he Chairman and the Members of the [COMELEC] have recently been quoted in the national papers that the [COMELEC] is duty bound to and shall implement the *Veterans* ruling, that is, would apply the Panganiban formula in allocating party-list seats."[7] There were no intervenors in BANAT's petition before the NBC. BANAT filed a memorandum on 19 July 2007.

On 9 July 2007, the COMELEC, sitting as the NBC, promulgated NBC Resolution No. 07-60. NBC Resolution

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[3] Under Rule 65 of the 1997 Rules of Civil Procedure.

[4] *Rollo* (G.R. No. 179295), pp. 103-108. Signed by Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer.

[5] 396 Phil. 419 (2000).

[6] *Rollo* (G.R. No. 179271), pp. 969-986; *rollo* (G.R. No. 179295), pp. 798-815. Party-List Canvass Report No. 32, as of 31 August 2007, 6:00 p.m.

[7] *Rollo* (G.R. No. 179271), p. 70.

No. 07-60 proclaimed thirteen (13) parties as winners in the party-list elections, namely: Buhay Hayaan Yumabong (BUHAY), Bayan Muna, Citizens' Battle Against Corruption (CIBAC), Gabriela's Women Party (Gabriela), Association of Philippine Electric Cooperatives (APEC), A Teacher, Akbayan! Citizen's Action Party (AKBAYAN), Alagad, Luzon Farmers Party (BUTIL), Cooperative-Natco Network Party (COOP-NATCCO), Anak Pawis, Alliance of Rural Concerns (ARC), and Abono. We quote NBC Resolution No. 07-60 in its entirety below:

WHEREAS, the Commission on Elections sitting *en banc* as National Board of Canvassers, thru its Sub-Committee for Party-List, as of 03 July 2007, had officially canvassed, in open and public proceedings, a total of **fifteen million two hundred eighty three thousand six hundred fifty-nine (15,283,659)** votes under the Party-List System of Representation, in connection with the National and Local Elections conducted last 14 May 2007;

WHEREAS, the study conducted by the Legal and Tabulation Groups of the National Board of Canvassers reveals that the projected/maximum total party-list votes cannot go any higher than **sixteen million seven hundred twenty three thousand one hundred twenty-one (16,723,121)** votes given the following statistical data:

Projected/Maximum Party-List Votes for May 2007 Elections

i. Total party-list votes already canvassed/tabulated	15,283,659
ii. Total party-list votes remaining uncanvassed/ untabulated (*i.e.* canvass deferred)	1,337,032
iii. Maximum party-list votes (based on 100% outcome) from areas not yet submitted for canvass (Bogo, Cebu; Bais City; Pantar, Lanao del Norte; and Pagalungan, Maguindanao)	102,430
Maximum Total Party-List Votes	**16,723,121**

WHEREAS, Section 11 of Republic Act No. 7941 (Party-List System Act) provides in part:

The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: provided, that those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: provided, finally, that each party, organization, or coalition shall be entitled to not more than three (3) seats.

WHEREAS, for the 2007 Elections, based on the above projected total of party-list votes, the presumptive two percent (2%) threshold can be pegged at **three hundred thirty four thousand four hundred sixty-two (334,462)** votes;

WHEREAS, the Supreme Court, in *Citizen's Battle Against Corruption (CIBAC) versus COMELEC*, reiterated its ruling in *Veterans Federation Party versus COMELEC* adopting a formula for the additional seats of each party, organization or coalition receving more than the required two percent (2%) votes, stating that the same shall be determined only after all party-list ballots have been completely canvassed;

WHEREAS, the parties, organizations, and coalitions that have thus far garnered at least **three hundred thirty four thousand four hundred sixty-two (334,462)** votes are as follows:

RANK	PARTY/ORGANIZATION/ COALITION	VOTES RECEIVED
1	BUHAY	1,163,218
2	BAYAN MUNA	972,730
3	CIBAC	760,260
4	GABRIELA	610,451
5	APEC	538,971
6	A TEACHER	476,036
7	AKBAYAN	470,872
8	ALAGAD	423,076
9	BUTIL	405,052
10	COOP-NATCO	390,029
11	BATAS	386,361
12	ANAK PAWIS	376,036
13	ARC	338,194
14	ABONO	337,046

WHEREAS, except for Bagong Alyansang Tagapagtaguyod ng Adhikaing Sambayanan (BATAS), against which an *URGENT PETITION FOR CANCELLATION/REMOVAL OF REGISTRATION AND DISQUALIFICATION OF PARTY-LIST NOMINEE (With Prayer for the Issuance of Restraining Order)* has been filed before the Commission, docketed as SPC No. 07-250, all the parties, organizations and coalitions included in the aforementioned list are therefore entitled to at least one seat under the party-list system of representation in the meantime.

NOW, THEREFORE, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code, Executive Order No. 144, Republic Act Nos. 6646, 7166, 7941, and other election laws, the Commission on Elections, sitting *en banc* as the National Board of Canvassers, hereby RESOLVES to PARTIALLY PROCLAIM, subject to certain conditions set forth below, the following parties, organizations and coalitions participating under the Party-List System:

1	Buhay Hayaan Yumabong	BUHAY
2	Bayan Muna	BAYAN MUNA
3	Citizens Battle Against Corruption	CIBAC
4	Gabriela Women's Party	GABRIELA
5	Association of Philippine Electric Cooperatives	APEC
6	Advocacy for Teacher Empowerment Through Action, Cooperation and Harmony Towards Educational Reforms, Inc.	A TEACHER
7	Akbayan! Citizen's Action Party	AKBAYAN
8	Alagad	ALAGAD
9	Luzon Farmers Party	BUTIL
10	Cooperative-Natco Network Party	COOP-NATCCO
11	Anak Pawis	ANAKPAWIS
12	Alliance of Rural Concerns	ARC
13	Abono	ABONO

This is without prejudice to the proclamation of other parties, organizations, or coalitions which may later on be established to have obtained at least two percent (2%) of the total actual votes cast under the Party-List System.

The total number of seats of each winning party, organization or coalition shall be determined pursuant to *Veterans Federation Party versus COMELEC* formula upon completion of the canvass of the party-list results.

The proclamation of Bagong Alyansang Tagapagtaguyod ng Adhikaing Sambayanan (BATAS) is hereby deferred until final resolution of SPC No. 07-250, in order not to render the proceedings therein moot and academic.

Finally, all proclamation of the nominees of concerned parties, organizations and coalitions with pending disputes shall likewise be held in abeyance until final resolution of their respective cases.

Let the Clerk of the Commission implement this Resolution, furnishing a copy thereof to the Speaker of the House of Representatives of the Philippines.

SO ORDERED.[8] (Emphasis in the original)

Pursuant to NBC Resolution No. 07-60, the COMELEC, acting as NBC, promulgated NBC Resolution No. 07-72, which declared the additional seats allocated to the appropriate parties. We quote from the COMELEC's interpretation of the *Veterans* formula as found in NBC Resolution No. 07-72:

WHEREAS, on July 9, 2007, the Commission on Elections sitting *en banc* as the National Board of Canvassers proclaimed thirteen (13) qualified parties, organization[s] and coalitions based on the presumptive two percent (2%) threshold of 334,462 votes from the projected maximum total number of party-list votes of 16,723,121, and were thus given one (1) guaranteed party-list seat each;

WHEREAS, per Report of the Tabulation Group and Supervisory Committee of the National Board of Canvassers, the projected maximum total party-list votes, as of July 11, 2007, based on the votes actually canvassed, votes canvassed but not included in Report No. 29, votes received but uncanvassed, and maximum votes expected for Pantar, Lanao del Norte, is 16,261,369; and that the projected maximum total votes for the thirteen (13) qualified parties, organizations and coalition[s] are as follows:

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[8] *Rollo* (G.R. No. 179271), pp. 88-92.

	Party-List	Projected total number of votes
1	BUHAY	1,178,747
2	BAYAN MUNA	977,476
3	CIBAC	755,964
4	GABRIELA	621,718
5	APEC	622,489
6	A TEACHER	492,369
7	AKBAYAN	462,674
8	ALAGAD	423,190
9	BUTIL	409,298
10	COOP-NATCO	412,920
11	ANAKPAWIS	370,165
12	ARC	375,846
13	ABONO	340,151

WHEREAS, based on the above Report, *Buhay Hayaan Yumabong* (Buhay) obtained the highest number of votes among the thirteen (13) qualified parties, organizations and coalitions, making it the "first party" in accordance with *Veterans Federation Party versus COMELEC*, reiterated in *Citizen's Battle Against Corruption (CIBAC) versus COMELEC*;

WHEREAS, qualified parties, organizations and coalitions participating under the party-list system of representation that have obtained one guaranteed (1) seat may be entitled to an additional seat or seats based on the formula prescribed by the Supreme Court in *Veterans*;

WHEREAS, in determining the additional seats for the "first party", the correct formula as expressed in *Veterans*, is:

$$\frac{\text{Number of votes of first party}}{\text{Total votes for party-list system for}} = \text{Proportion of votes of first party relative to total votes party-list system}$$

wherein the proportion of votes received by the first party (without rounding off) shall entitle it to additional seats:

Proportion of votes received by the first party	Additional seats
Equal to or at least 6%	Two (2) additional seats
Equal to or greater than 4% but less than 6%	One (1) additional seat
Less than 4%	No additional seat

WHEREAS, applying the above formula, Buhay obtained the following percentage:

$$\frac{1{,}178{,}747}{16{,}261{,}369} = 0.07248 \text{ or } 7.2\%$$

which entitles it to two (2) additional seats.

WHEREAS, in determining the additional seats for the other qualified parties, organizations and coalitions, the correct formula as expressed in *Veterans* and reiterated in *CIBAC* is, as follows:

$$\text{Additional seats for a concerned party} = \frac{\text{No. of votes of concerned party}}{\text{No. of votes of first party}} \times \text{No. of additional seats allocated to first party}$$

WHEREAS, applying the above formula, the results are as follows:

Party List	Percentage	Additional Seat
BAYAN MUNA	1.65	1
CIBAC	1.28	1
GABRIELA	1.05	1
APEC	1.05	1
A TEACHER	0.83	0
AKBAYAN	0.78	0
ALAGAD	0.71	0
BUTIL	0.69	0
COOP-NATCO	0.69	0
ANAKPAWIS	0.62	0
ARC	0.63	0
ABONO	0.57	0

NOW THEREFORE, by virtue of the powers vested in it by the Constitution, Omnibus Election Code, Executive Order No. 144, Republic Act Nos. 6646, 7166, 7941 and other elections laws, the Commission on Elections *en banc* sitting as the National Board of Canvassers, hereby RESOLVED, as it hereby RESOLVES, to proclaim the following parties, organizations or coalitions as entitled to additional seats, to wit:

Party List	Additional Seats
BUHAY	2
BAYAN MUNA	1
CIBAC	1
GABRIELA	1
APEC	1

This is without prejudice to the proclamation of other parties, organizations or coalitions which may later on be established to have obtained at least two per cent (2%) of the total votes cast under the party-list system to entitle them to one (1) guaranteed seat, or to the appropriate percentage of votes to entitle them to one (1) additional seat.

Finally, all proclamation of the nominees of concerned parties, organizations and coalitions with pending disputes shall likewise be held in abeyance until final resolution of their respective cases.

Let the National Board of Canvassers Secretariat implement this Resolution, furnishing a copy hereof to the Speaker of the House of Representatives of the Philippines.

SO ORDERED.[9]

Acting on BANAT's petition, the NBC promulgated NBC Resolution No. 07-88 on 3 August 2007, which reads as follows:

This pertains to the Petition to Proclaim the Full Number of Party-List Representatives Provided by the Constitution filed by the Barangay Association for National Advancement and Transparency (BANAT).

Acting on the foregoing Petition of the Barangay Association for National Advancement and Transparency (BANAT) party-list,

[9] *Id.* at 150-153.

Atty. Alioden D. Dalaig, Head, National Board of Canvassers Legal Group submitted his comments/observations and recommendation thereon [NBC 07-041 (PL)], which reads:

COMMENTS / OBSERVATIONS:

Petitioner Barangay Association for National Advancement and Transparency (BANAT), in its Petition to Proclaim the Full Number of Party-List Representatives Provided by the Constitution prayed for the following reliefs, to wit:

1. That the full number — twenty percent (20%) — of Party-List representatives as mandated by Section 5, Article VI of the Constitution shall be proclaimed.

2. Paragraph (b), Section 11 of RA 7941 which prescribes the 2% threshold votes, should be harmonized with Section 5, Article VI of the Constitution and with Section 12 of the same RA 7941 in that it should be applicable only to the first party-list representative seats to be allotted on the basis of their initial/first ranking.

3. The 3-seat limit prescribed by RA 7941 shall be applied; and

4. Initially, all party-list groups shall be given the number of seats corresponding to every 2% of the votes they received and the additional seats shall be allocated in accordance with Section 12 of RA 7941, that is, in proportion to the percentage of votes obtained by each party-list group in relation to the total nationwide votes cast in the party-list election, after deducting the corresponding votes of those which were allotted seats under the 2% threshold rule. In fine, the formula/procedure prescribed in the "ALLOCATION OF PARTY-LIST SEATS, ANNEX "A" of COMELEC RESOLUTION 2847 dated 25 June 1996, shall be used for [the] purpose of determining how many seats shall be proclaimed, which party-list groups are entitled to representative seats and how many of their nominees shall seat [sic].

5. In the alternative, to declare as unconstitutional Section 11 of Republic Act No. 7941 and that the procedure in allocating seats for party-list representative prescribed by Section 12 of RA 7941 shall be followed.

RECOMMENDATION:

The petition of BANAT is now moot and academic.

The Commission En Banc in NBC Resolution No. 07-60 promulgated July 9, 2007 re "In the Matter of the Canvass of Votes and Partial Proclamation of the Parties, Organizations and Coalitions Participating Under the Party-List System During the May 14, 2007 National and Local Elections" *resolved among others that the total number of seats of each winning party, organization or coalition shall be determined pursuant to the Veterans Federation Party versus COMELEC formula upon completion of the canvass of the party-list results.*

WHEREFORE, premises considered, the National Board of Canvassers RESOLVED, as it hereby RESOLVES, to approve and adopt the recommendation of Atty. Alioden D. Dalaig, Head, NBC Legal Group, to DENY the herein petition of BANAT for being moot and academic.

Let the Supervisory Committee implement this resolution.

SO ORDERED.[10]

BANAT filed a petition for *certiorari* and *mandamus* assailing the ruling in NBC Resolution No. 07-88. BANAT did not file a motion for reconsideration of NBC Resolution No. 07-88.

On 9 July 2007, Bayan Muna, Abono, and A Teacher asked the COMELEC, acting as NBC, to reconsider its decision to use the *Veterans* formula as stated in its NBC Resolution No. 07-60 because the *Veterans* formula is violative of the Constitution and of Republic Act No. 7941 (R.A. No. 7941). On the same day, the COMELEC denied reconsideration during the proceedings of the NBC.[11]

Aside from the thirteen party-list organizations proclaimed on 9 July 2007, the COMELEC proclaimed three other party-list organizations as qualified parties entitled to one guaranteed seat under the Party-List System: Agricultural Sector Alliance

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[10] *Id.* at 86-87.

[11] *Rollo* (G.R. No. 179295), p. 112.

of the Philippines, Inc. (AGAP),[12] Anak Mindanao (AMIN),[13] and An Waray.[14] Per the certification[15] by COMELEC, the following party-list organizations have been proclaimed as of 19 May 2008:

	Party-List	**No. of Seat(s)**
1.1	Buhay	3
1.2	Bayan Muna	2
1.3	CIBAC	2
1.4	Gabriela	2
1.5	APEC	2
1.6	A Teacher	1
1.7	Akbayan	1
1.8	Alagad	1
1.9	Butil	1
1.10	Coop-Natco [sic]	1
1.11	Anak Pawis	1
1.12	ARC	1
1.13	Abono	1
1.14	AGAP	1
1.15	AMIN	1

The proclamation of Bagong Alyansang Tagapagtaguyod ng Adhikaing Sambayanan (BATAS), against which an Urgent Petition for Cancellation/Removal of Registration and Disqualification of Party-list Nominee (with Prayer for the Issuance of Restraining Order) has been filed before the COMELEC, was deferred pending final resolution of SPC No. 07-250.

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[12] *Rollo* (G.R. No. 179271), pp. 158-159. NBC Resolution No. 07-74, 24 July 2007.

[13] *Id.* at 160-161. NBC Resolution No. 07-87, 3 August 2007.

[14] NBC Resolution No. 07-97, 4 September 2007.

[15] *Rollo* (G.R. No. 179295), pp. 816-817. This COMELEC certification should have included An Waray, which was proclaimed on 4 September 2007 under NBC Resolution No. 07-97.

Issues

BANAT brought the following issues before this Court:

1. Is the twenty percent allocation for party-list representatives provided in Section 5(2), Article VI of the Constitution mandatory or is it merely a ceiling?
2. Is the three-seat limit provided in Section 11(b) of RA 7941 constitutional?
3. Is the two percent threshold and "qualifier" votes prescribed by the same Section 11(b) of RA 7941 constitutional?
4. How shall the party-list representatives be allocated?[16]

Bayan Muna, A Teacher, and Abono, on the other hand, raised the following issues in their petition:

I. Respondent Commission on Elections, acting as National Board of Canvassers, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it promulgated NBC Resolution No. 07-60 to implement the First-Party Rule in the allocation of seats to qualified party-list organizations as said rule:

   A. Violates the constitutional principle of proportional representation.

   B. Violates the provisions of RA 7941 particularly:

      1. The 2-4-6 Formula used by the First Party Rule in allocating additional seats for the "First Party" violates the principle of proportional representation under RA 7941.

      2. The use of two formulas in the allocation of additional seats, one for the "First Party" and another for the qualifying parties, violates Section 11(b) of RA 7941.

      3. The proportional relationships under the First Party Rule are different from those required under RA 7941;

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[16] *Rollo* (G.R. No. 179271), p. 14.

C. Violates the "Four Inviolable Parameters" of the Philippine party-list system as provided for under the same case of *Veterans Federation Party, et al. v. COMELEC*.

II. Presuming that the Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it implemented the First-Party Rule in the allocation of seats to qualified party-list organizations, the same being merely in consonance with the ruling in *Veterans Federations Party, et al. v. COMELEC,* the instant Petition is a justiciable case as the issues involved herein are constitutional in nature, involving the correct interpretation and implementation of RA 7941, and are of transcendental importance to our nation.[17]

Considering the allegations in the petitions and the comments of the parties in these cases, we defined the following issues in our advisory for the oral arguments set on 22 April 2008:

1. Is the twenty percent allocation for party-list representatives in Section 5(2), Article VI of the Constitution mandatory or merely a ceiling?
2. Is the three-seat limit in Section 11(b) of RA 7941 constitutional?
3. Is the two percent threshold prescribed in Section 11(b) of RA 7941 to qualify for one seat constitutional?
4. How shall the party-list representative seats be allocated?
5. Does the Constitution prohibit the major political parties from participating in the party-list elections? If not, can the major political parties be barred from participating in the party-list elections?[18]

The Ruling of the Court

The petitions have partial merit. We maintain that a Philippine-style party-list election has at least four inviolable parameters as clearly stated in *Veterans*. For easy reference, these are:

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[17] *Rollo* (G.R. No. 179295), pp. 21-22.

[18] *Rollo* (G.R. No. 179271), p. 553; *rollo* (G. R. No. 179295), p. 341.

First, the twenty percent allocation — the combined number of *all* party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list;

Second, the two percent threshold — only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives;

Third, the three-seat limit — each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats;

Fourth, proportional representation— the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."[19]

However, because the formula in *Veterans* has flaws in its mathematical interpretation of the term "proportional representation," this Court is compelled to revisit the formula for the allocation of additional seats to party-list organizations.

Number of Party-List Representatives: The Formula Mandated by the Constitution

Section 5, Article VI of the Constitution provides:

Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural

[19] *Supra* note 5 at 424.

communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

The first paragraph of Section 11 of R.A. No. 7941 reads:

> Section 11. *Number of Party-List Representatives.* — The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.
>
> x x x x x x x x x

Section 5(1), Article VI of the Constitution states that the "House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law." The House of Representatives shall be composed of district representatives and party-list representatives. The Constitution allows the legislature to modify the number of the members of the House of Representatives.

Section 5(2), Article VI of the Constitution, on the other hand, states the ratio of party-list representatives to the total number of representatives. We compute the number of seats available to party-list representatives from the number of legislative districts. On this point, we do not deviate from the first formula in *Veterans*, thus:

$$\frac{\text{Number of seats available to legislative districts}}{.80} \times .20 = \text{Number of seats available to party-list representatives}$$

This formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law. Since the 14th Congress of the Philippines has 220 district representatives, there are 55 seats available to party-list representatives.

$$\frac{220}{.80} \times .20 = 55$$

After prescribing the ratio of the number of party-list representatives to the total number of representatives, **the**

Constitution left the manner of allocating the seats available to party-list representatives to the wisdom of the legislature.

Allocation of Seats for Party-List Representatives: The Statutory Limits Presented by the Two Percent Threshold and the Three-Seat Cap

All parties agree on the formula to determine the maximum number of seats reserved under the Party-List System, as well as on the formula to determine the guaranteed seats to party-list candidates garnering at least two-percent of the total party-list votes. However, there are numerous interpretations of the provisions of R.A. No. 7941 on the allocation of **"additional seats"** under the Party-List System. *Veterans* produced the First Party Rule,[20] and Justice Vicente V. Mendoza's dissent in *Veterans* presented Germany's Niemeyer formula[21] as an alternative.

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[20] *Id.* at 446-451. We quote below the discussion in *Veterans* explaining the First Party Rule:

Formula for Determining Additional Seats for the First Party

Now, how do we determine the number of seats the first party is entitled to? The only basis given by the law is that a party receiving at least two percent of the total votes shall be entitled to one seat. Proportionally, if the first party were to receive twice the number of votes of the second party, it should be entitled to twice the latter's number of seats and so on. The formula, therefore, for computing the number of seats to which the first party is entitled is as follows:

Number of votes of first party		Proportion of votes of
----------	=	first party relative to
Total votes for party -list system		total votes for party-list system

If the proportion of votes received by the first party without rounding it off is equal to at least six percent of the total valid votes cast for all the party list groups, then the first party shall be entitled to two additional seats or a total of three seats overall. If the proportion of votes without a rounding off is equal to or greater than four percent, but less than six percent, then the first party shall have one additional or a total of two seats. And if the proportion is less than four percent, then the first party shall not be entitled to any additional seat.

The Constitution left to Congress the determination of the manner of allocating the seats for party-list representatives. Congress enacted R.A. No. 7941, paragraphs (a) and (b) of Section 11 and Section 12 of which provide:

We adopted this six percent bench mark, because the first party is not always entitled to the maximum number of additional seats. Likewise, it would prevent the allotment of more than the total number of available seats, such as in an extreme case wherein 18 or more parties tie for the highest rank and are thus entitled to three seats each. In such scenario, the number of seats to which all the parties are entitled may exceed the maximum number of party-list seats reserved in the House of Representatives.

x x x x x x x x x

Note that the above formula will be applicable only in determining the number of additional seats the *first party* is entitled to. It cannot be used to determine the number of additional seats of the other qualified parties. As explained earlier, the use of the same formula for all would contravene the proportional representation parameter. For example, a second party obtains six percent of the total number of votes cast. According to the above formula, the said party would be entitled to two additional seats or a total of three seats overall. However, if the first party received a significantly higher amount of votes — say, twenty percent — to grant it the same number of seats as the second party would violate the statutory mandate of proportional representation, since a party getting only six percent of the votes will have an equal number of representatives as the one obtaining twenty percent. The proper solution, therefore, is to grant the first party a total of three seats; and the party receiving six percent, additional seats in proportion to those of the first party.

Formula for Additional Seats of Other Qualified Parties

Step Three The next step is to solve for the number of additional seats that the other qualified parties are entitled to, based on proportional representation. The formula is encompassed by the following complex fraction:

$$\text{Additional seats for concerned party} = \frac{\frac{\text{No. of votes of concerned party}}{\text{Total no. of votes for party-list system}}}{\frac{\text{No. of votes of first party}}{\text{Total no. of votes for party list system}}} \times \text{No. of additional seats allocated to the first party}$$

Section 11. *Number of Party-List Representatives.* — x x x

In determining the allocation of seats for the second vote,[22] the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

(b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: **Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes:** Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Section 12. *Procedure in Allocating Seats for Party-List Representatives*. — The COMELEC shall tally all the votes for the

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In simplified form, it is written as follows:

$$\text{Additional seats for concerned party} = \frac{\text{No. of votes of concerned party}}{\text{No. of votes of first party}} \times \text{No. of additional seats allocated to the first party}$$

x x x x x x x x x

Incidentally, if the first party is not entitled to any additional seat, then the ratio of the number of votes for the other party to that for the first one is multiplied by zero. The end result would be zero additional seat for each of the other qualified parties as well.

The above formula does not give an exact mathematical representation of the number of additional seats to be awarded since, in order to be entitled to one additional seat, an exact whole number is necessary. In fact, most of the actual mathematical proportions are not whole numbers and are not rounded off for the reasons explained earlier. To repeat, rounding off may result in the awarding of a number of seats in excess of that provided by the law. Furthermore, obtaining absolute proportional representation is restricted by the three-seat-per-party limit to a maximum of two additional slots. An increase in the maximum number of additional representatives a party may be entitled to would result in a more accurate proportional representation. But the law itself has set the limit: only two additional seats. Hence, we need to work within such extant parameter.

[21] *Id.* at 475-481.

[22] The second vote cast by a registered voter is for the party-list candidates as provided in Section 10 of R.A. No. 7941.

parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system. (Emphasis supplied)

In G.R. No. 179271, BANAT presents two interpretations through three formulas to allocate party-list representative seats.

The first interpretation allegedly harmonizes the provisions of Section 11(b) on the 2% requirement with Section 12 of R.A. No. 7941. BANAT described this procedure as follows:

(a) The party-list representatives shall constitute twenty percent (20%) of the total Members of the House of Representatives including those from the party-list groups as prescribed by Section 5, Article VI of the Constitution, Section 11 (1st par.) of RA 7941 and Comelec Resolution No. 2847 dated 25 June 1996. Since there are 220 District Representatives in the 14th Congress, there shall be 55 Party-List Representatives. All seats shall have to be proclaimed.

(b) All party-list groups shall initially be allotted one (1) seat for every two per centum (2%) of the total party-list votes they obtained; provided, that no party-list groups shall have more than three (3) seats (Section 11, RA 7941).

(c) The remaining seats shall, after deducting the seats obtained by the party-list groups under the immediately preceding paragraph and after deducting from their total the votes corresponding to those seats, the remaining seats shall be allotted proportionately to all the party-list groups which have not secured the maximum three (3) seats under the 2% threshold rule, in accordance with Section 12 of RA 7941.[23]

Forty-four (44) party-list seats will be awarded under BANAT's first interpretation.

The second interpretation presented by BANAT assumes that the 2% vote requirement is declared unconstitutional, and apportions the seats for party-list representatives by following Section 12 of R.A. No. 7941. BANAT states that the COMELEC:

(a) shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis;

[23] *Rollo* (G.R. No. 179271), p. 47.

(b) rank them according to the number of votes received; and,

(c) allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization or coalition as against the total nationwide votes cast for the party-list system.[24]

BANAT used two formulas to obtain the same results: one is based on the proportional percentage of the votes received by each party as against the total nationwide party-list votes, and the other is "by making the votes of a party-list with a median percentage of votes as the divisor in computing the allocation of seats."[25] Thirty-four (34) party-list seats will be awarded under BANAT's second interpretation.

In G.R. No. 179295, Bayan Muna, Abono, and A Teacher criticize both the COMELEC's original 2-4-6 formula and the *Veterans* formula for systematically preventing all the party-list seats from being filled up. They claim that both formulas do not factor in the total number of seats alloted for the entire Party-List System. Bayan Muna, Abono, and A Teacher reject the three-seat cap, but accept the 2% threshold. After determining the qualified parties, a second percentage is generated by dividing the votes of a qualified party by the total votes of all qualified parties only. The number of seats allocated to a qualified party is computed by multiplying the total party-list seats available with the second percentage. There will be a first round of seat allocation, limited to using the whole integers as the equivalent of the number of seats allocated to the concerned party-list. After all the qualified parties are given their seats, a second round of seat allocation is conducted. The fractions, or remainders, from the whole integers are ranked from highest to lowest and the remaining seats on the basis of this ranking are allocated until all the seats are filled up.[26]

We examine what R.A. No. 7941 prescribes to allocate seats for party-list representatives.

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[24] *Id.* at 48.

[25] *Id.* at 1076.

[26] *Rollo* (G.R. No. 179295), pp. 66-81.

Section 11(a) of R.A. No. 7941 prescribes the ranking of the participating parties from the highest to the lowest based on the number of votes they garnered during the elections.

Table 1. Ranking of the participating parties from the highest to the lowest based on the number of votes garnered during the elections.[27]

Rank	Party	Votes Garnered	Rank	Party	Votes Garnered
1	BUHAY	1,169,234	48	KALAHI	88,868
2	BAYAN MUNA	979,039	49	APOI	79,386
3	CIBAC	755,686	50	BP	78,541
4	GABRIELA	621,171	51	AHONBAYAN	78,424
5	APEC	619,657	52	BIGKIS	77,327
6	A TEACHER	490,379	53	PMAP	75,200
7	AKBAYAN	466,112	54	AKAPIN	74,686
8	ALAGAD	423,149	55	PBA	71,544
9	COOP-NATCCO	409,883	56	GRECON	62,220
10	BUTIL	409,160	57	BTM	60,993
11	BATAS	385,810	58	A SMILE	58,717
12	ARC	374,288	59	NELFFI	57,872
13	ANAKPAWIS	370,261	60	AKSA	57,012
14	ABONO	339,990	61	BAGO	55,846
15	AMIN	338,185	62	BANDILA	54,751
16	AGAP	328,724	63	AHON	54,522
17	AN WARAY	321,503	64	ASAHAN MO	51,722
18	YACAP	310,889	65	AGBIAG!	50,837
19	FPJPM	300,923	66	SPI	50,478
20	UNI-MAD	245,382	67	BAHANDI	46,612
21	ABS	235,086	68	ADD	45,624

[27] *Rollo* (G.R. No. 179271), pp. 969-974; *rollo* (G.R. No. 179295), pp. 798-803. Party-List Canvass Report No. 32, as of 31 August 2007, 6:00 p.m.

22	KAKUSA	228,999	69	AMANG	43,062
23	KABATAAN	228,637	70	ABAY PARAK	42,282
24	ABA-AKO	218,818	71	BABAE KA	36,512
25	ALIF	217,822	72	SB	34,835
26	SENIOR CITIZENS	213,058	73	ASAP	34,098
27	AT	197,872	74	PEP	33,938
28	VFP	196,266	75	ABA ILONGGO	33,903
29	ANAD	188,521	76	VENDORS	33,691
30	BANAT	177,028	77	ADD-TRIBAL	32,896
31	ANG KASANGGA	170,531	78	ALMANA	32,255
32	BANTAY	169,801	79	AANGAT KA PILIPINO	29,130
33	ABAKADA	166,747	80	AAPS	26,271
34	1-UTAK	164,980	81	HAPI	25,781
35	TUCP	162,647	82	AAWAS	22,946
36	COCOFED	155,920	83	SM	20,744
37	AGHAM	146,032	84	AG	16,916
38	ANAK	141,817	85	AGING PINOY	16,729
39	ABANSE! PINAY	130,356	86	APO	16,421
40	PM	119,054	87	BIYAYANG BUKID	16,241
41	AVE	110,769	88	ATS	14,161
42	SUARA	110,732	89	UMDJ	9,445
43	ASSALAM	110,440	90	BUKLOD FILIPINA	8,915
44	DIWA	107,021	91	LYPAD	8,471
45	ANC	99,636	92	AA-KASOSYO	8,406
46	SANLAKAS	97,375	93	KASAPI	6,221
47	ABC	90,058		**TOTAL**	**15,950,900**

The first clause of Section 11(b) of R.A. No. 7941 states that "parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each." This clause guarantees a seat to the two-percenters. In Table 2 below, we use the first 20 party-list candidates for illustration purposes. The percentage of votes garnered by each party is arrived at by dividing the number of votes garnered by each party by 15,950,900, the total number of votes cast for all party-list candidates.

Table 2. The first 20 party-list candidates and their respective percentage of votes garnered over the total votes for the party-list.[28]

Rank	Party	Votes Garnered	Votes Garnered over Total Votes for Party-List, in %	Guaranteed Seat
1	BUHAY	1,169,234	7.33%	1
2	BAYAN MUNA	979,039	6.14%	1
3	CIBAC	755,686	4.74%	1
4	GABRIELA	621,171	3.89%	1
5	APEC	619,657	3.88%	1
6	A TEACHER	490,379	3.07%	1
7	AKBAYAN	466,112	2.92%	1
8	ALAGAD	423,149	2.65%	1
9	COOP-NATCCO	409,883	2.57%	1
10	BUTIL	409,160	2.57%	1
11	BATAS[29]	385,810	2.42%	1
12	ARC	374,288	2.35%	1
13	ANAKPAWIS	370,261	2.32%	1
14	ABONO	339,990	2.13%	1
15	AMIN	338,185	2.12%	1
16	AGAP	328,724	2.06%	1
17	AN WARAY	321,503	2.02%	1
	Total			**17**

[28] *Id.*

[29] Proclamation deferred by COMELEC.

18	YACAP	310,889	1.95%	0
19	FPJPM	300,923	1.89%	0
20	UNI-MAD	245,382	1.54%	0

From Table 2 above, we see that only 17 party-list candidates received at least 2% from the total number of votes cast for party-list candidates. The 17 qualified party-list candidates, or the two-percenters, are the party-list candidates that are "entitled to one seat each," or the guaranteed seat. In this first round of seat allocation, we distributed 17 guaranteed seats.

The second clause of Section 11(b) of R.A. No. 7941 provides that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes**." This is where petitioners' and intervenors' problem with the formula in *Veterans* lies. *Veterans* interprets the clause "in proportion to their total number of votes" to be **in proportion to the votes of the first party**. This interpretation is contrary to the express language of R.A. No. 7941.

We rule that, in computing the allocation of **additional seats**, the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941 is **unconstitutional**. This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.

To illustrate: There are 55 available party-list seats. Suppose there are 50 million votes cast for the 100 participants in the party list elections. A party that has two percent of the votes cast, or one million votes, gets a guaranteed seat. Let us further assume that the first 50 parties all get one million votes. Only 50 parties get a seat despite the availability of 55 seats. Because of the operation of the two percent threshold, this situation will

repeat itself even if we increase the available party-list seats to 60 seats and even if we increase the votes cast to 100 million. Thus, even if the maximum number of parties get two percent of the votes for every party, it is always impossible for the number of occupied party-list seats to exceed 50 seats as long as the two percent threshold is present.

We therefore strike down the two percent threshold only in relation to the distribution of the additional seats as found in the second clause of Section 11(b) of R.A. No. 7941. The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives."[30]

In determining the allocation of seats for party-list representatives under Section 11 of R.A. No. 7941, the following procedure shall be observed:

1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.
3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.
4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.

In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining

[30] Section 2, R.A. No. 7941.

available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.

In declaring the two percent threshold unconstitutional, we do not limit our allocation of additional seats in Table 3 below to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by 15,950,900, the total number of votes cast for party-list candidates. There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats, 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed. We distributed all of the remaining 38 seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled. Thus:

Table 3. Distribution of Available Party-List Seats

Rank	Party	Votes Garnered	Votes Garnered over Total Votes for Party List, in % (A)	Guaranteed Seat (First Round) (B)	Additional Seats (Second Round) (C)	(B) plus (C), in whole integers (D)	Applying the three seat cap (E)
1	BUHAY	1,169,234	7.33%	1	2.79	3	N.A.
2	BAYAN MUNA	979,039	6.14%	1	2.33	3	N.A.
3	CIBAC	755,686	4.74%	1	1.80	2	N.A.
4	GABRIELA	621,171	3.89%	1	1.48	2	N.A.
5	APEC	619,657	3.88%	1	1.48	2	N.A.
6	A Teacher	490,379	3.07%	1	1.17	2	N.A.

7	AKBAYAN	466,112	2.92%	1	1.11	2	N.A.
8	ALAGAD	423,149	2.65%	1	1.01	2	N.A.
9[31]	COOP-NATCCO	409,883	2.57%	1	1	2	N.A.
10	BUTIL	409,160	2.57%	1	1	2	N.A.
11	BATAS	385,810	2.42%	1	1	2	N.A.
12	ARC	374,288	2.35%	1	1	2	N.A.
13	ANAKPAWIS	370,261	2.32%	1	1	2	N.A.
14	ABONO	339,990	2.13%	1	1	2	N.A.
15	AMIN	338,185	2.12%	1	1	2	N.A.
16	AGAP	328,724	2.06%	1	1	2	N.A.
17	AN WARAY	321,503	2.02%	1	1	2	N.A.
18	YACAP	310,889	1.95%	0	1	1	N.A.
19	FPJPM	300,923	1.89%	0	1	1	N.A.
20	UNI-MAD	245,382	1.54%	0	1	1	N.A.
21	ABS	235,086	1.47%	0	1	1	N.A.
22	KAKUSA	228,999	1.44%	0	1	1	N.A.
23	KABATAAN	228,637	1.43%	0	1	1	N.A.
24	ABA-AKO	218,818	1.37%	0	1	1	N.A.
25	ALIF	217,822	1.37%	0	1	1	N.A.
26	SENIOR CITIZENS	213,058	1.34%	0	1	1	N.A.
27	AT	197,872	1.24%	0	1	1	N.A.
28	VFP	196,266	1.23%	0	1	1	N.A.
29	ANAD	188,521	1.18%	0	1	1	N.A.
30	BANAT	177,028	1.11%	0	1	1	N.A.
31	ANG KASANGGA	170,531	1.07%	0	1	1	N.A.
32	BANTAY	169,801	1.06%	0	1	1	N.A.
33	ABAKADA	166,747	1.05%	0	1	1	N.A.
34	1-UTAK	164,980	1.03%	0	1	1	N.A.
35	TUCP	162,647	1.02%	0	1	1	N.A.
36	COCOFED	155,920	0.98%	0	1	1	N.A.
Total				**17**		**55**	

Applying the procedure of seat allocation as illustrated in Table 3 above, there are 55 party-list representatives from the 36 winning party-list organizations. All 55 available party-list

[31] The product of the percentage and the remaining available seats of all parties ranked nine and below is less than one.

seats are filled. The additional seats allocated to the parties with sufficient number of votes for one whole seat, in no case to exceed a total of three seats for each party, are shown in column (D).

Participation of Major Political Parties in Party-List Elections

The Constitutional Commission adopted a multi-party system that **allowed all political parties to participate in the party-list elections.** The deliberations of the Constitutional Commission clearly bear this out, thus:

MR. MONSOD. Madam President, I just want to say that we suggested or proposed the party list system because we wanted to open up the political system to a pluralistic society through a multiparty system. x x x **We are for opening up the system, and we would like very much for the sectors to be there. That is why one of the ways to do that is to put a ceiling on the number of representatives from any single party that can sit within the 50 allocated under the party list system**. x x x.

x x x x x x x x x

MR. MONSOD. Madam President, the candidacy for the 198 seats is not limited to political parties. My question is this: Are we going to classify for example Christian Democrats and Social Democrats as political parties? Can they run under the party list concept or must they be under the district legislation side of it only?

MR. VILLACORTA. In reply to that query, I think these parties that the Commissioner mentioned can field candidates for the Senate as well as for the House of Representatives. **Likewise, they can also field sectoral candidates for the 20 percent or 30 percent, whichever is adopted, of the seats that we are allocating under the party list system**.

MR. MONSOD. In other words, the Christian Democrats can field district candidates and can also participate in the party list system?

MR. VILLACORTA. **Why not? When they come to the party list system, they will be fielding only sectoral candidates.**

MR. MONSOD. May I be clarified on that? Can UNIDO participate in the party list system?

MR. VILLACORTA. Yes, why not? **For as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution.**

MR. MONSOD. Suppose Senator Tañada wants to run under BAYAN group and says that he represents the farmers, would he qualify?

MR. VILLACORTA. No, Senator Tañada would not qualify.

MR. MONSOD. But UNIDO can field candidates under the party list system and say Juan dela Cruz is a farmer. Who would pass on whether he is a farmer or not?

MR. TADEO. *Kay Commissioner Monsod, gusto ko lamang linawin ito.* **Political parties, particularly minority political parties, are not prohibited to participate in the party list election if they can prove that they are also organized along sectoral lines.**

MR. MONSOD. What the Commissioner is saying is that all political parties can participate because it is precisely the contention of political parties that they represent the broad base of citizens and that all sectors are represented in them. Would the Commissioner agree?

MR. TADEO. *Ang punto lamang namin, pag pinayagan mo ang UNIDO na isang political party, it will dominate the party list at mawawalang saysay din yung* sector. *Lalamunin mismo ng* political *parties ang party list system. Gusto ko lamang bigyan ng diin ang* "reserve." *Hindi ito reserve seat sa marginalized sectors. Kung titingnan natin itong* 198 seats, reserved *din ito sa* political parties.

MR. MONSOD. *Hindi po reserved iyon kasi anybody can run there.* But my question to Commissioner Villacorta and probably also to Commissioner Tadeo is that under this system, would UNIDO be banned from running under the party list system?

MR. VILLACORTA. No, as I said, **UNIDO may field sectoral candidates. On that condition alone, UNIDO may be allowed to register for the party list system.**

MR. MONSOD. May I inquire from Commissioner Tadeo if he shares that answer?

MR. TADEO. The same.

MR. VILLACORTA. ***Puwede po ang* UNIDO*, pero sa sectoral lines.***

x x x x x x x x x

MR. OPLE. x x x In my opinion, this will also create the stimulus for political parties and mass organizations to seek common ground. For example, we have the PDP-Laban and the UNIDO. I see no reason why they should not be able to make common goals with mass organizations so that the very leadership of these parties can be transformed through the participation of mass organizations. And if this is true of the administration parties, this will be true of others like the Partido ng Bayan which is now being formed. There is no question that they will be attractive to many mass organizations. In the opposition parties to which we belong, there will be a stimulus for us to contact mass organizations so that with their participation, the policies of such parties can be radically transformed because this amendment will create conditions that will challenge both the mass organizations and the political parties to come together. And the party list system is certainly available, although it is open to all the parties. It is understood that the parties will enter in the roll of the COMELEC the names of representatives of mass organizations affiliated with them. So that we may, in time, develop this excellent system that they have in Europe where labor organizations and cooperatives, for example, distribute themselves either in the Social Democratic Party and the Christian Democratic Party in Germany, and their very presence there has a transforming effect upon the philosophies and the leadership of those parties.

It is also a fact well known to all that in the United States, the AFL-CIO always vote with the Democratic Party. But the businessmen, most of them, always vote with the Republican Party, meaning that there is no reason at all why political parties and mass organizations should not combine, reenforce, influence and interact with each other so that the very objectives that we set in this Constitution for sectoral representation are achieved in a wider, more lasting, and more institutionalized way. Therefore, I support this [Monsod-Villacorta] amendment. It installs sectoral representation as a constitutional gift, but at the same time, it challenges the sector to rise to the majesty of being elected representatives later on through a party list system; and even beyond that, to become actual political parties capable of contesting political power in the wider constitutional arena for major political parties.

x x x x x x x x x (Emphasis supplied)[32]

[32] II RECORD, CONSTITUTIONAL COMMISSION 256-257 (25 July 1986), 568 (1 August 1986).

R.A. No. 7941 provided the details for the concepts put forward by the Constitutional Commission. Section 3 of R.A. No. 7941 reads:

Definition of Terms. (a) The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections (COMELEC). Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system.

(b) A party means either a political party or a sectoral party or a coalition of parties.

(c) A political party refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.

It is a national party when its constituency is spread over the geographical territory of at least a majority of the regions. It is a regional party when its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.

(d) A sectoral party refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5 hereof whose principal advocacy pertains to the special interests and concerns of their sector.

(e) A sectoral organization refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

(f) A coalition refers to an aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

Congress, in enacting R.A. No. 7941, put the three-seat cap to prevent any party from dominating the party-list elections.

Neither the Constitution nor R.A. No. 7941 prohibits major political parties from participating in the party-list system. On

the contrary, the framers of the Constitution clearly intended the major political parties to participate in party-list elections through their sectoral wings. In fact, the members of the Constitutional Commission voted down, 19-22, any permanent sectoral seats, and in the alternative the reservation of the party-list system to the sectoral groups.[33] In defining a "party" that participates in party-list elections as either "a political party or a sectoral party," R.A. No. 7941 also clearly intended that major political parties will participate in the party-list elections. Excluding the major political parties in party-list elections is manifestly against the Constitution, the intent of the Constitutional Commission, and R.A. No. 7941. This Court cannot engage in socio-political engineering and judicially legislate the exclusion of major political parties from the party-list elections in patent violation of the Constitution and the law.

Read together, R.A. No. 7941 and the deliberations of the Constitutional Commission state that major political parties are allowed to establish, or form coalitions with, sectoral organizations for electoral or political purposes. There should not be a problem if, for example, the Liberal Party participates in the party-list election through the Kabataang Liberal ng Pilipinas (KALIPI), its sectoral youth wing. The other major political parties can thus organize, or affiliate with, their chosen sector or sectors. To further illustrate, the Nacionalista Party can establish a fisherfolk wing to participate in the party-list election, and this fisherfolk wing can field its fisherfolk nominees. Kabalikat ng Malayang Pilipino (KAMPI) can do the same for the urban poor.

The qualifications of party-list nominees are prescribed in Section 9 of R.A. No. 7941:

Qualifications of Party-List Nominees. — No person shall be nominated as party-list representative unless he is a natural born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately

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[33] *Id.* at 584 (1 August 1986). Dissenting opinion of Justice Jose C. Vitug in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, 412 Phil. 308, 350 (2001).

preceding the day of the elections, able to read and write, *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue until the expiration of his term.

Under Section 9 of R.A. No. 7941, it is not necessary that the party-list organization's nominee "wallow in poverty, destitution and infirmity"[34] as there is no financial status required in the law. It is enough that the nominee of the sectoral party/ organization/coalition belongs to the marginalized and underrepresented sectors,[35] that is, if the nominee represents the fisherfolk, he or she must be a fisherfolk, or if the nominee represents the senior citizens, he or she must be a senior citizen.

Neither the Constitution nor R.A. No. 7941 mandates the filling-up of the entire 20% allocation of party-list representatives found in the Constitution. The Constitution, in paragraph 1, Section 5 of Article VI, left the determination of the number of the members of the House of Representatives to Congress: "The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, x x x." The 20% allocation of party-list representatives is merely a ceiling; party-list representatives cannot be more than 20% of the members of the House of Representatives. However, we cannot allow the continued existence of a provision in the law which will systematically prevent the constitutionally allocated 20% party-list representatives from being filled. The three-seat cap, as a limitation to the number of seats that a qualified party-list organization may occupy, remains a valid statutory device that prevents any party from dominating the party-list elections. Seats for party-list representatives shall thus be allocated in accordance with the procedure used in Table 3 above.

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[34] *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, 412 Phil. 308, 336 (2001).

[35] Section 2, R.A. No. 7941.

However, by a vote of 8-7, the Court decided to continue the ruling in *Veterans* disallowing major political parties from participating in the party-list elections, directly or indirectly. Those who voted to continue disallowing major political parties from the party-list elections joined Chief Justice Reynato S. Puno in his separate opinion. On the formula to allocate party-list seats, the Court is unanimous in concurring with this *ponencia*.

WHEREFORE, we *PARTIALLY GRANT* the petition. We *SET ASIDE* the Resolution of the COMELEC dated 3 August 2007 in NBC No. 07-041 (PL) as well as the Resolution dated 9 July 2007 in NBC No. 07-60. We declare unconstitutional the two percent threshold in the distribution of additional party-list seats. The allocation of additional seats under the Party-List System shall be in accordance with the procedure used in Table 3 of this Decision. Major political parties are disallowed from participating in party-list elections. This Decision is immediately executory. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Brion, Peralta, and *Bersamin, JJ.,* concur.

Nachura, J., see separate opinion.

Puno, C.J., see concurring and dissenting opinion.

Quisumbing, J., the *C.J.* certifies that *J. Quisumbing* joins the former in his concurring and dissenting opinion.

Ynares-Santiago, Austria-Martinez, Corona, Chico-Nazario, Velasco, Jr. and *Leonardo-de Castro, JJ.,* join the Chief Justice in his concurring and dissenting opinion.

SEPARATE OPINION

NACHURA, *J.*:

I concur with the well-written *ponencia* of Justice Antonio T. Carpio.

However, I wish to add a few words to support the proposition that the inflexible 2% threshold vote required for entitlement by a party-list group to a seat in the House of Representatives

in Republic Act (R.A.) No. 7941[1] is unconstitutional. This minimum vote requirement — fixed at 2% of the total number of votes cast for the party list system — presents an unwarranted obstacle to the full implementation of Section 5 (2), Article VI, of the Philippine Constitution. As such, it effectively defeats the declared constitutional policy, as well as the legislative objective expressed in the enabling law, to allow the people's broadest representation in Congress,[2] the *raison d'etre* for the adoption of the party-list system.

Article VI, Section 5 of the 1987 Constitution pertinently provides:

Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and **those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations**.

(2) **The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those**

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[1] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR," approved on March 3, 1995.

[2] Section 2, R.A. 7941, provides:

"The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable the Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. **Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives, by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.**" (Emphasis supplied.)

under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

(3) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of at least hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.[3]

This party-list provision in the Constitution intends to open the system[4] of representation by allowing different sectors, parties, organizations and coalitions to win a legislative seat. It diversifies the membership in the legislature and "gives genuine power to the people."[5] As aforesaid, the Constitution desires the people's widest representation in Congress.

To determine the total number of seats that will be allocated to party-list groups based on the foregoing constitutional provision, this Court, in *Veterans Federation Party v. Commission on Elections*,[6] declared:

Clearly, the Constitution makes the number of district representatives the determinant in arriving at the number of seats allocated for party-list lawmakers, who shall comprise "twenty per centum of the total number of representatives, including those under the party-list." We thus translate this legal provision into a mathematical formula, as follows:

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[3] Emphasis supplied.

[4] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. No. 147589, June 26, 2001, 359 SCRA 698, 716.

[5] *Id.* at 717.

[6] G.R. No. 136781, October 6, 2000; 342 SCRA 244.

No. of district representatives

---------- x .20 = No. of party-list representatives
.80

This formulation means that any increase in the number of district representatives, as may be provided by law, will necessarily result in a corresponding increase in the number of party-list seats.

On the basis of this formula, the number of party-list seats is not static; it could add up to a substantial figure depending on the additional number of legislative districts which Congress may create. Thus, for instance, the *ponencia* states that *"since the 14th Congress of the Philippines has 220 district representatives, there are 55 seats available to party-list representatives,"* based on the following computation:

$$\frac{220}{.80} \times .20 = 55$$

To provide the mechanics for the implementation of the party-list system, Congress enacted R.A. No. 7941, Section 11[7] of

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[7] In full, the provision reads:

"Section 11. *Number of Party-List Representatives*. The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.

"For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.

"In determining the allocation of seats for the second vote, the following procedure shall be observed:

"(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

"(b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes : Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats."

which sets, among others, the inviolable parameter that a party, sectoral organization or coalition, must obtain at least two percent (2%) of the total votes cast for the party-list system in order to claim one seat in the House of Representatives. This is referred to as the threshold vote, or the minimum vote requirement.

Here lies the crux of its unconstitutionality.

Given this fixed 2% threshold vote, the maximum number of seats in the House of Representatives which may be occupied by party-list representatives can never exceed fifty (50), because:

$$\frac{\text{(Total number of votes cast for party-list system)} \times \frac{100\%}{2\%}}{} = 50$$

In other words, there will never be a situation where the number of party-list representatives will exceed 50, regardless of the number of district representatives.

I see a scenario in the future when, because of the inexorable growth in the country's population, Congress should see fit to increase the legislative district seats to 400. If that happens, there would be a corresponding adjustment in party-list representation that will translate to 100 party-list seats, applying the formula in *Veterans Federation Party, viz*:

$$\frac{400}{.80} \times .20 = 100$$

Yet, by virtue of the rigid 2% threshold requirement, the number of seats that the political parties, organizations or coalitions registered under the party-list system could ever aspire for would still be limited to only 50.

This is not an unlikely scenario. Today, a little over eight (8) years after this Court's decision in *Veterans Federation Party,* we see that in the 14th Congress, 55 seats are allocated to party-list representatives, using the *Veterans* formula. But that figure (of 55) can never be realized, because the 2% threshold vote

requirement makes it mathematically impossible to have more than 50 seats. After all, the total number of votes cast for the party-list system can never exceed 100%.

This, to my mind, stigmatizes the 2% minimum vote requirement in R.A. 7941. A legal provision that poses an insurmountable barrier to the full implementation and realization of the constitutional provision on the party-list system should be declared void. As Chief Justice Reynato S. Puno says in his Concurring and Dissenting Opinion, *"(W)e should strive to make every word of the fundamental law operative and avoid rendering some word idle and nugatory."*[8]

Lest I be misunderstood, I do not advocate doing away completely with a threshold vote requirement. The need for such a minimum vote requirement was explained in careful and elaborate detail by Chief Justice Puno in his separate concurring opinion in *Veterans Federation Party*. I fully agree with him that a minimum vote requirement is needed —

1. to avoid a situation where the candidate will just use the party-list system as a fallback position;
2. to discourage nuisance candidates or parties, who are not ready and whose chances are very low, from participating in the elections;
3. to avoid the reserve seat system by opening up the system;
4. to encourage the marginalized sectors to organize, work hard, and earn their seats within the system;
5. to enable sectoral representatives to rise to the same majesty as that of the elected representatives in the legislative body, rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines;
6. if no threshold is imposed, this will actually proliferate political party groups and those who have not really been given by the people sufficient basis for them to represent their constituents and, in turn, they will be able to get to

[8] Citing *Lamborn v. Bell,* 20 L.R.A. 241, 18 Colo. 346, 32.

the Parliament through the backdoor under the name of the party-list system; and

7. to ensure that only those with a more or less substantial following can be represented.[9]

However, with the burgeoning of the population, the steady increase in the party-list seat allotment as it keeps pace with the creation of additional legislative districts, and the foreseeable growth of party-list groups, the fixed 2% vote requirement is no longer viable. It does not adequately respond to the inevitable changes that come with time; and it is, in fact, inconsistent with the Constitution, because it prevents the fundamental law from ever being fully operative.

It is correct to say, and I completely agree with *Veterans Federation Party*, that Section 5 (2), Article VI of the Constitution, is not mandatory, that it merely provides a ceiling for the number of party-list seats in Congress. But when the enabling law, R.A. 7941, enacted by Congress for the precise purpose of implementing the constitutional provision, contains a condition that places the constitutional ceiling completely beyond reach, totally impossible of realization, then we must strike down the offending condition as an affront to the fundamental law. This is not simply an inquiry into the wisdom of the legislative measure; rather it involves the duty of this Court to ensure that constitutional provisions remain effective at all times. No rule of statutory construction can save a particular legislative enactment that renders a constitutional provision inoperative and ineffectual.

In light of the foregoing disquisition, what then do we use as the norm for a minimum vote requirement to entitle a political party, sectoral organization or coalition, to a party-list seat in the House of Representatives?

I submit that, until Congress shall have effected an acceptable amendment to the minimum vote requirement in R.A. 7941, we abide by the sensible standard of "proportional representation" and adopt a gradually regressive threshold vote requirement, inversely proportional to the increase in the number of party-

[9] *Id*. at 290.

list seats. Thus, at present, considering that there are 55 seats allocated for party-list groups, the formula should be:

$$\frac{100\%}{\text{(Total number of votes cast for party-list)}} = 1.818\%$$
$$\text{55 party-list seats}$$

The minimum vote requirement will gradually lessen as the number of party-list seats increases. Accordingly, if the scenario we presented above should ever come to pass, and there are 100 seats allocated for party-list groups, then the threshold vote should be 1%, based on the following computation:

$$\frac{100\%}{\text{(Total number of votes cast for party-list)}} = 1\%$$
$$\text{100 party-list seats}$$

This is the more logical and equitable formula. It would judiciously respond to the inevitable changes in the composition of the House of Representatives; it would open opportunities for the broadest people's representation in the House of Representatives; and more importantly, it would not violate the Constitution.

Time changes and laws change with it.[10] And the Constitution—

> must grow with the society it seeks to re-structure and march apace with the progress of the race, drawing from the vicissitudes of history the dynamism and vitality that will keep it, far from being a petrified rule, a pulsing, living law attuned to the heartbeat of the nation.[11]

Thus, with respect to the fixed threshold vote of 2% in Section 11 of R.A. No. 7941, I join the Court in declaring it unconstitutional, since all enactments inconsistent with the Constitution should be invalidated.[12]

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[10] *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 314-315.

[11] Isagani A. Cruz, "A Quintessential Constitution," San Beda Law Journal, April 1972.

[12] *Sabio v. Gordon*, G.R. No. 174340, October 17, 2006, 504 SCRA 704, 730-731.

CONCURRING AND DISSENTING OPINION

PUNO, *C.J.*:

History has borne witness to the struggle of the faceless masses to find their voice, even as they are relegated to the sidelines as genuine functional representation systemically evades them. It is by reason of this underlying premise that the party-list system was espoused and embedded in the Constitution, and it is within this context that I register my dissent to the entry of major political parties to the party-list system.

The Court today effectively reversed the ruling in ***Ang Bagong Bayani v. Comelec***[1] with regard to the computation of seat allotments and the participation of major political parties in the party-list system. I vote for the formula propounded by the majority as it benefits the party-list system but I regret that my interpretation of Article VI, Section 5 of the Constitution with respect to the participation of the major political parties in the election of party-list representatives is not in direct congruence with theirs, hence this dissent.

To revisit the crux of the controversy, the pertinent portion of Article VI, Section 5 of the Constitution reads:

> Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
>
> (2) The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.[2]

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[1] G.R. No. 147589, June 26, 2001, 359 SCRA 698.

[2] *Id*.

It will be remembered that the petitioners in **Ang Bagong Bayani** sought the disqualification of the major political parties on the ground that the party-list system was intended to benefit the marginalized and underrepresented, and not the mainstream political parties, the non-marginalized or overrepresented. Rising to the occasion, the Court ruled through then Associate, later Chief Justice Panganiban, that while any duly registered political party, organization or group may participate, the role of the Comelec is to ensure that only those who are marginalized and underrepresented become members of Congress through the "Filipino-style" party-list elections. Characterizing the party-list system as a social justice vehicle, the Court batted for the empowerment of the masses, thus—

> It is ironic, therefore, that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted — to give them not only genuine hope, but genuine power; to give them the opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct voice in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those marginalized and underrepresented in the past — the farm hands, the fisher folk, the urban poor, even those in the underground movement — to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.

Today, less than a decade after, there is an attempt to undo the democratic victory achieved by the marginalized in the political arena in **Ang Bagong Bayani**. In permitting the major political parties to participate in the party-list system, Mr. Justice Carpio relies on the deliberations of the Constitutional Commission. Allegedly, the said deliberations indicate that the party-list system is open to all political parties, as long as they field candidates who come from the different marginalized sectors.[3] Buttressing his view, Mr. Justice Carpio notes that the major political parties

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[3] II Record, Constitutional Commission, 25 July 1986, pp. 256-257.

also fall within the term "political parties" in the Definition of Terms in Republic Act 7941, otherwise known as the Party-List System Act.[4] Likewise, he holds that the qualifications of a party-list nominee as prescribed in Section 9 of the said law do not specify any financial status or educational requirement, hence, it is not necessary for the party-list nominee to "wallow in poverty, destitution and infirmity."[5] It is then concluded that major political parties may now participate in the party-list system.

With all due respect, I cannot join this submission. We stand on solid grounds when we interpret the Constitution to give utmost deference to the democratic sympathies, ideals and aspirations of the people. More than the deliberations in the Constitutional Commission, these are expressed in the text of the Constitution which the people ratified. Indeed, it is the intent of the sovereign people that matters in interpreting the Constitution. In ***Civil Liberties Union v. Executive Secretary***, we held:

> While it is permissible in this jurisdiction to consult the **debates and proceedings of the constitutional convention** in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had **only** when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the **individual members**, and as indicating the reason for their votes, but they give us **no light** as to the views of the large majority who did not talk, much less of the mass or our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face.[6]

Everybody agrees that the best way to interpret the Constitution is to harmonize the whole instrument, its every section and clause.[7] We should strive to make every word of the fundamental

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[4] Section 3.

[5] Main opinion, p. 33.

[6] G.R. No.83896, February 22, 1991, 194 SCRA 317, 337.

[7] *Lamborn v. Bell*, 20 L.R.A. 241, 18 Colo. 346, 32.

law operative and avoid rendering some words idle and nugatory.[8] The harmonization of Article VI, Section 5 with related constitutional provisions will better reveal the intent of the people as regards the party-list system. Thus, under Section 7 of the Transitory Provisions,[9] the President was permitted to fill by appointment the seats reserved for sectoral representation under the party-list system from a list of nominees submitted by the respective sectors. This was the result of historical precedents that saw how the elected Members of the interim Batasang Pambansa and the regular Batasang Pambansa tried to torpedo sectoral representation and delay the seating of sectoral representatives on the ground that they could not rise to the same levelled status of dignity as those elected by the people.[10] To avoid this bias against sectoral representatives, the President was given all the leeway to "break new ground and precisely plant the seeds for sectoral representation so that the sectoral representatives will take roots and be part and parcel exactly of the process of drafting the law which will stipulate and provide for the concept of sectoral representation."[11] Similarly, limiting the party-list system to the marginalized and excluding the major political parties from participating in the election of their representatives is aligned with the constitutional mandate to "reduce social, economic, and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power for the common good";[12] the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making;[13] the right of women to opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation;[14] the right of labor to participate in policy and decision-

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[8] *Id*.

[9] Article XVIII.

[10] V Record, Constitutional Commission, 1 October 1986, p. 332.

[11] *Id.* at 330.

[12] Article XIII, Section 1.

[13] Article XIII, Sec. 16.

[14] Article XIII, Sec. 3, in relation to section 14.

making processes affecting their rights and benefits in keeping with its role as a primary social economic force;[15] the right of teachers to professional advancement;[16] the rights of indigenous cultural communities to the consideration of their cultures, traditions and institutions in the formulation of national plans and policies,[17] and the indispensable role of the private sector in the national economy.[18]

There is no gainsaying the fact that the party-list parties are no match to our traditional political parties in the political arena. This is borne out in the party-list elections held in 2001 where major political parties were initially allowed to campaign and be voted for. The results confirmed the fear expressed by some commissioners in the Constitutional Commission[19] that major political parties would figure in the disproportionate distribution of votes: of the 162 parties which participated, the seven major political parties[20] made it to the top 50. These seven parties garnered an accumulated 9.54% of the total number of votes counted, yielding an average of 1.36% each, while the remaining 155 parties (including those whose qualifications were contested) only obtained 90.45% or an average of 0.58% each. Of these seven, three parties[21] or 42.8% of the total number of the major parties garnered more than 2% of the total number of votes each, a feat that would have entitled them to seat their members as party-list representatives. In contrast, only about 4% of the total number of the remaining parties, or only 8 out of the 155 parties garnered more than 2%.[22]

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[15] Article XIII, Sec. 3, in relation to Article II, Sec. 18.

[16] Article XIV, Sec. 5.

[17] Article XIV, Sec. 17.

[18] Article II, Sec. 20.

[19] *Id.*, at 562.

[20] As noted in *Bagong Bayani*: Nationalist People's Coalition, Lakas NUCD-UMDP, Laban ng Demokratikong Pilipino, Aksyon Demokratiko, Partido ng Masang Pilipino, Partido Demokratikong Pilipino Lakas ng Bayan and Liberal Party.

[21] Nationalist People's Coalition, Lakas NUCD-UMDP and Laban ng Demokratikong Pilipino.

[22] Party List Canvass Report No. 26, Commission on Elections.

In sum, the evils that faced our marginalized and underrepresented people at the time of the framing of the 1987 Constitution still haunt them today. It is through the party-list system that the Constitution sought to address this systemic dilemma. In ratifying the Constitution, our people recognized how the interests of our poor and powerless sectoral groups can be frustrated by the traditional political parties who have the machinery and chicanery to dominate our political institutions. If we allow major political parties to participate in the party-list system electoral process, we will surely suffocate the voice of the marginalized, frustrate their sovereignty and betray the democratic spirit of the Constitution. That opinion will serve as the graveyard of the party-list system.

IN VIEW WHEREOF, I dissent on the ruling allowing the entry of major political parties into the party-list system.

SECOND DIVISION

[G.R. No. 155639. April 22, 2009]

JANUARIA A. RIVERA, *petitioner, vs.* **UNITED LABORATORIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— In *Traverse Development Corporation v. DBP*, reflecting our rulings in a number of cases, we definitively stated that a "*question of law*" exists when the doubt or difference arises as to what the law is on a certain state of facts, and does not call for an examination of the *probative value of the evidence presented* by the parties-litigants. On the other hand, a "*question of fact*" exists when

the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of the correctness of the conclusion drawn the given facts, is a question of law. Simple as it may seem, determining the true nature and extent of the distinction is not always easy. In a case involving a "*question of law*" the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Once it is clear that the issue invites a review of the *probative value* of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

2. CIVIL LAW; PRESCRIPTION OF ACTIONS; THE GENERAL LAW SHALL GOVERN IN THE SILENCE OF THE SPECIAL LAW; APPLICATION IN CASE AT BAR.— It should be noted in this regard that Articles 1139 to 1155 of the Civil Code provide the general law on prescription of actions. Under Article 1139, actions prescribe by the mere lapse of time prescribed by law. That law may either be the Civil Code or special laws as specifically mandated by Article 1148. In labor cases, the special law on prescription is Article 291 of the Labor Code which provides: Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever. The Labor Code has no specific provision on when a monetary claim accrues. Thus, again the general law on prescription applies. Article 1150 of the Civil Code provides that – Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought. *The day the action may be brought* is the day a claim started as a legal possibility. For the petitioner in the present case, this date came when she learned that she was being paid on the basis of her December 31, 1988 retirement computations for the retirement that she claimed to have occurred on December 31, 1992. How prescription operates is another matter that the general law, rather than the Labor Code, governs since the Labor Code is silent on the matter. Under Article 1155 – The prescription of actions is interrupted

when they are filed with the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

3. REMEDIAL LAW; APPEALS; APPEALS TO THE SUPREME COURT; REVIEW ONLY ISSUES INVOLVING QUESTIONS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR.— While this Court is indeed not a trier of facts, the examination of facts at our level is not without precedent. In a ruling of the Court made in *Quisumbing v. Court of Appeals*, we held: *It may rightly be said that to fully ventilate the question as to whether or not private respondent was repurchasing the land not to preserve the same for himself and his but for speculation and profit, the natural cause of action to take would be to remand this case to the trial court for it to conduct further proceedings in order to enable petitioner to present evidence to sustain their aforesaid contention. A close examination of the records of this case, however, convinced us that such a time-consuming procedure may be properly dispensed with for being unnecessary to resolve the issue at hand. We encounter several facts of record, none of which is denied by the private respondent which by themselves, sufficiently support the allegation of the petitioner that the private respondent is repurchasing the land in question merely for speculative and profit purposes and not to uphold the policy of the State regarding the grant of homesteads.* Also, in *Velasco v. Court of Appeals*, the Court declared - x x x going over the extended pleadings of both parties, the Court immediately was impressed that substantial justice may not be timely achieved, if we should decide the case upon such a technical ground alone. We have carefully read all the allegations and arguments of the parties, very ably and comprehensively expounded by evidently knowledgeable and unusually competent counsel, and we feel we can better serve the interests of justice by broadening the scope of our inquiry, for as the record before Us stands, We see that there is enough basis for us to end the basic controversy between the parties here and now x x x. To the same effect is the ruling in *Ortigas and Company, Limited Partnership v. Ruiz* where we held that it will resolve a case on the merits to prevent delays even if the petition was brought to the Court only on a procedural incident. Also, the argument that we will be violating the doctrine of the hierarchy of courts

if we act on the case is misplaced. The case had gone through the labor tribunals and the CA who had all the opportunity to rule on the substantive aspect of the case, yet they failed to do so, or were sidetracked by the issue of prescription. In this already lengthy process, the parties presented their respective factual positions, all of which are now before us for ready examination. Under the circumstances, we shall not serve the ends of justice if we go back to square one and start all over again. As we already stated, the material facts on record necessary for a definitive ruling are sufficient.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; POST EMPLOYMENT; RULES IMPLEMENTING THE RETIREMENT LAW; APPLICATION IN CASE AT BAR.— Retirement in its ordinary signification is the termination of an employee's service upon reaching retirement age. Prior to the Retirement Pay Law (R.A. 7641), Article 287 of the Labor Code simply provided that - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract;… the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreement. Section 13 of the Rules to Implement the Labor Code, on the other hand, provided that – In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years. These were the governing laws at the end of 1988 when the petitioner compulsorily retired under the UNILAB retirement plan. Thus, her retirement was governed by the applicable agreement which was the UNILAB retirement plan. Under the terms of this pre-1992 plan (as quoted above), her retirement was mandatory as she had reached 30 years of service, a characterization that we do not find to be disputed by the parties. In fact, we note nowhere in her submissions before the Labor Arbiter, the NLRC, the CA and even before the Court, did Rivera categorically dispute the claim of UNILAB that she completed her 30th year of service with the company and was declared retired from the plan on this basis effective December 31, 1988. x x x **Thus, by the strict standards of law, we cannot grant Rivera's petition**. Interestingly, the

same conclusion obtains if the case were to be viewed solely from the ordinary norms of fairness. We go out of our way to say this in light of what Rivera stated in her demand letter of January 7, 1995 to UNILAB; she felt aggrieved because the retirement benefits she received were less than what other employees – with less years of service, with lower rates of pay, or with lower rank – received. Apparently, Rivera failed to realize that she cannot compare herself with these other employees because she and they were not in the same situation; these other employees retired later and under retirement plan terms that, by then and for various reasons not attributable to any company wrongdoing, had been enhanced. Both in law and under the common concept of fairness, there is inequitable treatment only if persons under the same situation or circumstances are treated differently. Rivera was not so treated by UNILAB; rather, she was given her just due under the specific rules that applied to her. **Hence, we cannot likewise recognize the validity of Rivera's claim even from the point of view of justice administered according to ordinary norms of fairness.**

5. MERCANTILE LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; APPLICATION THEREOF, SUSTAINED.— On this point, the case of *John F. McLeod v. NLRC*, G.R. No. 146667. January 23, 2007, instructively tells that: While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

APPEARANCES OF COUNSEL

Florante Arceo Bautista for petitioner.
Sycip Salazar Hernandez & Gatmaitan for private respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is the case of a retired employee who continued working after her retirement, and who now claims retirement pay differential for the subsequent work she undertook. The retiree is Januaria A. Rivera (*Rivera*) now before the Court on a petition for review on *certiorari* under Rule 45 of the Rules of Court.[1] She seeks to set aside the decision of the Court of Appeals (*CA*)[2] and its subsequent resolution denying her motion for reconsideration.[3] The assailed CA decision set aside the decision of the National Labor Relations Commission (*NLRC*) decision dismissing Rivera's appeal,[4] and remanded the case to the Labor Arbiter for hearing on the merits.

The Factual Background

Rivera commenced employment with respondent United Laboratories, Inc. (*UNILAB*) on April 7, 1958 as senior manufacturing pharmacist. She later became Director of UNILAB's Manufacturing Division.

In 1959, UNILAB adopted a comprehensive retirement plan[5] (*the plan or retirement plan*) supported by a retirement fund, consisting of Trust Fund A where it would put in its contributions for the account of the member-employee (*member*) and Trust

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[1] *Rollo*, pp. 10-33, Rule 45 of the Rules of Court.

[2] *Id.*, pp. 37-41, promulgated on December 21, 2001; penned by Associate Justice Conchita Carpio Morales (now a member of this Court), and concurred in by Associate Justice Martin Villarama and Associate Justice Sergio Pestaño.

[3] *Id.*, pp. 42-46, promulgated on October 16, 2002.

[4] Dated August 19, 1998.

[5] *Id.*, p. 148.

Fund B consisting of the contributions of the members themselves. **The parties do not dispute that under the plan, a member is compulsorily retired upon reaching the normal retirement date which is the date when the member has reached age 60 or has completed 30 years of service, whichever comes first.**

In 1988, Rivera completed 30 years of service and UNILAB retired her pursuant to the terms of the plan effective December 31, 1988. Based on her monthly salary of ₱28,000.00 at that time, and at one month's terminal basic salary for every year of service, Rivera's retirement benefits amounted to ₱860,473.12 from Trust Fund A and ₱186,858.21 from Trust Fund B, for a total of ₱1,047,331.33.[6]

Rivera's accrued retirement benefits under Trust Fund A and Trust Fund B were withdrawn from the retirement fund and deposited in Trust Fund C, a special account from which she could make withdrawals as she pleased. A manual computation prepared by the company showed that the full amount of Rivera's retirement pay was transferred to Trust Fund C.[7]

At Rivera's request, UNILAB allowed her to continue working for the company; she was even promoted to the position of Assistant Vice-President on January 1, 1989, with a basic monthly salary of ₱50,034.00, and a fixed monthly allowance of ₱8,900.00. She rendered service to the company in this capacity until the end of 1992, at which time, **Rivera retired from employment with the company (*as distinguished from retirement from the plan*), as UNILAB put it and as evidenced by a personnel action notice dated February 19, 1993.**[8]

From 1993 to 1994, Rivera served as a personal consultant under contract with the Active Research and Management Corporation (*ARMCO*) in 1993 and with Fil-Asia Business Consultants (*Fil-Asia*) in 1994. These are UNILAB's sister companies which assigned Rivera to render service involving

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[6] *Id.*, p. 158.

[7] *Id.*, p. 159.

[8] *Id.*, p. 160.

UNILAB. Submitted in evidence were Rivera's contracts with the two corporations.[9]

On December 16, 1992, the company amended its retirement plan, providing, among others, for an increase in retirement benefits from one (1) month to one-and-a-half (1.5) months of terminal basic salary for every year of service.[10] The amendment also provides that "[T]he effective date of normal or mandatory retirement from the Plan is 30 days after an employee reaches his/her 60th birthday. The effective date applies to all rank and file as well as KPs."[11]

In a **letter dated January 7, 1995** to UNILAB,[12] Rivera asked that her retirement benefits be increased in accordance with the amended retirement program based on her December 31, 1992 terminal basic salary, multiplied by her thirty four (34) years of service with the company. UNILAB did not reply to this letter and Rivera made two follow-up letters, one dated December 18, 1995[13] and the other, February 12, 1996,[14] reiterating her demand for additional retirement benefits.

UNILAB denied Rivera's request in a letter dated February 26, 1996.[15] The company explained that since the upgrade of the retirement benefit formula occurred in December 1992, the upgraded formula does not apply to her; what applied to her case is the formula that governed in 1988, the year she compulsory retired from the plan.

Rivera sought legal assistance and in a letter dated July 24, 1996,[16] lawyer Katz N. Tierra demanded a recomputation

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[9] *Id.*, Annexes "4" and "5".

[10] *Id.*, Memorandum dated June 1, 1993 issued by C.C. Ejercito of UNILAB.

[11] *Rollo*, p. 122.

[12] *Id.*, p. 138.

[13] *Id.*, p. 140.

[14] *Id.*, p. 141.

[15] *Id.*, p. 142.

[16] *Id.*, p. 144.

of Rivera's retirement pay under the plan and under the retirement law. UNILAB again rejected the demand in its letter dated August 5, 1996.[17]

On August 9, 1996, Rivera sought relief from the NLRC in an action against UNILAB for recovery of unpaid retirement pay differential. In defense, UNILAB argued that the complaint was filed out of time as it was filed only on August 9, 1996. UNILAB prayed for the dismissal of the complaint on the ground of prescription. Invoking Article 291 of the Labor Code,[18] it maintained that Rivera's cause of action accrued when the company's retirement plan was amended considering that the action was triggered by the additional benefit provided by the amendment to the retirement plan on December 16, 1992.

Rivera disagreed with UNILAB's position, arguing that the three-year period within which to file her complaint should be counted, not from December 16, 1992, but from February 26, 1996 when the company had "*categorically*" denied her letter demanding payment of the unpaid balance of her retirement benefits.

The Arbitration Rulings

Labor Arbiter Manuel R. Caday dismissed the complaint for lack of merit in an order dated November 7, 1997.[19] The Labor Arbiter found that Rivera's cause of action did not accrue only on February 26, 1996 when her third letter was answered by UNILAB; it accrued on January 15, 1993 when she received the company's check in payment of her retirement benefits after she was retired on December 31, 1992. According to the Arbiter, the company stood firm in its position that the amended retirement plan did not apply to Rivera and the company had not wavered in this stand; UNILAB's reply to Rivera's third

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[17] *Id.*, pp. 56-62.

[18] *Money claims*.— All money claims arising from employer-employee relations accruing during the effectivity of this Code, shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[19] *Rollo*, p. 47.

letter was nothing but a reiteration of its denial of Rivera's demand that she be covered by the amended retirement plan.

Arbiter Caday rejected Rivera's contention that under Article 1155 of the Civil Code, "*written extrajudicial demand*," like letters, effectively interrupted the running of the three-year prescriptive period. He pointed out that while it is true that Article 1155 of the Civil Code was mentioned in *Manuel L. Quezon University Association v. Manuel L. Quezon Educational Institution Inc.*,[20] the Court did not categorically state that it superseded Article 291 because the said demand letter amounted to nothing, the cause of action having already prescribed.

Separately from the prescription issue, the Labor Arbiter found that Rivera was not entitled to the upgraded benefits under the company's amended retirement plan because she was compulsorily retired on April 7, 1988. Thus, her retirement benefits should be computed based on her last monthly basic pay in April 1988 and not in December 1992.

Rivera appealed to the NLRC. In a decision promulgated on August 18, 1998,[21] the NLRC denied the appeal for lack of merit, thereby affirming the Labor Arbiter's order of November 7, 1997. Rivera moved for the reconsideration of the decision, but the NLRC denied the motion in a resolution promulgated on January 29, 1997.[22]

Rivera elevated the case to the CA by way of a petition for *certiorari* under Rule 65 of the Rules of Court,[23] questioning the NLRC's ruling that her claims for additional retirement benefits had prescribed.

The CA ruled in favor of Rivera. In a decision promulgated on December 21, 2001,[24] it set aside the assailed decision and resolution of the NLRC, but remanded the case to the Labor

[20] G.R. No. 82312, April 19, 1989, 172 SCRA 597.

[21] *Rollo*, pp. 47-55.

[22] *Id.*, pp. 211-212.

[23] *Id.*, pp. 63-87.

[24] *Id.*, pp. 37-41.

Arbiter for hearing on the merits. It found that Rivera's claim for retirement had not yet prescribed at the time of its filing on August 9, 1996.

The appellate court held that even assuming that Rivera's cause of action did arise on January 15, 1993, when she received her retirement pay check from the company, the running of the three-year prescriptive period was effectively interrupted by Rivera's first letter to UNILAB on January 7, 1995, when she demanded additional retirement benefits under the 1992 amended retirement plan.

In upholding Rivera's claim, the CA relied on *De Guzman v. Court of Appeals*[25] where the Court ruled that based on Article 1155 of the Civil Code, the three-year prescriptive period for money claims in labor cases can be interrupted by a claim filed with the proper judicial or quasi-judicial forum, by an extrajudicial demand on the employer, or by the employer's acknowledgment of its debt or obligation. *De Guzman* cited the *Manuel L. Quezon University* ruling.[26]

To the CA, the running of the prescriptive period (that began on January 15, 1993) stopped when Rivera made the extrajudicial demand on UNILAB through her January 7, 1995 letter,[27] leaving her with one year and eight days more of the three-year period, or up to about March 5, 1997, within which to file her claim. Thus, when Rivera brought her case to the NLRC on August 9, 1996, it was well within the prescriptive period.

The CA however avoided ruling on the merits of the case by reason of what it recognized as "*an existing controversy as to the crucial fact of when precisely petitioner retired from respondent company for purposes of determining whether or not she is covered by respondent's amended retirement plan so as to fix the amount of retirement benefits*."

UNILAB moved for a reconsideration of the CA decision on grounds that the CA erred: in entertaining the petition which

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[25] G.R. No. 132257, October 12, 1998, 297 SCRA 743.

[26] *Supra* note 18, p. 6.

[27] *Supra* note 10, p. 4.

was filed beyond the 60-day period allowed by the Rules of Court; and, in ruling that Rivera's cause of action had not prescribed. On the other hand, Rivera filed a partial motion for reconsideration of the decision asking the CA to resolve the remaining issues raised in the petition.

On October 16, 2002, the CA promulgated its resolution denying both motions for lack of merit.[28] Hence, the present petition.

The Petition

The petition asks the Court to exercise its power of review over the questioned decision and resolution of the CA on the following grounds:

1. They are not in accord with applicable decisions of the Court;
2. They contravene the provisions of the Constitution on the promotion of "*social justice*" and "*protection to labor*"; and
3. The CA and NLRC records of the case are sufficient to resolve the entire controversy.

The petition then proceeds to show that Rivera's claim for unpaid retirement benefits differential should have been disposed of by the CA on the basis of the records before it, considering that the appellate court made specific factual findings culled from the parties' respective submissions in resolving the prescription issue.

Rivera contends that: the CA's factual findings based on UNILAB's admissions show that she continued in the employ and service of the company from April 7, 1958 until December 31, 1994; her so-called first and second "*retirements*" in 1988 and 1992, as well as "*consultancy*" up to the end of 1994, "*were a brilliant but a devious scheme*" by UNILAB to deprive her of benefits due her; she lost millions of pesos in benefits when she was made to retire a second time on December 31, 1992, and to immediately assume thereafter a

[28] *Rollo,* pp. 42-46.

"*consultancy*" that lasted until December 31, 1994, but was given retirement benefits based only on her 1988 pay scale and under the old retirement plan.

Rivera further contends that even without UNILAB's admissions, the factual findings of the CA are borne out by the records which unequivocally established that there was no break in her employment with the company. Even prior to Rivera's so-called retirement on December 31, 1992, her services were already subject of a consultancy contract dated October 15, 1992 with ARMCO,[29] which UNILAB used to maintain her services under a purported "*contract of hire*"; Rivera's compensation package exposed ARMCO's consultancy contract with her as a "*monumental sham*."

Rivera submits that a cursory examination of the corporate records of UNILAB and ARMCO on file with the Securities and Exchange Commission (*SEC*)[30] discloses that ARMCO and UNILAB have six (6) common directors, a common chairman of the board, a common corporate secretary, a common treasurer and two (2) other common officers. UNILAB continued to use Rivera's services for the period January to December 1994 through another conduit, FIL-ASIA, pursuant to a letter-agreement dated January 3, 1994.[31] Comparing FIL-ASIA's corporate records with those of ARMCO and UNILAB, Rivera points out that the three (3) corporations have a common president, a common corporate secretary, and a common assistant secretary. Moreover, FIL-ASIA has three (3) common directors with UNILAB and also three (3) common directors with ARMCO, with which it has likewise two (2) common officers; both FIL-ASIA and ARMCO have the same business address and telephone numbers.[32]

Rivera posits that in the light of these incontrovertible facts, UNILAB, ARMCO and FIL-ASIA are one and the same

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[29] *Supra* note 8, p. 3.

[30] *Rollo*, pp. 129-133.

[31] *Id.*, pp. 134-136.

[32] *Id.*, pp. 128-134.

corporation. She opines that the "*veil of corporate fiction may be pierced when the same is made as a shield to confuse the legitimate issues.*" She maintains that when her "*agreement*" with FIL-ASIA expired on December 31, 1994, she had completed thirty six (36) years, eight (8) months and twenty four (24) days of continuous service with UNILAB.

Rivera considers the check for ₱1,175,666.22[33] that she received on January 15, 1993 as retirement benefits falls short of the correct amount due her; the amount paid was computed on the basis of her 1988 salary scale, not on her last salary as of December 31, 1994. She adds that there were modifications and changes to the retirement plan prior to January 15, 1993, but were formally made known only in a memorandum dated June 1, 1993;[34] thus, the January 15, 1993 check did not include the modifications and changes in the benefits mentioned in the memorandum.

Rivera submits that the provisions of the retirement plan on compulsory retirement age and maximum years of service were deemed waived, when UNILAB continued to employ the services of Rivera for six (6) more years after 1988, or until December 31, 1994. Under these facts, Rivera contends, the "*monthly basic pay*" that should serve as basis in computing her retirement benefits should be the prevailing pay in December 1994, not that of April 1988, as waiver of the provisions of the retirement plan had intervened.

Rivera explains that in December 1994, her aggregate monthly compensation was already ₱78,460.60 and her aggregate annual compensation package was equivalent to fourteen (14) months.[35] Thus, her average monthly compensation in 1994 was ninety-one thousand five hundred thirty-six pesos and sixty-seven centavos (₱91,536.67), arrived at by multiplying the aggregate monthly compensation of ₱78,460.00 by 14 months and dividing the product by 12. By multiplying her aggregate monthly

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[33] *Id.*, p. 123.

[34] *Supra* note 10, p. 3.

[35] *Rollo*, p. 29; petition, p. 20, par. 3.

compensation by 1.5 (the salary benefit per year of service) and by her 36.67 years of service, she arrived at a total of Five Million Thirty Four Thousand Nine Hundred Seventy-Four Pesos and thirty centavos (₱5,034,974.30), from which is deducted ₱1,175,666.22 [*the retirement benefits paid earlier by UNILAB*]. This computation leaves a balance or differential of Three Million Eight Hundred Fifty-Nine Thousand Three Hundred Eight Pesos and eight centavos (₱3,859,308.08) as retirement benefits still due her.

In the alternative, Rivera contends that in the absence of any company retirement plan applicable to her after April 7, 1988, the "*New Retirement Law*" (R.A. No. 7641) that took effect on January 7, 1993 should apply to her, since she was actually separated from the service only on December 31, 1994. She claims she is still entitled to additional retirement benefits at least under R.A. No. 7641 for her services to UNILAB from April 8, 1988 to December 31, 1994, or a period of six (6) years and eight (8) months.

Rivera prays that judgment be rendered: (1) ordering UNILAB to pay her retirement benefits differential of ₱3,859,308.08 with 12% interest per annum from the time of filing of the complaint on August 9, 1996; (2) ordering UNILAB to pay her 10% attorney's fees; and (3) in the alternative, ordering UNILAB to pay her retirement benefits under the law on retirement, R.A. No. 7641, for a period of six (6) years and eight (8) months based on her last average aggregate monthly compensation of ₱91,536.67.

The Case for UNILAB

In a memorandum dated June 18, 2003,[36] UNILAB defines the issues raised by the petition to be: (1) whether the CA committed grave or reversible error, or decided questions not in accord with law or the applicable decision of the Court, in remanding the case to the Labor Arbiter for hearing on the merits and reception of evidence; and (2) whether the instant petition should be dismissed because it raises questions of fact,

[36] *Rollo*, pp. 361-373.

and not solely questions of law as required under Rule 45 of the Rules of Court.

UNILAB contends that the CA properly remanded the case to the Labor Arbiter; a decision from this Court is premature as a decision on the merits now from this Court would disregard and violate the doctrine of judicial hierarchy. It argues that the present case involves a dispute over a benefit arising from employment that under Article 217 of the Labor Code, falls within the original and exclusive jurisdiction of Labor Arbiters to hear and decide to the exclusion of all other courts, quasi-judicial bodies or tribunals; Labor Arbiters, by reason of their training, experience and background are in a better position to resolve labor controversies, citing *Alejandro v. CA*[37] in support of its position.

UNILAB vehemently opposes Rivera's plea that the Court decide the present case on the merits, arguing that her cited ruling – *First Asian Transport and Shipping Agency v. Ople*[38] – does not apply. It argues that in *First Asian*, the parties were heard and evidence were presented before the Director of the National Seamen Board made his factual findings; only then was the petition filed before this Court who, at that point, had findings from below as basis for its ruling on the merits.

UNILAB further argues that the records of the case are not complete for a determination of the factual issues, for it did not have the opportunity to present its evidence on Rivera's factual allegations. It submits that deciding the case at this point would result in a denial of due process to the company.

On the second issue, UNILAB contends that Rivera comes to the Court through a petition for *certiorari* under Rule 45 of the Rules of Court that only allows questions of law. It maintains that an examination of the petition would show that Rivera did not distinctly raise questions of law but, in fact, raised questions of fact. The petition, UNILAB posits, "*is beyond the Office of the Court*" as it is not a trier of facts.

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[37] G.R. Nos. 84572-73, November 27, 1990, 191 SCRA 700.

[38] G. R. No. 65545, July 9, 1986, 142 SCRA 542.

While it admits that the Court has laid down several exceptions to the rule that only questions of law shall be raised in an appeal by *certiorari* under Rule 45,[39] the exceptions, however, presuppose that findings of fact have been made by the CA, the trial courts or the administrative agencies. UNILAB points out that in this case, the Labor Arbiter, the NLRC and the CA have not made any findings of fact on the matters alleged by Rivera. UNILAB prays that the petition be denied for lack of merit and the decision dated January 29, 1999, be affirmed.

On the prescription question, UNILAB disputes the CA findings that the running of the prescriptive period on Rivera's claim for retirement benefits differential was interrupted by her extra-judicial demand.[40] It insists that Rivera's claim had already prescribed, having been paid on January 15, 1993 the exact amount of her retirement benefits as evidenced by a voucher for ₱1,175,666.22.[41] It submits that the benefit is not paid unless the employee is excluded from the retirement plan; this exclusion from the coverage of the retirement plan is something that Rivera was very much aware of when she voluntarily received the amount representing her retirement benefits on January 15, 1993. It concludes that if Rivera had any cause of action, it accrued on January 15, 1993, not on January 7, 1995 when she wrote the company demanding for additional retirement benefits.

The Submitted Issues

The submissions of the parties present the following issues for resolution.

1. Whether the petition is in compliance with the requirement of Section 1, Rule 45 of the Rules of Court, that it shall raise only questions of law;
2. Whether the CA erred in ruling that petitioner's claim for additional retirement benefits had not prescribed; and
3. Whether the CA erred in remanding the case to the Labor Arbiter for hearing on the merits.

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[39] *Aclon v. CA*, G.R. No. 106880, August 20, 2002, 387 SCRA 415.

[40] See: Comment dated February 20, 2003; *rollo*, pp. 310-328.

[41] *Supra* note 32, p. 10.

The Court's Ruling

We deny the petition for lack of merit.

The Threshold Issue.

The threshold issue of whether the petition raises only questions of law appropriate for a petition for review on *certiorari* is not a novel question for the Court. In *Traverse Development Corporation v. DBP*,[42] reflecting our rulings in a number of cases, we definitively stated that a "*question of law*" exists when the doubt or difference arises as to what the law is on a certain state of facts, and does not call for an examination of the *probative value of the evidence presented* by the parties-litigants. On the other hand, a "*question of fact*" exists when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of the correctness of the conclusion drawn the given facts, is a question of law.

Simple as it may seem, determining the true nature and extent of the distinction is not always easy. In a case involving a "*question of law*" the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Once it is clear that the issue invites a review of the *probative value* of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

The petition asks for a review of the CA's assailed ruling remanding the case to the Labor Arbiter for hearing on the merits. This necessarily requires a determination of whether the parties' submissions sufficiently provide a basis for the appellate court to decide the case on the merits. In order to resolve this issue, as we held in *Cucueco v. Court of Appeals*,[43] we only need to look into the pleadings and the parties' submissions

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[42] G.R. No. 150888, September 24, 2004, 439 SCRA 83.

[43] G.R. No. 139278, October 25, 2004, 441 SCRA 290.

without necessarily going into the truth or falsity of the allegations and submissions made.

Again in *Cucueco*, we stated that the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the question; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, question for resolution is one of law; otherwise, the issue involves a question of fact.

In the present case, we find that the issue raised by the petition — *whether the CA erred in remanding the case to the Labor Arbiter for hearing on the merits* — can be resolved by the Court without having to review or evaluate the evidence presented. We do not need to evaluate the evidence as they are largely undisputed as will be shown below. We thus conclude that the petition is not procedurally nor substantively defective under the terms of Rule 45 of the Rules of Court. If we rule on issues of fact at all, our ruling is by way of exception as discussed below.

The Prescription Issue.

We agree with the CA's conclusion that Rivera's cause of action had not prescribed when she filed her claim with the Labor Arbiter on August 9, 1996. As UNILAB contended, Rivera's claim for retirement pay differential only accrued on January 15, 1993 when she received her retirement pay check. It could not have accrued on December 31, 1988 as what was clearly due her then was her retirement pay up to that date, a matter that is not disputed. On the other hand, the first opportunity for her to claim her **retirement pay differential** *corresponding to her claimed continuous work up to December 31, 1992* came only on January 15, 1993 when she received her final pay that did not include her service after December 31, 1988. However, the running of the prescriptive period was effectively interrupted by her first letter to the respondent on January 7, 1995 when she demanded additional retirement benefits under the 1992 amended retirement plan.[44]

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[44] *Supra* note 10, p. 3.

It should be noted in this regard that Articles 1139 to 1155 of the Civil Code provide the general law on prescription of actions. Under Article 1139, actions prescribe by the mere lapse of time prescribed by law. That law may either be the Civil Code or special laws as specifically mandated by Article 1148. In labor cases, the special law on prescription is Article 291 of the Labor Code which provides:

> Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

The Labor Code has no specific provision on when a monetary claim accrues. Thus, again the general law on prescription applies. Article 1150 of the Civil Code provides that –

> Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

The day the action may be brought is the day a claim started as a legal possibility.[45] For the petitioner in the present case, this date came when she learned that she was being paid on the basis of her December 31, 1988 retirement computations for the retirement that she claimed to have occurred on December 31, 1992.

How prescription operates is another matter that the general law, rather than the Labor Code, governs since the Labor Code is silent on the matter. Under Article 1155 –

> The prescription of actions is interrupted when they are filed with the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

In the present case, the earliest incident covered by Article 1155 is the extrajudicial demand which came on January 7, 1995. As the CA correctly computed, the period for

[45] Paras, *CIVIL CODE OF THE PHILIPPINES*, 14th Ed., Vol. IV, p. 60.

prescription started to run on January 15, 1993, and was interrupted on January 7, 1995. UNILAB only answered the petitioner's January 7, 1995 letter on February 26, 1996, with a categorical denial of the petitioner's demand; the running of the prescription period re-started on the date of this denial, but again stopped again on August 9, 1996, when the complaint before the NLRC was filed. Adding all the running periods yields a total of less than three (3) years; hence, the petitioner seasonably filed her monetary claim when she filed her complaint before the NLRC.

In ruling on the prescription issue, the CA cited *De Guzman v. Court of Appeals*[46] where we ruled that based on Article 1155, the three-year prescriptive period can be interrupted by a claim filed at the proper judicial or quasi-judicial forum, an extra-judicial demand on the employer or the employer's acknowledgment of its debt or obligation. *De Guzman*, in turn, cited the case of *Manuel L. Quezon University Association v. Manuel L. Quezon Educational Institution (MLQU)*[47] which UNILAB argues to be a mere *obiter dictum.* Whether or not the MLQU decision controls is a non-issue as the above discussion of the applicable laws shows and as confirmed by the CA in *De Guzman:*[48]

> Thus, contrary to respondent's contention that such a pronouncement in the *MLQU* case was merely an *obiter dictum*, this judicial declaration that the prescriptive period for labor-related money claims can be interrupted by an extra-judicial demand on the employer is indeed a controlling principle as confirmed in the aforesaid *De Guzman* case.
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> Therefore, when petitioner made that extra-judicial demand upon respondent via her January 7, 1995 letter. The running of the filing period was stopped until February 26, 1996 when answered petitioner's demand such that she was left with one year and eight days more of the three-year period of up to about March 5, 1997 within which to file her claim.

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[46] G.R. No. 132257, October 12, 1998; 297 SCRA 743.

[47] *Supra* note 18, p. 6.

[48] *Rollo*, p. 40; Decision in CA- G.R. SP No. 52215.

When petitioner then brought her case to the NLRC on August 9, 1996 it was well within the prescriptive period.

To Remand or not to Remand?

In the assailed ruling, the appellate court withheld action on the substantive aspect of the case because, "*there is an existing controversy as to the crucial fact of when precisely petitioner retired from respondent company for purposes of determining whether or not she is covered by respondent's amended retirement plan so as to fix the amount of her retirement benefits.*"[49]

Pleading old age, Rivera fervently asks the Court for a decision on the merits of the case. She submits that "*the appellate court and the NLRC records of the case are sufficient to resolve the entire controversy.*"[50] She adds that the appellate court, in resolving the issue of whether Rivera's claim for unpaid differential in retirement benefits has prescribed, made specific factual findings culled from the parties' respective submissions.

UNILAB, on the other hand, sees nothing improper in the remand of the case to the Labor Arbiter. It contends that deciding the case now would disregard the doctrine of judicial hierarchy,[51] invoking Article 217 of the Labor Code of the Philippines[52] which grants labor arbiters "*original and exclusive jurisdiction to hear and decide x x x all other claims arising from employer-employee relations x x x.*"

Further, UNILAB submits that the records of the case are not complete for a determination of the factual issues because the company had no opportunity to respond and present its evidence on Rivera's factual allegations; deciding the case at this stage would result in a denial of the company's right to due process.

We note that this case is now almost thirteen (13) years old as Rivera's complaint was filed on August 9, 1996. Given this

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[49] *Id.*, p. 41; CA Decision in CA G.R. SP No. 52215.

[50] *Id.*, p. 42; Petition, p. 13, paragraph c.

[51] *Id.*, p. 363; Respondent UNILAB's Memorandum, p. 3 (Arguments).

[52] Jurisdiction of Labor Arbiters and the Commission.

stark reality and the fact that Rivera is around 78 years old at this time (she was 72 years old when the petition was filed in December 2002),[53] we can understand why she entreats the Court not to send the case back to the Labor Arbiter. In fact, we find her reason a compelling one, provided that there are enough undisputed facts that we can consider in arriving at a decision on the merits.

Our examination of the records of the case tells us that the parties have freely made factual allegations in the course of the dispute without any major dispute on any material factual issue. Thus, contrary to the CA's ruling, we hold that we are in the position to completely rule on the case. If the full facts are not before us as UNILAB contends, whatever gaps there are either not material to a ruling on the merits or can be deduced from the undisputed facts, as the discussions below will show.

While this Court is indeed not a trier of facts, the examination of facts at our level is not without precedent. In a ruling of the Court made in *Quisumbing v. Court of Appeals*,[54] we held:

> *It may rightly be said that to fully ventilate the question as to whether or not private respondent was repurchasing the land not to preserve the same for himself and his but for speculation and profit, the natural cause of action to take would be to remand this case to the trial court for it to conduct further proceedings in order to enable petitioner to present evidence to sustain their aforesaid contention. A close examination of the records of this case, however, convinced us that such a time-consuming procedure may be properly dispensed with for being unnecessary to resolve the issue at hand. We encounter several facts of record, none of which is denied by the private respondent which by themselves, sufficiently support the allegation of the petitioner that the private respondent is repurchasing the land in question merely for speculative and profit purposes and not to uphold the policy of the State regarding the grant of homesteads.*

Also, in *Velasco v. Court of Appeals*,[55] the Court declared –

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[53] *Rollo*, p. 11; Petition, p. 2, last paragraph.

[54] G.R. No. 60364, June 23, 1983, 122 SCRA 703.

[55] G.R. No. L-47544, January 28, 980, 95 SCRA 616.

x x x going over the extended pleadings of both parties, the Court immediately was impressed that substantial justice may not be timely achieved, if we should decide the case upon such a technical ground alone. We have carefully read all the allegations and arguments of the parties, very ably and comprehensively expounded by evidently knowledgeable and unusually competent counsel, and we feel we can better serve the interests of justice by broadening the scope of our inquiry, for as the record before Us stands, We see that there is enough basis for us to end the basic controversy between the parties here and now x x x.

To the same effect is the ruling in *Ortigas and Company, Limited Partnership v. Ruiz*[56] where we held that it will resolve a case on the merits to prevent delays even if the petition was brought to the Court only on a procedural incident.

Also, the argument that we will be violating the doctrine of the hierarchy of courts if we act on the case is misplaced. The case had gone through the labor tribunals and the CA who had all the opportunity to rule on the substantive aspect of the case, yet they failed to do so, or were sidetracked by the issue of prescription. In this already lengthy process, the parties presented their respective factual positions, all of which are now before us for ready examination. Under the circumstances, we shall not serve the ends of justice if we go back to square one and start all over again. As we already stated, the material facts on record necessary for a definitive ruling are sufficient. For clarity and convenience, we enumerate these facts hereunder.

1. Rivera completed 30 years of service with the company in 1988. The company compulsorily retired her on December 31, 1988, under the company's pre-1992 retirement plan whose Section 1, Article IV provided that:

Any member (manager or non-manager) shall be retired on December 31 of the year during which he attained age 60 or has rendered 30 years of service, whichever comes first and shall be entitled to the full normal retirement benefits as provided for in the succeeding Article V of the retirement plan document x x x .

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[56] G.R. No. L-33952, March 9, 1987, 148 SCRA 326.

The plan is supported by a retirement fund with the following components:

(a) Trust Fund A which consists of contributions made exclusively by the company for the account of each member based on actuarial estimates, and

(b) Trust Fund B which consists of contributions from the members themselves.

When Rivera retired, her accrued retirement benefits under Trust Fund A and Trust Fund B were withdrawn from the retirement Fund and deposited in Trust Fund C, a special investment account from which she could make withdrawals as she pleased. Rivera made withdrawals from Trust Fund C, specifically ₱50,000.00 and ₱40,000.00 in May and October 1991, respectively,[57] and ₱200,000.00 in June 1992.[58]

2. Rivera continued to work for UNILAB until the end of 1992 and was made Assistant Vice-President in January 1989. Effective December 31, 1992, UNILAB declared her retired from employment and gave her the balance of what remained at Trust Fund C with accrued interests.

3. In December 1992, the retirement plan was amended which provided the following terms:

1. The retirement benefit has been increased from 1 month to 1.5 months of Terminal Basic Salary per year of service.
2. The effective date of normal or mandatory retirement from the Plan is 30 days after an employee reaches his/her 60th birthday. This effective date applies to all rank and file as well as KPs'.

The Plan provides for full vesting of benefits to all employees who leave the company after reaching the age of 55, regardless of the number of service years.

4. As of December 31, 1992, Rivera's retirement benefits in Trust Fund C amounted to ₱1,175,666.22 including interests

[57] *Rollo*, p. 169.

[58] *Id.*, p. 170.

net of Rivera's withdrawals of ₱650,000.00. On January 15, 1993, Rivera received her retirement pay check in the amount of ₱1,175,666.22.

5. From 1993 to 1994, Rivera continued to work as a personal consultant at ARMCO in 1993 and at FIL-ASIA in 1994. These companies have interlocking directorates and common facilities with UNILAB. The work she was assigned still pertained to UNILAB.

Under these facts, we deem it undisputed that Rivera did retire from the company on December 31, 1988 after thirty (30) of service pursuant to the terms of the company's retirement plan. This was a mandatory retirement and she had no claim relating to the completeness of the retirement pay she received as of that date.

That Rivera continued working with UNILAB is another undisputed matter. What is uncertain is whether this was at her request as UNILAB alleges, but the source of initiative that gave rise to this renewed employment does not materially affect our consideration. What we find material is the undisputed fact that Rivera had no objection to her renewed employment after her December 31, 1988 retirement. Of utmost materiality, too, is a clear understanding of what her December 31, 1988 retirement signified — a conclusion of law drawn from the given facts.

Retirement in its ordinary signification is the termination of an employee's service upon reaching retirement age.[59] Prior to the Retirement Pay Law (R.A. 7641),[60] Article 287 of the Labor Code simply provided that —

> Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract;… the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreement.

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[59] See: *Black's Law Dictionary*, 6th Ed., at p. 1316.

[60] Passed by Congress on October 29, 1992 and approved by President Fidel V. Ramos on December 9, 1992.

Section 13 of the Rules to Implement the Labor Code, on the other hand, provided that –

> In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

These were the governing laws at the end of 1988 when the petitioner compulsorily retired under the UNILAB retirement plan. Thus, her retirement was governed by the applicable agreement which was the UNILAB retirement plan. Under the terms of this pre-1992 plan (as quoted above), her retirement was mandatory as she had reached 30 years of service,[61] a characterization that we do not find to be disputed by the parties. In fact, we note nowhere in her submissions before the Labor Arbiter, the NLRC, the CA and even before the Court, did Rivera categorically dispute the claim of UNILAB that she completed her 30th year of service with the company and was declared retired from the plan on this basis effective December 31, 1988.

"Retirement" as a fact carries with it certain legal effects, one of which is the retired employee's termination of the services with the company as of the retirement date, in this case December 31, 1988.[62] With this retirement, her coverage by the UNILAB retirement plan ceased based on the express terms of the plan. As a consequence, Rivera's retirement pay was computed; her accrued retirement benefits under Trust Fund A and Trust Fund B of the plan were withdrawn, and deposited in Trust Fund C from which she could make withdrawals. In fact, Rivera did make withdrawals from Trust Fund C – ₱50,000.00 in May and ₱400,000.00 in October 1991[63] and ₱200,000.00 in June 1992.[64] Thus, there is no question that Rivera accepted her retirement and its benefits in 1988.

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[61] As indicated by the word "shall" when the plan provided that "Any member (manager or non-manager) ***shall*** be retired on December 31, of the year. . ."

[62] *UST Faculty Union v. NLRC*, G.R. No. 89885, August 6, 1990.

[63] *Supra* note 56, p. 21.

[64] *Supra* note 57, p. 21.

A twist in Rivera's case is that she continued working beyond the compulsory separation from service that resulted from her retirement. Whether she could or could not resume working with the company is, as a rule, a consensual matter for the parties to agree upon, limited only by company policies and the applicable terms of the retirement plan. To be sure, there is no limitation by law that barred her from continuing her work with UNILAB; even the above-quoted Implementing Rules, in setting the retirement age at 60, deferred to the parties' agreement. Her employment terms under this renewed employment are based on what she and the company agreed upon. Whether these terms included renewed coverage in the retirement plan is an evidentiary gap that could have been conclusively shown by evidence of deductions of contributions to the plan after 1988. Two indicators, however, tell us that no such coverage took place. The first is that the terms of the retirement plan, before and after its 1992 amendment, continued to exclude those who have rendered 30 years of service or have reached 60 years of age. Therefore, the plan could not have covered her. The second is the absence of evidence of, or of any demand for, any reimbursement of what Rivera would have paid as contributions to the plan had her coverage and deductions continued after 1988. Thus, we conclude that her renewed service did not have the benefit of any retirement plan coverage.

Could she have availed of retirement benefits under the Retirement Pay Law that was signed by President Ramos on December 9, 1992 and became effective on December 31 of that year? Unfortunately for her, the answer is still in the negative as she did not qualify under the terms of that law when she was retired effective December 31, 1992. At that point, she was not covered by any applicable retirement plan, as heretofore discussed. In the absence of a plan, the Retirement Pay Law requires that an employee must have served for at least five (5) years to be entitled to coverage.[65] As of December 31, 1992, her service without any retirement plan coverage was only four (4) years, *i.e.* from January 1, 1989 to December 31, 1992.

In considering her renewed employment period, we have not included the years 1993-1994 for three reasons.

[65] Article 287, as amended by R.A. 7641, par. 3.

First, based on Rivera's extra-judicial demand for the balance of her retirement pay, especially the first two letters,[66] she counted thirty-four (34) years of service with UNILAB starting April 7, 1958 up to December 31, 1992, thereby excluding the years 1993 to 1994 from her service record. The evidence on record shows that Rivera herself conceded these last two years as periods when she worked as a consultant.[67] Given this concession and in the absence of evidence showing that her principals controlled her as to the means, manner and the results of her work, we cannot conclude that an employment relationship existed.

Second, that indeed there was no employer-employee relationship in her service with ARMCO in 1993 and with FIL-ASIA Business Consultants, Inc. in 1994 is supported, not only by the records we referred to in the above reason, but by the consultancy contracts Rivera herself marked as Exhibits "J" and "P" in her appeal to the NLRC.

Third, we cannot accept the Rivera's theory that her employment service with UNILAB extended to 1994 because her last two years with ARMCO and FIL-ASIA were in fact services rendered to UNILAB as consultant. To achieve this result, Rivera asks us to pierce the veil of the separate corporate identities of UNILAB and its affiliate corporations. On this point, the case of *John F. McLeod v. NLRC*, G.R. No. 146667. January 23, 2007, instructively tells that:

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[66] *Rollo*, pp. 172-173, letter dated January 7, 1995 and p. 174, letter dated December 18, 1995.

[67] See: (1) her letter of January 7, 1995 to UNILAB stating that "I served the company as a regular employee for 34 years and as a full-time consultant for additional two years, from 1993-1994 (*rollo*, pp. 172-173; Annex "11" of Annex "C" to the Petition); (2) her "*conforme*" to the letter to her by the Vice-President of ARMCO dated June 2, 1993, (sic) and, another "*conforme*" to the letter to her dated January 3, 1994 by Fil-Asia, both letters referring to her consultancy services to UNILAB; (3) her follow-up letter dated December 18, 1995[67] to Dr. Delfin Samson, Jr., UNILAB's President and CEO, where she mentioned "*34 years of service with UNILAB with utmost dedication and loyalty.*" "I became a consultant only the following year of 1993 x x x" and, the letter dated July 24, 1996 of lawyer Katz N. Tierra, whose services Rivera engaged at that time referring to "*all the 34 years that she was your employee*."

While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.

As in this cited case, we see no basis in the present case to conclude that UNILAB committed any fraud or illegality in employing a retired employee whose knowledge, experience and expertise the company recognized, as an employee or as a consultant. We note that Rivera had already been an Assistant Vice President with UNILAB – an "old timer" in a senior position based on the responsibilities she carried – when she entered into the consultancy contracts. What UNILAB did, in itself, is not an illegality; on the contrary, it is a recognized practice in this country, a fact we take judicial notice of, for companies to continue to avail of the expertise and experience of their retired employees by retaining them either as employees or as consultants. Nor can Rivera claim she had been shortchanged, or in any manner prejudiced by her consultancy services and her relationship with her principals, or placed in a disadvantaged position that would merit special consideration from this Court. From the totality of the evidence presented, she appears to have openly embraced the consultancy services she was assigned, knowing fully well the conditions under which she was serving, and receiving benefits that cannot be described as negligible. Under these circumstances, we find it too late in the day for her to complain that she was given a run-around as ARMCO and FIL-ASIA were simply conduits of UNILAB, and we see no need to engage in piercing the veil of these corporate entities that she advocates.[68]

[68] *Id.*, pp. 27-28; Petition, last paragraph.

Thus, by the strict standards of law, we cannot grant Rivera's petition. Interestingly, the same conclusion obtains if the case were to be viewed solely from the ordinary norms of fairness. We go out of our way to say this in light of what Rivera stated in her demand letter of January 7, 1995 to UNILAB; she felt aggrieved because the retirement benefits she received were less than what other employees – with less years of service, with lower rates of pay, or with lower rank – received.[69] Apparently, Rivera failed to realize that she cannot compare herself with these other employees because she and they were not in the same situation; these other employees retired later and under retirement plan terms that, by then and for various reasons not attributable to any company wrongdoing, had been enhanced. Both in law and under the common concept of fairness, there is inequitable treatment only if persons under the same situation or circumstances are treated differently. Rivera was not so treated by UNILAB; rather, she was given her just due under the specific rules that applied to her. **Hence, we cannot likewise recognize the validity of Rivera's claim even from the point of view of justice administered according to ordinary norms of fairness.**

WHEREFORE, premises considered, we hereby *DENY* the petition and *DISMISS* the claim of Januaria A. Rivera for unpaid retirement pay differential for lack of merit. Costs against the petitioner.

SO ORDERED.

Tinga, Velasco, Jr., Nachura,*** and *Leonardo-de Castro,*** JJ.,* concur.

Carpio Morales, J., took no part, *ponente* of the assailed Decision.

Quisumbing, J.(Chairperson), on official leave.

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[69] See: January 7, 1995 letter of Rivera to UNILAB.

[*] Designated Acting Chairperson for this case only.

[**] Justice Antonio Eduardo B. Nachura, designated additional Member of the Second Division for this case only.

[***] Justice Teresita J. Leonardo-De Castro designated additional Member of the Second Division per Special Order No. 619 dated April 14, 2009.

EN BANC

[G.R. No. 173588. April 22, 2009]

ARIEL M. LOS BAÑOS, on behalf of P/SUPT. VICTOR AREVALO, SPO2 MARCIAL OLYMPIA, SPO1 ROCKY MERCENE and PO1 RAUL ADLAWAN, and in his personal capacity, *petitioner, vs.* **JOEL R. PEDRO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; CONSTRUED; GROUNDS FOR QUASHAL OF COMPLAINT.— A motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint or the criminal information filed against him for insufficiency on its face in point of law, or for defect apparent on the face of the Information. The motion, as a rule, hypothetically admits the truth of the facts spelled out in the complaint or information. The rules governing a motion to quash are found under Rule 117 of the Revised Rules of Court. Section 3 of this Rule enumerates the grounds for the quashal of a complaint or information, as follows: (a) That the facts charged do not constitute an offense; (b) That the court trying the case has no jurisdiction over the offense charged; (c) That the court trying the case has no jurisdiction over the person of the accused; (d) That the officer who filed the information had no authority to do so; (e) That it does not conform substantially to the prescribed form; (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law; (g) That the criminal action or liability has been extinguished; (h) That it contains averments which, if true, would constitute a legal excuse or justification; and (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

2. ID.; ID.; PROVISIONAL DISMISSAL; REQUIREMENTS.— On the other hand, Section 8, Rule 117 that is at the center of the dispute states that: SEC.8. *Provisional dismissal.* — A case shall not be provisionally dismissed except with the express

consent of the accused and with notice to the offended party. The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived. A case is provisionally dismissed if the following requirements concur: 1) the prosecution with the express conformity of the accused, or the accused, moves for a provisional dismissal (*sin perjuicio*) of his case; or both the prosecution and the accused move for its provisional dismissal; 2) the offended party is notified of the motion for a provisional dismissal of the case; 3) the court issues an order granting the motion and dismissing the case provisionally; and 4) the public prosecutor is served with a copy of the order of provisional dismissal of the case. In *People v. Lacson*, we ruled that there are *sine qua non* requirements in the application of the time-bar rule stated in the second paragraph of Section 8 of Rule 117. We also ruled that the time-bar under the foregoing provision is a special procedural limitation qualifying the right of the State to prosecute, making the time-bar an essence of the given right or as an inherent part thereof, so that the lapse of the time-bar operates to extinguish the right of the State to prosecute the accused.

3. ID.; ID.; ID.; DISTINGUISHED FROM DISMISSAL BASED ON MOTION TO QUASH.— An examination of the whole Rule tells us that a dismissal based on a motion to quash and a provisional dismissal are far different from one another as concepts, in their features, and legal consequences. While the provision on provisional dismissal is found within Rule 117 (entitled Motion to Quash), it does not follow that a motion to quash results in a provisional dismissal to which Section 8, Rule 117 applies. A first notable feature of Section 8, Rule 117 is that it does not exactly state what a provisional dismissal is. The modifier *"provisional"* directly suggests that the dismissals which Section 8 essentially refers to are those that are temporary in character (*i.e.*, to dismissals that are without prejudice to the re-filing of the case), and not the dismissals that are permanent (*i.e.*, those that bar the re-filing

of the case). Based on the law, rules, and jurisprudence, permanent dismissals are those barred by the principle of double jeopardy, by the previous extinction of criminal liability, by the rule on speedy trial, and the dismissals after plea without the express consent of the accused. Section 8, by its own terms, cannot cover these dismissals because they are not provisional. A second feature is that Section 8 does not state the grounds that lead to a provisional dismissal. This is in marked contrast with a motion to quash whose grounds are specified under Section 3. The delimitation of the grounds available in a motion to quash suggests that a motion to quash is a class in itself, with specific and closely-defined characteristics under the Rules of Court. A necessary consequence is that where the grounds cited are those listed under Section 3, then the appropriate remedy is to file a motion to quash, not any other remedy. Conversely, where a ground does not appear under Section 3, then a motion to quash is not a proper remedy. A motion for provisional dismissal may then apply if the conditions required by Section 8 obtain. A third feature, closely related to the second, focuses on the consequences of a meritorious motion to quash. This feature also answers the question of whether the quashal of an information can be treated as a provisional dismissal. Sections 4, 5, 6, and 7 of Rule 117 unmistakably provide for the consequences of a meritorious motion to quash. **Section 4** speaks of an amendment of the complaint or information, if the motion to quash relates to a defect curable by amendment. **Section 5** dwells on the effect of sustaining the motion to quash - the complaint or information may be re-filed, except for the instances mentioned under **Section 6**. The latter section, on the other hand, specifies the limit of the re-filing that Section 5 allows – it cannot be done where the dismissal is based on extinction of criminal liability or double jeopardy. **Section 7** defines double jeopardy and complements the ground provided under Section 3(i) and the exception stated in Section 6. Rather than going into specifics, Section 8 simply states when a provisional dismissal can be made, *i.e.*, when the accused expressly consents and the offended party is given notice. The consent of the accused to a dismissal relates directly to what Section 3(i) and Section 7 provide, *i.e.*, the conditions for dismissals that lead to double jeopardy. This immediately suggests that a dismissal under Section 8 – *i.e.*, one with the express consent of the accused – is not intended to lead to

double jeopardy *as provided under Section 7*, but nevertheless creates a bar to further prosecution under the special terms of Section 8. This feature must be read with Section 6 which provides for the effects of sustaining a motion to quash – the dismissal is not a bar to another prosecution for the same offense – unless the basis for the dismissal is the extinction of criminal liability and double jeopardy. These unique terms, read in relation with Sections 3(i) and 7 and compared with the consequences of Section 8, carry unavoidable implications that cannot but lead to distinctions between a quashal and a provisional dismissal under Section 8. They stress in no uncertain terms that, save only for what has been provided under Sections 4 and 5, the governing rule when a motion to quash is meritorious are the terms of Section 6. The failure of the Rules to state under Section 6 that a Section 8 provisional dismissal is a bar to further prosecution shows that the framers did not intend a dismissal based on a motion to quash and a provisional dismissal to be confused with one another; Section 8 operates in a world of its own separate from motion to quash, and merely provides a time-bar that uniquely applies to dismissals other than those grounded on Section 3. Conversely, when a dismissal is pursuant to a motion to quash under Section 3, Section 8 and its time-bar does not apply.

4. ID.; ID.; MOTION TO QUASH RESULTING TO DISMISSAL OF CASE; DISTINGUISHED FROM OTHER DISMISSALS.— Other than the above, we note also the following differences stressing that a motion to quash and its resulting dismissal is a unique class that should not be confused with other dismissals: First, a motion to quash is invariably filed by the accused to question the efficacy of the complaint or information filed against him or her (Sections 1 and 2, Rule 117); in contrast, a case may be provisionally dismissed at the instance of either the prosecution or the accused, or both, subject to the conditions enumerated under Section 8, Rule 117. Second, the form and content of a motion to quash are as stated under Section 2 of Rule 117; these requirements do not apply to a provisional dismissal. Third, a motion to quash assails the validity of the criminal complaint or the criminal information for defects or defenses apparent on face of the information; a provisional dismissal may be grounded on reasons other than the defects found in the information. Fourth, a motion to quash is allowed

> before the arraignment (Section 1, Rule 117); there may be a provisional dismissal of the case even when the trial proper of the case is already underway provided that the required consents are present. Fifth, a *provisional* dismissal is, by its own terms, *impermanent* until the time-bar applies, at which time it becomes a permanent dismissal. In contrast, an information that is quashed stays quashed until revived; the grant of a motion to quash does not *per se* carry any connotation of impermanence, and becomes so only as provided by law or by the Rules. In re-filing the case, what is important is the question of whether the action can still be brought, *i.e.*, whether the prescription of action or of the offense has set in. In a provisional dismissal, there can be no re-filing after the time-bar, and prescription is not an immediate consideration. To recapitulate, quashal and provisional dismissal are different concepts whose respective rules refer to different situations that should not be confused with one another. If the problem relates to *an intrinsic or extrinsic deficiency of the complaint or information, as shown on its face*, the remedy is a motion to quash under the terms of Section 3, Rule 117. All other reasons for seeking the dismissal of the complaint or information, *before arraignment* and *under the circumstances outlined in Section 8*, fall under provisional dismissal.

APPEARANCES OF COUNSEL

Ariel M. Los Baños a in his own behalf and for petitioner P/Supt. Arevalo, et al.

Domingo R. Buenviaje for respondent.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the September 19, 2005 decision[2] and the July 6, 2006 resolution[3]

[1] Under Rule 45 of the Rules of Court

[2] Penned by Associate Justice Santiago J. Ranada (retired), with Associate Justice Marina L. Buzon (retired) and Associate Justice Mario L. Guarina III; *rollo*, pp. 32-38.

[3] *Id.*, pp. 60-63.

of the Court of Appeals (*CA*) in CA-G.R. SP No. 80223. The petition seeks to revive the case against respondent Joel R. Pedro (*Pedro*) for election gun ban violation after the CA declared the case permanently dismissed pursuant to Section 8, Rule 117 of the Rules of Court.

THE ANTECEDENTS

Pedro was charged in court for carrying a loaded firearm without the required written authorization from the Commission on Elections (*Comelec*) a day before the May 14, 2001 national and local elections. The Information reads:

> That on or about the 13th day of May 2001 at about 4:00 o'clock in the afternoon, in [S]itio Bantauyan, [B]arangay Bantad, Municipality of Boac, Province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously carry a Revolver Cal. 357, Magnum Ruger 100 loaded with six (6) ammunitions, with Serial No. 173-56836 outside his residence during the election period, without authorization in writing from the Commission on Election[s].
>
> CONTRARY TO LAW.[4]

The accusation was based on *Batas Pambansa Bilang* 881 or the Omnibus Election Code (*Code*) after the Marinduque Philippine National Police (*PNP*) caught Pedro illegally carrying his firearm at a checkpoint at Boac, Marinduque. The Boac checkpoint team was composed of Police Senior Inspector Victor V. Arevalo, SPO2 Marshal Olympia, SPO1 Rocky Mercene, and PO1 Raul Adlawan. The team stopped a silver-gray Toyota Hi-Ace with plate number WHT-371 on the national highway, coming from the Boac town proper. When Pedro (who was seated at the rear portion) opened the window, Arevalo saw a gun carry case beside him. Pedro could not show any COMELEC authority to carry a firearm when the checkpoint team asked for one, but he opened the case when asked to do so. The checkpoint team saw the following when the case was opened: 1) one Revolver 357 Magnum Ruger GP100, serial number 173-56836, loaded with six ammunitions; 2) one ammunition

[4] *Id.*, pp. 65-66.

box containing 100 bullets; 3) two pieces speed loader with six ammunitions each; and 4) one set ear protector. Pedro was with three other men. The checkpoint team brought all of them to the Boac police station for investigation.

The Boac election officer filed a criminal complaint against Pedro for violating the election gun ban, *i.e.*, for carrying a firearm outside of his residence or place of business without any authority from the Comelec. After an inquest, the Marinduque provincial prosecutor filed the above Information against Pedro with the Marinduque Regional Trial Court (*RTC*) for violation of the Code's Article XXII, Section 261 (q),[5] in relation to Section 264.[6]

Pedro filed a Motion for Preliminary Investigation, which the RTC granted.[7] The preliminary investigation, however, did

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[5] SEC. 261. *Prohibited Acts*. — The following shall be guilty of an election offense:

x x x x x x x x x

(q) *Carrying firearms outside residence or place of business*. — Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission [on Elections]: *Provided*, That a motor vehicle, water or air craft shall not be considered residence or place of business or extension thereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

This section was subsequently amended under Republic Act (R.A.) No. 7166, the Synchronized Election Law of 1991, to read:

> SEC. 32. *Who May Bear Firearms*.— During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, *even if licensed to possess or carry the same, unless authorized in writing by the Commission.* The issuance of firearm licenses shall be suspended during the election period. (Emphasis supplied)

[6] Section 264 of the Code states that "[a]ny person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years."

[7] Through Judge Rodolfo Dimaano of RTC Branch 94, Boac, Marinduque.

not materialize. Instead, Pedro filed with the RTC a Motion to Quash, arguing that the Information "contains averments which, if true, would constitute a legal excuse or justification[8] and/or that the facts charged do not constitute an offense."[9] Pedro attached to his motion a Comelec *Certification* dated September 24, 2001 that he was "exempted" from the gun ban. The provincial prosecutor opposed the motion.

The RTC quashed the Information and ordered the police and the prosecutors to return the seized articles to Pedro.[10]

The petitioner, private prosecutor Ariel Los Baños (*Los Baños*), representing the checkpoint team, moved to reopen the case, as Pedro's Comelec *Certification* was a "falsification," and the prosecution was "deprived of due process" when the judge quashed the information without a hearing. Attached to Los Baños' motion were two Comelec certifications stating that: (1) Pedro was not exempted from the firearm ban; and (2) the signatures in the Comelec *Certification* of September 24, 2001 were forged.

The RTC reopened the case for further proceedings, as Pedro did not object to Los Baños' motion.[11] Pedro moved for the reconsideration of the RTC's order primarily based on Section 8 of Rule 117,[12] arguing that the dismissal had become permanent. He likewise cited the public prosecutor's lack of express approval of the motion to reopen the case.

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[8] RULES OF COURT, Rule 117, Section 3(a).

[9] *Id.,* Section 3(h).

[10] Through Judge Alejandro Arenas.

[11] Order dated March 13, 2003, issued by Judge Rodolfo B. Dimaano.

[12] SEC. 8. *Provisional dismissal.* — A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

The public prosecutor, however, manifested his express conformity with the motion to reopen the case. The trial court, for its part, rejected the position that Section 8, Rule 117 applies, and explained that this provision refers to situations where both the prosecution and the accused mutually consented to the dismissal of the case, or where the prosecution or the offended party failed to object to the dismissal of the case, and not to a situation where the information was quashed upon motion of the accused and over the objection of the prosecution. The RTC, thus, set Pedro's arraignment date.

Pedro filed with the CA a petition for *certiorari* and *prohibition* to nullify the RTC's mandated reopening.[13] He argued that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the dismissal contemplated under Section 8, Rule 117 refers to situations where either the prosecution and the accused mutually consented to, or where the prosecution alone moved for, the provisional dismissal of the case; in rejecting his argument that the prescriptive periods under Article 90 of the Revised Penal Code[14] or Act No. 3326[15] find no application to his case as the filing of the Information

[13] Docketed as CA-G.R. SP No. 80223, and titled as *Joel R. Pedro v. Hon. Rodolfo B. Dimaano, Executive/Acting Presiding Judge of the Regional Trial Court of Marinduque, Branch 38, et al.*

[14] ART. 90. Prescription of crimes. – Crimes punishable by death, *reclusion perpetua* or *reclusion temporal* shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by *arresto mayor*, which shall prescribe in five years. xxx

[15] An Act to Establish Periods of Prescription for Violations Penalized By Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run.

Section 2 thereof states: Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

against him stopped the running of the prescriptive periods so that the prescription mandated by these laws became irrelevant; and, in setting the case for arraignment and pre-trial conference, despite being barred under Section 8 of Rule 117.

THE COURT OF APPEALS DECISION

The CA initially denied Pedro's petition. For accuracy, we quote the material portions of its ruling:

> The petition lacks merit.
>
> The trial court erred in ruling that Section 8, Rule 117 does not apply to provisional dismissals on motion of the accused. The Rule merely provides that a case shall not be provisionally dismissed, except with the express consent of the accused and with notice to the offended party. Nothing in the said rule proscribes its application to dismissal on motion of the accused.
>
> Nevertheless, we find no basis for issuing the extraordinary writs of *certiorari* and prohibition, as there is no showing that the error was tainted with grave abuse of discretion. Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction. The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.
>
> Before the petitioner may invoke the time-bar in Section 8, he must establish the following:
>
> 1. the prosecution, with the express conformity of the accused or the accused moves for a provisional (*sin perjuicio*) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case;
> 2. the offended party is notified of the motion for a provisional dismissal of the case;
> 3. the court issues an order granting the motion and dismissing the case provisionally;
> 4. the public prosecutor is served, with a copy of the order of provisional dismissal of the case.
>
> Although the second paragraph of Section 8 states that the order of dismissal shall become permanent one year after the issuance

thereof, without the case having been revived, such provision should be construed to mean that *the dismissal shall become permanent one year after service of the order of dismissal on the public prosecutor*, as the public prosecutor cannot be expected to comply with the timeliness requirement unless he is served with a copy of the order of dismissal.

In the instant, case, the records are bereft of proof as to when the public prosecutor was served the order of dismissal dated 22 November 2001. Absent such proof, we cannot declare that the State is barred from reviving the case.

WHEREFORE, the petition is **DENIED**.

In his motion for reconsideration, Pedro manifested the exact date and time of the Marinduque provincial prosecutor's receipt of the quashal order to be "2:35 p.m., December 10, 2001," and argued that based on this date, the provisional dismissal of the case became "permanent" on December 10, 2002. Based on this information, the CA reversed itself, ruling as follows:

On 9 September 2005, we ruled that Section 8, Rule 117 is applicable to a dismissal on motion of the accused. However, we did not issue the writs of *certiorari* and prohibition, because it was shown that the trial court committed grave abuse of discretion in ordering the reopening of the case. Moreover, we stated that we cannot rule on the issue of whether or not the State is barred from reopening the case because it was not shown *when* the public prosecutor was served the order of dismissal.

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The arguments raised in the respondents' motion for modification were duly passed upon in arriving at the decision dated 9 September 2005, and no new matters were raised which would warrant a reconsideration thereof.

On the other hand, the petitioner was able to prove that the motion to reopen the case was filed after the lapse of more than one year from the time the public prosecutor was served the notice of dismissal. Therefore, the state is barred from reopening the case.

WHEREFORE, petitioner Joel Pedro's motion for partial reconsideration is hereby **GRANTED**, and respondent Ariel Los Banos' motion for modification of judgment is, accordingly, **DENIED**.

To summarize this ruling, the appellate court, while initially saying that there was an error of law but no grave abuse of discretion that would call for the issuance of a writ, reversed itself on motion for reconsideration; it then ruled that the RTC committed grave abuse of discretion because it failed to apply Section 8, Rule 17 and the time-bar under this provision.

THE PETITION

Los Baños prays in his petition that the case be remanded to the RTC for arraignment and trial, or that a new charge sheet be filed against Pedro, or that the old information be re-filed with the RTC. He contends that under Section 6 of Rule 117, an order sustaining a motion to quash does not bar another prosecution for the same offense, unless the motion was based on the grounds specified in Section 3(g)[16] and (i)[17] of Rule 117. Los Baños argues that the dismissal under Section 8 of Rule 117 covers only situations where both the prosecution and the accused either mutually consented or agreed to, or where the prosecution alone moved for the provisional dismissal of the case; it can also apply to instances of failure on the part of the prosecution or the offended party to object, after having been forewarned or cautioned that its case will be dismissed. It does not apply where the information was quashed. He adds that although the trial court granted the motion to quash, it did not categorically dismiss the case, either provisionally or permanently, as the judge simply ordered the return of the confiscated arms and ammunition to Pedro. The order was "open-ended," and did not have the effect of provisionally dismissing the case under Section 8 of Rule 117.

Los Baños also contends that the CA gravely erred when: (1) it ruled in effect that the Order dated November 22, 2001 granting the motion to quash is considered a provisional dismissal, which became permanent one year from the prosecutor's receipt

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[16] (g) That the criminal action or liability has been extinguished.

[17] (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

of the order; the order to quash the Information was based on Section 3 of Rule 117, not on Section 8 of this Rule; (2) it granted Pedro's motion for reconsideration and denied Los Baños' motion for modification of judgment, when Section 6 of Rule 117 clearly provides that an order granting a motion to quash is not a bar to another prosecution for the same offense.

He notes that the grounds Pedro relied upon in his motion to quash are not subsections (g) or (i) of Rule 117, but its subsections (a) – that the facts charged do not constitute an offense, and (h) – that it contains averments which if true would constitute a legal justification. Pedro's cited grounds are not the exceptions that would bar another prosecution for the same offense.[18] The dismissal of a criminal case upon the express application of the accused (under subsections [a] and [h]) is not a bar to another prosecution for the same offense, because his application is a waiver of his constitutional prerogative against double jeopardy.

In response to all these, respondent Pedro insists and fully relies on the application of Section 8 of Rule 117 to support his position that the RTC should not have granted Los Baños' motion to reopen the case.

THE ISSUES

The issue is ultimately reduced to whether Section 8, Rule 117 is applicable to the case, as the CA found. If it applies, then the CA ruling effectively lays the matter to rest. If it does not, then the revised RTC decision reopening the case should prevail.

OUR RULING

We find the petition meritorious and hold that the case should be remanded to the trial court for arraignment and trial.

Quashal v. Provisional Dismissal

a. Motion to Quash

A motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint

[18] *Rollo*, p. 14.

or the criminal information filed against him for insufficiency on its face in point of law, or for defect apparent on the face of the Information.[19] The motion, as a rule, hypothetically admits the truth of the facts spelled out in the complaint or information. The rules governing a motion to quash are found under Rule 117 of the Revised Rules of Court. Section 3 of this Rule enumerates the grounds for the quashal of a complaint or information, as follows:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

b. Provisional Dismissal

On the other hand, Section 8, Rule 117 that is at the center of the dispute states that:

SEC.8. *Provisional dismissal.* — A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall

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[19] *Serapio v. Sandiganbayan*, G.R. No. 148468, January 28, 2003, 396 SCRA 443, 474.

become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

A case is provisionally dismissed if the following requirements concur:

1) the prosecution with the express conformity of the accused, or the accused, moves for a provisional dismissal (*sin perjuicio*) of his case; or both the prosecution and the accused move for its provisional dismissal;

2) the offended party is notified of the motion for a provisional dismissal of the case;

3) the court issues an order granting the motion and dismissing the case provisionally; and

4) the public prosecutor is served with a copy of the order of provisional dismissal of the case.[20]

In *People v. Lacson*,[21] we ruled that there are *sine qua non* requirements in the application of the time-bar rule stated in the second paragraph of Section 8 of Rule 117. We also ruled that the time-bar under the foregoing provision is a special procedural limitation qualifying the right of the State to prosecute, making the time-bar an essence of the given right or as an inherent part thereof, so that the lapse of the time-bar operates to extinguish the right of the State to prosecute the accused.

c. Their Comparison

An examination of the whole Rule tells us that a dismissal based on a motion to quash and a provisional dismissal are far different from one another as concepts, in their features, and legal consequences. While the provision on provisional dismissal is found within Rule 117 (entitled Motion to Quash), it does

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[20] *People v. Lacson*, G.R. No. 149453, April 1, 2003, 400 SCRA 267, 292-293.

[21] *People v. Lacson*, G.R. No. 149453, April 1, 2003, 400 SCRA 293.

not follow that a motion to quash results in a provisional dismissal to which Section 8, Rule 117 applies.

A first notable feature of Section 8, Rule 117 is that it does not exactly state what a provisional dismissal is. The modifier *"provisional"* directly suggests that the dismissals which Section 8 essentially refers to are those that are temporary in character (*i.e.*, to dismissals that are without prejudice to the re-filing of the case), and not the dismissals that are permanent (*i.e.*, those that bar the re-filing of the case). Based on the law, rules, and jurisprudence, permanent dismissals are those barred by the principle of double jeopardy,[22] by the previous extinction of criminal liability,[23] by the rule on speedy trial,[24] and the dismissals after plea without the express consent of the accused.[25] Section 8, by its own terms, cannot cover these dismissals because they are not provisional.

A second feature is that Section 8 does not state the grounds that lead to a provisional dismissal. This is in marked contrast with

[22] *People v. Laguio*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 402-403; *People v. Hon. Hernandez*, G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688,706-707; *Philippine Savings Bank v. Spouses Bermoy*, G.R. No. 151912, September 26, 2005, 471 SCRA 94,107-108; *Sanvicente v. People*, G.R. No. 132081, November 26, 2002, 392 SCRA 610,616-617; *Metropolitan Bank & Trust Co. v. Hon. Veridiano*, G.R. No. 118251, June 29, 2001, 360 SCRA 359, 366; *People v. Velasco*, G.R. No. 127444, September 13, 2000, 340 SCRA 207, 242; *Palu-ay v. Court of Appeals*, G.R. No. 112995, July 30, 1998, 293 SCRA 358, 365.

[23] *Romualdez v. Ombudsman*, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 114; *People v. Pacificador*, G.R. No. 139405, March 13, 2001, 354 SCRA 310, 319-320; *Garcia v. Court of Appeals*, G.R. No. 119063, January 27, 1997, 266 SCRA 678, 694; *Cabral v. Puno*, L-41692, April 30, 1976, 70 SCRA 606, 609.

[24] *People v. Hon. Hernandez*, *supra* note 22, p. 706; *Angchangco Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301; *Guerrero v. Court of Appeals*, G.R. No. 107211, June 28, 1996, 257 SCRA 703, 713-714; *People v. Leviste*, G.R. No. 104386, March 28, 1996, 255 SCRA 238, 248-249; *People v. Tampal*, G.R. No. 102485, May 22,1995, 244 SCRA 202; *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16,1991, 199 SCRA 298, 308; *Tatad vs. Sandiganbayan*, G.R. No. 72335-39, 21 March 1988, 159 SCRA 70, 83.

[25] *People v. Espinosa*, G.R. Nos. 153714-20, August 15, 2003, 409 SCRA 256, 266.

a motion to quash whose grounds are specified under Section 3. The delimitation of the grounds available in a motion to quash suggests that a motion to quash is a class in itself, with specific and closely-defined characteristics under the Rules of Court. A necessary consequence is that where the grounds cited are those listed under Section 3, then the appropriate remedy is to file a motion to quash, not any other remedy. Conversely, where a ground does not appear under Section 3, then a motion to quash is not a proper remedy. A motion for provisional dismissal may then apply if the conditions required by Section 8 obtain.

A third feature, closely related to the second, focuses on the consequences of a meritorious motion to quash. This feature also answers the question of whether the quashal of an information can be treated as a provisional dismissal. Sections 4, 5, 6, and 7 of Rule 117 unmistakably provide for the consequences of a meritorious motion to quash. **Section 4** speaks of an amendment of the complaint or information, if the motion to quash relates to a defect curable by amendment. **Section 5** dwells on the effect of sustaining the motion to quash - the complaint or information may be re-filed, except for the instances mentioned under **Section 6**. The latter section, on the other hand, specifies the limit of the re-filing that Section 5 allows – it cannot be done where the dismissal is based on extinction of criminal liability or double jeopardy. **Section 7** defines double jeopardy and complements the ground provided under Section 3(i) and the exception stated in Section 6.

Rather than going into specifics, Section 8 simply states when a provisional dismissal can be made, *i.e.*, when the accused expressly consents and the offended party is given notice. The consent of the accused to a dismissal relates directly to what Section 3(i) and Section 7 provide, *i.e.*, the conditions for dismissals that lead to double jeopardy. This immediately suggests that a dismissal under Section 8 – *i.e.*, one with the express consent of the accused – is not intended to lead to double jeopardy *as provided under Section 7*, but nevertheless creates a bar to further prosecution under the special terms of Section 8.

This feature must be read with Section 6 which provides for the effects of sustaining a motion to quash – the dismissal is not a bar to another prosecution for the same offense – unless the basis for the dismissal is the extinction of criminal liability and double jeopardy. These unique terms, read in relation with Sections 3(i) and 7 and compared with the consequences of Section 8, carry unavoidable implications that cannot but lead to distinctions between a quashal and a provisional dismissal under Section 8. They stress in no uncertain terms that, save only for what has been provided under Sections 4 and 5, the governing rule when a motion to quash is meritorious are the terms of Section 6. The failure of the Rules to state under Section 6 that a Section 8 provisional dismissal is a bar to further prosecution shows that the framers did not intend a dismissal based on a motion to quash and a provisional dismissal to be confused with one another; Section 8 operates in a world of its own separate from motion to quash, and merely provides a time-bar that uniquely applies to dismissals other than those grounded on Section 3. Conversely, when a dismissal is pursuant to a motion to quash under Section 3, Section 8 and its time-bar does not apply.

Other than the above, we note also the following differences stressing that a motion to quash and its resulting dismissal is a unique class that should not be confused with other dismissals:

First, a motion to quash is invariably filed by the accused to question the efficacy of the complaint or information filed against him or her (Sections 1 and 2, Rule 117); in contrast, a case may be provisionally dismissed at the instance of either the prosecution or the accused, or both, subject to the conditions enumerated under Section 8, Rule 117.[26]

[26] In *People v. Togle*, (105 Phil 126, 127, [1959]), the defense moved for the provisional dismissal of the case because of the inability of the prosecution to present important witnesses. In *Baesa v. Provincial Fiscal of Camarines Sur (*G.R. No. L-30363, January 30, 1971, 37 SCRA 437), the provisional dismissal was made by the accused *via* motion. Further, in *People v. Oliva* (G.R. No. 106826, January 18, 2001, 349 SCRA 435, 438) and *People v. Hinaut* (105 Phil. 303 [1959]), the case was provisionally dismissed by the prosecution with the consent of the accused; in the later case, the accused manifested his consent by writing "with conformity" in the motion.

Second, the form and content of a motion to quash are as stated under Section 2 of Rule 117; these requirements do not apply to a provisional dismissal.

Third, a motion to quash assails the validity of the criminal complaint or the criminal information for defects or defenses apparent on face of the information; a provisional dismissal may be grounded on reasons other than the defects found in the information.

Fourth, a motion to quash is allowed before the arraignment (Section 1, Rule 117); there may be a provisional dismissal of the case even when the trial proper of the case is already underway provided that the required consents are present.[27]

Fifth, a *provisional* dismissal is, by its own terms, *impermanent* until the time-bar applies, at which time it becomes a permanent dismissal. In contrast, an information that is quashed stays quashed until revived; the grant of a motion to quash does not *per se* carry any connotation of impermanence, and becomes so only as provided by law or by the Rules. In re-filing the case, what is important is the question of whether the action can still be brought, *i.e.*, whether the prescription of action or of the offense has set in. In a provisional dismissal, there can be no re-filing after the time-bar, and prescription is not an immediate consideration.

To recapitulate, quashal and provisional dismissal are different concepts whose respective rules refer to different situations that should not be confused with one another. If the problem relates to *an intrinsic or extrinsic deficiency of the complaint or information, as shown on its face*, the remedy is a motion to quash under the terms of Section 3, Rule 117. All other reasons for seeking the dismissal of the complaint or information, *before arraignment* and *under the circumstances outlined in Section 8*, fall under provisional dismissal.

Thus, we conclude that Section 8, Rule 117 does not apply to the reopening of the case that the RTC ordered and which the CA reversed; the reversal of the CA's order is legally proper.

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[27] *People v. Ramos*, G.R. No. 135204, April 14, 2004, 427 SCRA 299, 301; *People v. Hinaut*, *supra* note 26, p. 304; *People v. Togle*, *supra* note 26, p. 127

Pedro's Motion to Quash

The merits of the grant of the motion to quash that the RTC initially ordered is not a matter that has been ruled upon in the subsequent proceedings in the courts below, including the CA. We feel obliged to refer back to this ruling, however, to determine the exact terms of the remand of the case to the RTC that we shall order.

The grounds Pedro cited in his motion to quash are that the Information *contains averments which, if true, would constitute a legal excuse or justification* [Section 3(h), Rule 117], and that *the facts charged do not constitute an offense* [Section 3(a), Rule 117]. We find from our examination of the records that the Information duly charged a specific offense and provides the details on how the offense was committed.[28] Thus, the cited Section 3(a) ground has no merit. On the other hand, we do not see on the face or from the averments of the Information any legal excuse or justification. The cited basis, in fact, for Pedro's motion to quash was a Comelec *Certification* (dated September 24, 2001, issued by Director Jose P. Balbuena, Sr. of the Law Department, Committee on Firearms and Security Personnel of the Comelec, granting him an exemption from the ban and a permit to carry firearms during the election period)[29] that Pedro *attached to his motion to quash*. This COMELEC *Certification* is a matter *aliunde* that is not an appropriate motion to raise in, and cannot support, a motion to quash grounded on legal excuse or justification found on the face of the Information.

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[28] *Rollo*, pp. 65-66; for convenience, the body of the Information reads:

> That on or about the 13th day of May 2001 at about 4:00 o'clock in the afternoon, in [S]itio Bantauyan, [B]arangay Bantad, Municipality of Boac, Province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, wilfully, unlawfully and feloniously carry a Revolver Cal. 357, Magnum Ruger 100 loaded with six (6) ammunitions, with Serial No. 173-56836 outside his residence during the election period without authorization in writing from the Commission on Election[s].
>
> CONTRARY TO LAW.

[29] *Id.*, p. 85.

Significantly, no hearing was ever called to allow the prosecution to contest the genuineness of the COMELEC certification.[30]

Thus, the RTC grossly erred in its initial ruling that a quashal of the Information was in order. Pedro, on the other hand, also misappreciated the true nature, function, and utility of a motion to quash. As a consequence, a valid Information still stands, on the basis of which Pedro should now be arraigned and stand trial.

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[30] In a long line of cases, we have ruled that a motion to quash on the ground that the allegations of the information do not constitute the offense charged, should be resolved on the basis alone of these allegations whose truth and veracity are hypothetically admitted. By way of exception, we held in *People v. Navarro* (G.R. No. L-1 & L-2, December 4, 1945; 75 Phil. 516, 518-519) that additional facts not alleged in the information, but admitted or not denied by the prosecution, may be invoked in support of the motion to quash. In *People v. De la Rosa*(98 SCRA 190, 196-197 [1980]) we adopted a pragmatic approach and allowed additional facts brought out through the presentation of evidence by the parties to be considered in the determination of a motion to quash grounded on the theory that the facts charged do not constitute an offense. We held:

> Indeed, where in the hearing on a motion to quash predicated on the ground that the allegations of the information do not charge an offense, facts have been brought out by evidence presented by both parties which destroy the *prima facie* truth accorded to the allegations of the information on the hypothetical admission thereof, as is implicit in the nature of the ground of the motion to quash, it would be pure technicality for the court to close its eyes to said facts and still give due course to the prosecution of the case already shown to be weak even to support possible conviction, and hold the accused to what would clearly appear to be a merely vexatious and expensive trial, on her part, and a wasteful expense of precious time on the part of the court, as well as of the prosecution.

The combined application of these rules tells us where the information is allegedly defective because *the facts charged do not constitute an offense* or that *the averments of the Information contain a legal excuse or justiciation*, the motion will be resolved, as a rule, solely on the basis of the facts alleged in the information which are all hypothetically admitted. These facts are to be tested against the essential elements of the offense. Matters *aliunde, as a rule*, cannot considered,[30] except under the circumstances contemplated in *Navarro* and *De la Rosa* and as permitted by Rule 117. The jurisprudential exceptions refer to the facts brought out through the evidence adduced by the opposing parties during the hearing of the motion to quash and those admitted or otherwise not denied by the prosecution.

One final observation: the Information was not rendered defective by the fact that Pedro was charged of violating Section 261(q) of the Code, instead of Section 32 of R.A. No. 7166, which amended Section 261(q); these two sections aim to penalize among others, the carrying of firearms (or other deadly weapons) in public places during the election period without the authority of the Comelec. The established rule is that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.[31] Further, in *Abenes v. Court of Appeals*,[32] we specifically recognized that the amendment under Section 32 of R.A. No. 7166 does not affect the prosecution of the accused who was charged under Section 261(q) of the Code.

WHEREFORE, we hereby *GRANT* the petition and accordingly declare the assailed September 19, 2005 decision and the July 6, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 80223 respectively *MODIFIED* and *REVERSED*. The case is remanded to the Regional Trial Court of Boac, Marinduque for the arraignment and trial of respondent Joel R. Pedro, after reflecting in the Information the amendment introduced on Section 261(q) of the Code by Section 32 of Republic Act No. 7166.

SO ORDERED.

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

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[31] *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 482, *Reyes v. Camilon*, G.R. No. 46198, 20 December 1990, 192 SCRA 445, 453 citing *People v. Mendoza*, 175 SCRA 743,752.

[32] G.R. No. 156320, February 14, 2007, 550 SCRA 690, 706.

EN BANC

[A.M. No. 2008-12-SC. April 24, 2009]
(Formerly A.M. No. 08-7-4-SC)

IN RE: IMPROPER SOLICITATION OF COURT EMPLOYEES — ROLANDO H. HERNANDEZ, EXECUTIVE ASSISTANT I, LEGAL OFFICE, OFFICE OF THE COURT ADMINISTRATOR.

[A.M. No. P-08-2510. April 24, 2009]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **SHEELA R. NOBLEZA, Court Stenographer, Metropolitan Trial Court, Branch 23, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE CODE OF CONDUCT FOR COURT PERSONNEL; SOLICITATION AS PROHIBITED ACT; SUSTAINED; RATIONALE.— Soliciting is prohibited under The Code of Conduct for Court Personnel. Section 2, Canon I thereof provides that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions"; while Section 2(e), Canon III states that "Court personnel shall not x x x solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties." Such acts are strictly prohibited to avoid the perception that in exchange for certain favors, court personnel can be influenced to act in favor of a certain party or person. Thus, in *Villaros v. Orpiano*, the Court emphasized that: Time and time again, we have stressed that the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct

must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness. The respondent's act of demanding money from the complainant hardly meets the foregoing standard. Improper solicitation from litigants is a grave offense that carries an equally grave penalty. Again, in *De Leon-Dela Cruz v. Recacho,* the following pronouncement was made: The Court reiterates its policy not to tolerate or condone any conduct, act or omission that falls short of the exacting norms of public office, especially on the part of those expected to preserve the image of the judiciary. Thus, it will not shirk from its responsibility of imposing discipline upon its employees in order not to diminish the people's faith in our justice system.

2. ID.; ID.; COURT PERSONNEL; WHEN GUILTY OF IMPROPER SOLICITATION; PENALTY.— In this case, respondents admittedly solicited money from several bonding companies. Mr. Hernandez immediately acknowledged that his actions constituted a violation of the memorandum circular issued by the Civil Service Commission and apologized for his transgression, but pleaded for compassion, asking the Court to consider his 34 years of service with the Court and his advanced age. As for Ms. Nobleza, she explained that it was her understanding that the prohibition was only against soliciting from persons or parties who had pending cases before the court. Clearly, respondents committed improper solicitation, an offense which merits a grave penalty. Under Section 52(A)(11) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dismissal is the penalty for improper solicitation at the first offense. Section 58(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

APPEARANCES OF COUNSEL

Public Attorney's Office for Sheela R. Nobleza.

JOINT RESOLUTION

PER CURIAM:

In Administrative Matter No. 2008-12-SC, the Legal Office, Office of the Court Administrator (OCA), as the nominal complainant, charged Rolando H. Hernandez, Executive Assistant I, Legal Office, OCA, for dishonesty through improper solicitations from bonding companies accredited by the Court, and unauthorized use of an improvised letterhead of the Court, herein reproduced verbatim, as follows:

SUPREME COURT
Padre Faura, Taft Avenue
Manila

Sir/Madam:

The Court Stenographic Reporters Association of the Philippines (COSTRAPHIL) will hold its 5th National Convention on May 5 to 7, 2008 at the Quezon Convention Center, Lucena City as per OCA CIRCULAR NO. 122A-2007 signed by ZENAIDA N. ELEPAÑO, Court Administrator, Supreme Court of the Philippines. This affair aims to bolster the moral and promote unity and camaraderie among court stenographers and to work side by side with the authorities in the judiciary and the City Government towards a competent, effective and honest service to the public.

To realize this goal, may we request for solicitation from your good office to pave our way with this service to the public.

Thank you very much.

Very truly yours,

RUDY HERNANDEZ
Office of the Court Administrator
Documentation Division[1]

In Administrative Matter No. P-08-2510, the OCA charged Sheela R. Nobleza, Court Stenographer, Metropolitan Trial Court, Branch 23, Manila for the same offense as the solicitations were made in her behalf.

[1] *Rollo*, p. 13.

Per *En Banc* Resolution dated November 18, 2008, the Court, upon recommendation of the Court Administrator, referred these administrative matters to the Complaints and Investigation Division, Office of Administrative Services of the Court (OAS-SC) for investigation, report and recommendation.

On March 5, 2009, the OAS-SC submitted its Report and Recommendation, portions of which read:

Evaluation

We agree with the Legal Office's initial investigation and findings. Our own investigation also elicits substantial evidence to support the charges of respondents' alleged improper solicitations and unauthorized use of the Court's letterhead. After a review of the records of the case particularly the sworn statements and testimonies of the parties, this Office is convinced that improper and illegal acts are committed by the respondents who conspired with each other in unduly soliciting money from different bonding and surety companies accredited by the Court.

At the outset, a closer look at the functions of the Legal Office, OCA discloses that through its Docketed and Clearance Division, it handles, among others, the monitoring and collection of forfeited surety bonds, and issues certifications to insurance companies engaged in the bonding business.[2] Notably, the personnel of the said division where respondent Hernandez is presently assigned is susceptible to some personal interaction with people transacting business with the said office such as bonding companies and employees of the lower courts.

Both respondents admitted that on different dates and occasions, they personally went together and brought solicitation letters to the offices of bonding companies and actually solicited money. It was established that in perpetrating the improper and unauthorized solicitation, two (2) sets of solicitation letters were used. So that the letters would appear to be official and authorized for the said purpose, respondents devised an idea of using an improvised letterhead of the Supreme Court and the Metropolitan Trial Court Stenographers Association (MeTCSA), Manila Chapter. Using the improvised solicitation letters, respondents solicited cash from eight (8) bonding companies namely: Country Bankers Insurance, Sterling Insurance,

[2] Supreme Court Annual Report 2004.

Philippines Phoenix Surety and Insurance, Far Eastern Surety and Insurance, Prudential Guarantee and Insurance, Malayan Insurance, Paramount Life and General Insurance, and Equitable Insurance. However, only six (6) companies responded to the request who gave an amount that ranges from One Thousand to Two Thousand Pesos (₱1,000.00 - ₱2,000.00) either in cash or check. Both admitted they actually received the amount solicited.

When respondent Nobleza was asked to explain why she was involved in the improper solicitation from the bonding companies, she contended that soliciting money from any person is allowed so long as the donor has no pending cases before the courts. Pertinent portion of the transcript of the proceedings as quoted hereunder clearly shows this point:

Q: Are you aware of the Code of Conduct for Court Personnel?

A: Opo.

Q; Have you read the Code of Conduct for Court Personnel?

A; Nabasa ko po.

Q: When was that?

A: Nag-attend po pala ako ng Code of Conduct for Court Personnel.

Q; Ano ang pinaka content ng Code of Conduct for Court Personnel? What is required of us as employees of the Judiciary?

A: Huwag pong hihingi ng kapalit sa mga ginagawa n'ya.

x x x x x x x x x

Q; At the outset, alam mong mali ang mag-solicit?

A: Hindi po kasi ang alam ko po Ma'am, ang pagkakaalam ko kapag walang kaso sa inyo eh pwedeng mag-solicit.[3]

Respondent's contention is untenable. She may have already conveniently forgotten OCA Circular No. 4-91 strictly enjoining all personnel of the lower courts under the Administrative supervision of the Office of the Court Administrator from making any form of

[3] TSN, January 7, 2009, p. 149.

solicitation for contributions as it is strictly prohibited by law. And consequently, all those who have been found soliciting for and/or receiving contributions, in cash or in kind, from any person, whether or not a litigant or lawyer, will be dealt with severely.[4]

While respondent Hernandez during the hearing alleged that he just wanted to help Ms. Nobleza through soliciting money from the bonding companies that he knows. Pertinent portion of the transcript of the proceedings as quoted hereunder clearly shows this point:

Q: *Sino po ang gumawa ng sulat na yan?*

A: *Siya po.*

Q; *Ano po ang nagpag-usapan (sic) n'yo tungkol sa sulat?*

A: *Sabi ko nga po ay tutulungan ko s'ya sa abot ng aking makakaya.*

Q; *Ano 'yung ibig n'yong sabihin na "tutulungan n'yo s'ya sa abotng inyong makakaya"? Ano 'yung specific na gagawin n'yo na pagtulong o ginawa n'yong pagtulong?*

A: ***Lumapit po ako sa mga bonding companies.***[5] (Emphasis and underscoring supplied)

Both respondents apparently see nothing wrong with asking or soliciting money from bonding companies. This Office, reminds them that such act is highly improper conduct as all forms of solicitations and receipt of contributions, directly or indirectly, are prohibited. That is why, the Court provides the rule against any form of solicitations of gift or other pecuniary or material benefits or receipts of contributions for himself/herself from any person, whether or not a litigant or lawyer, to avoid any suspicion that the major purpose of the donor is to influence the court personnel in performing official duties. Further, it should be emphasized that in improper solicitation, its receipt is not necessary as it is sufficient that the employee demanded money from them.[6] Also, the act of respondents in soliciting money using the name of an association and of the Supreme Court itself without its consent cannot be countenanced.

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[4] OCA Circular No. 4-91 Re: Letter-complaint against solicitations for contributions by court personnel.

[5] TSN, January 7, 2009, pp. 114-115.

[6] *Villaros v. Orpiano*, 459 Phil. 1, 8 (2003).

Using the name of the Court is strictly for official correspondence, records and similar papers of the court only. Unless authorized by the Court or its offices, no person shall use the name of the Court for personal gain or advantage.

This Office established how the respondents were able to carry our (sic) their plan in raising the money to be used allegedly in a seminar for court stenographers. Respondents' protestation of good faith and inadvertence are simply too incredible to believe and merit credence. With their desire to hide something by finger pointing and accusing one another, unfortunately, it only bolsters and exposes their guilt to the present administrative charges rather than their innocence thereof. This Office found out that the scheme could only have been effected by the respondents themselves who were acting in agreement in the pursuit of their unlawful act. This Office has reached such conclusion primarily on the following: **First,** Ms. Nobleza asked Mr. Hernandez's help to raise money so she could attend the seminar of the court stenographers. **Second,** two (2) sets of solicitation letters indicating the same tenor of the request were printed. One letter bears the signature of Ms. Nobleza, and the other letter carries the signature of Mr. Hernandez using the letterhead of the Metropolitan Trial Court Stenographers Association and Supreme Court, respectively so it would appear as official and authorized. **Third,** respondents actually used the solicitation letters in soliciting money from different bonding companies. The principal role of Mr. Hernandez on their modus operandi is to merely introduce Ms. Nobleza to the employees of the bonding companies since he knows most of them by name while Ms. Nobleza is the one who collects and keeps the proceeds thereof. Although the idea to solicit from bonding companies was denied by Ms. Nobleza, her claim would thus be unlikely, considering that right from the start, she was with Mr. Hernandez when she went to these companies to solicit. **Fourth,** this Office cannot accept the defense of Ms. Nobleza that she inadvertently used the letterhead of the court stenographers' association neither we believe the excuse of Mr. Hernandez that he only signed the other set of the solicitation letter using the Supreme Court's letterhead but have not read the content thereof.

While the respondents gave their respective accounts, Mr. Hernandez and Ms. Nobleza could not agree as to who made a suggestion to solicit from bonding companies. This Office, however, finds that both respondents cannot be worthy to be trusted in their stories. It was established that Ms. Nobleza has conspired with

Mr. Hernandez in perpetrating the improper solicitations from the bonding companies. As defined by the law, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[7]

This Office, however, submits that the "conspiracy" per se should not be given its technical meaning in criminal law. Rather, for purpose of administrative proceeding where the quantum of evidence required is substantive evidence and not proof beyond reasonable doubt, it is sufficient that the two respondents by their own respective acts have participated in the realization of the fraudulent and unlawful object and without such collusion the objective could not have been accomplished.[8]

On the said hearing, Ms. Nobleza was asked whether she was able to attend the convention of court stenographers on May 5 to 7, 2008. She admitted that she did not attend the convention despite the fact that she already had the money to cover the cost and expenses to be incurred for the seminar. And when asked what happened to the money she collected. Ms. Nobleza replied that she used the money for her children. This Office believes that the improper conduct exhibited by Ms. Nobleza aggravated by the fact that she never returned the money and appropriated it instead to personal use clearly constitutes unacceptable conduct for judicial employees, a form of dishonestly and gross misconduct which are grave offenses punishable under Civil Service Rules.

With respect to Mr. Hernandez, this Office also established the evidence to prove that he used the name of the Court and the office where he is presently employed to defraud the public, in general, by taking advantage of the letter to solicit funds purportedly for a convention sponsored by Court Stenographic Reporters Association of the Philippines. This Office could not also rule out the possibility that part and portion of the total collection received were also spent by him for his personal use since according to them they have not planned out to record every amount that comes in and count the total collection they received.

Clearly, substantial evidence exists in this case to hold respondents Hernandez and Nobleza guilty of improper solicitation and use of

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[7] REVISED PENAL CODE, Art. 8.

[8] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 159556, May 26, 2005, 459 SCRA 236.

the letterheads of the Supreme Court and Metropolitan Trial Court Stenographers Association (MeTCSA), Manila Chapter without its consent. Both constitute gross misconduct and dishonesty.

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In view of the foregoing, this Office respectfully recommends that respondents Mr. Rolando H. Hernandez, Executive Assistant I, Legal Office, Office of the Court Administrator and Ms. Sheela R. Nobleza, Court Stenographer II, Metropolitan Trial Court, Branch 23, Manila be found liable for Improper Solicitation, Serious Dishonesty and Gross Misconduct and be **DISMISSED** from office with forfeiture of all benefits except accrued leave credits, if any.

The Court adopts the evaluation and findings of fact and recommendation of the OAS-SC.

Soliciting is prohibited under The Code of Conduct for Court Personnel. Section 2, Canon I thereof provides that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions;" while Section 2(e), Canon III states that "Court personnel shall not x x x solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties." Such acts are strictly prohibited to avoid the perception that in exchange for certain favors, court personnel can be influenced to act in favor of a certain party or person. Thus, in *Villaros v. Orpiano*,[9] the Court emphasized that:

Time and time again, we have stressed that the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.

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[9] *Supra* note 6.

The respondent's act of demanding money from the complainant hardly meets the foregoing standard. Improper solicitation from litigants is a grave offense that carries an equally grave penalty.[10]

Again, in *De Leon-Dela Cruz v. Recacho*,[11] the following pronouncement was made:

> The Court reiterates its policy not to tolerate or condone any conduct, act or omission that falls short of the exacting norms of public office, especially on the part of those expected to preserve the image of the judiciary. Thus, it will not shirk from its responsibility of imposing discipline upon its employees in order not to diminish the people's faith in our justice system.[12]

In this case, respondents admittedly solicited money from several bonding companies. Mr. Hernandez immediately acknowledged that his actions constituted a violation of the memorandum circular issued by the Civil Service Commission and apologized for his transgression, but pleaded for compassion, asking the Court to consider his 34 years of service with the Court and his advanced age. As for Ms. Nobleza, she explained that it was her understanding that the prohibition was only against soliciting from persons or parties who had pending cases before the court.

Clearly, respondents committed improper solicitation, an offense which merits a grave penalty. Under Section 52(A) (11) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dismissal is the penalty for improper solicitation at the first offense. Section 58(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

WHEREFORE, respondents Rolando H. Hernandez, Executive Assistant I, Legal Office, Office of the Court Administrator,

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

[11] A.M. No. P-06-2122, July 17, 2007, 527 SCRA 622.

[12] *Id.* at 632.

and Sheela R. Nobleza, Court Stenographer, Metropolitan Trial Court, Branch 23, Manila are hereby found *GUILTY* of Improper Solicitation. They are hereby *DISMISSED* from service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Quisumbing, J., on official leave.

EN BANC

[A.M. No. P-07-2298. April 24, 2009]

PETER B. MALLONGA, *complainant, vs.* **MARITES R. MANIO, Court Interpreter III, Regional Trial Court (RTC), Branch 4, Tuguegarao City,** *respondent.*

[A.M. No. P-07-2299. April 24, 2009]

HON. LYLIHA ABELLA-AQUINO, Judge, RTC, Branch 4, Tuguegarao City, *complainant, vs.* **MARITES R. MANIO, Court Interpreter III, RTC, Branch 4, Tuguegarao City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WHEN GUILTY OF DISHONESTY AND GRAVE MISCONDUCT.— In **A.M. No. P-07-2298**, we sustain the findings of the OCA and hold respondent Manio guilty of dishonesty and grave misconduct for the second time. The detailed narration of the facts in the unrebutted affidavit of Mallonga and the letter of Judge Aquino, taken together with the copy of the fake resolution, substantially supported the administrative charges of dishonesty and grave misconduct against respondent Manio. She took advantage of her official position and defrauded a potential litigant. Her acts clearly constitute dishonesty which is the "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." On the other hand, the forgery that she committed in furtherance of the deceit constitutes grave misconduct or a "flagrantly or shamefully wrong or improper conduct." Moreover, we view with disfavor respondent Manio's repeated refusal to answer the charges against her. By analogy, we advert to "the principle in criminal law that the first impulse of an innocent man, when accused of wrongdoing, is to express his innocence at the first opportune time." Thus, the Court considers her silence and inaction as indicative not only of defiance, but also of guilt.

2. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— Dishonesty or grave misconduct carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service. In *OCA v. Cunting*, we imposed upon the respondent therein the penalty of fine to be deducted from his accrued leave credits in view of the respondent's previous dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service. In the present case, taking into account the Court's earlier decision in *Canlas-Bartolome v. Manio*, we deem it proper to impose upon respondent Manio the penalty of fine in the amount of ₱40,000.00 to be deducted from her

accrued leave credits in lieu of the extreme penalty of dismissal for a grave offense.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Before us are the consolidated administrative charges against Court Interpreter III Marites R. Manio (Manio) of Branch 4, Regional Trial Court (RTC), Tuguegarao City for dishonesty and grave misconduct.

Administrative Matter (A.M.) No. P-07-2298 stemmed from an *Affidavit* dated June 4, 2004 executed by Peter B. Mallonga (Mallonga).

In said Affidavit, Mallonga related that respondent Manio was his former classmate and friend in college. Sometime in September 2003, Mallonga went to the RTC of Tuguegarao City and inquired from respondent Manio if she knew a lawyer who could help him file a petition for the correction of entry in his marriage certificate. Respondent Manio allegedly volunteered the name of a certain lawyer and told Mallonga to secure copies of his marriage and birth certificates so that these could be given to the lawyer. A week later, Mallonga gave respondent Manio copies of the said certificates. Respondent Manio then asked Mallonga to sign a prepared petition and to pay the total amount of ₱13,000.00 for attorney's fees and other expenses.

Respondent Manio eventually persuaded Mallonga and the latter paid the agreed amount in installments. As the weeks passed, Mallonga attempted to see or contact respondent Manio to inquire about the status of his petition but Manio was always out of the office or absent. They finally met once more sometime in December 2003 at Baby's Restaurant where respondent Manio handed to Mallonga a copy of an alleged resolution dated November 25, 2003 of Branch 4, RTC, Tuguegarao City and purportedly signed by Judge Lyliha L. Abella-Aquino (Judge Abella-Aquino).[1] Respondent Manio told Mallonga his petition

[1] *Rollo,* pp. 5-6.

was already granted and that she "pulled some strings in the court" so that his appearance was dispensed with at the hearing of the case.

Mallonga then filed the above-mentioned resolution with the Local Civil Registrar of Solana, Cagayan, but the said office informed him that a certificate of finality was required before the correction of his marriage certificate could be effected. Mallonga asked respondent Manio to produce a certificate of finality, but the latter failed to deliver the same on the date agreed upon by them.

On June 3, 2004, Mallonga went again to the office of respondent Manio and asked for the assistance of one of the court personnel who led him to Jacinto Danao (Danao), the clerk in charge of civil cases. When Danao checked his records, he found that the docket number which appeared in the resolution Manio had given Mallonga belonged to another case, and that the said resolution was a spurious document.

On June 7, 2004, Judge Abella-Aquino forwarded the complaint of Mallonga to the Office of the Court Administrator (OCA) and reported that her signature in the purported resolution was a forgery.

On the other hand, **A.M. No. P-07-2299** arose from an *Affidavit* dated April 19, 2004 executed by Bernadette Canlas-Bartolome (Bartolome).

In her Affidavit, Bartolome narrated that her sister, Bety Canlas-Marcelo, filed a petition for the correction of entries in her marriage certificate on August 8, 2003; the petition was raffled to Branch 1 of the RTC of Tuguegarao City. Bartolome said that her sister left for Italy after the petition had been filed, so her sister asked her to personally check the status of the case. Bartolome was further informed by her sister that she (Bety) had been in touch with respondent Manio, a former officemate in a bank, who had promised to keep her informed of the status of the case. Bety told her sister that the latter would hear from Manio.

On October 8, 2003, Bartolome was informed by respondent Manio that the case of her sister was dismissed because of the negligence of the lawyer who handled the same. However, respondent Manio quickly advised Bartolome that she (Manio) could re-file the case with a guaranteed favorable decision. Manio advised Bartolome that the amount of ₱15,000.00 would be needed. Respondent Manio explained that this amount was for the expenses for the filing of the case, for the attorney's and publication fees, and as bribe for the judge who would hear the case. Bartolome agreed and initially paid respondent Manio the amount of ₱10,000.00. Respondent Manio accepted the money and signed a receipt therefor.[2] Both agreed that the remaining balance of ₱5,000.00 would be paid after the case had been concluded.

On December 15, 2003, respondent Manio handed Bartolome an alleged resolution approving the change of entries in Bety's marriage certificate issued by Branch 4, RTC, Tuguegarao City and purportedly signed by Judge Abella-Aquino.[3] Respondent Manio also informed Bartolome that the certificate of finality of the said resolution would be released after the lapse of a certain number of days. Bartolome then paid respondent Manio the balance of ₱5,000.00.

On December 20, 2003, respondent Manio asked for and received an additional amount of ₱500.00 from Bartolome to allegedly expedite the release of the certificate of finality but, despite such additional payment, respondent Manio failed to deliver the said document.

On April 14, 2004, Bartolome went again to the office of respondent Manio at Branch 4, RTC, Tuguegarao City, where she showed Danao, the clerk in charge of civil cases, the resolution given to her by Manio and asked Danao about the certificate of finality that she needed. Bartolome then discovered that the docket number as indicated in the adverted resolution belonged to a different case, and that Branch 4 of the RTC of Tuguegarao City had no record of the case of her sister Bety.[4]

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[2] *Id*. at 9.

[3] *Id*. at 10-11.

[4] *Id*. at 12.

In a *Letter* dated April 23, 2004, Judge Abella-Aquino indorsed the complaint of Bartolome against respondent Manio to the OCA and further reported that she confronted respondent Manio about the complaint, and that the latter admitted forging the judge's signature in the purported resolution.

In each of these administrative charges, the OCA twice required respondent Manio to comment, but the latter failed to comply. This Court then directed respondent Manio to comply with the directives of the OCA and to show cause why no administrative sanction should be meted to her for ignoring the same. Respondent Manio was further reminded that her non-compliance would be considered as a waiver of her right to be heard or to present any defense, and that the cases would be decided on the basis of the records. Respondent Manio still refused to answer the charges against her. Consequently, this Court resolved to consider as waived the right of respondent Manio to be heard and to present evidence and referred these cases back to the OCA for report and recommendation.

In its *Memorandum*[5] dated January 9, 2007, the OCA evaluated the evidence on record and recommended that respondent Manio be held liable for dishonesty and grave misconduct. These cases were then submitted for resolution in a *Minute Resolution*[6] dated July 16, 2007 of this Court.

Meanwhile, on December 4, 2007, this Court promulgated *Canlas-Bartolome v. Manio*[7] docketed as **A.M. No. P-07-2397**, which essentially involved the same parties and charges against respondent Manio in **A.M. No. P-07-2299,** one of the consolidated cases herein. Respondent Manio was administratively held liable and sanctioned in **A.M. No. P-07-2397** as follows:

The Court finds respondent guilty of dishonesty and grave misconduct and hereby dismisses her from the service.

As a public servant, respondent is expected to exhibit at all times the highest sense of honesty and integrity and faithfully adhere to, hold

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[5] *Rollo,* A.M. No. P-07-2298, pp. 13-19.

[6] *Rollo,* A.M. Nos. P-07-2298 and P-07-2299, p. 18 and p. 21, respectively.

[7] 539 SCRA 333.

inviolate, and invigorate the principle that public office is a public trust. **By soliciting money from complainant, she committed an act of impropriety which immeasurably affects the honor and dignity of the judiciary and the people's confidence in it. She committed the ultimate betrayal of the duty to uphold the dignity and authority of the judiciary by arrogating to herself judicial power which she does not possess, in order to extort money from a party-litigant. Her act of forging the presiding judge's signature also constitutes a blatant disregard for the values of integrity, uprightness and honesty which are expected of all court personnel.**

The Court has never wavered in exhorting all those in the judiciary to behave at all times to promote public confidence in the integrity of the judiciary. At every opportunity, the Court has emphasized that the conduct and behavior of all officials and employees of the judiciary must at all times be characterized by strict propriety and decorum in order to earn and maintain the respect of the people.

As the Court deplored in many cases, what brings the judiciary into disrepute are often the actuations of a few erring court personnel peddling influence to party-litigants, creating the impression that decisions can be bought and sold, ultimately resulting in the disillusionment of the public. Thus, whenever warranted by the gravity of the offense, the supreme penalty of dismissal in an administrative case is meted to erring personnel. Indeed, the Court will never countenance such conduct, act or omission on the part of all those in the judiciary as would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary. The Court has been resolute in its drive to discipline and, if warranted, to remove from the service errant magistrates, employees and even Justices of higher collegiate appellate courts for any infraction that tends to give the Judiciary a bad name. The Court has been unflinching in imposing discipline on errant personnel or in purging the ranks of those undeserving to remain in the service, such as in this case.

WHEREFORE, **respondent Marites R. Manio is hereby found guilty of dishonesty and grave misconduct and is hereby DISMISSED from the service, with prejudice to re-employment in any government agency including government-owned or controlled corporations. Her retirement benefits, except accrued leaves credits, are FORFEITED.**

The Office of the Court Administrator is directed to initiate the criminal prosecution of respondent.

SO ORDERED. (Emphasis supplied)

Respondent Manio having been punished for the same acts which constitute the charges involved in the present **A.M. No. P-07-2299**, the aforesaid case should, therefore, be dismissed.

However, respondent Manio's dismissal from the service in **A.M. No. P-07-2397** does not render moot[8] the subject complaints of Mallonga and Judge Aquino in **A.M. P-07-2298**, which were founded on a different set of facts.

In **A.M. No. P-07-2298**, we sustain the findings of the OCA and hold respondent Manio guilty of dishonesty and grave misconduct for the second time. The detailed narration of the facts in the unrebutted affidavit of Mallonga and the letter of Judge Aquino, taken together with the copy of the fake resolution, substantially supported the administrative charges of dishonesty and grave misconduct against respondent Manio. She took advantage of her official position and defrauded a potential litigant. Her acts clearly constitute dishonesty which is the "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[9] On the other hand, the forgery that she committed in furtherance of the deceit constitutes grave misconduct or a "flagrantly or shamefully wrong or improper conduct."[10]

Moreover, we view with disfavor respondent Manio's repeated refusal to answer the charges against her. By analogy, we advert to "the principle in criminal law that the first impulse of an innocent man, when accused of wrongdoing, is to express his innocence at the first opportune time."[11] Thus, the Court

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[8] *OCA v. Cunting*, A.M. No. P-04-1917, December 10, 2007, 539 SCRA 494, 511-512.

[9] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, February 22, 2008, 546 SCRA 414, 424.

[10] *Faeldonea v. CSC*, G.R. No. 143474, August 6, 2002, 386 SCRA 384, 388.

[11] *Ortiz v. De Guzman*, A.M. No. P-03-1708, February 16, 2005, 451 SCRA 392, 399.

considers her silence and inaction as indicative not only of defiance, but also of guilt.

Dishonesty or grave misconduct carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.[12] In *OCA v. Cunting*,[13] we imposed upon the respondent therein the penalty of fine to be deducted from his accrued leave credits in view of the respondent's previous dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service. In the present case, taking into account the Court's earlier decision in *Canlas-Bartolome v. Manio*, we deem it proper to impose upon respondent Manio the penalty of fine in the amount of ₱40,000.00 to be deducted from her accrued leave credits in lieu of the extreme penalty of dismissal for a grave offense.

WHEREFORE, in view of the foregoing, respondent Marites R. Manio is hereby held administratively *GUILTY* of dishonesty and grave misconduct in *A.M. No. P-07-2298*. In view of her previous dismissal from the service, a *FINE* in the amount of *₱40,000.00* is imposed upon respondent Manio to be deducted from her accrued leave benefits. The Office of the Court Administrator is directed to file appropriate criminal charges against the said respondent.

A.M. No. P-07-2299 is hereby *DISMISSED*, as the charges involved therein against respondent Manio had already been resolved by this Court in a prior judgment.

SO ORDERED.

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

Quisumbing, J., on official leave.

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[12] Sections 52 and 58 of Rule IV of the Civil Service Commission Memorandum Circular No. 19-99.

[13] *Supra* note 8.

SECOND DIVISION

[A.M. No. P-07-2321. April 24, 2009]
(Formerly OCA I.P.I. No. 07-2492-P)

JUDGE PELAGIA DALMACIO-JOAQUIN, *petitioner, vs.* **NICOMEDES C. DELA CRUZ, Process Server, MTCC, San Jose Del Monte, Bulacan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DISCIPLINE FOR COURT PERSONNEL; INSUBORDINATION, DEFINED; WHEN PRESENT; CASE AT BAR.— Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. Clearly, respondent's conduct towards complainant constitutes insubordination. Complainant, as the chief of her office, acted within her authority when she summoned the employees involved in the reported November 2, 2006 incident into her chambers for a meeting to ascertain what actually happened during that time and to undertake the appropriate measures to maintain peace in her office. In that meeting, however, respondent deported in a manner reflecting lack of restraint and disrespect towards his superior. And if this was not enough, he rudely and unceremoniously walked out of the meeting. He even had the audacity to ignore complainant's requests for him to return to the meeting. Worse, after hiding in the comfort room of the clerk, he went home without so much as seeking leave from the judge. Without a doubt, respondent's actions amount to gross insubordination, not to mention gross disobedience and disrespect to the judicial authority and the position of complainant judge.

2. ID.; ID.; ID.; MISCONDUCT; DEFINED AND CONSTRUED; EXEMPLIFIED.— Misconduct, on the other hand, is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. It is any unlawful

behavior by public officers in relation to the duties of their offices, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. Respondent committed misconduct when he verbally abused his co-employees and appeared at his place of work drunk. Drinking during office hours may constitute misconduct and is prohibited under the Civil Service Rules. Drinking undermines efficiency and is counter-productive. It generates an unwholesome consequence on a public servant. And when the culprit is an employee of the court, the image of the judiciary as a whole cannot but be affected.

3. ID.; ID.; ID.; SIMPLE MISCONDUCT; WHEN GUILTY.— Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, should not be countenanced. Respondent's act can only be regarded as simple misconduct since it has no direct relation to the performance of his official duties.

4. ID.; ID.; ID.; GROSS INSUBORDINATION; DISTINGUISHED FROM SIMPLE MISCONDUCT.— Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, gross insubordination is a grave offense punishable by suspension (from six months and one day to one year) for the first offense. On the other hand, simple misconduct is a less grave offense punishable by suspension for the first offense, but only from one month and one day to six months. In this instance, we apply Sec. 55 of the same Rules and consider the offense of simple misconduct as an aggravating circumstance, for which reason, the penalty for gross insubordination in its maximum should be imposed. Respondent and other court employees for that matter need to be reminded that government service is people-oriented where high-strung behavior and boorishness cannot be allowed. They are supposed to be well-mannered and considerate in their actuation both in their relationships with co-workers and the transacting public. Belligerent behavior has no place in government service where personnel are enjoined to act with self restraint and civility at all times even when confronted with rudenessd and insolence.

5. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— At this juncture, the Court notes that, as the OCA pointed out, the respondent has already been administratively charged thrice for misconduct. In one, he was admonished and warned. It is obvious that respondent did not take seriously the warning the Court gave him and flaunted his ill-tempered manner even after the imposition of the sanction. **WHEREFORE,** Nicomedes C. dela Cruz, Process Server of the MTCC in San Jose Del Monte City, Bulacan, is found **GUILTY** of **Gross Insubordination** and **Simple Misconduct.** He is meted the penalty of **SUSPENSION of one (1) year without pay**, with the stern warning that a repetition of similar or analogous infractions in the future shall be dealt with more severely.

APPEARANCES OF COUNSEL

Wilfredo O. Arceo for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This administrative matter arose from the Letter-Complaint of Judge Pelagia J. Dalmacio-Joaquin of the Metropolitan Trial Court in Cities (MTCC) in San Jose Del Monte City, Bulacan, charging respondent Nicomedes C. dela Cruz, Process Server in said MTCC, with Insubordination, Disobedience, and Conduct Unbecoming a Court Personnel.

The facts of the case, as gathered from the records, are as follows:

On November 3, 2006, after complainant judge left her office a few minutes before 5:00 p.m., Security Guard Sielam G. Wee reported to her that on November 2, 2006, respondent allegedly arrived in the office, apparently drunk, and hurled invectives while pointing his fingers at other employees present, particularly: Jonathan Nolasco, Josephine dela Rosa, Cresencia Reyes, and Harold Gumbao. Afterwards, respondent attempted to punch Nolasco but was waylaid by Wee who pulled respondent away.

After hearing the report, complainant summoned the employees involved in the incident to her chambers. In the presence of Acting Branch Clerk of Court Mark Anthony V. Aniag, the employees recounted their stories and expressed their apprehension that respondent might do them harm. They also expressed the intention not to file administrative charges against respondent and one of them even asked to be transferred to another court.

At past 1:00 p.m. of the same day, respondent was summoned into the complainant's office where he denied the contents of Wee's report. Thereafter, complainant asked Wee to produce the logbook, which detailed the events that transpired the day before, and show it to respondent. After seeing the logbook, respondent admitted taking alcoholic drink but denied being drunk at that time. When the employees involved in the incident confronted respondent, he called them liars and left the complainant's chambers without a word. Complainant then followed him asking him to return so that they can finish their discussion, but respondent ignored her and hid in a comfort room.

Complainant also alleged that respondent is the subject of other complaints, one filed sometime in 2005 with the Office of the Court Administrator (OCA), entitled *Judge Pelagia Dalmacio-Joaquin v. Nicomedes C. Dela Cruz*, initially docketed as IPI No. 05-2299-P, and later redocketed as A.M. No. 05-2299-P. In it, respondent was charged with challenging a co-employee to a fight, submitting either false or misleading and oftentimes late returns for serving notices and orders, and failing to comply with the show-cause orders issued to him. In fact, on February 20, 2006, the Court issued a Resolution in which respondent was admonished and warned that a repetition of the same or similar offense shall be dealt with more severely.

In compliance with the directive of the OCA, respondent submitted his comment dated January 15, 2007. Giving his version of the incident in question, he alleged that he was just having an argument with his co-employees, adding that he raised his voice merely to stress a point. He claimed that Wee must have thought that he was angry upon hearing his voice. He denied

the imputation of his being drunk and that he hurled invectives against his co-employees. He also said that a stomachache prompted him to hurriedly leave the complainant's office and go home. Furthermore, he declared that he did not want to answer back at the complainant so he just left her office.

On May 23, 2007, the Court resolved to refer the administrative matter to Executive Judge Petrita B. Dime of the Regional Trial Court in Malolos City for investigation, report, and recommendation.

In accordance with the authority the Court granted her through a Resolution in A.M. No. 05-10-671-RTC, Judge Dime, after the raffle of the matter on November 21, 2007, designated 1st Vice-Executive Judge Herminia V. Pasamba to conduct the investigation, prepare the report, and submit her recommendations.

Following an investigation, Judge Pasamba submitted on March 5, 2008 her Report, in which she described respondent as ill-tempered and lacking in restraint and discipline, bordering on disrespect and disobedience to a superior. She also found respondent to have deviated from the judicial decorum demanded of him when he hurled invectives at his co-employees, causing them to cow in fear and cry. She also determined that respondent was drunk when he returned to the court on the afternoon in question. Finally, she found that respondent has been charged administratively three (3) times, one of which is still pending with the Executive Judge.

The investigating judge recommended that respondent, for his acts complained of, be meted the penalty of suspension for two (2) months without pay.

On April 16, 2008, the Court referred the report of Judge Pasamba to the OCA for further evaluation, report, and recommendation. On October 21, 2008, Court Administrator Jose P. Perez submitted a Memorandum in which he affirmed and adopted the factual findings of the investigating judge. He, however, recommended the modification of the proposed sanction to suspension of one (1) year without pay on the ground that respondent's inculpatory acts constitute gross insubordination and misconduct.

The recommendation of the Court Administrator and the premises holding it together are well taken.

Insubordination is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed.[1] The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[2]

Clearly, respondent's conduct towards complainant constitutes insubordination. Complainant, as the chief of her office, acted within her authority when she summoned the employees involved in the reported November 2, 2006 incident into her chambers for a meeting to ascertain what actually happened during that time and to undertake the appropriate measures to maintain peace in her office. In that meeting, however, respondent deported in a manner reflecting lack of restraint and disrespect towards his superior. And if this was not enough, he rudely and unceremoniously walked out of the meeting. He even had the audacity to ignore complainant's requests for him to return to the meeting. Worse, after hiding in the comfort room of the clerk, he went home without so much as seeking leave from the judge. Without a doubt, respondent's actions amount to gross insubordination, not to mention gross disobedience and disrespect to the judicial authority and the position of complainant judge.

Misconduct, on the other hand, is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior.[3] It is any unlawful behavior by public officers in relation to the duties of their offices, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.[4]

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[1] BLACK'S LAW DICTIONARY WITH PRONUNCIATIONS (6th ed.).

[2] *Porter v. Pepsi-Cola Bottling Co. of Columbia*, 246 S.C. 370, 146 S.E.2d 620, 622.

[3] *Camus, Jr. v. Alegre*, A.M. No. P-06-2182, August 12, 2008, 561 SCRA 744, 754; citing *Rodriguez v. Eugenio*, A.M. No. RTJ-06-2216, April 20, 2007, 521 SCRA 489, 501.

[4] Callejo, Juanita T., CSC Resolution No. 99-0192, January 15, 1999.

Respondent committed misconduct when he verbally abused his co-employees and appeared at his place of work drunk. Drinking during office hours may constitute misconduct and is prohibited under the Civil Service Rules.[5] Drinking undermines efficiency and is counter-productive. It generates an unwholesome consequence on a public servant. And when the culprit is an employee of the court, the image of the judiciary as a whole cannot but be affected.

Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, should not be countenanced. Respondent's act can only be regarded as simple misconduct since it has no direct relation to the performance of his official duties.[6]

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, gross insubordination is a grave offense punishable by suspension (from six months and one day to one year) for the first offense. On the other hand, simple misconduct is a less grave offense punishable by suspension for the first offense, but only from one month and one day to six months. In this instance, we apply Sec. 55 of the same Rules[7] and consider the offense of simple misconduct as an aggravating circumstance, for which reason, the penalty for gross insubordination in its maximum should be imposed.[8]

Respondent and other court employees for that matter need to be reminded that government service is people-oriented where high-strung behavior and boorishness cannot be allowed.[9] They

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[5] Presidential Decree No. 807, Art. IX, Sec. 36(4).

[6] *Jallorina v. CSC*, CA-G.R. SP No. 45642, September 8, 1998.

[7] Section 55. *Penalty for the Most Serious Offense*.—If the respondent is guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

[8] *Anonymous v. Velarde-Laolao*, A.M. No. P-07-2404, December 13, 2007, 540 SCRA 42, 59.

[9] *De Luna v. Ricon*, A.M. No. P-94-1093, November 16, 1995, 250 SCRA 1, 6.

are supposed to be well-mannered and considerate in their actuation both in their relationships with co-workers and the transacting public.[10] Belligerent behavior has no place in government service where personnel are enjoined to act with self restraint and civility at all times even when confronted with rudeness and insolence.[11]

At this juncture, the Court notes that, as the OCA pointed out, the respondent has already been administratively charged thrice for misconduct. In one, he was admonished and warned.[12] It is obvious that respondent did not take seriously the warning the Court gave him and flaunted his ill-tempered manner even after the imposition of the sanction.

WHEREFORE, Nicomedes C. dela Cruz, Process Server of the MTCC in San Jose Del Monte City, Bulacan, is found *GUILTY* of *Gross Insubordination* and *Simple Misconduct*. He is meted the penalty of *SUSPENSION of one (1) year without pay*, with the stern warning that a repetition of similar or analogous infractions in the future shall be dealt with more severely.

SO ORDERED.

Carpio Morales (Acting Chairperson), Tinga, Leonardo-de Castro,*** and *Brion, JJ.,* concur.

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[10] *De Vera, Jr. v. Rimando*, A.M. No. P-03-1672, June 8, 2007, 524 SCRA 25, 32.

[11] *Quiroz v. Orfila*, A.M. No. P-96-1210, May 7, 1997, 272 SCRA 324, 331.

[12] A.M. No. 05-2299-P.

[*] As per Special Order No. 618 dated April 14, 2009.

[**] Additional member as per Special Order No. 619 dated April 14, 2009.

EN BANC

[A.M. No. P-08-2469. April 24, 2009]
(Formerly OCA IPI No. 07-2509-P)

ERLINA P. JOLITO, *complainant, vs.* **MARLENE E. TANUDRA, Court Stenographer II, Municipal Trial Court in Cities (MTCC), Victoria City, Negros Occidental,** *respondent.*

[A.M. OCA IPI No. 08-2857-P. April 24, 2009]

ERLINA P. JOLITO, *complainant, vs.* **GEORGE E. GAREZA, Sheriff II, Municipal Trial Court in Cities (MTCC), Victoria City, Negros Occidental,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; OFFICIALS AND EMPLOYEES OF THE JUDICIARY ARE PROHIBITED FROM ENGAGING DIRECTLY IN ANY PRIVATE BUSINESS, VOCATION OR PROFESSION EVEN OUTSIDE OFFICE HOURS; RATIONALE.— It bears to emphasize that the charge against Tanudra is not related to the performance of her official functions. Facilitating the transfer of properties is not a function of a court stenographer. As observed by the OCA, Tanudra is engaged in a "moonlighting activity," since facilitating the transfer of properties can only be done by her during office hours, as it required transacting with a government office such as the Registry of Deeds. Time and again this Court has impressed on employees of the Court to serve with the highest degree of responsibility and integrity and has enjoined them to conduct themselves with propriety even in private life. Any reproach to them is bound to reflect adversely on their office. Officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure that full-time officers of the court render full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases as required by the Rules of Court. As held in *Biyaheros*

Mart Livelihood Association, Inc. v. Cabusao, Jr.: Government service demands great sacrifice. One who cannot live with the modest salary of a public office has no business staying in the service. He is free to seek greener pastures elsewhere. The public trust character of the office proscribes him from employing its facilities or using official time for private business or purposes.

2. ID.; ID.; ID.; WHEN GUILTY OF DISHONESTY AND GROSS MISCONDUCT; PRESENT IN CASE AT BAR.— This Court agrees with the OCA's recommendation that Tanudra be dismissed from service because of the following acts: her act of accepting money as facilitation fee which was clearly not part of her official duties as a Court Stenographer; refusing to return the same despite repeated demands for its return; and then later on blaming a fellow court officer for such failure. Clearly, such actuations of Tanudra are tantamount to dishonesty and gross misconduct. Gross misconduct has been defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence. Dishonesty on the other hand is the "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle. Moreover, as correctly observed by the OCA, it is of no moment that the act of dishonesty of Tanudra does not relate to the performance of her official duties. The government cannot tolerate in its service a dishonest official, even if she performs her duties correctly and well, because by reason of her government position, she is given more ample opportunities to commit acts of dishonesty against her fellowmen, even against offices and entities of the government other than the office where she is employed; and by reason of her office, she enjoys and possesses a certain influence and power which render the victim of her great misconduct, oppression and dishonesty less disposed and prepared to resist and counteract her evil acts and actuations. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work therein. Thus, the conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and, above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of any of those in the administration of justice, who will violate the norm of public

accountability and diminish or even just tend to diminish the faith of the people in the judiciary.

3. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— Under Section 52 (A) (1) and (3), Civil Service Resolution No. 991936, dishonesty and gross misconduct are punishable by dismissal even for the first offense. x x x Therefore, **Marlene E. Tanudra**, Court Stenographer II, MTCC, Victorias City, Negros Occidental, is found **GUILTY** of dishonesty and gross misconduct and is hereby **DISMISSED** from the service with prejudice to reinstatement or re-employment in any agency of the government, including government-owned or controlled corporations. All retirement benefits and other privileges to which she may be entitled are forfeited except for leave credits to which she may be entitled.

R E S O L U T I O N

PER CURIAM:

This case arose from a Complaint[1] filed by Erlina P. Jolito (Jolito) on June 2, 2006, against Marlene E. Tanudra (Tanudra), a Court Stenographer II of the Municipal Trial Court in Cities (MTCC), Victorias City, Negros Occidental, for grave misconduct.

The facts of the case:

Jolito alleged that sometime in April 1995, she purchased, from the Heirs of Emilia *Vda. de* Zaldarriaga, two parcels of land situated at Juan Luna Street, Cadiz City, Negros Occidental.

Sometime in February 2005, Jolito called her nephew Voltaire Jolito and his friend George E. Gareza (Gareza), a Sheriff of the MTCC, Victorias City, to assist her in the transfer of title to her name.

On March 3, 2005, Gareza introduced Jolito to Tanudra, who posed as an expert in legal matters such as the process pertaining to the transfer of ownership and titling of lots with the Office of the Register of Deeds of Cadiz City.

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

Sometime in May 2005, Jolito went to the office of Tanudra and gave the latter PhP20,000.00, which Tanudra required for the processing of the titles including the payment for the transfer of ownership of the lots.

After more than one year, Jolito did not receive any news from Tanudra. Jolito then confronted Tanudra who said that she was still processing the transfer of titles.

Later on, Jolito became frustrated and thus demanded from Tanudra the return of the money and the documents the former gave the latter. Jolito sent three demand letters to Tanudra dated February 6, 2006, February 28, 2006 and April 7, 2006. Jolito however did not receive any reply from Tanudra.

On May 15, 2006, Gareza executed an affidavit stating that he introduced Jolito to Tanudra and that he was present when Jolito handed to Tanudra PhP20,000.00 for expenses for transaction. In addition, Gareza claimed that when Tanudra was confronted with the status of the transaction, the latter replied that she was still getting in touch with her "contacts" in the Registry of Deeds. Moreover, Gareza claimed that he went to the Registry of Deeds to follow up the status of the transaction and learned that no application for transfer of ownership was filed in the said office by Tanudra.[2]

Thus, the instant complaint supported by the affidavit of Gareza.

Upon recommendation of the Court Administrator, Tanudra was required to file a comment in response to the complaint lodged against her.

Tanudra's comment states:

x x x x x x x x x

My comment to this complaint of Ms. Jolito against me is that it is fabricated, unfounded, malicious as well as libelous as it bears no truth in it, thus, giving me a besmirched reputation. I cannot gamble my 27 years of employment with the judiciary for that amount of money.

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[2] *Rollo*, p. 194.

I don't have any intention not to return her documents and money but my delay in doing so was coupled by the fact that up to the present, part and parcel of the same amount is in the possession of GEORGE GAREZA, he having borrowed it.

Even before I received her requests to return back the documents and money, which was wrongfully alleged by her to be in the amount of ₱20,0000.00, (sic) I was already preparing to return them back to her as I was informed that the TRANSFER OF TITLE IN HER NAME could not be done because the same property sought to be transferred upon her request had long been FORECLOSED BY THE CENTRAL BANK which is also of her knowledge, thus, she likewise misled me.

I am therefore wrongfully charged by MISS JOLITO for Grave Misconduct and Dishonesty because in the first place she is dishonest in herself by insisting to help her in the transfer of said title.

I was just made by them an instrument to that sale she had executed of said property to another person and thus a poor victim of injustice.

With his comment I am therefore requesting that the ADMINISTRATIVE CASE filed against me by Ms. Jolito be DISMISSED, and hereby respectfully seeks for any other legal relief and remedies in the premises.[3]

On April 20, 2007, the Senior Deputy Court Administrator recommended that the complaint be referred to Executive Judge Felipe G. Banzon (Judge Banzon), Regional Trial Court, Silay City, Negros Occidental for further investigation.[4]

In compliance with this Court's Third Division Resolution,[5] Judge Banzon submitted his Investigation Report[6] on October 23, 2007. The report contained the following findings/observations as summarized by the Office of the Court Administrator (OCA):

1. For quite a period of time from the date of purchase (1995), the transfer of titles of the two parcels of land to

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[3] *Rollo,* p. 30.

[4] *Id.* at 1-3.

[5] *Id.* at 31.

[6] *Id.* at 65-72.

complainant's name was not effected, and the complainant gave no reason why this is so. Respondent asserts it is because the parcels of land had long been foreclosed by the Central Bank.

2. Respondent Tanudra admits the allegations made by complainant, though she claims she received only Php19,000.00. She states she wanted to return the money but a significant portion thereof (Php9,000.00) was taken by Gareza, who now denies having taken the said sum.

3. Atty. Meddie Arbolado, the Register of Deeds of the City of Cadiz, where the two parcels of land were registered, told the court that said parcels of land were and still are registered with the Registry of Deeds of Cadiz City in the name of the Intestate Estate of the late Antonio Monfort. The named vendors in the Deed of Absolute Sale of complainant are not the registered owners of said land.

4. Atty. Arbolado categorically states that respondents has not made any application on the matter of the transfer of titles of said parcels of land, nor was there an attempt by the respondent to do the same.

5. Judge Banzon believes that respondent Tanudra and Gareza eventually discovered that the vendors named in the Deed of the Absolute Sale were not the registered owners of the land, yet they demanded and received from complainant the sum of Php20,000.00 for "expenses of transfer."[7]

Judge Banzon found that Tandura made no denial of her participation in the series of incidents that eventually resulted in the prejudice of Jolito and thus recommended that administrative proceedings be filed against Tanudra for "Grave Misconduct" and "Gross Dishonesty." Moreover, Judge Banzon also found that Gareza was an active participant in and direct beneficiary of the proceeds of the incident and thus recommended that administrative proceedings also be filed against him for "Grave Misconduct" and "Gross Dishonesty."[8]

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[7] *Rollo*, pp. 194-195.

[8] *Id.* at 72.

The OCA in a Memorandum[9] dated May 2, 2008 concurred in the finding of Judge Banzon that Tanudra be administratively charged, but not for grave misconduct and gross dishonesty as recommended by Judge Banzon.

For its part, the OCA made the following recommendations, to wit:

1. That the instant administrative matter be RE-DOCKETED as a regular administrative complaint against respondent Marlene E. Tandura, Court Stenographer II, MTCC, Victorias City, Negros Occidental;

2. That respondent Tanudra be found GUILTY of conduct prejudicial to the best interest of the service and be meted with a penalty of SUSPENSION for six (6) months and one (1) day without pay effective immediately with a stern warning that a repetition of the same or similar offense shall be dealt with more severely;

3. That the complaint of Erlina P. Jolito dated 02 June 2006 be TREATED as an administrative complaint against George E. Gareza, Sheriff II, MTCC, Victorias City, Negros Occidental, and that the latter be directed to submit his COMMENT thereto within thirty (30) days from notice hereof.[10]

In compliance with this Court's Order dated June 4, 2008, Gareza submitted his Comment[11] where he contended that during the time Jolito was demanding from Tanudra the return of the money and documents, Tanudra never mentioned anything about Gareza having borrowed the money. Gareza claimed that Tanudra only involved him in the mess because of his decision to be a witness in favor of Jolito. Thus, Gareza denied having received half of the money in dispute as claimed by Tanudra.[12]

On November 19, 2008, this Court's Third Division issued a Resolution noting the comment filed by Gareza and referring the same to the OCA for evaluation, report and recommendation.

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[9] *Id.* at 193-197.

[10] *Rollo*, p. 197.

[11] *Id.* at 8-13.

[12] *Id.* at 13.

On January 27, 2009, the OCA submitted its Memorandum[13] where, upon a second look at the evidence on record, it recommended that Tanudra be instead dismissed from service and that the administrative complaint against Gareza be dismissed for lack of evidence.

The OCA in its Memorandum considered the fact that Jolito sent demand letters to Tanudra, but the latter offered no reply. The OCA ruled that Tanudra should have at least informed Jolito that she could not return the money because half of it was with Gareza. It was only after Gareza made an affidavit in support of the complaint that Tanudra alleged that the portion of what she received from Jolito was borrowed by Gareza. Thus, the OCA concluded that Tanudra's claim was self-serving and a mere afterthought, as she tried to shift the blame to Gareza only after a formal complaint was filed against her.

In summary, the OCA found the following circumstances tantamount to dishonesty and gross misconduct to justify the dismissal of Tanudra from service: Tanudra's acts of (a) accepting money as facilitation fee; (b) refusing to return the same, although she had failed to perform her obligation; (c) blaming someone else for such failure.

The findings of the OCA are well-taken.

This Court notes the finding of Judge Banzon that Tanudra admitted the allegations made by Jolito, to wit:

> x x x She did admit that sometime in March 2005, she was engaged by the complainant to undertake the processing of the transfer of titles to her name of the two parcels of land which the latter purchased. The respondent made no denial of her receipt from the complainant of the amount supposedly needed for said purpose, though she claimed that she was given and did receive only Php 19,000.00 *vis-à-vis* complainant's assertion that she gave the respondent the sum of Php 20,000.00. The respondent further admits that she assured the complainant that the intended transfer of titles to her name of the referred two parcels of land would be accomplished in three months time, which undertaking she was not able to comply. The respondent

[13] *Id.* at 6.

also admits that demands were made on her by the complainant to return and/or refund the money given her for said purpose. The respondent admits that even as of date, she had not returned to the complainant the sum demanded of her.[14]

Given the admissions made by Tanudra during the investigation conducted by Judge Banzon, her administrative liability is indisputable.

It bears to emphasize that the charge against Tanudra is not related to the performance of her official functions. Facilitating the transfer of properties is not a function of a court stenographer. As observed by the OCA, Tanudra is engaged in a "moonlighting activity," since facilitating the transfer of properties can only be done by her during office hours, as it required transacting with a government office such as the Registry of Deeds.

Time and again this Court has impressed on employees of the Court to serve with the highest degree of responsibility and integrity and has enjoined them to conduct themselves with propriety even in private life. Any reproach to them is bound to reflect adversely on their office. Officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure that full-time officers of the court render full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases as required by the Rules of Court.[15]

As held in *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*:[16]

Government service demands great sacrifice. One who cannot live with the modest salary of a public office has no business staying in the service. He is free to seek greener pastures elsewhere. The public trust character of the office proscribes him from employing its facilities or using official time for private business or purposes.

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[14] *Rollo*, p. 69.

[15] *Benavidez v. Vega*, A.M. No. P-01-1530, December 13, 2001, 372 SCRA 208.

[16] A.M. No. P-93-811, June 2, 1994, 232 SCRA 707, 713.

Originally, the OCA in its May 2, 2008 Memorandum recommended that Tanudra be found guilty of conduct prejudicial to the best interest of the service and be meted with the penalty of suspension for six months and one day. However, after a second look at the evidence of record, the OCA in its January 27, 2009 Memorandum instead recommended that Tanudra be found guilty of dishonesty and gross misconduct and forthwith be dismissed from service.

This Court is more inclined to adopt the January 27, 2009 recommendation of the OCA. In the case at bar, the moonlighting activities of Tanudra, along with her attempt to blame Gareza (a fellow court officer) for her shortcomings, which the OCA described as self-serving and a mere afterthought, cannot be tolerated by this Court.

This Court agrees with the OCA's recommendation that Tanudra be dismissed from service because of the following acts: her act of accepting money as facilitation fee which was clearly not part of her official duties as a Court Stenographer; refusing to return the same despite repeated demands for its return; and then later on blaming a fellow court officer for such failure. Clearly, such actuations of Tanudra are tantamount to dishonesty and gross misconduct.

Gross misconduct has been defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence. Dishonesty on the other hand is the "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle."[17]

Under Section 52 (A) (1) and (3), Civil Service Resolution No. 991936,[18] dishonesty and gross misconduct are punishable by dismissal even for the first offense.[19]

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[17] *Philippine Amusement and Gaming Corporation v. Rilloraza*, G.R. No. 141141, June 25, 2001, 359 SCRA 525, citing Black's Law Dictionary Sixth Edition, p. 468, 1990.

[18] Uniform Rules on Administrative Cases in the Civil Service, August 31, 1999.

[19] *Malabanan v. Metrillo*, A.M. No. P-04-1875, February 6, 2008, 544 SCRA 1.

Moreover, as correctly observed by the OCA, it is of no moment that the act of dishonesty of Tanudra does not relate to the performance of her official duties. The government cannot tolerate in its service a dishonest official, even if she performs her duties correctly and well, because by reason of her government position, she is given more ample opportunities to commit acts of dishonesty against her fellowmen, even against offices and entities of the government other than the office where she is employed; and by reason of her office, she enjoys and possesses a certain influence and power which render the victim of her great misconduct, oppression and dishonesty less disposed and prepared to resist and counteract her evil acts and actuations.[20]

The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work therein. Thus, the conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and, above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of any of those in the administration of justice, who will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[21]

Lastly, with respect to the administrative complaint against Gareza, this Court adopts the recommendation of the OCA dismissing the same, as evidence on record fails to establish his culpability.

WHEREFORE, premises considered, *Marlene E. Tanudra*, Court Stenographer II, MTCC, Victorias City, Negros Occidental, is found *GUILTY* of dishonesty and gross misconduct and is hereby *DISMISSED* from the service with prejudice to reinstatement or re-employment in any agency of the government, including government-owned or controlled corporations. All retirement benefits and other privileges to which she may be

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[20] *Remolona v. Civil Service Commission*, G.R. No. 137473, August 2, 2001, 362 SCRA 304.

[21] *Prak v. Anacan*, A.M. No. P-03-1738, July 12, 2004, 434 SCRA 11.

entitled are forfeited except for leave credits to which she may be entitled.

The administrative complaint against George F. Gareza, Sheriff II, MTCC, Victorias City, Negros Occidental, is hereby *DISMISSED*, for lack of evidence.

SO ORDERED.

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

Quisumbing, J., on official leave.

EN BANC

[A.M. No. P-09-2628. April 24, 2009]
(A.M. No. OCA IPI No. 07-2686-P)

WILSON C. ONG, *complainant, vs.* **ARIEL R. PASCASIO, Sheriff IV, MTCC, Br. 5, Olongapo City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; WHEN GUILTY OF DERELICTION OF DUTY; GOOD FAITH IS NOT A DEFENSE; PRESENT IN CASE AT BAR.— The respondent's **failure to fully implement the writ of possession is inexcusable and constitutes dereliction of duty**. His claim that he was prevented from fully implementing the writ due to lack of manpower resources is untenable. He is guilty of dereliction of duty as a sheriff for **failing to execute the writ within 30 days from receipt thereof**. Pursuant to Section 14,

Rule 39 of the Rules of Civil Procedure, the respondent is required to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and if the judgment could not be satisfied in full, to make a report to the court within thirty (30) days after his receipt of the writ and to state why full satisfaction could not be made. The sheriff shall continue to make a report every thirty (30) days on the proceedings being taken thereon until the judgment is fully satisfied. The requirement aims to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides the court with insights as to how efficient court processes are after judgment has been promulgated. The over-all purpose of the requirement is to ensure the speedy execution of decisions. Anent the allegation that the **respondent received the amount of Two Hundred Ten Thousand Pesos (₱210,000.00) without informing the complainant, respondent Sheriff Pascasio also ignored the procedures set forth in the Rules of Court**. Good faith on the part of the sheriff, or lack of it, in proceeding to properly discharge his responsibility has no bearing on the matter, for the sheriff is chargeable with the knowledge that being the officer of the court tasked therefor, he is mandated to make due compliance. In the implementation of a writ of execution, **only the payment of sheriff's fees may be received by the sheriffs**. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To permit them to do so would be inimical to the best interests of the service because even assuming *arguendo* that such payments were given and received in good faith, this circumstance in itself would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even the "reasonableness" of the amounts charged, collected and received by the sheriff would not be a defense where the procedure laid down in Section 9, Rule 141 of the Rules of Court has been clearly ignored. In short, **sheriffs cannot, as in this case, receive payments from parties they are under obligation to assist**. The money accepted by the respondent amounting to Two Hundred Ten Thousand Pesos (₱210,000.00) was **not deposited with the Clerk of Court and there was no showing that this amount was subjected to the court's prior approval. The respondent sheriff should not be accepting money from a party, much less requesting for it[.]**

2. ID.; ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— Respondent was earlier dismissed from the service, however, in *Musngi v. Pascasio* where the Court noted his propensity to commit the same acts of misconduct and dishonesty every time an opportunity arose. The OCA in fact took note of this and while it is aware that the penalty of dismissal could no longer be imposed, it recommended that he be adjudged administratively liable for Dishonesty, Dereliction of Duty and violation of the provisions of Rules 39 and 141 of the Rules of Court without, however, specifying the penalty. Respondent having been earlier dismissed from the service, the Court imposes on him a fine in the amount of Forty Thousand Pesos, to be deducted from the benefits due him.

D E C I S I O N

CARPIO MORALES, *J.*:

In a Complaint-Affidavit dated February 22, 2007,[1] Wilson C. Ong (complainant), the plaintiff in Civil Case No. 6120, *Wilson C. Ong v. Trinidad Cabreros, assisted by her husband, Mr. Reynaldo Cabreros,* for collection of sum of money (the civil case), which was lodged before the Municipal Trial Court in Cities, Branch 5, Olongapo City, charged Ariel R. Pascasio, Sheriff IV (respondent),[2] with Grave Abuse of Authority, Dishonesty, and Malfeasance in the Performance of Public Functions as Branch Sheriff.

After the Decision dated November 20, 2003[3] rendered by the trial court in the civil case in favor of herein complainant

[1] *Rollo,* pp. 16-20. Complainant earlier filed a Complaint-Affidavit dated January 17, 2007 but the complaint-affidavit was returned to him per letter dated February 6, 2007 of then Court Administrator Christopher O. Lock, due to his failure to comply with the required proper *jurat*.

[2] Sheriff III in some parts of the records.

[3] *Rollo,* pp. 21-22. The dispositive portion of the Decision reads:

WHEREFORE, judgment by default is hereby rendered in favor of the plaintiff and against the defendants ordering said defendants to pay jointly and severally unto the plaintiff the sum of ONE HUNDRED EIGHTY ONE THOUSAND AND SEVEN HUNDRED SIXTY EIGHT (₱181,768.00)

became final and executory, a Writ of Execution dated February 5, 2004[4] was issued, which was implemented when, among other things, the judgment debtor's property was attached and sold at public auction.[5]

The period to redeem the property having lapsed and a Final Bill of Sale dated August 9, 2005[6] having been issued in complainant's favor, a Writ of Possession dated February 9, 2006[7] was issued.

On June 26, 2006, respondent sent the judgment debtors-Spouses Cabreros a Notice to Vacate.[8] And he requested and received from complainant the initial amount of ₱1,500 and another ₱6,000 as "partial deposit" in the implementation of the writ, with the assurance that he (respondent) would deliver the Certificate of Possession on November 14, 2006. Respondent failed to do so,[9] however.

Complainant later discovered on December 4, 2006 that on July 3, 2006, respondent received ₱210,000 from the judgment debtors via an Acknowledgement Receipt[10] "[r]epresenting [d]eposit in [c]onnection with the WRIT OF EXECUTION . . . in [c]ompliance with the Judgment [s]tated in the WRIT."

Complainant claims that respondent had earlier assured him that the spouses-judgment debtors would voluntarily vacate the

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PESOS with legal rate of interest thereon from November 20, 2002, date of filing of the complaint, until fully paid and the sum of THIRTY THOUSAND (₱30,000.00) PESOS, as and for attorney's fees, plus costs.

[4] *Id.* at 23-24.

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

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

[7] *Id.* at 31.

[8] *Id.* at 32.

[9] *Id.* at 33. Respondent issued an Acknowledgement Receipt dated November 7, 2006. It was marked as Annex "I", and not Annex "J" as stated in the Complaint-Affidavit.

[10] *Id.* at 34. Marked as Annex "J" and not Annex "I" as stated in the Complaint-Affidavit.

premises and they needed only two weeks to move to another residence; and after the lapse of two weeks, he approached respondent who merely told him that the spouses were still residing in the premises.

Complainant concludes that as a result of respondent's dishonesty, the implementation of the writ of possession had been unduly delayed, as the judgment debtors in fact filed a Motion to Quash Writ of Execution and Possession.[11]

Respondent, claiming that the decision of the trial court had been implemented except for the enforcement of the Notice to Vacate, admitted having received the ₱210,000 deposit from the judgment debtors. He claims, however, that complainant refused to receive the said amount, fearing that he (complainant) would not be able to recover the remaining balance of the judgment debt; and when he (respondent) attempted to return the amount to the judgment debtors, they also refused to accept it.

Respondent goes on to claim that he made several attempts to remove the spouses from the property, but "due to lack of manpower resources" he failed to do so.[12]

Respondent claims anyway that complainant was not prejudiced especially since "there has never been an urgency on Mr. Ong's part to be in physical possession of the property"; and as the trial court, by Order dated February 28, 2007, designated another sheriff to execute the final stage of its decision per request of complainant, there is nothing more that would hinder the implementation of the decision.[13]

By Memorandum of November 4, 2008,[14] the OCA found respondent to have violated Section 9, Rule 141 and Section 14, Rule 39 of the Rules of Court in this wise:

x x x x x x x x x

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[11] *Id.* at 35-36.

[12] *Id.* at 87.

[13] *Ibid*.

[14] *Id.* at 103-107.

The respondent's act of demanding money and **receiving from the complainant** the amounts of ₱1,500.00 and ₱6,000.00, allegedly **as partial deposit for the implementation of the writ of possession** is a clear **violation of Section 9**,[15] **Rule 141 of the Rules of Court**. This section requires a sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount as approved by the court to the Clerk of Court who will in turn disburse the same to the sheriff, subject to liquidation. This procedure was not observed by the respondent. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction which makes him liable for grave misconduct and gross dishonesty.

x x x x x x x x x

The writ of possession was assigned for implementation to the respondent sheriff on 9 February 2006. The notice to vacate was served upon the defendant on 26 June 2006. As of the time of the filing of this complaint [in the first quarter of 2007], the writ was still pending implementation.

The respondent's **failure to fully implement the writ of possession is inexcusable and constitutes dereliction of duty**. His claim that he was prevented from fully implementing the writ

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[15] Should have been Section 10, Rule 141 of the Rules of Court. Rule 141 was revised by A.M. No. 04-2-04-SC effective August 16, 2004. It provides:

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes.* –

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

x x x x x x x x x

due to lack of manpower resources is untenable. He is guilty of dereliction of duty as a sheriff for **failing to execute the writ within 30 days from receipt thereof**.

Pursuant to Section 14,[16] Rule 39 of the Rules of Civil Procedure, the respondent is required to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and if the judgment could not be satisfied in full, to make a report to the court within thirty (30) days after his receipt of the writ and to state why full satisfaction could not be made. The sheriff shall continue to make a report every thirty (30) days on the proceedings being taken thereon until the judgment is fully satisfied. The requirement aims to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides the court with insights as to how efficient court processes are after judgment has been promulgated. The over-all purpose of the requirement is to ensure the speedy execution of decisions.

Anent the allegation that the **respondent received the amount of Two Hundred Ten Thousand Pesos (₱210,000.00) without informing the complainant, respondent Sheriff Pascasio also ignored the procedures set forth in the Rules of Court**. Good faith on the part of the sheriff, or lack of it, in proceeding to properly discharge his responsibility has no bearing on the matter, for the sheriff is chargeable with the knowledge that being the officer of the court tasked therefor, he is mandated to make due compliance. In the implementation of a writ of execution, **only the payment of sheriff's fees may be received by the sheriffs**. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To permit them to do so would be inimical to the best interests of the service because even assuming *arguendo* that such payments were given and received in good faith, this

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[16] **SEC. 14.** *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

circumstance in itself would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even the "reasonableness" of the amounts charged, collected and received by the sheriff would not be a defense where the procedure laid down in Section 9,[17] Rule 141 of the Rules of Court has been clearly ignored. In short, **sheriffs cannot**, as in this case, **receive payments from parties they are under obligation to assist.**

The money accepted by the respondent amounting to Two Hundred Ten Thousand Pesos (₱210,000.00) was **not deposited with the Clerk of Court and there was no showing that this amount was subjected to the court's prior approval. The respondent sheriff should not be accepting money from a party, much less requesting for it[.]**[18] (Citations omitted) (Italics in the original; emphasis and underscoring supplied)

The Court finds the evaluation by the OCA well-taken. As detailed above, respondent committed Dishonesty, Dereliction of Duty, and violation of the Rules which calls for his dismissal from the service.[19]

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[17] Should have been Section 10. In any event, Section 9, prior to its revision pursuant to A.M. No. 04-2-04-SC, reads:

SEC. 9. *Sheriffs and other persons serving processes. –*

x x x x x x x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio sheriff*, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

[18] *Rollo*, pp. 105-107.

[19] Under Section 52(A) (1) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is classified as grave offense and punishable by dismissal for the first offense.

Respondent was earlier dismissed from the service, however, in *Musngi v. Pascasio*[20] where the Court noted his propensity to commit the same acts of misconduct and dishonesty every time an opportunity arose. The OCA in fact took note of this and while it is aware that the penalty of dismissal could no longer be imposed, it recommended that he be adjudged administratively liable for Dishonesty, Dereliction of Duty and violation of the provisions of Rules 39 and 141 of the Rules of Court without, however, specifying the penalty.

Respondent having been earlier dismissed from the service, the Court imposes on him a fine in the amount of Forty Thousand Pesos,[21] to be deducted from the benefits due him.

WHEREFORE, this Court finds Ariel R. Pascasio, Sheriff IV, MTCC, Branch 5, Olongapo City, guilty of Dishonesty, Dereliction of Duty and violation of the provisions of Rules 39 and 141 of the Rules of Court. He having earlier been dismissed from the service, however, he is *FINED* the amount of Forty Thousand (₱40,000) Pesos. The Financial Management Office, Office of the Court Administrator is authorized to deduct the sum of Forty Thousand (₱40,000) Pesos from the benefits due him.

SO ORDERED.

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

Quisumbing, J., on official leave.

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[20] A.M. NO. P-08-2454, May 7, 2008, 554 SCRA 1.

[21] Vide *Atty. Ernesto A. Tabujara III v. Judge Fatima Gonzales-Asdala,* A.M. No. RTJ-08-2126, January 20, 2009.

EN BANC

[B.M. No. 1222. April 24, 2009]

RE: 2003 BAR EXAMINATIONS
ATTY. DANILO DE GUZMAN, *petitioner*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISCIPLINE OF LAWYERS; PENALTY OF DISBARMENT; NATURE THEREOF.— Penalties, such as disbarment, are imposed not to punish but to correct offenders. While the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose.

2. ID.; ID.; ID.; ID.; WHEN COMPASSION WARRANTS LIFTING OR COMMUTING THE SUPREME PENALTY OF DISBARMENT; PRESENT IN CASE AT BAR.— In cases where we have deigned to lift or commute the supreme penalty of disbarment imposed on the lawyer, we have taken into account the remorse of the disbarred lawyer and the conduct of his public life during his years outside of the bar. Petitioner has sufficiently demonstrated the remorse expected of him considering the gravity of his transgressions. Even more to his favor, petitioner has redirected focus since his disbarment towards public service, particularly with the People's Law Enforcement Board. The attestations submitted by his peers in the community and other esteemed members of the legal profession, such as retired Court of Appeals Associate Justice Oscar Herrera, Judge Hilario Laqui, Professor Edwin Sandoval and Atty. Lorenzo Ata, and the ecclesiastical community such as Rev. Fr. Paul Balagtas testify to his positive impact on society at large since the unfortunate events of 2003. Petitioner's subsequent track record in public service affords the Court some hope that if he were to reacquire membership in the Philippine bar, his achievements as a lawyer would redound to the general good and more than mitigate the stain on his record. Compassion to the petitioner is warranted. Nonetheless, we wish to impart to him the following stern warning: "Of all classes

> and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them underfoot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic."

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

This treats the Petition for Judicial Clemency and Compassion dated November 10, 2008 filed by petitioner Danilo de Guzman. He prays that this Honorable Court "in the exercise of equity and compassion, grant petitioner's plea for judicial clemency, and thereupon, order his reinstatement as a member in good standing of the Philippine Bar."[1]

To recall, on February 4, 2004, the Court promulgated a Resolution, in B.M. No. 1222, the dispositive portion of which reads in part:

> WHEREFORE, the Court, acting on the recommendations of the Investigating Committee, hereby resolves to —
>
> (1) DISBAR Atty. DANILO DE GUZMAN from the practice of law effective upon his receipt of this RESOLUTION;
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> x x x x x x x x x

The subject of the Resolution is the leakage of questions in Mercantile Law during the 2003 Bar Examinations. Petitioner at that time was employed as an assistant lawyer in the law firm of Balgos & Perez, one of whose partners, Marcial Balgos, was the examiner for Mercantile Law during the said bar examinations. The Court had adopted the findings of the Investigating Committee, which identified petitioner as the person who had downloaded the test questions from the computer of Balgos and faxed them to other persons.

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[1] Petition for Judicial Clemency and Compassion (hereinafter, Petition), p. 26.

The Office of the Bar Confidant (OBC) has favorably recommended the reinstatement of petitioner in the Philippine Bar. In a Report dated January 6, 2009, the OBC rendered its assessment of the petition, the relevant portions of which we quote hereunder:

Petitioner narrated that he had labored to become a lawyer to fulfill his father's childhood dream to become one. This task was not particularly easy for him and his family but he willed to endure the same in order to pay tribute to his parents.

Petitioner added that even at a very young age, he already imposed upon himself the duty of rendering service to his fellowmen. At 19 years, he started his exposure to public service when he was elected Chairman of the Sangguniang Kabataan (SK) of Barangay Tuktukan, Taguig City. During this time, he initiated several projects benefiting the youth in their *barangay*.

Thereafter, petitioner focused on his studies, taking up Bachelor of Arts in Political Science and eventually pursuing Bachelor of Laws. In his second year in law school, he was elected as the President of the Student Council of the Institute of Law of the Far Eastern University (FEU). Here, he spearheaded various activities including the conduct of seminars for law students as well as the holding of bar operations for bar examinees.

Despite his many extra-curricular activities as a youth and student leader, petitioner still managed to excel in his studies. Thus, he was conferred an Academic Excellence Award upon his graduation in Bachelor of Laws.

Upon admission to the bar in April 1999, petitioner immediately entered government service as a Legal Officer assigned at the Sangguniang Bayan of Taguig. Simultaneously, he also rendered free legal services to less fortunate residents of Taguig City who were then in need of legal assistance.

In March 2000, petitioner was hired as one of the Associate Lawyers at the Balgos and Perez Law Offices. It was during his stay with this firm when his craft as a lawyer was polished and developed. Despite having entered private practice, he continued to render free legal services to his fellow Taguigeños.

Then in February 2004, by a sudden twist of fate, petitioner's flourishing career was cut short as he was stripped of his license to

practice law for his alleged involvement in the leakage in the 2003 Bar Examinations.

Devastated, petitioner then practically locked himself inside his house to avoid the rather unavoidable consequences of his disbarment.

On March 2004, however, petitioner was given a new lease in life when he was taken as a consultant by the City Government of Taguig. Later, he was designated as a member of the Secretariat of the People's Law Enforcement Board (PLEB). For the next five (5) years, petitioner concentrated mainly on rendering public service.

Petitioner humbly acknowledged the damaging impact of his act which unfortunately, compromised the integrity of the bar examinations. As could be borne from the records of the investigation, he cooperated fully in the investigation conducted and took personal responsibility for his actions. Also, he has offered his sincerest apologies to Atty. Balgos, to the Court as well as to all the 2003 bar examinees for the unforeseen and unintended effects of his actions.

Petitioner averred that he has since learned from his mistakes and has taken the said humbling experience to make him a better person.

Meanwhile, as part of his Petition, petitioner submitted the following testimonials and endorsements of various individuals and entities all attesting to his good moral character:

1) Resolution No. 101, Series of 2007, "Resolution Expressing Full Support to Danilo G. De Guzman in his Application for Judicial Clemency, Endorsing his Competence and Fitness to be Reinstated as a Member of the Philippine Bar and for Other Purposes" dated 4 June 2007 of the Sangguniang Panlungsod, City of Taguig;

2) *"Isang Bukas na Liham na Naglalayong Iparating sa Kataas-Taasang Hukuman ang Buong Suporta ng Pamunuan at mga Kasapi ng Southeast People's Village Homeowners Association, Inc. (SEPHVOA) kay Danilo G. De Guzman sa Kanyang Petisyong Magawaran ng Kapatawaran at ang Boluntaryong Pag-susulong sa Kanyang Kakayahan Upang Maibalik sa Kanya ang mga Pribilehiyo ng Isang Abogado" dated 1 June 2007 of the Southeast People's Village Homeowners Association, Inc. (SEPHVOA), Ibayo-Tipas, City of Taguig;*

3) "*Isang Bukas na Liham na Naglalayong Iparating sa Kataas-Taasang Hukuman ang Buong Suporta ng Pamunuan at mga Kasapi ng Samahang Residente ng Mauling Creek, Inc. (SAREMAC) kay G. Danilo G. De Guzman sa Kanyang Petisyong Magawaran ng Kapatawaran at ang Boluntaryong Pag-susulong sa Kanyang Kakayahan Upang Maibalik sa Kanya ang mga Pribilehiyo ng Isang Abogado" dated 1 June 2007 of the Samahang Residente ng Mauling Creek, Inc. (SAREMAC), Lower Bicutan, City of Taguig;*

4) "*Isang Bukas na Liham na Naglalayong Iparating sa Kataas-Taasang Hukuman ang Buong Suporta ng Pamunuan at mga Kasapi ng Samahan ng mga Maralita (PULONG KENDI) Neighborhood Association, Inc. (SAMANA) kay G. Danilo G. De Guzman sa Kanyang Petisyong Magawaran ng Kapatawaran at ang Boluntaryong Pag-susulong sa Kanyang Kakayahan Upang Maibalik sa Kanya ang mga Pribilehiyo ng Isang Abogado" dated 1 June 2007 of the Samahan ng mga Maralita (PULONG KENDI) Neighborhood Association, Inc. (SAMANA), Sta. Ana, City of Taguig;*

5) "An Open Letter Attesting Personally to the Competence and Fitness of Danilo G. De Guzman as to Warrant the Grant of Judicial Clemency and his Reinstatement as Member of the Philippine Bar" dated 8 June 2007 of Miguelito Nazareno V. Llantino, Laogan, Trespeses and Llantino Law Offices;

6) "Testimonial to the Moral and Spiritual Competence of Danilo G. De Guzman to be Truly Deserving of Judicial Clemency and Compassion" dated 5 July 2007 of Rev. Fr. Paul G. Balagtas, Parish Priest, Archdiocesan Shrine of St. Anne;

7) "Testimonial Letter" dated 18 February 2008 of Atty. Loreto C. Ata, President, Far Eastern University Law Alumni Association (FEULAA), Far Eastern University (FEU);

8) "*Isang Bukas na Liham na Naglalayong Iparating sa Kataas-Taasang Hukuman ang Buong Suporta ng Pamunuan at mga Kasapi ng Samahang Bisig Kamay sa Kaunlaran, Inc. (SABISKA) kay G. Danilo G. De Guzman sa Kanyang Petisyong Magawaran ng Kapatawaran at ang Boluntaryong Pag-susulong sa Kanyang Kakayahan Upang Maibalik sa Kanya ang mga Pribilehiyo ng Isang Abogado" dated 8 July*

2008 of the Samahang Bisig Kamay sa Kaunlaran, Inc. (SABISKA);

9) Board Resolution No. 02, Series of 2008, "A Resolution Recognizing the Contributions of Danilo G. De Guzman to the People's Law Enforcement Board (PLEB) – Taguig City, Attesting to his Utmost Dedication and Commitment to the Call of Civic and Social Duty and for Other Purposes" dated 11 July 2008 of the People's Law Enforcement Board (PLEB);

10) "A Personal Appeal for the Grant of Judicial Forgiveness and Compassion in Favor of Danilo G. De Guzman" dated 14 July 2008 of Atty. Edwin R. Sandoval, Professor, College of Law, San Sebastian College – Recoletos;

11) "An Open Letter Personally Attesting to the Moral competence and Fitness of Danilo G. De Guzman" dated 5 September 2008 of Mr. Nixon F. Faderog, Deputy Grand [Kn]ight, Knights of Columbus and President, General Parent-Teacher Association, Taguig National High School, Lower Bicutan, Taguig City;

12) "Testimonial Letter" dated 5 September 2008 of Atty. Primitivo C. Cruz, President, Taguig Lawyers League, Inc., Tuktukan, Taguig City;

13) "Testimonial Letter" dated 21 October 2008 of Judge Hilario L. Laqui, Presiding Judge, Regional Trail Court (RTC), Branch 218, Quezon City; and

14) "Testimonial Letter" dated 28 October 2008 of Justice Oscar M. Herrera, former Justice, Court of Appeals and former Dean, Institute of Law, Far Eastern University (FEU).

Citing the case of ***In Re: Carlos S. Basa***, petitioner pleaded that he be afforded the same kindness and compassion in order that, like Atty. Basa, his promising future may not be perpetually foreclosed. In the said case, the Court had the occasion to say:

> Carlos S. Basa is a young man about 29 years of age, admitted to the bars of California and the Philippine Islands. Recently, he was charged in the Court of First Instance of the City of Manila with the crime of abduction with consent, was found guilty in a decision rendered by the Honorable M.V. De Rosario, Judge of First Instance, and was sentenced to be imprisoned

> for a period of two years, eleven months and eleven days of *prision correccional*. On appeal, this decision was affirmed in a judgment handed down by the second division of the Supreme Court.
>
> x x x x x x x x x
>
> When come next, as we must, to determine the exact action which should be taken by the court, we do so regretfully and reluctantly. On the one hand, the violation of the criminal law by the respondent attorney cannot be lightly passed over. On the other hand, we are willing to strain the limits of our compassion to the uttermost in order that so promising a career may not be utterly ruined.

Petitioner promised to commit himself to be more circumspect in his actions and solemnly pledged to exert all efforts to atone for his misdeeds.

There may be a reasonable ground to consider the herein Petition.

In the case of ***Re: Petition of Al Argosino to Take the Lawyer's Oath*** **(Bar Matter 712),** which may be applied in the instant case, the Court said:

> After a very careful evaluation of this case, we resolve to allow petitioner Al Caparros Argosino to take the lawyer's oath, sign the Roll of Attorneys and practice the legal profession with the following admonition:
>
> In allowing Mr. Argosino to take the lawyer's oath, the Court recognizes that Mr. Argosino is not inherently of bad moral fiber. On the contrary, the various certifications show that he is a devout Catholic with a genuine concern for civic duties and public service.
>
> The Court is persuaded that Mr. Argosino has exerted all efforts, to atone for the death of Raul Camaligan. We are prepared to give him the benefit of the doubt, taking judicial notice of the general tendency of youth to be rash, temerarious and uncalculating.
>
> x x x x x x x x x

Meanwhile, in the case of ***Rodolfo M. Bernardo vs. Atty. Ismael F. Mejia*** **(Administrative Case No. 2984)**, the Court [in] deciding whether or not to reinstate Atty. Mejia to the practice of law stated:

> The Court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge/s for which he was disbarred, his conduct subsequent to the disbarment and the time that has elapsed in between the disbarment and the application for reinstatement.

Petitioner was barely thirty (30) years old and had only been in the practice of law for five (5) years when he was disbarred from the practice of law. It is of no doubt that petitioner had a promising future ahead of him where it not for the decision of the Court stripping off his license.

Petitioner is also of good moral repute, not only before but likewise, after his disbarment, as attested to overwhelmingly by his constituents, colleagues as well as people of known probity in the community and society.

Way before the petitioner was even admitted to the bar, he had already manifested his intense desire to render public service as evidenced by his active involvement and participation in several social and civic projects and activities. Likewise, even during and after his disbarment, which could be perceived by some as a debilitating circumstance, petitioner still managed to continue extending his assistance to others in whatever means possible. This only proves petitioner's strength of character and positive moral fiber.

However, still, it is of no question that petitioner's act in copying the examination questions from Atty. Balgos' computer without the latter's knowledge and consent, and which questions later turned out to be the bar examinations questions in Mercantile Law in the 2003 Bar Examinations, is not at all commendable. While we do believe that petitioner sincerely did not intend to cause the damage that his action ensued, still, he must be sanctioned for unduly compromising the integrity of the bar examinations as well as of this Court.

We are convinced, however, that petitioner has since reformed and has sincerely reflected on his transgressions. Thus, in view of the circumstances and likewise for humanitarian considerations, the penalty of disbarment may now be commuted to suspension. Considering the fact, however, that petitioner had already been disbarred for more than five (5) years, the same may be considered as proper service of said commuted penalty and thus, may now be allowed to resume practice of law.

WHEREFORE, PREMISES CONSIDERED, it is respectfully recommended that the instant Petition for Judicial Clemency and Compassion dated 10 November 2008 of petitioner DANILO G. DE GUZMAN be GRANTED. Petitioner's disbarment is now commuted to suspension, which suspension is considered as served in view of the petitioner's five (5) year disbarment. Hence, petitioner may now be allowed to resume practice of law.

The recommendation of the Office of the Bar Confidant is well-taken in part. We deem petitioner worthy of clemency to the extent of commuting his penalty to seven (7) years suspension from the practice of law, inclusive of the five (5) years he has already served his disbarment.

Penalties, such as disbarment, are imposed not to punish but to correct offenders.[2] While the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose.[3]

In cases where we have deigned to lift or commute the supreme penalty of disbarment imposed on the lawyer, we have taken into account the remorse of the disbarred lawyer[4] and the conduct of his public life during his years outside of the bar.[5] For example, in *Valencia v. Antiniw*, we held:

> However, the record shows that the long period of respondent's disbarment gave him the chance to purge himself of his misconduct, to show his remorse and repentance, and to demonstrate his willingness and capacity to live up once again to the exacting standards of conduct demanded of every member of the bar and officer of the court. During respondent's disbarment for more than fifteen (15) years to date for his professional infraction, he has been persistent in reiterating his apologies and pleas for reinstatement to the practice of law and unrelenting in his efforts to show that he has regained his worthiness

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[2] *Bernardo v. Mejia*, A.C. No. 2984, August 31, 2007, 531 SCRA 639.

[3] *Id*.

[4] See *Adez Realty, Incorporated v. Court of Appeals*, G.R. No. 100643, December 12, 1995, 251 SCRA 201.

[5] A.C. No. 1302, 1391, 1543, June 30, 2008, 556 SCRA 503.

to practice law, by his civic and humanitarian activities and unblemished record as an elected public servant, as attested to by numerous civic and professional organizations, government institutions, public officials and members of the judiciary.[6]

And in *Bernardo v. Atty. Mejia*,[7] we noted:

Although the Court does not lightly take the bases for Mejia's disbarment, it also cannot close its eyes to the fact that Mejia is already of advanced years. While the age of the petitioner and the length of time during which he has endured the ignominy of disbarment are not the sole measure in allowing a petition for reinstatement, the Court takes cognizance of the rehabilitation of Mejia. Since his disbarment in 1992, no other transgression has been attributed to him, and he has shown remorse. Obviously, he has learned his lesson from this experience, and his punishment has lasted long enough. x x x

Petitioner has sufficiently demonstrated the remorse expected of him considering the gravity of his transgressions. Even more to his favor, petitioner has redirected focus since his disbarment towards public service, particularly with the People's Law Enforcement Board. The attestations submitted by his peers in the community and other esteemed members of the legal profession, such as retired Court of Appeals Associate Justice Oscar Herrera, Judge Hilario Laqui, Professor Edwin Sandoval and Atty. Lorenzo Ata, and the ecclesiastical community such as Rev. Fr. Paul Balagtas testify to his positive impact on society at large since the unfortunate events of 2003.

Petitioner's subsequent track record in public service affords the Court some hope that if he were to reacquire membership in the Philippine bar, his achievements as a lawyer would redound to the general good and more than mitigate the stain on his record. Compassion to the petitioner is warranted. Nonetheless, we wish to impart to him the following stern warning:

"Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample

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[6] *Id*. at 515.

[7] *Supra* note 2 at 643.

them underfoot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic."[8]

WHEREFORE, in view of the foregoing, the Petition for Judicial Clemency and Compassion is hereby *GRANTED IN PART*. The disbarment of DANILO G. DE GUZMAN from the practice of law is hereby *COMMUTED* to *SEVEN (7) YEARS SUSPENSION FROM THE PRACTICE OF LAW*, reckoned from February 4, 2004.

SO ORDERED.

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

Tinga, J., no part. Family friend of a party.

Quisumbing, J., on official leave.

SECOND DIVISION

[G.R. No. 145222. April 24, 2009]

SPOUSES ROBERTO BUADO and VENUS BUADO, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, Former Division, and ROMULO NICOL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DEFINED AND CONSTRUED.— A petition for *certiorari*

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[8] *Barrios v. Martinez*, A.C. No. 4585, November 12, 2004, 442 SCRA 324, 341.

is an extraordinary remedy that is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal. In addition, an independent action for *certiorari* may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

2. ID.; CIVIL PROCEDURE; THIRD - PARTY CLAIM; ONLY A STRANGER TO THE CASE MAY FILE A THIRD-PARTY CLAIM; APPLICATION IN CASE AT BAR.— A third-party claim must be filed a person other than the judgment debtor or his agent. In other words, only a stranger to the case may file a third-party claim. This leads us to the question: Is the husband, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a "stranger?" In determining whether the husband is a stranger to the suit, the character of the property must be taken into account. In *Mariano v. Court of Appeals, which was later adopted in Spouses Ching v. Court of Appeals*, this Court held that the husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife for an obligation that has redounded to the benefit of the conjugal partnership. On the other hand, in *Naguit v. Court of Appeals* and *Sy v. Discaya,* the Court stated that a spouse is deemed a stranger to the action wherein the writ of execution was issued and is therefore justified in bringing an independent action to vindicate her right of ownership over his exclusive or paraphernal property. Pursuant to *Mariano* however, it must further be settled whether the obligation of the judgment debtor redounded to the benefit of the conjugal partnership or not.

3. ID.; ID.; ID.; CONJUGAL PROPERTY CANNOT BE HELD LIABLE FOR THE PERSONAL OBLIGATION CONTRACTED BY ONE SPOUSE; EXCEPTION.— There is no dispute that contested property is conjugal in nature. Article 122 of the Family Code explicitly provides that payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal

partnership except insofar as they redounded to the benefit of the family. Unlike in the system of absolute community where liabilities incurred by either spouse by reason of a crime or *quasi-delict* is chargeable to the absolute community of property, in the absence or insufficiency of the exclusive property of the debtor-spouse, the same advantage is not accorded in the system of conjugal partnership of gains. The conjugal partnership of gains has no duty to make advance payments for the liability of the debtor-spouse. Parenthetically, by no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership. To reiterate, conjugal property cannot be held liable for the personal obligation contracted by one spouse, unless some advantage or benefit is shown to have accrued to the conjugal partnership. In *Guadalupe v. Tronco,* this Court held that the car which was claimed by the third party complainant to be conjugal property was being levied upon to enforce "a judgment for support" filed by a third person, the third-party claim of the wife is proper since the obligation which is personal to the husband is chargeable not on the conjugal property but on his separate property.

APPEARANCES OF COUNSEL

Venus T. Buado for petitioners.

D E C I S I O N

TINGA, *J.*:

Before this Court is a petition for *certiorari* assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 47029 and its Resolution denying the motion for reconsideration thereof.

The case stemmed from the following factual backdrop:

On 30 April 1984, Spouses Roberto and Venus Buado (petitioners) filed a complaint for damages against Erlinda Nicol

[1] Penned by Associate Justice Jainal D. Rasul, concurred in by Associate Justices Hector L. Hofileña and Artemio S. Tuquero.

(Erlinda) with **Branch 19** of the Regional Trial Court (RTC) of Bacoor, Cavite, docketed as Civil Case No. 84-33. Said action originated from Erlinda Nicol's civil liability arising from the criminal offense of slander filed against her by petitioners.

On 6 April 1987, the trial court rendered a decision ordering Erlinda to pay damages. The dispositive portion reads:

> Wherefore, judgment is hereby rendered in favor of the plaintiff[s] and against defendant ordering the latter to pay the former the amount of thirty thousand (₱30,000.00) pesos as moral damages, five thousand (₱5,000.00) pesos as attorney's fees and litigation expenses, another five thousand (₱5,000.00) pesos as exemplary damages and the cost of suit.[2]

Said decision was affirmed, successively, by the Court of Appeals and this Court. It became final and executory on 5 March 1992.

On 14 October 1992, the trial court issued a writ of execution, a portion of which provides:

> Now, therefore, you are commanded that of the goods and chattels of the defendant Erlinda Nicol, or from her estates or legal heirs, you cause the sum in the amount of forty thousand pesos (₱40,000.00), Philippine Currency, representing the moral damages, attorney's fees and litigation expenses and exemplary damages and the cost of suit of the plaintiff aside from your lawful fees on this execution and do likewise return this writ into court within sixty (60) days from date, with your proceedings endorsed hereon.
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> But if sufficient personal property cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of said defendant you make the said sum of money in the manner required by the Rules of Court, and make return of your proceedings with this writ within sixty (60) days from date.[3]

Finding Erlinda Nicol's personal properties insufficient to satisfy the judgment, the Deputy Sheriff issued a notice of levy on

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[2] Records, p. 10.

[3] *Id.* at 11.

real property on execution addressed to the Register of Deeds of Cavite. The notice of levy was annotated on the Transfer Certificate of Title No. T-125322.

On 20 November 1992, a notice of sheriff's sale was issued.

Two (2) days before the public auction sale on 28 January 1993, an affidavit of third-party claim from one Arnulfo F. Fulo was received by the deputy sheriff prompting petitioners to put up a sheriff's indemnity bond. The auction sale proceeded with petitioners as the highest bidder.

On 4 February 1993, a certificate of sale was issued in favor of petitioners.

Almost a year later on 2 February 1994, Romulo Nicol (respondent), the husband of Erlinda Nicol, filed a complaint for annulment of certificate of sale and damages with preliminary injunction against petitioners and the deputy sheriff. Respondent, as plaintiff therein, alleged that the defendants, now petitioners, connived and directly levied upon and execute his real property without exhausting the personal properties of Erlinda Nicol. Respondent averred that there was no proper publication and posting of the notice of sale. Furthermore, respondent claimed that his property which was valued at ₱500,000.00 was only sold at a "very low price" of ₱51,685.00, whereas the judgment obligation of Erlinda Nicol was only ₱40,000.00. The case was assigned to **Branch 21** of the RTC of Imus, Cavite.

In response, petitioners filed a motion to dismiss on the grounds of lack of jurisdiction and that they had acted on the basis of a valid writ of execution. Citing *De Leon v. Salvador,*[4] petitioners claimed that respondent should have filed the case with **Branch 19** where the judgment originated and which issued the order of execution, writ of execution, notice of levy and notice of sheriff's sale.

In an Order[5] dated 18 April 1994, the RTC dismissed respondent's complaint and ruled that **Branch 19** has jurisdiction over the case, thus:

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[4] No. L-30871, December 28, 1970, 36 SCRA 567.

[5] Issued by Judge Roy S. Del Rosario.

As correctly pointed out by the defendants, any flaw in the implementation of the writ of execution by the implementing sheriff must be brought before the court issuing the writ of execution. Besides, there are two (2) remedies open to the plaintiff, if he feels that the property being levied on belongs to him and not to the judgment debtor. The first remedy is to file a third-party claim. If he fails to do this, a right is reserved to him to vindicate his claim over the property by any proper action. But certainly, this is not the proper action reserved to the plaintiff to vindicate his claim over the property in question to be ventilated before this court. As earlier stated, this case should have been addressed to Branch 19, RTC Bacoor as it was that court which issued the writ of execution.[6]

Respondent moved for reconsideration but it was denied on 26 July 1994.

On appeal, the Court of Appeals reversed the trial court and held that **Branch 21** has jurisdiction to act on the complaint filed by appellant. The dispositive portion reads:

WHEREFORE, the Orders appealed from are hereby REVERSED and SET ASIDE. This case is REMANDED to the Regional Trial Court of Imus, Cavite, Branch 21 for further proceedings.

SO ORDERED.[7]

Petitioners' motion for reconsideration was denied on 23 August 2000. Hence, the instant petition attributing grave abuse of discretion on the part of the Court of Appeals.

A petition for *certiorari* is an extraordinary remedy that is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal. In addition, an independent action for *certiorari* may be availed of only when there is no

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[6] Records, p. 67.

[7] *Rollo*, p. 26.

appeal or any plain, speedy and adequate remedy in the ordinary course of law.[8]

Nowhere in the petition was it shown that the jurisdiction of the Court of Appeals was questioned. The issue devolves on whether the husband of the judgment debtor may file an independent action to protect the conjugal property subject to execution. The alleged error therefore is an error of judgment which is a proper subject of an appeal.

Nevertheless, even if we were to treat this petition as one for review, the case should still be dismissed on substantive grounds.

Petitioners maintain that **Branch 19** retained jurisdiction over its judgment to the exclusion of all other co-ordinate courts for its execution and all incidents thereof, in line with *De Leon v. Salvador*. Petitioners insist that respondent, who is the husband of the judgment debtor, is not the "third party" contemplated in Section 17 (now Section 16), Rule 39 of the Rules of Court, hence a separate action need not be filed. Furthermore, petitioners assert that the obligation of the wife redounded to the benefit of the conjugal partnership and cited authorities to the effect that the husband is liable for the tort committed by his wife.

Respondent on the other hand merely avers that the decision of the Court of Appeals is supported by substantial evidence and in accord with law and jurisprudence.[9]

Verily, the question of jurisdiction could be resolved through a proper interpretation of Section 16, Rule 39 of the Rules of Court, which reads:

Sec. 16. Proceedings where property claimed by third person.

If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer

[8] *Centro Escolar University Faculty and Allied Workers Union v. Court of Appeals*, G.R. No. 165486, 31 May 2006, 490 SCRA 61, 70.

[9] *Rollo,* p. 59.

making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. **Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.**

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose. (Emphasis Supplied)

Apart from the remedy of *terceria* available to a third-party claimant or to a stranger to the foreclosure suit against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor, a third-party claimant may also resort to an independent separate action, the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property. If a separate action is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ.[10]

[10] *China Banking Corporation v. Spouses Ordinario*, G.R. No. 121943, 24 March 2003, 399 SCRA 430, 431.

A third-party claim must be filed a person other than the judgment debtor or his agent. In other words, only a stranger to the case may file a third-party claim.

This leads us to the question: Is the husband, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a "stranger?"

In determining whether the husband is a stranger to the suit, the character of the property must be taken into account. In *Mariano v. Court of Appeals,*[11] *which was later adopted in Spouses Ching v. Court of Appeals*,[12] this Court held that the husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife for an obligation that has redounded to the benefit of the conjugal partnership.[13] On the other hand, in *Naguit v. Court of Appeals*[14] and *Sy v. Discaya,*[15] the Court stated that a spouse is deemed a stranger to the action wherein the writ of execution was issued and is therefore justified in bringing an independent action to vindicate her right of ownership over his exclusive or paraphernal property.

Pursuant to *Mariano* however, it must further be settled whether the obligation of the judgment debtor redounded to the benefit of the conjugal partnership or not.

Petitioners argue that the obligation of the wife arising from her criminal liability is chargeable to the conjugal partnership. We do not agree.

There is no dispute that contested property is conjugal in nature. Article 122 of the Family Code[16] explicitly provides

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[11] G.R. No. 51283, 7 June 1989, 174 SCRA 59.

[12] G.R. No. 124642, 23 February 2004, 423 SCRA 356.

[13] *Supra* note 11 at 68.

[14] G.R. No. 7675, December 5, 2000, 347 SCRA 60.

[15] G.R. No. 86301, January 23, 1990, 181 SCRA 378.

[16] Art. 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal

that payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.

Unlike in the system of absolute community where liabilities incurred by either spouse by reason of a crime or *quasi-delict* is chargeable to the absolute community of property, in the absence or insufficiency of the exclusive property of the debtor-spouse, the same advantage is not accorded in the system of conjugal partnership of gains. The conjugal partnership of gains has no duty to make advance payments for the liability of the debtor-spouse.

Parenthetically, by no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership.

To reiterate, conjugal property cannot be held liable for the personal obligation contracted by one spouse, unless some advantage or benefit is shown to have accrued to the conjugal partnership.[17]

In *Guadalupe v. Tronco,*[18] this Court held that the car which was claimed by the third party complainant to be conjugal property was being levied upon to enforce "a judgment for support" filed by a third person, the third-party claim of the wife is proper

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properties partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned.

[17] *Go v. Yamane*, G.R. No. 160762, 3 May 2006, 489 SCRA 107.

[18] A.M. No. P-142, 28 February 1978, 81 SCRA 605.

since the obligation which is personal to the husband is chargeable not on the conjugal property but on his separate property.

Hence, the filing of a separate action by respondent is proper and jurisdiction is thus vested on **Branch 21**. Petitioners failed to show that the Court of Appeals committed grave abuse of discretion in remanding the case to **Branch 21** for further proceedings.

WHEREFORE, the petition is *DISMISSED*. The Decision of the Court of Appeals is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio Morales (Acting Chairperson), Velasco, Jr., Leonardo-de Castro,*** and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 146622. April 24, 2009]

LEONORA P. CALANZA, EVA M. AMOREN, GENE P. ROÑO, SANNY C. CALANZA, GREGORIO C. YNCIERTO II, and ANGEL M. PUYO, *petitioners, vs.* **PAPER INDUSTRIES CORPORATION OF THE PHILIPPINES (PICOP), GOOD EARTH MINERAL CORP. (GEMCOR), EVARISTO NARVAEZ, JR., RICARDO G. SANTIAGO, ROBERTO A. DORMENDO, and REYDANDE D. AZUCENA,** *respondents.*

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* Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

** Additional member of the Second Division per Special Order No. 619.

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENTS; LOCAL GOVERNMENT CODE; SETTLEMENT OF BOUNDARY DISPUTE, PROVIDED.— There is boundary dispute when a portion or the whole of the territorial area of a Local Government Unit (LGU) is claimed by two or more LGUs. In settling boundary disputes, Section 118 of the 1991 Local Government Code provides: Sec. 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute*. – Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end: (a) Boundary disputes involving two (2) or more *barangays* in the same city or municipality shall be referred for settlement to the *sangguniang panlungsod* or *sangguniang bayan* concerned. (b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the *sangguniang panlalawigan* concerned. **(c) Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the *sanggunians* of the provinces concerned.** (d) Boundary disputes involving a component city or municipality on the one hand and a highly urbanized city on the other, or two (2) or more highly urbanized cities, shall be jointly referred for settlement to the respective *sanggunians* of the parties. (e) In the event the *sanggunian* fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the *sanggunian* concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above. Under paragraph (c) of Section 118, the settlement of a boundary dispute involving municipalities or component cities of different provinces shall be jointly referred for settlement to the respective *Sanggunians* or the provincial boards of the different provinces involved. Section 119 of the Local Government Code gives a dissatisfied party an avenue to question the decision of the *Sanggunian* to the RTC having jurisdiction over the area, *viz*: Section 119. *Appeal*. - Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute x x x.

2. ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; OUTLINE OF THE PROCEDURES FOR SETTLING BOUNDARY DISPUTE, ENUMERATION.— Article 17, Rule III of the Rules and Regulations Implementing The Local Government Code of 1991 outlines the procedures governing boundary disputes, which succinctly includes the filing of the proper petition, and in case of failure to amicably settle, a formal trial will be conducted and a decision shall be rendered thereafter. An aggrieved party can appeal the decision of the *sanggunian* to the appropriate RTC. Said rules and regulations state: Article 17. *Procedures for Settling Boundary Disputes*. – The following procedures shall govern the settlement of boundary disputes: (a) Filing of petition - The *sanggunian* concerned may initiate action by filing a petition, in the form of a resolution, with the *sanggunian* having jurisdiction over the dispute. (b) Contents of petition - The petition shall state the grounds, reasons or justifications therefore. (c) Documents attached to petition - The petition shall be accompanied by: 1. Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; 2. Provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the LMB. 3. Technical description of the boundaries of the LGUs concerned; 4. Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; 5. Written declarations or sworn statements of the people residing in the disputed area; and 6. Such other documents or information as may be required by the *sanggunian* hearing the dispute. (d) Answer of adverse party - Upon receipt by the *sanggunian* concerned of the petition together with the required documents, the LGU or LGUs complained against shall be furnished copies thereof and shall be given fifteen (15) working days within which to file their answers. (e) Hearing - Within five (5) working days after receipt of the answer of the adverse party, the *sanggunian* shall hear the case and allow the parties concerned to present their respective evidences. (f) Joint hearing - When two or more *sanggunians* jointly hear a case, they may sit *en banc* or designate their respective representatives. Where representatives are designated, there shall be an equal number of representatives from each *sanggunian*. They shall elect from among themselves a presiding officer and a secretary. In case

of disagreement, selection shall be by drawing lot. (g) Failure to settle - In the event the *sanggunian* fails to amicably settle the dispute within sixty (60) days from the date such dispute was referred thereto, it shall issue a certification to the effect and copies thereof shall be furnished the parties concerned. (h) Decision - Within sixty (60) days from the date the certification was issued, the dispute shall be formally tried and decided by the *sanggunian* concerned. Copies of the decision shall, within fifteen (15) days from the promulgation thereof, be furnished the parties concerned, DILG, local assessor, COMELEC, NSO, and other NGAs concerned. (i) Appeal - Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the *sanggunian* concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case within one (1) year from the filing thereof. Decisions on boundary disputes promulgated jointly by two (2) or more *sangguniang panlalawigans* shall be heard by the Regional Trial Court of the province which first took cognizance of the dispute.

3. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JUDGMENT RENDERED BY A COURT WITHOUT JURISDICTION IS NULL AND VOID AND MAY BE ATTACKED ANYTIME; APPLICATION IN CASE AT BAR.— The RTC cannot exercise appellate jurisdiction over the case, since there was no petition that was filed and decided by the *Sangguniang Panlalawigans* of Davao Oriental and Surigao del Sur. Neither can the RTC assume original jurisdiction over the boundary dispute since the Local Government Code allocates such power to the *Sangguniang Panlalawigans* of Davao Oriental and Surigao del Sur. Since the RTC has no original jurisdiction over the boundary dispute, between Davao Oriental and Surigao del Sur, its decision is a total nullity. We have repeatedly ruled that a judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper

forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right or the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect.

APPEARANCES OF COUNSEL

Torreon De Vera-Torreon Law Firm for petitioners.
Factoran and Associates Law Offices for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review under Rule 45 of the Rules of Court seeks to reverse and set aside the 19 June 2000 Decision[1] of the Court of Appeals in CA-G.R. CV No. 45234 which annulled the Decision of the Regional Trial Court (RTC) of Banganga, Davao Oriental, Branch 7, granting the Complaint for Injunction filed by petitioners.

On 23 August 1991, petitioners Leonora P. Calanza, Eva M. Amoren, Gene P. Roño, Sanny C. Calanza, Gregorio C. Yncierto II, and Angel M. Puyo filed with the Mines and Geo-Sciences Development Service, Department of Environment and Natural Resources (DENR), Region XI, of Davao City, applications for small-scale mining permits for the purpose of extracting gold. In their applications, petitioners stated that the area where they would conduct mining operations was in the Municipality of Boston, Davao Oriental.[2]

On 22 December 1992, the governor of Davao Oriental, Rosalind Y. Lopez, approved the applications and issued six

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[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Salome A. Montoya and Romeo J. Callejo, Sr. (now a retired Supreme Court Justice), concurring. *Rollo,* pp. 41-49.

[2] CA *rollo*, p. 72.

small-scale mining permits in favor of the petitioners.[3] Since the mining areas applied for by petitioners were within the respondent Paper Industries Corporation of the Philippines' (PICOP) logging concession area under Timber License Agreements (TLAs) that covered large tracts of forest lands of the Provinces of Surigao del Sur, Agusan del Sur, Davao Oriental and Davao del Norte, petitioners negotiated with PICOP for their entry into the mining site at Barangay Catihan, Municipality of Boston, Davao Oriental. PICOP, through its officer Roberto A. Dormendo, refused petitioners' entry into the mining area on the grounds that it had the exclusive right of occupation, possession and control over the area, being a logging concessionaire thereof; that petitioners' mining permits were defective, since they were issued by the governor of Davao Oriental when in fact the mining area was situated in Barangay Pagtilaan, Municipality of Lingig, Surigao del Sur; and that mining permits cannot be issued over areas covered by forest rights such as TLAs or forest reservations, unless their status as such is withdrawn by competent authority.

On 7 May 1993, petitioners filed a *Complaint for Injunction with Prayer for the Issuance of a Restraining Order, Damages and Attorney's Fees* against PICOP and its officers before the RTC of Banganga, Davao Oriental, praying that PICOP or its agent be enjoined from preventing and prohibiting them from entering into the mining site.

PICOP countered that the RTC of Davao Oriental has no jurisdiction over the complaint of petitioners since the disputed area is situated in the Province of Surigao del Sur. PICOP also claimed that the issuance of petitioners' permits were *void ab initio* since the same violated Section 5 of Republic Act No. 7076, otherwise known as the People's Small-Scale Mining Act of 1991, which allegedly prohibits the issuance of mining permits over areas covered by forest rights, such as TLAs or forest reservations unless their status as such is withdrawn by the competent authority.

In the Pre-Trial Order dated 4 October 1993, the following were identified as the issues:

[3] Records, pp. 11-22.

1. Whether the mining areas claimed by petitioners are found within the territories of Davao Oriental or Surigao del Sur.
2. Whether the small-scale mining permits of petitioners are valid.
3. Whether PICOP has the right and authority to deny petitioners access to, possession of and the authority to conduct mining activities within the disputed areas.[4]

In a decision dated 26 November 1993, the RTC ruled in favor of the petitioners. The RTC opined that Barangay Pagtilaan (as claimed by PICOP) or Catihan (as claimed by petitioners) is within the territory of the Province of Davao Oriental. Citing Section 465, paragraph (b), sub-paragraph (3)iv of Republic Act No. 7160 or the Local Government Code of 1991, which states to the effect that the governor has the power to issue licenses and permits, the RTC ruled that the governor was vested with the power to issue the small-scale mining permits to the petitioners. The decretal portion of the RTC decision provides:

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

1. Declaring that all the [petitioners] have the rights under the laws to extract and remove gold ore from their permit area as particularly described by its technical descriptions found in their respective permits subject to the terms and conditions stipulated therein;

2. Finding that [respondents] have no rights to deny [petitioners] entry into the mining permit areas and hereby enjoining [respondents], their agents, representatives, their attorneys, the SCAA or any persons acting in their behalf to allow petitioners/permittees, their agents, representatives and vehicles to enter, travel into the mining site areas of plaintiffs without any restrictions, preventions and/or harassment of the purpose of conducting mining activities thereat;

3. Further restraining and enjoining the respondents, their attorneys, agents and/or representatives, the SCAA or its officers and such other persons acting for and in their behalf from preventing, prohibiting or harassing the [petitioners], their agents or authorized

[4] *Id.* at 158-161.

representatives, their vehicles, tools and other mining paraphernalia's from entering, traveling into the mining site using and passing through the most accessible concession roads of [respondents], such as but not limited to Road 5M and spurs within PICOP's TLA 43 areas.

There being no evidentiary proof of actual and compensatory damages, and in the absence of fraud or evident bad faith on the part of defendants, especially PICOP, which apparently is exercising its right to litigate, this Court makes no finding as to actual, compensatory and moral damages nor attorney's fees.[5]

Respondent PICOP appealed the RTC decision.

In a Decision dated 19 June 2000, the Court of Appeals reversed the RTC Decision and dismissed the complaint of respondents.

In setting aside the RTC Decision, the Court of Appeals stated that the RTC erred in passing upon the issue of the boundary dispute between the provinces of Davao Oriental and Surigao del Sur since the resolution of the boundary dispute primarily resides with the *Sangguniang Panlalawigans* of the two provinces, and the RTC had only appellate jurisdiction over the case, pursuant to the Local Government Code of 1991. The Court of Appeals also said that the governor had no power to issue small-scale mining permits, since such authority under Section 9 of Republic Act No. 7076 was vested in the Provincial Mining Regulatory Board.

The disposition of the Court of Appeals reads:

WHEREFORE, premises considered, the appealed decision in Civil Case No. 489 is hereby REVERSED and SET ASIDE and a new one is hereby rendered dismissing the complaint filed by [petitioners].[6]

Petitioners filed a motion for reconsideration, which was denied by the Court of Appeals in its Order dated 10 November 2000.

Hence, the instant petition.

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[5] CA *rollo*, pp. 44-46.

[6] *Rollo*, p. 49.

The petition is not meritorious.

There is boundary dispute when a portion or the whole of the territorial area of a Local Government Unit (LGU) is claimed by two or more LGUs.[7] In settling boundary disputes, Section 118 of the 1991 Local Government Code provides:

> Sec. 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute*. — Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:
>
> (a) Boundary disputes involving two (2) or more *barangays* in the same city or municipality shall be referred for settlement to the *sangguniang panlungsod* or *sangguniang bayan* concerned.
>
> (b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the *sangguniang panlalawigan* concerned.
>
> **(c) Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the *sanggunians* of the provinces concerned.**
>
> (d) Boundary disputes involving a component city or municipality on the one hand and a highly urbanized city on the other, or two (2) or more highly urbanized cities, shall be jointly referred for settlement to the respective *sanggunians* of the parties.
>
> (e) In the event the *sanggunian* fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the *sanggunian* concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.

Under paragraph (c) of Section 118, the settlement of a boundary dispute involving municipalities or component cities of different provinces shall be jointly referred for settlement to the respective *Sanggunians* or the provincial boards of the different provinces involved. Section 119 of the Local Government Code

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[7] Article 15, Rule III, Rules and Regulations Implementing The Local Government Code of 1991.

gives a dissatisfied party an avenue to question the decision of the *Sanggunian* to the RTC having jurisdiction over the area, *viz*:

> Section 119. *Appeal*. - Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the area in dispute x x x.

Article 17, Rule III of the Rules and Regulations Implementing the Local Government Code of 1991 outlines the procedures governing boundary disputes, which succinctly includes the filing of the proper petition; and in case of failure to amicably settle, a formal trial shall be conducted and a decision shall be rendered thereafter. An aggrieved party can appeal the decision of the *sanggunian* to the appropriate RTC. Said rules and regulations state:

> Article 17. *Procedures for Settling Boundary Disputes*. – The following procedures shall govern the settlement of boundary disputes:
>
> (a) Filing of petition - The *sanggunian* concerned may initiate action by filing a petition, in the form of a resolution, with the *sanggunian* having jurisdiction over the dispute.
>
> (b) Contents of petition - The petition shall state the grounds, reasons or justifications therefore.
>
> (c) Documents attached to petition - The petition shall be accompanied by:
>
> 1. Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU;
>
> 2. Provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the LMB.
>
> 3. Technical description of the boundaries of the LGUs concerned;
>
> 4. Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial

jurisdiction over the disputed area according to records in custody;

5. Written declarations or sworn statements of the people residing in the disputed area; and

6. Such other documents or information as may be required by the *sanggunian* hearing the dispute.

(d) Answer of adverse party - Upon receipt by the *sanggunian* concerned of the petition together with the required documents, the LGU or LGUs complained against shall be furnished copies thereof and shall be given fifteen (15) working days within which to file their answers.

(e) Hearing - Within five (5) working days after receipt of the answer of the adverse party, the *sanggunian* shall hear the case and allow the parties concerned to present their respective evidences.

(f) Joint hearing - When two or more *sanggunians* jointly hear a case, they may sit *en banc* or designate their respective representatives. Where representatives are designated, there shall be an equal number of representatives from each *sanggunian*. They shall elect from among themselves a presiding officer and a secretary. In case of disagreement, selection shall be by drawing lot.

(g) Failure to settle - In the event the *sanggunian* fails to amicably settle the dispute within sixty (60) days from the date such dispute was referred thereto, it shall issue a certification to the effect and copies thereof shall be furnished the parties concerned.

(h) Decision - Within sixty (60) days from the date the certification was issued, the dispute shall be formally tried and decided by the *sanggunian* concerned. Copies of the decision shall, within fifteen (15) days from the promulgation thereof, be furnished the parties concerned, DILG, local assessor, COMELEC, NSO, and other NGAs concerned.

(i) Appeal - Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the *sanggunian* concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing therewith the appropriate pleading,

> stating among others, the nature of the dispute, the decision of the *sanggunian* concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case within one (1) year from the filing thereof. Decisions on boundary disputes promulgated jointly by two (2) or more *sangguniang panlalawigans* shall be heard by the Regional Trial Court of the province which first took cognizance of the dispute.

The records of the case reveal that the instant case was initiated by petitioners against respondents, predicated on the latter's refusal to allow the former entry into the disputed mining areas. This is not a case where the *Sangguniang Panlalawigans* of Davao Oriental and Surigao del Sur jointly rendered a decision resolving the boundary dispute of the two provinces, and the same decision was elevated to the RTC. Clearly, the RTC cannot exercise appellate jurisdiction over the case, since there was no petition that was filed and decided by the *Sangguniang Panlalawigans* of Davao Oriental and Surigao del Sur. Neither can the RTC assume original jurisdiction over the boundary dispute, since the Local Government Code allocates such power to the *Sangguniang Panlalawigans* of Davao Oriental and Surigao del Sur. Since the RTC has no original jurisdiction on the boundary dispute, between Davao Oriental and Surigao del Sur, its decision is a total nullity. We have repeatedly ruled that a judgment rendered by a court without jurisdiction is null and void and may be attacked anytime.[8] It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect.[9]

Moreover, petitioners' small-scale mining permits are legally questionable. Under Presidential Decree No. 1899, applications

[8] *Leonor v. Court of Appeals*, 326 Phil. 74, 88 (1996).

[9] *Arevalo v. Benedicto*, 157 Phil. 175, 181 (1974) cited in *Hilado v. Chavez*, G.R. No. 134742, 22 September 2004, 438 SCRA 623, 649.

of small-scale miners are processed with the Director of the Mines and Geo-Sciences Bureau. Pursuant to Republic Act No. 7076, which took effect[10] on 18 July 1991, approval of the applications for mining permits and for mining contracts are vested in the Provincial/City Mining Regulatory Board. Composed of the DENR representative, a representative from the small-scale mining sector, a representative from the big-scale mining industry and a representative from an environmental group, this body is tasked to approve small-scale mining permits and contracts.

In the case under consideration, petitioners filed their application for small-scale mining permits on 23 August 1991, making them bound by the procedures provided for under the applicable and prevailing statute, Republic Act No. 7076. Instead of processing and obtaining their permits from the Provincial Mining Regulatory Board, petitioners were able to get the same from the governor of Davao del Norte. Considering that the governor was without legal authority to issue said mining permits, the same permits are null and void.

Based on the discussions above, the Court of Appeals was correct in finding that petitioners have no right to enter into and to conduct mining operations within the disputed lands under the infirmed small-scale mining permits.

In fine, this Court defers to the findings of the Court of Appeals, there being no cogent reason to veer away from such findings.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated 19 June 2000 and its Resolution dated 10 November 2000 reversing the 26 November 1993 Decision of the Regional Trial Court of Banganga, Davao Oriental, Branch 7, are hereby *AFFIRMED*. No costs.

SO ORDERED.

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

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[10] Republic Act No. 7076 was published in Malaya on 3 July 1991.

EN BANC

[G.R. No. 154473. April 24, 2009]

PEOPLE OF THE PHILIPPINES and PHOTOKINA MARKETING CORPORATION, *petitioners, vs.* **ALFREDO L. BENIPAYO,** *respondent.*

[G.R. No. 155573. April 24, 2009]

PHOTOKINA MARKETING CORPORATION, *petitioner, vs.* **ALFREDO L. BENIPAYO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; CONFERRED BY THE LAW IN FORCE AT THE TIME OF THE INSTITUTION OF THE ACTION, UNLESS A LATTER STATUTE PROVIDES FOR A RETROACTIVE APPLICATION THEREOF; JURISDICTION OVER LIBEL CASES IS LODGED WITH THE REGIONAL TRIAL COURTS.— Uniformly applied is the familiar rule that the jurisdiction of the court to hear and decide a case is conferred by the law in force at the time of the institution of the action, unless a latter statute provides for a retroactive application thereof. Article 360 of the Revised Penal Code (RPC), as amended by Republic Act No. 4363, is explicit on which court has jurisdiction to try cases of written defamations, thus: The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the *court of first instance* [now, the Regional Trial Court] of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense xxx. xxx. This exclusive and original jurisdiction of the RTC over written defamations is echoed in *Bocobo v. Estanislao*, where the Court further declared that jurisdiction remains with the trial court even if the libelous act is committed "by similar means," and despite the fact that the phrase "by similar means" is not repeated in the latter portion of Article 360. In these cases, and in those that followed, the

Court had been unwavering in its pronouncement that the expanded jurisdiction of the municipal trial courts cannot be exercised over libel cases.

2. ID.; ID.; ID.; ID.; ID.; THE GRANT TO THE SANDIGANBAYAN OF JURISDICTION OVER OFFENSES COMMITTED IN RELATION TO PUBLIC OFFICE DID NOT DIVEST THE REGIONAL TRIAL COURT OF ITS EXCLUSIVE AND ORIGINAL JURISDICTION TO TRY WRITTEN DEFAMATION CASES REGARDLESS OF WHETHER THE OFFENSE IS COMMITTED IN RELATION TO OFFICE.— As we have constantly held in *Jalandoni*, *Bocobo*, *People v. Metropolitan Trial Court of Quezon City, Br. 32*, *Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations shall be filed simultaneously or separately with the RTC **to the exclusion of all other courts**. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, **in the absence of an express repeal or modification**, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means. **The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to (public) office**, similar to the expansion of the jurisdiction of the MTCs, **did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office**. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.

3. ID.; ID.; ID.; JURISDICTION OVER WRITTEN DEFAMATIONS EXCLUSIVELY RESTS IN THE REGIONAL TRIAL COURT WITHOUT QUALIFICATION; REMAND OF THE CASE AT BAR TO THE REGIONAL TRIAL COURTS, WARRANTED.— Since jurisdiction over written defamations exclusively rests in the RTC without qualification, it is unnecessary and futile for the parties to argue on whether the crime is committed in relation to office. Thus, the conclusion reached by the trial court that the

respondent committed the alleged libelous acts in relation to his office as former COMELEC chair, and deprives it of jurisdiction to try the case, is, following the above disquisition, gross error. This Court, therefore, orders the reinstatement of Criminal Cases Nos. Q-02-109406 and Q-02-109407 and their remand to the respective Regional Trial Courts for further proceedings.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon and San Jose for Photokina Marketing Corporation.

Roberto A. Abad for Alfredo Benipayo.

D E C I S I O N

NACHURA, *J.*:

Before the Court are two consolidated petitions for review on *certiorari* filed under Rules 45 and 122 of the Rules of Court: (1) G.R. No. 154473 assailing the June 18, 2002[1] and the June 23, 2002[2] Orders of the Regional Trial Court (RTC) of Quezon City, Branch 102 in Criminal Case No. Q-02-109407; and (2) G.R. No. 155573 challenging the June 25, 2002[3] and the September 18, 2002[4] Orders of the RTC of Quezon City, Branch 101 in Criminal Case No. Q-02-109406.

The petitions, while involving the same issues, rest on different factual settings, thus:

G.R. No. 154473

On January 31, 2002, respondent Alfredo L. Benipayo, then Chairman of the Commission on Elections (COMELEC), delivered a speech in the "Forum on Electoral Problems: Roots and

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[1] Records (Crim. Case No. Q-02-109407), pp. 129-138.

[2] *Id.* at 175-177.

[3] Records (Crim. Case No. Q-02-109406), pp. 108-111.

[4] *Id.* at 157-158.

Responses in the Philippines" held at the Balay Kalinaw, University of the Philippines-Diliman Campus, Quezon City.[5] The speech was subsequently published in the February 4 and 5, 2002 issues of the Manila Bulletin.[6]

Petitioner corporation, believing that it was the one alluded to by the respondent when he stated in his speech that

> Even worse, the Commission came right up to the brink of signing a 6.5 billion contract for a registration solution that could have been bought for 350 million pesos, and an ID solution that isn't even a requirement for voting. But reason intervened and no contract was signed. **Now, they are at it again, trying to hoodwink us into contract that is so grossly disadvantageous to the government that it offends common sense to say that it would be worth the 6.5 billion-peso price tag.**[7]

filed, through its authorized representative, an Affidavit-Complaint[8] for libel.

Arguing that he was an impeachable officer, respondent questioned the jurisdiction of the Office of the City Prosecutor of Quezon City (OCP-QC).[9] Despite the challenge, the City Prosecutor filed an Information[10] for libel against the respondent, docketed as Criminal Case No. Q-02-109407, with the RTC of Quezon City, Branch 102.

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[5] Records (Crim. Case No. Q-02-109407), p. 3.

[6] *Id.* at 12-18.

[7] *Id.* at 14.

[8] *Id.* at 6-9.

[9] *Id.* at 34-41.

[10] *Id.* at 1-2. The accusatory portion of the Information reads:

"That on or about the 4th and 5th day of February 2002, in Quezon City, Philippines, the said accused, with malicious intent of impeaching the honor, virtue, character and reputation of PHOTOKINA MARKETING CORPORATION, a juridical person, represented by Atty. Rodrigo Sta. Ana with office address at 117 West Avenue, Quezon City, and with evident intent of exposing the said juridical person to public dishonor, discredit, contempt and ridicule, did then and there willfully, unlawfully, feloniously and maliciously utter the following defamatory statements, in a speech delivered at the University of the Philippines at its Diliman Campus in Quezon City, to wit:

Petitioner later filed a Motion for Inhibition and Consolidation,[11] contending that Judge Jaime N. Salazar of Branch 102 could not impartially preside over the case because his appointment to the judiciary was made possible through the recommendation of respondent's father-in-law. Petitioner further moved that the case be ordered consolidated with the other libel case [Criminal Case No. Q-02-103406, which is the subject of G.R. No. 155573] pending with Branch 101 of the RTC.

While the said motion remained unresolved, respondent, for his part, moved for the dismissal of the case on the assertion that the trial court had no jurisdiction over his person for he was an impeachable officer and thus, could not be criminally prosecuted before any court during his incumbency; and that, assuming he can be criminally prosecuted, it was the Office of the Ombudsman that should investigate him and the case should be filed with the Sandiganbayan.[12]

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x x x x x x x x x x x x

"Even worse, the Commission came right up to the brink of signing a 6.5 billion contract for a registration solution that could have been bought for 350 million pesos, and an ID solution that isn't even a requirement for voting. But reason intervened and no contract was signed. Now, they are at it again, trying to hoodwink us into contract that is so grossly disadvantageous to the government that it offends common sense to say that it would be worth the 6.5 billion-peso price tag.

x x x x x x x x x x x x

"that with the said statement, the said accused meant and intended to convey as in fact he did mean and convey, malicious and offensive insinuations and imputations that Photokina Marketing Corporation is a cheater and has unreasonable (sic) and grossly took advantage of the government whom it has outwitted into entering into a disadvantageous contract, which insinuations and imputations are destructive of and tends to destroy the good name and reputation of said Photokina Marketing Corporation as a juridical person, with no good or justifiable motive but solely for the purpose of maligning and besmirching the good name, honor, character and reputation of said Photokina Marketing Corporation, as in fact it was exposed to public hatred, contempt and ridicule, to the damage and prejudice of said juridical person.

"CONTRARY TO LAW."

[11] *Id.* at 55-58.

[12] *Id.* at 69-78.

On June 18, 2002, the trial court issued the challenged Order[13] dismissing Criminal Case No. Q-02-109407 and considering as moot and academic petitioner's motion to inhibit. While the RTC found that respondent was no longer an impeachable officer because his appointment was not confirmed by Congress, it ruled that the case had to be dismissed for lack of jurisdiction considering that the alleged libel was committed by respondent in relation to his office—he delivered the speech in his official capacity as COMELEC Chair. Accordingly, it was the Sandiganbayan that had jurisdiction over the case to the exclusion of all other courts.

On motion for reconsideration, the trial court adhered to its ruling that it was not vested with jurisdiction to hear the libel case.[14]

Aggrieved, petitioners timely filed before the Court, on pure questions of law, the instant Petition for Review on *Certiorari*[15] under Rule 122 in relation to Rule 45 of the Rules of Court raising the following grounds:

I. THE TRIAL COURT SHOULD HAVE FIRST RESOLVED THE MOTION TO INHIBIT BEFORE RESOLVING THE MOTION TO DISMISS;

II. THE TRIAL COURT ERRED IN RULING THAT THE CRIME OF LIBEL IN THIS CASE WAS COMMITTED BY ACCUSED "IN RELATION TO HIS OFFICE", AND

III. THE TRIAL COURT ERRED IN RULING THAT IT HAD NO JURISDICTION IN THIS CASE.[16]

G.R. No. 155573

On March 13, 2002, respondent, as COMELEC Chair, and COMELEC Commissioner Luzviminda Tangcangco were guests of the talk show "Point Blank," hosted by Ces Drilon and televised

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[13] *Supra* note 1.

[14] *Supra* note 2.

[15] *Rollo* (G.R. No. 154473), pp. 18-41.

[16] *Id.* at 26-27.

nationwide on the ANC-23 channel. The television show's episode that day was entitled "COMELEC Wars."[17] In that episode, the following conversation transpired:

> Drilon: Are you saying, Chairman, that COMELEC funds are being used for a "PR" campaign against you? Is that what you are saying?
>
> Benipayo: No, I think [it's] not COMELEC funds, [it's] Photokina funds. You know, admittedly, according to [c]hargé d'[a]ffaires of the U.S. Embassy[,] in a letter sent to me in July of 2001, it is what's been [so] happening to the Photokina deal, they have already spent in excess of 2.4 [m]illion U.S. [d]ollars. At that time[,] that's about 120 [m]illion pesos and I said, what for[?] [T]hey wouldn't tell me, you see. Now you asked me, [who is] funding this? I think it's pretty obvious.[18]

Petitioner considered respondent's statement as defamatory, and, through its authorized representative, filed a Complaint-Affidavit[19] for libel. Respondent similarly questioned the jurisdiction of the OCP-QC.[20] The City Prosecutor, however, consequently instituted Criminal Case No. Q-02-109406 by filing the corresponding Information[21] with the RTC of Quezon City, Branch 101.

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[17] Records (Crim. Case No. Q-02-109406), p. 6.

[18] *Id.* at 1.

[19] *Id.* at 6-8.

[20] *Id.* at 9-15.

[21] *Id.* at 1-2. The accusatory portion of the Information reads:

"That on or about the 13th day of March, 2002, in Quezon City, Philippines, the said accused, with malicious intent of impeaching the honor, virtue, character and reputation of PHOTOKINA MARKETING CORPORATION, a juridical person, represented by Atty. Rodrigo Sta. Ana, with office address at 117 West Avenue, Quezon City, and with evident intent of exposing the said juridical person to public dishonor, discredit, contempt and ridicule, did then and there willfully, unlawfully, feloniously and maliciously utter the following defamatory statements, in response to the question of Cez Drilon, to wit:

"Cez Drilon: Are you saying, Chairman, that COMELEC funds are being used for a 'PR' campaign against you? Is that what you are saying?

Respondent also moved for the dismissal of the information raising similar arguments that the court had no jurisdiction over his person, he being an impeachable officer; and that, even if criminal prosecution were possible, jurisdiction rested with the Sandiganbayan.[22]

On June 25, 2002, the trial court issued the assailed Order[23] dismissing Criminal Case No. Q-02-109406 for lack of jurisdiction over the person of the respondent. The RTC, in the further assailed September 18, 2002 Order,[24] denied petitioner's Motion for Reconsideration.[25]

Displeased with the rulings of the trial court, petitioners seasonably filed before this Court, on pure questions of law, another Petition for Review on *Certiorari*[26] under Rule 122 in

> "Chairman Benipayo: No, I think [it's] not COMELEC funds, [it's] Photokina funds. You know, admittedly, according to [c]hargé d'[a]ffaires of the U.S. Embassy[,] in a letter sent to me in July of 2001, it is what's been so happening to the Photokina deal, they have already spent an excess of 2.4 [m]illion U.S. [d]ollars. At that time[,] that's about 120 [m]illion pesos and I said, what for[?] [T]hey wouldn't tell me, you see. Now you asked me, whose funding this? I think it's pretty obvious…

"that with the said statement, the said accused meant and intended to convey, as in fact he did mean and convey, malicious and offensive insinuations and imputations that Photokina (Marketing Corporation) funds are being used to destroy the respondent and that 2.4 [m]illion US dollars (₱120 [m]illion [p]esos) (sic) have already been spent for the 'Photokina deal,' which maliciously and publicly imputed and suggested a certain vice on the part of Photokina Marketing Corporation such as bribery and rigging of bids, as well as a defect on the Photokina VRIS contract, which insinuations and imputations are destructive of and tends to destroy the good name and reputation of said Photokina Marketing Corporation as a juridical person, with no good or justifiable motive but solely for the purpose of maligning and besmirching the good name, honor, character and reputation of said Photokina Marketing Corporation, as in fact it was exposed to public hatred, contempt and ridicule, to the damage and prejudice of said juridical person.

"CONTRARY TO LAW."

[22] *Id.* at 34-44.

[23] *Supra* note 3.

[24] *Supra* note 4.

[25] Records (Crim. Case No. Q-02-109406), pp. 118-127.

[26] *Rollo* (G.R. No. 155573), pp. 3-21.

relation to Rule 45 of the Rules of Court raising the following grounds:

I. THE TRIAL COURT ERRED IN RULING THAT THE CRIME OF LIBEL IN THIS CASE WAS COMMITTED BY RESPONDENT "IN RELATION TO HIS OFFICE"; AND

II. IN THE ABSENCE OF ANY ALLEGATION IN THE INFORMATION THAT THE CRIME OF LIBEL WAS COMMITTED BY RESPONDENT IN RELATION TO HIS OFFICE, THE TRIAL COURT ERRED IN RULING THAT IT HAD NO JURISDICTION OVER THE CASE BELOW.

III. EVEN ON THE ASSUMPTION THAT THE SANDIGANBAYAN HAS JURISDICTION OVER THE CASE, THE TRIAL COURT SHOULD HAVE ENDORSED THE CASE TO THE SANDIGANBAYAN INSTEAD OF DISMISSING IT OUTRIGHT.[27]

Considering that the two petitions, as aforesaid, involve the same issues and the same parties, the Court, upon the recommendation of the Clerk of Court,[28] consolidated the cases.[29]

The core issue for the resolution of the Court in these twin cases is whether the RTC has jurisdiction over libel cases to the exclusion of all other courts.

The Ruling of the Court

The Court observes that the parties have argued at length in their pleadings on the issue of whether the alleged criminal acts of respondent are committed in relation to his office. They are of the conviction that the resolution of the said question will ultimately determine which court—the RTC or the Sandiganbayan—has jurisdiction over the criminal cases filed. The Court, however, notes that both parties are working on a wrong premise. The foremost concern, which the parties, and even the trial court, failed to identify, is whether, under our current laws, jurisdiction

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

[28] Memorandum of the Clerk of Court dated July 22, 2003.

[29] Resolution dated July 29, 2003.

over libel cases, or written defamations to be more specific, is shared by the RTC with the Sandiganbayan. Indeed, if the said courts do not have concurrent jurisdiction to try the offense, it would be pointless to still determine whether the crime is committed in relation to office.

Uniformly applied is the familiar rule that the jurisdiction of the court to hear and decide a case is conferred by the law in force at the time of the institution of the action, unless a latter statute provides for a retroactive application thereof.[30] Article 360 of the Revised Penal Code (RPC),[31] as amended by Republic Act No. 4363,[32] is explicit on which court has jurisdiction to try cases of written defamations, thus:

> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the *court of first instance* [now, the Regional Trial Court] of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense xxx.[33] [Underscoring and italics ours.]

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[30] *Escobal v. Justice Garchitorena*, 466 Phil. 625, 635 (2004); *Alarilla v. Sandiganbayan*, 393 Phil. 143, 155 (2000).

[31] Act No. 3815, as amended, entitled "An Act Revising the Penal Code and Other Penal Laws," which took effect on January 1, 1932.

[32] Entitled "An Act to Further Amend Article Three Hundred Sixty of the Revised Penal Code," which was approved on June 19, 1965.

[33] Article 360 of the RPC reads in full:

"Art. 360. *Persons responsible*.—Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

"The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

"The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided,*

More than three decades ago, the Court, in *Jalandoni v. Endaya*,[34] acknowledged the unmistakable import of the said provision:

> There is no need to make mention again that it is a court of first instance [now, the Regional Trial Court] that is specifically designated to try a libel case. Its language is categorical; its meaning is free from doubt. This is one of those statutory provisions that leave no room for interpretation. All that is required is application. What the law ordains must then be followed.[35]

This exclusive and original jurisdiction of the RTC over written defamations is echoed in *Bocobo v. Estanislao*,[36] where the

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however, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: *Provided, further,* That the civil action shall be filed in the same court where the criminal action is filed and vice versa: *Provided, furthermore,* That the court where the criminal or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: *And provided, finally,* That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions to which have been filed in court at the time of the effectivity of this law.

"Preliminary investigation of criminal actions for written defamations as provided for in this chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted in accordance with the provisions of this article.

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de oficio* shall be brought except at the instance of and upon complaint expressly filed by the offended party."

[34] No. L-23894, January 24, 1974, 55 SCRA 261.

[35] *Id.* at 263.

[36] No. L-30458, August 31, 1976, 72 SCRA 520, 523.

Court further declared that jurisdiction remains with the trial court even if the libelous act is committed "by similar means,"[37] and despite the fact that the phrase "by similar means" is not repeated in the latter portion of Article 360.[38] In these cases, and in those that followed, the Court had been unwavering in its pronouncement that the expanded jurisdiction of the municipal trial courts cannot be exercised over libel cases. Thus, in *Manzano v. Hon. Valera*,[39] we explained at length that:

> The applicable law is still Article 360 of the Revised Penal Code, which categorically provides that jurisdiction over libel cases [is] lodged with the Courts of First Instance (now Regional Trial Courts).
>
> This Court already had the opportunity to rule on the matter in G.R. No. 123263, *People vs. MTC of Quezon City, Branch 32 and Isah v. Red* wherein a similar question of jurisdiction over libel was raised. In that case, the MTC judge opined that it was the first level courts which had jurisdiction due to the enactment of RA 7691. Upon elevation of the matter to us, respondent judge's orders were nullified for lack of jurisdiction, as follows:
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> > "WHEREFORE, the petition is granted: the respondent Court's Orders dated August 14, 1995, September 7, 1995, and October 18, 1995 are declared null and void for having been issued without jurisdiction; and said Court is enjoined from further taking cognizance of and proceeding with Criminal Case No. 43-00548, which it is commanded to remand to the Executive Judge of the Regional Trial Court of Quezon City for proper disposition."
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> Another case involving the same question was cited as resolving the matter:

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[37] Article 355 of the Revised Penal Code states the other means of committing libel similar to writing. The provision reads:

"Art. 355. *Libel by means of writings or similar means.*—A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prision correccional* in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party."

[38] *Bocobo v. Estanislao*, *supra* note 36, at 523-524.

[39] 354 Phil. 66 (1998).

> "Anent the question of jurisdiction, we ** find no reversible error committed by public respondent Court of Appeals in denying petitioner's motion to dismiss for lack of jurisdiction. The contention ** that R.A. 7691 divested the Regional Trial Courts of jurisdiction to try libel cases cannot be sustained. While libel is punishable by imprisonment of six months and one day to four years and two months (Art. 360, Revised Penal Code) which imposable penalty is lodged within the Municipal Trial Court's jurisdiction under R.A. No. 7691 (Sec. 32 [2]), said law however, excludes therefrom ** cases falling within the exclusive original jurisdiction of the Regional Trial Courts **. The Court in *Bocobo vs. Estanislao*, 72 SCRA 520 and *Jalandoni vs. Endaya*, 55 SCRA 261, correctly cited by the Court of Appeals, has laid down the rule that Regional Trial courts have the exclusive jurisdiction over libel cases, hence, the expanded jurisdiction conferred by R.A. 7691 to inferior courts cannot be applied to libel cases."

Conformably with [these] rulings, we now hold that public respondent committed an error in ordering that the criminal case for libel be tried by the MTC of Bangued.

For, although RA 7691 was enacted to decongest the clogged dockets of the Regional Trail Courts by expanding the jurisdiction of first level courts, said law is of a general character. Even if it is a later enactment, it does not alter the provision of Article 360 of the RPC, a law of a special nature. "Laws vesting jurisdiction exclusively with a particular court, are special in character, and should prevail over the Judiciary Act defining the jurisdiction of other courts (such as the Court of First Instance) which is a general law." A later enactment like RA 7691 does not automatically override an existing law, because it is a well-settled principle of construction that, in case of conflict between a general law and a special law, the latter must prevail regardless of the dates of their enactment. Jurisdiction conferred by a special law on the RTC must therefore prevail over that granted by a general law on the MTC.

Moreover, from the provisions of R.A. 7691, there seems to be no manifest intent to repeal or alter the jurisdiction in libel cases. If there was such intent, then the amending law should have clearly so indicated because implied repeals are not favored. As much as possible, effect must be given to all enactments of the legislature. A special law cannot be repealed, amended or altered by a subsequent

general law by mere implication. Furthermore, for an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws. Absent an express repeal, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws. The two laws, in brief, must be absolutely incompatible. In the law which broadened the jurisdiction of the first level courts, there is no absolute prohibition barring Regional Trial Courts from taking cognizance of certain cases over which they have been priorly granted special and exclusive jurisdiction. Such grant of the RTC (previously CFI) was categorically contained in the first sentence of the amended Sec. 32 of B.P. 129. The inconsistency referred to in Section 6 of RA 7691, therefore, does not apply to cases of criminal libel.

Lastly, in Administrative Order No. 104-96 issued 21 October 1996, this Court delineated the proper jurisdiction over libel cases, hence settled the matter with finality:

> "RE: DESIGNATION OF SPECIAL COURTS FOR KIDNAPPING, ROBBERY, CARNAPPING, DANGEROUS DRUGS CASES AND OTHER HEINOUS CRIMES; INTELLECTUAL PROPERTY RIGHTS VIOLATIONS AND JURISDICTION IN LIBEL CASES.
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> "LIBEL CASES SHALL BE TRIED BY THE REGIONAL TRIAL COURTS HAVING JURISDICTION OVER THEM TO THE EXCLUSION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS." (Underscoring supplied)[40]

As we have constantly held in *Jalandoni*, *Bocobo*, *People v. Metropolitan Trial Court of Quezon City, Br. 32*,[41] *Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations

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[40] *Id.* at 74-77.

[41] G.R. No. 123263, December 16, 1996, 265 SCRA 645.

shall be filed simultaneously or separately with the RTC **to the exclusion of all other courts**. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, **in the absence of an express repeal or modification**, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means.[42] **The grant to the Sandiganbayan**[43] **of jurisdiction over offenses committed in relation to (public) office**, similar to the expansion of the jurisdiction of the MTCs, **did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office**. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249,[44] cannot be construed to have impliedly repealed, or

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[42] *Manzano v. Hon. Valera*, *supra* note 39.

[43] This court was created on June 11, 1978 by the issuance of Presidential Decree (P.D.) No. 1486. On December 10, 1978, P.D. No. 1606 was issued to revise and repeal P.D. No. 1486. Throughout the years, P.D. No. 1606 underwent a series of amendments—on January 14, 1983, by P.D. No. 1860; on March 23, 1983, by P.D. No. 1861; on March 30, 1995, by Republic Act (R.A.) No. 7975; and on February 5, 1997, by R.A. No. 8249.

[44] Section 4 of R.A. No. 8249, entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes," reads:

"SECTION 4. Section 4 of the same decree is hereby further amended to read as follows:

"Sec. 4. Jurisdiction.—The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

> "(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads;

even simply modified, such exclusive and original jurisdiction of the RTC.[45]

"(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors engineers and other city department heads;

"(c) Officials of the diplomatic service occupying the position of consul and higher;

"(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

"(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

"(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

"(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations;

"(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

"(3) Members of the judiciary without prejudice to the provisions of the Constitution;

"(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

"(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

"b. *Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.*

"c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"In cases where none of the accused are occupying positions corresponding to salary grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court, as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129, as amended.

"The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders or regional trial courts whether in the

Since jurisdiction over written defamations exclusively rests in the RTC without qualification, it is unnecessary and futile

exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

"The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including *quo warranto*, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1,2,14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

"The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

"Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had therefore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned." [Italics ours]

[45] See *De Jesus v. People*, 205 Phil. 663, 670 (1983), in which the Court ruled that the provision of the law stating the jurisdiction of the Sandiganbayan, which is phrased in terms so broad and general, cannot be legitimately construed to vest the said court with exclusive jurisdiction over election offenses committed by public officers in relation to their office. Neither can it be interpreted to impliedly repeal the exclusive and original jurisdiction granted by Section 184 of the Election Code of 1978 to the court of first instance (now, the RTC) to hear and decide all election offenses, without qualification as to the status of the accused.

for the parties to argue on whether the crime is committed in relation to office. Thus, the conclusion reached by the trial court that the respondent committed the alleged libelous acts in relation to his office as former COMELEC chair, and deprives it of jurisdiction to try the case, is, following the above disquisition, gross error. This Court, therefore, orders the reinstatement of Criminal Cases Nos. Q-02-109406 and Q-02-109407 and their remand to the respective Regional Trial Courts for further proceedings. Having said that, the Court finds unnecessary any further discussion of the other issues raised in the petitions.

WHEREFORE, premises considered, the consolidated petitions for review on *certiorari* are *GRANTED*. Criminal Cases Nos. Q-02-109406 and Q-02-109407 are *REINSTATED* and *REMANDED* to the Regional Trial Court of Quezon City for further proceedings.

SO ORDERED.

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

Carpio Morales, J., no part due to relation to a party.

Quisumbing, J., on official leave.

SECOND DIVISION

[G.R. No. 154609. April 24, 2009]

MA. CORAZON SAN JUAN, *petitioner, vs.* **CELESTE M. OFFRIL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES AND CARRY EVEN MORE WEIGHT WHEN THESE COINCIDE WITH THE FACTUAL FINDINGS OF THE TRIAL COURT.— To begin with, the findings of fact of the Court of Appeals are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court. This Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous.

2. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; A NOTARIZED DOCUMENT IS PRESUMED REGULAR; PRESUMPTION IS NOT ABSOLUTE.— San Juan makes much of the fact that the testimony of Offril, which was replete with inconsistencies and lapses of memory, is insufficient to overcome the presumption of regularity of notarized document. While indeed, a notarized document enjoys this presumption, the fact that a deed is notarized is not a guarantee of the validity of its contents. The presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. The presumption cannot be made to apply in this case because the regularity in the execution of the documents was challenged in the proceedings below where their *prima facie* validity was overthrown by the highly questionable circumstances pointed out by both trial and appellate courts. These circumstances include: (i) the registration by San Juan of the deeds of sale in 1990 notwithstanding the fact that the deeds were allegedly made in 1979; (ii) the execution of a deed of sale dated 2 April 1990 despite San Juan's claim that the deeds of sale were antedated to avoid the payment of tax; and (iii) the execution of the Deed of Partition on 2 May 1990, in spite of San Juan's claim that she had acquired the entire property.

3. ID.; ID.; CREDIBILITY OF WITNESSESS; THE COURT WILL NOT INTERFERE WITH THE TRIAL COURT'S DETERMINATION THEREOF; EXCEPTION; CASE AT

BAR.— The lone testimony of a witness, if credible, is sufficient. The Court cannot ignore the fact that both the trial court and the Court of Appeals found Offril's lone testimony as credible, "clear, unequivocal and rang with truth." The Court has repeatedly held that it will not interfere with the trial court's determination of the credibility of witnesses, unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason for this is that the trial court is in a better position to do so because it heard the witnesses testify before it and had every opportunity to observe their demeanor and deportment on the witness stand. In any case, San Juan's allegation that Offril was suffering from Alzheimer's disease or loss of memory and as such her testimony cannot be given credence, as there was no proof of such affliction. The claim that Offril had Alzheimer's disease was already brought up before the trial court and before the Court of Appeals, but this was rejected by both courts. Moreover, what is significant is that the trial court had the opportunity to observe the demeanor of Offril and found it to be truthful and worthy of credence. Even the Court of Appeals declared that there was no major inconsistency in Offril's testimony. Besides, even this Court's perusal of Offril's testimony reveals that indeed, there was no such major inconsistency. While Offril did in fact forget the names of her other children, her address, the date when San Juan started leasing the apartment, or the amount of the rent, it was clear that she knew and considered San Juan as a mere tenant in her apartment, and she was certain that she never sold the five-door apartment to San Juan, nor received any amount corresponding to the value of the said property. She likewise denied having signed the deed purporting to sell the five-door apartment to San Juan. Thus, on all matters material to her complaint, the Court finds that Offril's testimony was clear, equivocal and consistent.

4. CIVIL LAW; ESTOPPEL; PETITIONER IS ESTOPPED BY THE DEED OF PARTITION.— Contrary to San Juan's claim, the Deed of Partition is material to instant case. The trial court and the Court of Appeals found that evidence on record shows that per the partition agreement, Offril did not intend to dispose of, and that San Juan did not intend to acquire, the entire property. More importantly, the Deed of Partition, which was executed

on 2 May 1990, debunks San Juan's claim that she had acquired the property at a much earlier date, since there would be no need for a partition if San Juan was truly the owner of the entire property. The Court notes too, the fact that San Juan did not deny the existence of the Deed of Partition as well as the fact that she was a signatory thereto; neither did she raise any objection to the admission of the Deed of Partition. Thus, the Court finds that San Juan is estopped by the Deed of Partition.

APPEARANCES OF COUNSEL

Camacho and Associates for petitioner.
Ramon L. Quino for respondents.

D E C I S I O N

TINGA, *J.*:

This is a petition for review of the Decision of the Court of Appeals dated 30 July 2002 in CA-G.R. No. 52597 entitled *Celeste M. Offril v. Maria Corazon San Juan*,[1] which affirmed *in toto* the decision of the Regional Trial Court of Makati City, Branch 64 in Civil Case No. 92-3604.

The facts of the case follow.

Celeste M. Offril (Offril) used to be the registered owner of a 264 square meter lot in Makati City covered by Transfer Certificate (TCT) No. (114181) S-24948. On the lot is a five (5) door apartment leased to tenants, one of whom was Ma. Corazon San Juan (San Juan), who leased the first door. Sometime in 1990, San Juan convinced Offril, who was then trying to obtain a loan from her, to deliver to her the title to the property so that San Juan could present it to the bank to enable her to apply for a loan, the proceeds of which she would lend to Offril. It appears that without Offril's knowledge, two deeds of sale were executed, dated 2 April 1979 and 14 June 1979, respectively, allegedly between Offril and San Juan. By virtue of these deeds,

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with the concurrence of Associate Justices Andres B. Reyes, Jr. and Mario L. Guariña III.

San Juan caused the subdivision of the lot into six (6) sublots—Lots 20 A-F—and caused the issuance of separate titles to the said lots. Offril claimed that she neither sold the property to nor received any consideration from San Juan, as such; she claimed that the deeds are spurious, and the signatures appearing therein were forged. Additionally, she claimed that she learned of the cancellation of her title and existence of the new TCTs through her granddaughter, who was told by a personnel at the Assessor's Office of Makati City that Offril's tax declaration and title had been cancelled and that San Juan had already caused the cancellation of Offril's TCT and secured new ones. Thus, she prayed that the deeds of sale be declared null and void and the TCTs cancelled.[2]

On the other hand, San Juan maintained that she acquired the property from Offril through valid sales, as evidenced by two deeds of sale of the unsegregated portion, and for which she paid in cash and by checks subsequently encashed by Offril's granddaughter Consuelo Gorostiza in the latter's capacity as attorney-in-fact.[3]

In its 6 March 1996 decision,[4] the trial court ruled that only Lots 20-A and Lot 20-B were sold to San Juan, and thus the TCTs of said lots are valid. According to the trial court, Offril had no serious objection against the deed of sale concerning Lot 20-A, and hence, she admitted the due execution of the said document, including the authenticity of the signatures appearing thereon. On the other hand, the basis for considering Lot 20-B as having been sold to San Juan is a Deed of Partition executed between Offril and San Juan, which Offril herself submitted as part of her rebuttal evidence, and which was not objected to by San Juan. In the Deed of Partition, the parties agreed that Lot 20-A and Lot 20-B are to be adjudicated to San Juan. The trial court ruled that through the Deed of Partition,

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[2] Celeste Offril died intestate on 22 May 1994, while the case was still pending before the trial court. She was substituted by her children and grandchildren. Records, pp. 317, 319.

[3] *Rollo*, p. 107.

[4] *Id.* at 106-110.

Offril had negated her claim that she never sold nor received consideration for the sale of her property to San Juan. On the part of San Juan, her participation in the execution of the deed negated her assertion that she acquired the entire property from Offril through a sale,[5] the trial court added.

Anent the two deeds of sale presented by San Juan, the trial court ruled that the same have no probative value. The trial court found that in 1979 when these deeds were purportedly executed, San Juan was not yet a lessee of Offril's apartment. If San Juan had already acquired the property at that time, there would have been no reason for her to occupy the premises as a lessee, sign the lease contract with Offril in 1988, and subdivide the property in 1990. The trial court also pointed out that while the deeds of sale were executed in 1979, they were presented for registration only in 1990.[6]

Finally, the trial court ruled that neither party is entitled to the claim for damages and recovery of costs of suit, since there was no clear showing who caused the execution of the two spurious deeds of sale. Suffice it to say that both parties appear to have brought upon themselves the damage that they allegedly suffered.[7]

The dispositive portion of the decision of the trial court reads:

WHEREFORE, in view of the foregoing judgment is rendered:

1. declaring TCT No. 170403 and TCT NO. 170404 covering Lot No. 20-A and Lot No. 20-B respectively in the name of defendant Ma. Corazon San Juan, valid;

2. declaring as null and void the two (2) deeds denominated as "Deed of Sale of Unsegregated Portion" dated April 2, 1979 and June 14, 1979;

3. ordering the cancellation of TCT Nos. 170405, 170406, 170407, 170408 covering Lot Nos. 20-C, 20-D, 20-E and 20-F

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[5] *Id.* at 107-108.

[6] *Id.* at 108-110.

[7] *Id.* at 110.

respectively, and in lieu thereof new titles be issued to plaintiff Celeste Offril; and

4. ordering the parties to shoulder their respective damages and costs.

SO ORDERED.[8]

Initially, both parties appealed the decision to the Court of Appeals; however, Offril subsequently withdrew her appeal.[9] San Juan submitted that the trial court erred when it (i) shifted the burden of proof to San Juan; (ii) when it overlooked the fact that the second and third deeds of sale were actually antedated; (iii) when it found that San Juan was in estoppel despite the fact that estoppel is not applicable against her; and (iv) when it erred in not dismissing the complaint *in toto* despite the failure of Offril to discharge its burden of proof to overcome the validity of San Juan's TCTs.

The Court of Appeals denied the appeal. It ruled that there was no valid conveyance of all the disputed properties from Offril to San Juan, as Offril was able to discharge the burden of proving that there was fraud through forgery in the execution of the general power of authority and the deed of conveyance. The appellate court upheld the findings of the trial court as to Offril's credibility as a witness, and gave credence to the finding of validity of the Deed of Partition. Like the trial court, the Court of Appeals relied on the Deed of Partition, which was allegedly not objected to by San Juan. It concluded that had there been any intention by Offril to sell the property to San Juan, the intention should have been stated in categorical terms in the deed itself.[10]

San Juan thus filed the instant petition for review, claiming that the Court of Appeals erred in finding that (i) there was no valid conveyance of all the disputed properties; (ii) the disputed properties were not sold by Offril to San Juan; and (iii) that

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[8] *Id.*

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

[10] Court of Appeals Decision, *rollo*, pp. 56-69.

San Juan is in estoppel based on the deed of partition which was presented by Offril as rebuttal evidence.[11] In essence, San Juan's assignment of errors challenges the findings of fact and the appreciation of evidence made by the trial court and later affirmed by respondent court.

In urging us to reverse the courts *a quo*, San Juan insists that Offril failed to overcome the presumption of validity which attaches to the notarized deeds of sale. She points out that the trial court never found Offril's signatures in the deeds as forgeries, contrary to the Court of Appeals' statement that there was fraud through forgery in the execution of the questioned deeds, San Juan posits that Offril's testimony is unbelievable considering that Offril was already affected by Alzheimer's disease or loss of memory at the time she testified before the trial court, pointing out portions of the latter's testimony wherein it appears that she failed to recall the answers to the cross examination questions on personal matters and incidents related to the case.[12] San Juan further argues that the best proof of ownership are the TCTs in her name, which enjoy a strong a presumption of being valid and having been regularly issued, a presumption which Offril once more failed to dispute.[13] San Juan points out that the receipt of payments she presented is clear evidence showing that the disputed properties were sold to her by Offril.[14]

Moreover, San Juan argues that the partition agreement is completely irrelevant to the issue of forgery of Offril's signature in the deeds of sale. She also points out that the second and third deeds of sale were antedated, a fact which was never disputed by Offril. In any case, the antedating of the deeds is immaterial because Offril's cause of action is based on the allegation that she never executed the documents in question, she continues.[15]

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[11] *Id.* at 25.

[12] *Id.* at 29-33.

[13] *Id.* at 37.

[14] *Id.* at 40.

[15] *Id.* at 41-44.

Finally, San Juan claims that estoppel with regard to the Deed of Partition applies only to Offril and not to her, Offril being the party who used the said deed to support an assertion/ representation. According to her, the partition was only a safety precaution taken by both parties since payment for the remaining property, at the time of the partition, was still to be made in future installments. In fact, she was still making payments five months after the execution of the deed of partition, which shows that she never intended to relinquish her claim of ownership, she adds.[16]

To begin with, the findings of fact of the Court of Appeals are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court. This Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous.[17]

San Juan makes much of the fact that the testimony of Offril, which was replete with inconsistencies and lapses of memory, is insufficient to overcome the presumption of regularity of notarized document. While indeed, a notarized document enjoys this presumption, the fact that a deed is notarized is not a guarantee of the validity of its contents.[18] The presumption is not absolute and may be rebutted by clear and convincing evidence to the contrary. The presumption cannot be made to apply in this case because the regularity in the execution of the documents was challenged in the proceedings below where their *prima facie* validity was overthrown by the highly questionable circumstances pointed out by both trial and appellate courts.[19] These circumstances include: (i) the registration by San Juan of the deeds of sale in 1990 notwithstanding the fact that the deeds were allegedly made in 1979; (ii) the execution of a deed of

[16] *Id.* at 48-49.

[17] *Nazareno v. Court of Appeals*, G.R. No. 138842, 18 October 2000, 343 SCRA 637, 651.

[18] *Supra* note 17 at 637, 652, citing *Suntay v. Court of Appeals,* 251 SCRA 452 (1995).

[19] *Mayor v. Belen*, G.R. No. 151035, 3 June 2004, 430 SCRA 561, 567.

sale dated 2 April 1990 despite San Juan's claim that the deeds of sale were antedated to avoid the payment of tax; and (iii) the execution of the Deed of Partition on 2 May 1990, in spite of San Juan's claim that she had acquired the entire property.[20]

The lone testimony of a witness, if credible, is sufficient.[21] The Court cannot ignore the fact that both the trial court and the Court of Appeals found Offril's lone testimony as credible, "clear, unequivocal and rang with truth."[22] The Court has repeatedly held that it will not interfere with the trial court's determination of the credibility of witnesses, unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason for this is that the trial court is in a better position to do so because it heard the witnesses testify before it and had every opportunity to observe their demeanor and deportment on the witness stand.[23]

In any case, San Juan's allegation that Offril was suffering from Alzheimer's disease or loss of memory and as such her testimony cannot be given credence, as there was no proof of such affliction. The claim that Offril had Alzheimer's disease was already brought up before the trial court and before the Court of Appeals, but this was rejected by both courts. Moreover, what is significant is that the trial court had the opportunity to observe the demeanor of Offril and found it to be truthful and worthy of credence. Even the Court of Appeals declared that there was no major inconsistency in Offril's testimony.[24] Besides, even this Court's perusal of Offril's testimony reveals that indeed, there was no such major inconsistency. While Offril did in fact forget the names of her other children, her address, the date when San Juan started leasing the apartment, or the amount of

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[20] *Rollo*, p. 109.

[21] *Nazareno v. Court of Appeals*, G.R. No. 138842, 18 October 2000, 343 SCRA 637, 652.

[22] *Rollo*, p. 61.

[23] *People v. Conde*, G.R. No. 133647, 12 April 2000, 330 SCRA 645.

[24] *Rollo*, p. 63.

the rent,[25] it was clear that she knew and considered San Juan as a mere tenant in her apartment,[26] and she was certain that she never sold the five-door apartment to San Juan, nor received any amount corresponding to the value of the said property.[27] She likewise denied having signed the deed purporting to sell the five-door apartment to San Juan.[28] Thus, on all matters material to her complaint, the Court finds that Offril's testimony was clear, equivocal and consistent.

Contrary to San Juan's claim, the Deed of Partition is material to instant case. The trial court and the Court of Appeals found that evidence on record shows that per the partition agreement, Offril did not intend to dispose of, and that San Juan did not intend to acquire, the entire property. More importantly, the Deed of Partition, which was executed on 2 May 1990, debunks San Juan's claim that she had acquired the property at a much earlier date, since there would be no need for a partition if San Juan was truly the owner of the entire property. The Court notes too, the fact that San Juan did not deny the existence of the Deed of Partition as well as the fact that she was a signatory thereto; neither did she raise any objection to the admission of the Deed of Partition. Thus, the Court finds that San Juan is estopped by the Deed of Partition.

Finally, the Court quotes with approval the following findings of the trial court:

> As described above, this Court finds that both parties have made representations, admissions and omissions adversely affecting their respective allegations in this case. This Court considers both parties to have commonly declared in Exhibit 2 (Deed of Absolute Sale) and Exhibit Q (the Deed of Partition) not only their intention but also the extent of their rights over the property subject matter of this case. It is interesting to note that after the execution of the Deed of Partition on May 2, 1990, no other document was executed to cover the sale of the other lots.

[25] TSN, 24 May 1993, pp. 51-53, records, pp. 176-177.

[26] *Id.* at 46.

[27] *Id.* at 48-49.

[28] *Id.* at 49-50.

In sum, the evidence considered by the Court point to the finding that plaintiff has sold to defendant Lots 20-A and 20-B covered by TCT Nos. 170403 and 170404 only. There is no legal basis by which titles to Lot Nos. 20-C, 20-D, 20-E, and 20-F could have been Transferred [*sic*] to defendant Ma. Corazon San Juan, the two (2) deeds Exhibits 3 and 4 being spurious.[29]

All told, the Court finds no reversible error on the part of the Court of Appeals in upholding the decision of the trial court.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated 30 July 2002 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales (Acting Chairperson), Velasco, Jr., Leonardo-de Castro,*** and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 158956. April 24, 2009]

ILIGAN CEMENT CORPORATION, *petitioner, vs.* **ILIASCOR EMPLOYEES AND WORKERS UNION-SOUTHERN PHILIPPINES FEDERATION OF LABOR (IEWU-SPFL), AND ITS OFFICERS AND MEMBERS, HEADED BY CLEMENTINO DENSING, PRESIDENT, ANTONIO ACASO, FIDEL BADILLO, JR., BONIFACIO BANSAG, FELIPE BARDILAS, ALFREDO BERNALDEZ, ROMEO CARANYAGAN, MIGUEL CLAUDEL, VENERANDO**

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[29] *Rollo*, pp. 109-110.

* Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

** Additional member of the Second Division per Special Order No. 619.

DEL MONTE, ROMY DUMA-OG, JAIME DUMA-OG, EUSTIQUIO EBABIOSA, PEDRO EBABIOSA, VIRGINITO EBABIOSA, DOLIO EPAT, VIRGILIO FABRICANTE, ANACLETO JUNTILLA, JR., ROBERTO MILIJON, PACIFICO NACA, EDGARDO PACULBA, DAMACINO PANCHO, RODULFO QUARTEROS, EDGARDO RICO, GIL SECULA, SILVANO VEGA, EMEGDIO AMISTOSO, RODOLFO BABATIDO, CRISOLOGO BAGOY, PRUDENCIO BALABA, JR., ROMEO BALLANCA, PERFECTO BOHOL, JASUS BUGTAY, FRANCISCO CABALLA, ROMULO CABALUNA, ROLANDO CAGULA, RONALD CASTRO, DOMINADOR CATIAN, LUCRESIO CUNADO, PABLO DAYDAY, BERNABE DELA PENA, DISOCORO DIOSMANOS, SIXTO DUMAOG, ANASTACIO FLORIN, JOSELITO FULLIDO, LEONARDO GALLETO, APOLINARIO GUINITA, EMELIANO GUINITA, FELIX HERMOSO, RODOLFO HERMOSO, DOMINGO JAGONAL, AVELINO JORZA, ANTONIO JURADO, ISIDRO LAHOY-LAHOY, JR., SALVADOR LAURE, JIMMY MALIKSI, DEMOCRTO MAGHINAY, MANUELITO MAGSAYO, EDUARDO MALONHAO, JUANITO MANGGAS, LUCIANO MANGGAS, DIONESIO MANTALABA, FERNANDO MARIQUIT, JOSE MATA, NELSON MIANO, PERDO MIANO, JR., ALFREDO MICABALO, ELISAR MONTEJO, FELIX NAMOC, EDMUNDO NOTORIO, LUIS OGUIMAS, SILVINO OLANDAG, NARCISO OLLOVES, MARIO OLPOC, SANTIAGO MONDANG, RAUL PANILAGAO, JOLLY PESARAS, ANTONIO RAGANAS, DIOSCORO RICO, FELIPE RICO, CASEMERO RASARIO, ISIDRO RUBIO, BUENAVENTURA RUIZ, IRENIO SABINAY, JR., GILBERT SAYSON, ELESIO SANTINIAMAN, NIEVES SECULA, BALBINO SILLE, NORBERTO SUMILE, REMEGIO TAMPUS, WILFREDO TANUDRA,

ANTONIO TEJANO, PABLITO TOLEDO, JOHNAN OVALO, *ET AL.*, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; THE APPLICATION OF TECHNICAL RULES OF PROCEDURE MAY BE RELAXED IN LABOR CASES TO SERVE THE DEMAND OF SUBSTANTIAL JUSTICE.—** We note that petitioner subsequently made up for its earlier lapse when it submitted a Secretary's Certificate attesting that on August 9, 2002, the Board of Directors of the Corporation authorized Mr. Sunico "to sign the verification and/or certification of non-forum shopping of pleadings that may be filed by the corporation in the above mentioned case and in subsequent proceedings." While the authorization was submitted to the CA only after the issuance of the Resolution dismissing the petition, in view of the peculiar circumstances of the case and in the interest of substantial justice, the initial procedural lapse may be excused. It is well settled that the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice.

2. **ID.; PLEADINGS AND PRACTICES; SERVICE OF PLEADINGS; THE COURT HAS DISCRETION WHETHER OR NOT TO CONSIDER A PLEADING AS NOT FILED FOR FAILURE OF THE PETITIONER TO FILE AN EXPLANATION ON NON-PERSONAL SERVICE OF THE PETITION.—** Moreover, petitioner's argument that the failure to file an explanation on non-personal service of the petition should not automatically result to the outright dismissal of the petition, is meritorious. Section 11, Rule 13 reads: Section 11. *Priorities in modes of service and filing*. Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. **A violation of this Rule may be cause to consider the paper as not filed.** The use of "may," in the above quoted section signifies permissiveness and gives the court discretion whether or not to consider a pleading as not filed. While it is true that procedural rules are necessary

to secure an orderly and speedy administration of justice, in this case, the rigid application of Section 11, Rule 13 may be relaxed in the interest of substantial justice.

3. ID.; JUDICIARY REORGANIZATION ACT; JURISDICTION OF THE COURT OF APPEALS; THE COURT OF APPEALS CAN RESOLVE FACTUAL ISSUES IN SPECIAL CIVIL ACTIONS FOR *CERTIORARI* FROM DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION.— The procedural lapses having been cured, the CA should have reconsidered its Resolution dated October 17, 2002 and Order dated July 3, 2003 and gave due course to the petition for *certiorari.* Pertinently, Section 9 of Batas Pambansa 129 (B.P. 129), known as the Judiciary Reorganization Act provides: SEC. 9. Jurisdiction.- xxx. Clearly, the CA can resolve factual issues in special civil actions for *certiorari* from decisions and resolutions of the NLRC. However, the remand of the case to the CA would only result in further delay. Pursuant to established precedents, we deem it expedient in the interest of speedy justice, to rule on the merits of petitioner's claims based on the records of the case including the pleadings and the evidence submitted by the parties.

4. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTING DISTINGUISHED FROM PERMISSIBLE JOB CONTRACTING.— ***Labor-only contracting***, which is prohibited, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present: (a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and (b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal. On the other hand, ***permissible job contracting or subcontracting*** refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be

performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof; (b) The contractor or subcontractor has substantial capital or investment; and (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.

5. ID.; ID.; LABOR-ONLY CONTRACT; PARTIES INVOLVED; THE LABOR-ONLY CONTRACTOR IS A MERE AGENT OF THE PRINCIPAL; CASE AT BAR.— Petitioner is a mere labor-only contractor because it only supplied workers to petitioner to work at its pier. In a labor-only contract, there are three parties involved: (1) the "labor-only" contractor; (2) the employee who is ostensibly under the employ of the "labor-only" contractor; and (3) the principal who is deemed the real employer. Under this scheme, **the "labor-only" contractor is the agent of the principal.** Here, Vedali is the "labor-only" contractor; individual respondents are the employees and petitioner is the principal. The law makes the principal responsible to the employees of the "labor-only contractor" as if the principal itself directly hired or employed the employees. Taking into consideration the factual *milieu* of this case, the Court agrees with the conclusion of the NLRC that petitioner and not Vedali, is the employer of individual respondents and the latter are employees of petitioner. Individual respondent's work as stock-pilers, arrastre and stevedores were undoubtedly directly related to and in pursuit of the cement manufacturing and sales business of petitioner. Petitioner's packing plant operations would have been hampered were it not for the work rendered by individual respondents.

6. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; TWO-FOLD REQUIREMENTS TO BE VALID.— Under the Labor

Code, as amended, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause, the rudimentary requirements of due process — notice and hearing — must, likewise, be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.

7. ID.; ID.; ID.; CONSIDERED ILLEGAL WHERE THE EMPLOYER FAILED TO ESTABLISH COMPLIANCE WITH THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS.— As the employer, petitioner has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Petitioner failed to discharge this burden. Indeed, it failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of individual respondents. Neither did petitioner show that individual respondents were given ample opportunity to contest the legality of their dismissal. No notice of such impending termination was ever given to them. Individual respondents were definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of individual respondents was tainted with illegality.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Gregorio A. Pizarro for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Court assailing the twin Resolutions of the Court of Appeals in CA-G.R. SP No. 72267 dated October 17, 2002,[1]

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Ruben T. Reyes (now a retired Associate Justice of this Court) and Danilo B. Pine (ret.), *rollo*, p. 59.

and July 3, 2003[2] which dismissed the petition for *certiorari* and denied petitioner's motion for reconsideration respectively.

Petitioner Iligan Cement Corporation, is a corporation duly organized and existing under the laws of the Philippines with plant offices at Kiwalan, Iligan City.

Iligan Industrial and Agency Services Corporation (ILIASCOR), is the accredited job contractor of petitioner which provided stevedoring and arrastre services to the latter since its operations in the 1970s at its private pier in Kiwalan, Iligan City.

Respondent ILIASCOR Employees and Workers Union-Southern Philippines Federation of Labor (IEWU-SPFL) is the certified bargaining representative of ILIASCOR's arrastre and stevedoring workers, including herein individual respondents, from August 1, 1995 to August 1, 2000.[3]

Vedali General Services (Vedali) is an accredited service agency which provided general services to petitioner's various departments.

On November 11, 1999, Blue Circle Philippines, Inc. took over the management of petitioner's business,[4] and decided to bid[5] out the services at petitioner's private pier. Before the actual bidding, respondent requested that the employment of ILIASCOR's workers be continued.[6] In a letter dated November 26, 1999, Peter Brinkley, petitioner's Vice-President for Operations denied respondent's request as the contract with ILIASCOR had already expired.[7]

ILIASCOR lost the bidding to Luzon Visayas Mindanao Arrastre and Stevedoring, Inc. (LVMASI). Consequently, ILIASCOR paid the individual respondents their separation pay

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[2] *Id.* at 61.

[3] *Rollo*, p. 80. Annex "A", Collective Bargaining Agreement.

[4] Annex "D", CA *rollo*.

[5] *Id.* at 103, Annex "B", Invitation to Bid.

[6] *Id.* at 113, Annex "D".

[7] *Id.* at 115, Annex "D-2".

of half-month (1/2) pay for every year of service,[8] contrary to the stipulation in the Collective Bargaining Agreement (CBA), which is one-month pay for every year of service.[9]

The contract between petitioner and LVMASI was not perfected when it was discovered that LVMASI was a dormant corporation which was neither a stevedoring company nor possessed with sufficient capital to engage in the stevedoring and arrastre works.[10]

To ensure that its operations would not be hampered, petitioner issued a service order to Vedali.[11] On August 2, 2000 Vedali fielded stevedores, including herein respondents. Petitioner's Packhouse Manager Alex Sagario readily engaged stevedores.[12] On October 12, 2000, Vedali issued Charge Invoice No. 0275 to petitioner in the amount of ₱534,404.93 for the stevedores assigned at Packhouse from September 16-30, 2000.[13]

On October 23, 2000, individual respondents filed a complaint[14] with the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch XII against petitioner. Pursuant to Article 109 of the Labor Code respondents demanded for the declaration of their status as regular employees and for the payment of the half of their separation pay which ILIASCOR previously withheld.

On October 25, 2000, Vedali sent a Bill/ Demand Letter[15] to petitioner, demanding payment in the amount of ₱533,666.11 for the services of its stevedores assigned at Packhouse from October 1-15, 2000.

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[8] *Id.* at 116-118, Annexes "E" – "E-2", Employees Separation Pay - Stockpilers.

[9] *Id.* at 92.

[10] *Rollo,* p. 289; Annex "C" – "C-6", Complaint.

[11] *Id.* at 339.

[12] *Id.* at 289.

[13] Annex "Y", CA *rollo*.

[14] *Rollo*, pp. 73-79, Annex "D".

[15] Annex "DD", CA *rollo*; Annex "V", CA *rollo*.

On November 15, 2000, petitioner entered into a stevedoring and arrastre contract with Northern Mindanao Industrial and Port Services Corporation (NMIPSC). Thereafter, NMIPSC took over the stevedoring duties of individual respondents.[16]

Hence, on December 14, 2000, individual respondents filed a Supplemental Complaint[17] with the NLRC Sub-Regional Arbitration Branch XII for violation of Article 246 of the Labor Code, illegal dismissal, with prayer for preliminary injunction, damages and attorney's fees.

On March 30, 2001, Labor Arbiter Guardson A. Siao rendered a Decision[18] dismissing the complaint for lack of merit, thus:

> x x x, this office believes that respondent ICC is not liable to pay the unpaid portion of complainant's separation pay representing differentials since respondent is not the employer of the former. Besides, in the case of *PCI Automation Center, Inc. v. NLRC*, G.R. No. 145920, 29 January 1996, citing *Phil. Bank of Commerce v. NLRC*, 146 SCRA 347 (1986), the Hon. Supreme Court opines, *viz:*
>
> Other than the payment of wages, the principal employer is not responsible for any claim made by the employee.
>
> As can be gleaned from the above-discussion, herein respondent ICC is merely the principal in the contract with ILIASCOR, an independent contractor, the employer of individual complainants.
>
> x x x x x x x x x
>
> Another point worth discussing is that, the separation pay is based on the collective bargaining agreement entered into between the individual complainants and the complaining union, ILIASCOR IEWU-SPFL. Respondent ICC is not a privy to that CBA, thus the former cannot be held liable or be demanded upon to pay the same to the complainants.
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> x x x x x x x x x
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> WHEREFORE, premises considered, the instant case is hereby ordered DISMISSED for lack of merit.

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[16] *Rollo*, p. 289.

[17] *Id.* at 119-120, Annex "E", see also *rollo*, pp. 223-225.

[18] *Rollo*, pp. 282-287.

All other issues not discussed above and inconsistent with the above discussions are likewise ordered dismissed for lack of merit.

SO ORDERED.

On appeal, the National Labor Relations Commission (NLRC), Fifth Division, issued a Resolution[19] dated April 19, 2002, reversing the Decision of the Labor Arbiter and declaring, among others, that respondents are regular employees of petitioner, thus:

The contention of complainants that they were directly employed with respondent ICC during the period August 2 to November 15, 2000, stressing that they were in fact hired by its Packhouse Manager, Alex Sagario, is found credible. Not only has respondent failed to deny having the said Alex Sagario under its ranks, it has not given us any plausible reason why complainants would wrongfully drag the name of Sagario in this case. Complainants could not be faulted for failing to adduce evidence about their hiring by respondent. The workers' employment papers, their payrolls and other vouchers are naturally in the possession of the employers given the mandate of the law for them to keep the same. Thus, having claimed that complainants were otherwise employed with Vedali General Services, respondent ICC is burdened to produce the employment papers of the former with the latter, but none is offered so far.

Besides, we note that respondent has avowed Vedali was a legitimate contractor which it could and in fact contracted with to provide stevedoring services, though it was only on temporary basis. However, the status of Vedali has been challenged by complainants declaring that it was actually a labor-only contractor. With "labor-only" contracting being strictly prohibited in this jurisdiction, necessity dictates for respondent to confront the charge and lay bare the records of Vedali for our scrutiny. This, it should do. After all, we have already been aptly convinced by complainants on the matter of respondent having earlier contracted the services of an unqualified contractor, Luzon Visayas Mindanao Arrastre and Stevedoring, Inc. The documentary evidence (Vol. I pp. 35-40) submitted by complainants clearly suggest that LVMASI was incorporated for the primary purpose of engaging, operating, conducting and maintaining the business of manufacturing, exporting,

[19] *Id.* at 316- 322.

importing, buying or selling white cement, its by-products and other cement products, despite its corporate name; that it only had a paid-up capital of only Php 625,000.00 while the arrastre and stevedoring works up for bidding required the use of two (2) cranes and eight (8) forklifts; and, that, amazingly it was not engaged in any singular business as of October, 1999. Truly, the replacement of LVMASI with Vedali validated complainants' submission in this regard.

For us to gloss over the aforecited matters will be tantamount to our abandonment of the constitutional mandate affording protection to labor.

Hired by respondent's representative and working at its premises as stevedores and piers, services which were undoubtedly necessary in its business, complainants are thereby declared regular employees of respondent ICC during the period claimed. That, by the take-over of their jobs by the workforce of the Northern Mindanao Industrial and Port Services Corporation (NMIPSC) on November 15, 2000, complainants were evidently dismissed as a result. Bereft of any cause nor notice other than the actual take-over by another corporation of their jobs, the dismissal of complainants is clearly illegal.

This being the case, complainants are entitled to the reliefs of reinstatement with full backwages pursuant to Art. 279 of the Labor Code. However, the reinstatement of complainants to their previous positions is rendered impossible by the takeover of NMIPSC manpower. Thus, in lieu of thereof, the payment of separation pay proportionate to their length of service with respondent ICC is warranted.

Going to their claim for separation pay differential, the submission of complainants that respondent ICC should be held liable therefore is misplaced. Respondent ICC, as indirect employer of complainants, may only be held liable, "(I)n the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code" (Art. 106 Labor Code). Wage and salary, as differentiated from separation pay, refer to one and the same meaning, that is, a reward or recompense for services performed. Meanwhile, separation pay is that what is paid by the employer to an employee on account of the severance of their employment relations for any of the causes authorized by law.

Thus, as this case involved the severance of the employment of complainants, only their undisputed employer, ILIASCOR, may be

held answerable for the benefit sought. More so that the differential being asked is essentially a contractual obligation of ILIASCOR arising out of a specific stipulation in the collective bargaining agreement between them. Correspondingly, since respondent ICC was not privy to the CBA, it has no responsibility to comply therewith.

The claim of complainants for damage is likewise dismissed for lack of merit, but they are awarded attorney's fees equivalent to 10% of the total money award as they were compelled to litigate this case for reliefs.

WHEREFORE, premises considered, the decision on appeal is hereby VACATED and a new one entered:

1. Declaring complainants regular employees of respondent ICC for the period August 2, 2000 to November 15, 2000;

2. Declaring their dismissal from employment illegal; and

3. Awarding complainants full backwages, separation pay and attorney's fees in the amounts to be computed by the branch of origin.

SO ORDERED.[20]

Petitioner elevated the case to the Court of Appeals (CA) through a petition for *certiorari*[21] under Rule 65.

On October 17, 2002, the CA issued the assailed Resolution[22] dismissing the petition, thus:

The Court resolves to DISMISS the petition based on the following legal infirmities:

1. The verification and certification of non-forum-shopping was signed by Renato C. Sunico, however, petitioner failed to attach a copy of the board resolution authorizing him to sign the same in behalf of the corporation as required in *Digital Microwave Corp. v. Court of Appeals* (328 SCRA 286 [2001]); and

2. Petitioner failed to explain why service was done through mail as required by Section 3, Rule 13 of the 1997 Rules of Civil Procedure.

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[20] *Rollo*, pp. 319-322.

[21] *Id.* at 335-359.

[22] *Id.* at 59.

SO ORDERED.

Petitioner's subsequent Motion for Reconsideration was denied in the other assailed Resolution[23] dated July 3, 2003:

> The Court has gone over the said Motion for Reconsideration and the grounds raised therein but finds no cogent reason to reverse the aforesaid Resolution particularly because the SPA granted to Renato C. Sunico on August 9, 2002 (See: Secretary's Certificate, Records, p. 317) referred to a case filed before the NLRC.

Hence, the present petition seeking resolution as to whether the CA erred in denying the petition based merely on procedural infirmities.

We note that petitioner subsequently made up for its earlier lapse when it submitted a Secretary's Certificate[24] attesting that on August 9, 2002, the Board of Directors of the Corporation authorized Mr. Sunico "to sign the verification and/or certification of non-forum shopping of pleadings that may be filed by the corporation in the above mentioned case and in subsequent proceedings." While the authorization was submitted to the CA only after the issuance of the Resolution dismissing the petition, in view of the peculiar circumstances of the case and in the interest of substantial justice, the initial procedural lapse may be excused.[25] It is well settled that the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice.[26]

The CA's second ground for dismissal of the petition, that petitioner failed to explain why service was done through mail, was not passed upon by the CA in its second Resolution.[27]

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[23] *Id.* at 61.

[24] Annex "U", CA *rollo*.

[25] *Paul Lee Tan, Andrew Tanchi, Jr. et al v. Paul Sycip and Merritto Lim*, G.R. No. 153468, August 17, 2006, 499 SCRA 225, citing the case of *Estares v. Court of Appeals*, 459 SCRA 604.

[26] *Havtor Management Phils., Inc. v. NLRC*, G.R. No. 146336, December 13, 2001, 372 SCRA 274.

[27] *Rollo*, p. 39.

The CA must have found the explanation of petitioner in its motion for reconsideration acceptable. Counsel for petitioner admitted that the non-inclusion of an explanation on non-personal service was due to an oversight, but he explained that personal service was not feasible considering the geographical distance between counsel's office in Makati City and the address of the other parties in Iligan City. He added that there was never any intention not to comply with the rules as shown by his subsequent compliance with all the other technical requirements.[28] The Court also finds this explanation satisfactory.

Moreover, petitioner's argument that the failure to file an explanation on non-personal service of the petition should not automatically result to the outright dismissal of the petition, is meritorious. Section 11, Rule 13 reads:

> Section 11. *Priorities in modes of service and filing*. Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. **A violation of this Rule may be cause to consider the paper as not filed.** (emphasis ours)

The use of "may," in the above quoted section signifies permissiveness and gives the court discretion whether or not to consider a pleading as not filed. While it is true that procedural rules are necessary to secure an orderly and speedy administration of justice, in this case, the rigid application of Section 11, Rule 13 may be relaxed in the interest of substantial justice.[29]

The procedural lapses having been cured, the CA should have reconsidered its Resolution dated October 17, 2002 and Order dated July 3, 2003 and gave due course to the petition for *certiorari*.

Pertinently, Section 9 of Batas Pambansa 129 (B.P. 129), known as the Judiciary Reorganization Act provides:

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[28] *Id.* at 25.

[29] *Deogracias Musa, Romeo and Andro Musa v. Sylvia Amor,* G.R. No. 141396, April 9, 2002, 430 Phil. 128.

SEC. 9. Jurisdiction.- The Court of Appeals shall exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

x x x x x x x x x

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extend[ed] by the Chief Justice.

Clearly, the CA can resolve factual issues in special civil actions for *certiorari* from decisions and resolutions of the NLRC. However, the remand of the case to the CA would only result in further delay. Pursuant to established precedents, we deem it expedient in the interest of speedy justice, to rule on the merits of petitioner's claims based on the records of the case including the pleadings and the evidence submitted by the parties.[30]

We now go to the merits of the case by re-examining the contradicting findings of the Labor Arbiter and the NLRC in order to resolve the following substantial issues: (1) whether petitioner is the employer of individual respondents, and; (2) whether individual respondents were illegally dismissed.

Petitioner maintains that it never employed the individual respondents and that it contracted Vedali to render services at its pier as a stop-gap measure so as not to hamper its activities while it was negotiating with another contractor. Petitioner claims that the elements of employer-employee relationship were not present as it did not hire, fire, pay nor exercise control over the work of individual respondents. Petitioner further argues that the allegation that it was petitioner's Packhouse Manager Alex Sagario who hired individual respondents should not be given credence for lack of evidence.

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[30] *Armando M. Lascano v. Universal Steel Smelting Co., Inc., Reynaldo U. Lim and Hon. Regional Trial Court of Quezon City,* G.R. No. 146019, June 8, 2004, 431 SCRA 248.

Individual respondents, on the other hand, counter that there is no proof that petitioner and Vedali entered into a service contract to provide stevedoring services at petitioner's pier from August 2, 2000 to November 15, 2000. In the absence of such contract, Vedali was merely utilized by petitioner as a purported contractor. With regard to their hiring by Alex Sagario, individual respondents contend that they cannot be faulted for failing to adduce evidence. Their employment papers, payrolls and other vouchers are naturally in the possession of petitioner. Thus, petitioner is burdened to produce the same. Since petitioner offered nothing to prove their contrary claim, the NLRC Decision should be upheld.

We rule for the individual respondents.

In determining the true status of Vedali *viz-a-viz* the petitioner, it is important to ascertain first whether Vedali is a labor-only contractor or an independent contractor.

Labor-only contracting,[31] which is prohibited, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

(a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and

(b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.

On the other hand, ***permissible job contracting or subcontracting***[32] refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether

[31] Section 4(f), Rule VIII-A, Book III, of the Omnibus Rules Implementing the Labor Code.

[32] Section 4(d), *id.*

such job, work or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor or subcontractor has substantial capital or investment; and

(c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[33]

Taking into account the above mentioned elements and the facts obtaining in the present case, we are not convinced that Vedali is an independent contractor. Petitioner failed to present any service contract with Vedali in the proceedings with the Labor Arbiter. There is nothing on record that Vedali has a substantial capital or investment to actually perform the service under its own account and responsibility. Petitioner only attached to its petition with the CA Vedali's Certificate of Registration and Business permit, which merely pertain to the registration of Vedali with the SEC as engaged in Construction and General Services.[34] The Charge Invoices, billing statements and certificate of payment and inspection,[35] instead of strengthening petitioner's argument, weakened its defense and bolstered the claims of individual respondents. The Charge Invoices, billing statements and certificates of payments only show that the wages of individual respondents were paid by petitioner.

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[33] *Ibid.*

[34] *Rollo*, pp. 625-629; Annexes "E" – "E-2"; *rollo*, pp. 116-118.

[35] *Id.* at 629-635.

The evidence not having adequately shown that Vedali is an independent contractor, can it be considered as a labor-only contractor? We answer in the affirmative. Petitioner is a mere labor-only contractor because it only supplied workers to petitioner to work at its pier.

In a labor-only contract, there are three parties involved: (1) the "labor-only" contractor; (2) the employee who is ostensibly under the employ of the "labor-only" contractor; and (3) the principal who is deemed the real employer. Under this scheme, **the "labor-only" contractor is the agent of the principal**. Here, Vedali is the "labor-only" contractor; individual respondents are the employees and petitioner is the principal. The law makes the principal responsible to the employees of the "labor-only contractor" as if the principal itself directly hired or employed the employees.[36]

Taking into consideration the factual *milieu* of this case, the Court agrees with the conclusion of the NLRC that petitioner and not Vedali, is the employer of individual respondents and the latter are employees of petitioner. Individual respondent's work as stock-pilers, arrastre and stevedores were undoubtedly directly related to and in pursuit of the cement manufacturing and sales business of petitioner. Petitioner's packing plant operations would have been hampered were it not for the work rendered by individual respondents.

Having determined the real employer of respondents, we now proceed to ascertain the legality of their dismissal from employment.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural.[37] Not only must the dismissal be for a valid or authorized cause,[38] the rudimentary requirements of due process

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[36] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 605, citing Article 106(2) of the Labor Code.

[37] *Salaw v. NLRC*, G.R. No. 90786, September 27, 1991, 202 SCRA 11.

[38] Articles 279, 281, 282-284, Labor Code.

— notice and hearing — must, likewise, be observed before an employee may be dismissed.[39] One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.[40]

As the employer, petitioner has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Petitioner failed to discharge this burden. Indeed, it failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of individual respondents. Neither did petitioner show that individual respondents were given ample opportunity to contest the legality of their dismissal. No notice of such impending termination was ever given to them. Individual respondents were definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of individual respondents was tainted with illegality.

Even if the assailed resolutions of the CA were set aside, the petition must still fail considering that we find no reversible error was committed by the NLRC in rendering its April 19, 2002 Resolution.

WHEREFORE, the petition is hereby *DENIED*. The Resolution of the National Labor Relations Commission dated April 19, 2002 is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio (Acting Chairperson), Austria-Martinez,** Corona,* and *Velasco, Jr.,*** JJ.,* concur.

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[39] *Salaw v. NLRC*, *supra*.

[40] *Id.*, p. 12, citing *San Miguel Corporation v. NLRC*, G.R. No. 87277, May 12, 1989, 173 SCRA 314.

* Acting Chairperson as per Special Order No. 623.

** Additional Member in lieu of Associate Justice Lucas P. Bersamin as per Special Order No. 626.

*** Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 624.

THIRD DIVISION

[G.R. No. 159687. April 24, 2009]

GULF AIR, JASSIM HINDRI ABDULLAH and RESTY AREVALO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ROBERTO J.C. REYES,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PURELY FACTUAL QUESTIONS ARE NOT PASSED UPON THEREIN; EXCEPTION.— The petition hinges on the question of whether Reyes (respondent) committed willful breach of trust when he accepted the Astro Airline ticket of Queroz and granted him a MATO without prior authorization from his superiors in petitioner Gulf Air. This is undoubtedly a question of fact, the determination of which entails an evaluation of the evidence on record of the scope of the authority of respondent as Airport Manager and the nature of the privileges he granted to Queroz. As a general rule, purely factual questions are not passed upon in petitions for review under Rule 45, for this Court does not try facts but merely relies on the expert findings of labor tribunals whose statutory function is to determine the facts. In the present case, however, in view of the conflicting factual findings of the LA on the one hand and the NLRC and the CA on the other, the Court is constrained to resolve the factual question at hand.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; VALID CAUSE; BREACH OF TRUST AND CONFIDENCE; THERE MUST BE SUBSTANTIAL EVIDENCE THAT THE EMPLOYEE COMMITTED THE ACTS INTENTIONALLY, KNOWINGLY, AND PURPOSELY, WITHOUT JUSTIFIABLE EXCUSE, TO THE PREJUDICE OF THE EMPLOYER'S BUSINESS INTEREST.— Petitioners attribute to respondent two separate acts of breach of trust: one is the acceptance of the FOC Astro Airlines ticket of Queroz; and the other is the grant of MATO to Queroz. For either of these acts to constitute a valid cause for the dismissal of respondent,

there must be substantial evidence that he committed said acts intentionally, knowingly, and purposely, without justifiable excuse, to flout Gulf Air's policy regarding acceptance of tickets issued by other airlines and prior warning against the arbitrary issuance of a MATO, to the prejudice of its business interest and in betrayal of its trust and confidence.

3. ID.; ID.; ID.; ID.; THE TECHNICALITIES OF LAW AND PROCEDURE AND THE RULES OBTAINING IN COURTS OF LAW DO NOT STRICTLY APPLY IN LABOR PROCEEDINGS.— Moreover, that a mere photocopy of the manual was presented does not make said evidence any less significant. Labor proceedings are non-litigious in nature; hence, the technicalities of law and procedure and the rules obtaining in courts of law do not strictly apply. Rather, the hearing officer is given much leeway to ascertain for himself the facts of the case.

4. ID.; ID.; ID.; ID.; TO BE VALID CAUSE FOR DISMISSAL, THE SAME MUST BE WILLFUL.— As Airport Manager, respondent occupies a position of such extreme sensitivity that the existence of some basis or reasonable ground for his involvement in any irregularity is enough to destroy the trust and confidence which petitioner Gulf Air had reposed in him. However, it is settled that for breach of trust to constitute a valid cause for dismissal, the same must be willful. Ordinary breach of trust will not suffice.

5. ID.; ID.; ID.; ID.; IMPOSITION OF PENALTY OF DISMISSAL UNWARRANTED ABSENT EVIDENCE THAT THE EMPLOYEE ACTED WITH MALICE IN VIOLATING THE EMPLOYER'S POLICIES.— To establish that respondent willfully betrayed Gulf Air's trust and confidence by intentionally and knowingly disobeying its manual on interline agreements, Gulf Air cited a July 17, 1992 Memorandum in which respondent allegedly attempted to cover up the incident involving Queroz. But then, respondent obtained evidence, consisting of NBI Questioned Document Report No. 338-598, that said Memorandum did not emanate from him. Unfortunately, this matter was not threshed out in any of the fora below. Neither did Gulf Air dispute said findings of the NBI. In effect, there is no evidence that respondent acted with malice in committing the violation of his employer's policies. Thus, the CA and the NLRC correctly

observed that the worst that respondent committed was an inadvertent infraction. For that, the extreme penalty of dismissal imposed on him by petitioners was grossly disproportionate. Taking into account the managerial position he held and the prior warning issued to him for failing to communicate with his superiors, the penalty commensurate to the violation he committed should be suspension for three months. The period of his suspension is to be deducted from the period for which he is entitled to backwages as awarded by the NLRC and affirmed by the CA.

APPEARANCES OF COUNSEL

Villanueva Caña & Associates Law Offices for petitioners.
Reynaldo A. Ruiz for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated April 23, 2003 of the Court of Appeals (CA) which modified the Decision[2] dated April 26, 1999 of the National Labor Relations Commission (NLRC); and the August 6, 2003 CA Resolution[3] denying the motion for reconsideration.

The relevant facts are of record.

Roberto J.C. Reyes (Reyes) had been employed with Gulf Air as Airport Manager for around ten years when he was dismissed on October 10, 1992 for serious misconduct and breach of trust and confidence[4] arising from the following incidents:

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[1] Penned by Associate Justice Eubolo G. Verzola, and concurred in by Associate Justices Martin S. Villarama, Jr. and Mario L. Guariña III; *rollo*, p. 8.

[2] CA *rollo*, p. 29.

[3] *Rollo*, p. 15.

[4] *Id.* at 93.

In an office memorandum dated June 29, 1992, Aquel Yousip Ishaq (Ishaq) of the Gulf Air Revenue Department instructed Reyes to investigate the acceptance without prior authorization of an Astro Airline ticket on FOC [free of charge] basis for travel from MNL-BAH on GF 155 on June 10, 1992, in violation of Gulf Air's Manual of Authority which provides that "no FOC tickets of other airline (OAL) should be honored for travel on GF without obtaining proper authority." Astro Airline has no interline agreement with Gulf Air.[5]

In reply,[6] Reyes clarified that he ordered the acceptance of the free ticket from Astro Airline to accommodate Philippine Civil Aeronautics Board Executive Director Silvestre Pascual[7] (Pascual) who had requested Gulf Air to assist Mr. Andy Queroz (Queroz), a Filipino consultant in the Middle East, during the latter's stay in Manila.[8]

On October 1, 1992, Gulf Air Area Manager-Philippines, Jassim Hindri Abdulla (Abdulla) required Reyes to explain in writing why he should not be dismissed for dishonesty, serious misconduct and willful breach of the trust and confidence reposed in him by Gulf Air in view of the following results of the investigation into the matter:

1. That [Reyes] had authorized free hotel accommodation for an overnight stay at Philippine Village Hotel in favor of MR. A. QUEROZ on 08 May 1992 as per Meal Accommodation Transport Order No. 376677.
2. That subject passenger did not travel on Northwest Flight NO. 003/08 May 1992 to connect on GF155, and even if he did, the hotel accommodation should be the responsibility of delivering carrier which in this case is Northwest.
3. That the passenger traveled on GF155/10 May 1992 and not GF155/10 June 1992 as reported by [Reyes].

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[5] *Id.* at 819.

[6] *Id.* at 651.

[7] *Id.* at 820.

[8] *Rollo*, p. 821.

4. That the passenger was accepted using an Astro Airlines FREE TICKET not because of an oversight on the part of the GHA check-in staff but upon [Reyes'] direct instructions.

5. That [Reyes] did not conduct an investigation but rather had previous knowledge of the case. Thus, his reply to Revenue Department did not correct the actual departure date.

6. That based on the foregoing, it is clear that this is an accommodation on [Reyes'] part to provide free hotel and free travel to MR. QUEROZ at the expense of the Company and afterwards deliberately tried to cover it up.[9]

Pending submission of his explanation, Reyes was placed under preventive suspension.[10]

In his explanation letter, Reyes insisted that he acted "within the bounds of authority [he] believed he had in accommodating the request of [Pascual] to ASSIST AND ACCOMMODATE Mr. Andy Queroz x x x."[11]

Not satisfied with Reyes' explanation, Gulf Air terminated his employment.[12]

Reyes filed with the Labor Arbiter (LA) a complaint against Gulf Air, Abdulla and Gulf Air Area Financial Controller Resty Arevalo (hereinafter referred to as Gulf Air), alleging that he did not betray the trust and confidence of his employer when he granted certain privileges to Queroz upon the request of Pascual; rather, he acted in the exercise of his public relations duties as Airport Manager and in furtherance of Gulf Air's business interest.[13]

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[9] *Id.* at 834-834.

[10] *Id.* at 825.

[11] *Rollo*, p. 826.

[12] *Id.* at 93.

[13] CA *rollo*, pp. 166-167.

In their position paper, Gulf Air disclosed that Reyes was previously issued a stern warning for failing to coordinate closely with higher management;[14] and that in the incident which led to his dismissal, Reyes again failed to coordinate with higher management when he extended certain privileges to Queroz without seeking prior authorization as required under company policies.[15] Gulf Air further claimed that Reyes' conduct was tainted with malice for he attempted to cover it up by filing a Memorandum dated July 17, 1992[16] in which he denied knowledge of the incident.[17]

Reyes contested the authenticity of the July 17, 1992 Memorandum cited by Gulf Air.[18] He obtained Questioned Document Report No. 338-598[19] issued on May 29, 1998 by the National Bureau of Investigation which states that, in comparison with the standard signature of Reyes, the signature appearing on the questioned document was not the same.

In a Decision dated August 7, 1998, the LA declared that Reyes was validly dismissed for he had no authority to extend privileges to Queroz. The LA doubted that Reyes accommodated Queroz upon the request of Pascual, the latter not having been presented to attest to such claim.[20] The LA made no finding on whether Reyes attempted to cover up the incident.

Reyes appealed[21] to the NLRC which, in a Decision dated April 26, 1999, reversed the LA decision, thus:

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[14] *Rollo*, p. 394.

[15] *Id.* at 384.

[16] *Id.* at 397-398.

[17] *Id.* at 388.

[18] CA *rollo*, p. 240.

[19] *Id.* at 255.

[20] *Rollo*, pp. 409-410.

[21] CA *rollo*, p. 211.

Wherefore, in view thereof, the assailed decision is hereby Reversed and Set Aside and new one entered finding the dismissal of complainant illegal.

Consequently, respondents are ordered to pay complainant's separation pay at the rate of one (1) month salary for every year of service.

Aside from this, backwages reckoned from the time of dismissal up to the promulgation of this judgment is also recoverable.

Likewise, the awards of ₱300,000.00 and ₱200,000.00 representing moral and exemplary damages, respectively, are proper because of the whimsical dismissal of complainant.

Ten percent of the total monetary award shall likewise be proper representing attorney's fees.

SO ORDERED.[22]

The NLRC held that based on Reyes' job description,[23] he was authorized to extend privileges to Queroz in order to maintain Gulf Air's public relations. At one time, Reyes accommodated a certain Mr. Sheikh M. Alkhalifa (Alkhalifa) and his entourage by providing them passage through Gulf Air even when said passengers were holding "Cathay Pacific (CX) free of charge (FOC or ID 90 [90% discount)] tickets which were non-endorseable to Gulf Airline or any other airlines and which were also non-refundable." Gulf Air did not rebuke or reprobate Reyes for such action; hence, there is no reason for it to suddenly reverse its policy and dismiss Reyes for extending the same treatment to Queroz. If in the meantime Gulf Air had changed its policy by requiring Reyes to obtain prior authorization from the Area Manager, then evidence of the policy change should have been presented. As it were, Gulf Air failed to prove the existence of such requirement; what it established was only a previous warning issued to Reyes in 1989, but which was hardly relevant to the present case, because said warning pertained to the handling of accounting documents.[24]

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[22] CA *rollo*, pp. 43-44.

[23] *Id.* at 48.

[24] *Id.* at 39-42.

Gulf Air filed a Motion for Reconsideration but the NLRC denied the same.[25]

Upon Petition for Review on *Certiorari*[26] filed by Gulf Air, the CA rendered the decision assailed herein, the dispositive portion of which reads:

> WHEREFORE, the instant petition is PARTIALLY GRANTED. The questioned decision is hereby MODIFIED, to the effect that the awards of moral and exemplary damages and attorney's fees are hereby DELETED. The same is hereby AFFIRMED in all other respects.
>
> SO ORDERED.[27]

The CA denied Gulf Air's motion for partial reconsideration.[28]

Hence, the present petition by Gulf Air on the following grounds:

> The Honorable Court of Appeals grossly erred in that -
>
> I.
>
> Contrary to its findings that there is allegedly no evidence on record that would show that an accommodation in Gulf Air Flights is exclusive to an airline which has an interline agreement with Gulf Air, the following undisputed evidence and admission of private respondent himself, to wit:
>
> (a) Petitioner company's Finance Manual Volume III and Appendix XXVII (Annexes A and B of Petitioners' Memorandum and Annexes A and B of Petitioners' Reply to Private Respondent's Motion for Reconsideration filed with public respondent NLRC)
>
> (b) Admission of private respondent himself on cross-examination

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[25] *Id.* at 46.

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

[27] *Rollo*, p. 12.

[28] *Id.* at 15.

Established beyond doubt that only documents like free tickets of airlines with interline agreements with petitioner company are accepted in the latter's flights and subjected to the approval of the Area Manager.

II.

There is no evidence on record, except for the self-serving claim of private respondent, that would show that private respondent previously granted a similar accommodation on his own. On the other hand, unrebutted evidence on record clearly established that on matter of requests for accommodation of free passage, the prior approval of the Area Manager (private respondent's superior) is required as private respondent may only recommend.

III.

Contrary to the manifestly erroneous finding of the Honorable Court of Appeals, the matter subject of the present case is not private respondent's first offense that his actions were not tolerated as he had already been previously issued a warning regarding several irregularities pertaining to the grant of Meal Accommodation Transport Order (MATO); lack of exercise of proper judgment on operational decision and close liaison with the Area Manager, as evidenced by the Memo addressed to him dated May 17, 1989 (Annex E to the Petition for *Certiorari*).

IV.

Private respondent who was occupying a managerial position as Airport Manager does not deserve any degree of sympathy in that despite his long years of service, the previous written warning given to him regarding the use of MATO and the clear rules on interline agreement of which he is fully aware, he willfully breached the trust and confidence demanded of his position.

V.

As managerial employee, private respondent is subject to a stricter standard than that applicable to rank and file employees in that a slight breach of trust reposed in him or the mere existence of a basis for believing that he has breached the trust of his employer is sufficient to dismiss him for loss of trust and confidence.

VI.

The Honorable Court of Appeals grossly erred in awarding separation pay and backwages to private respondent who had willfully

breached the trust and confidence reposed in him as a managerial employee by his acts of gross dishonesty.[29]

The petition is partly meritorious.

The petition hinges on the question of whether Reyes (respondent) committed willful breach of trust when he accepted the Astro Airline ticket of Queroz and granted him a MATO without prior authorization from his superiors in petitioner Gulf Air. This is undoubtedly a question of fact, the determination of which entails an evaluation of the evidence on record of the scope of the authority of respondent as Airport Manager and the nature of the privileges he granted to Queroz. As a general rule, purely factual questions are not passed upon in petitions for review under Rule 45, for this Court does not try facts but merely relies on the expert findings of labor tribunals whose statutory function is to determine the facts. In the present case, however, in view of the conflicting factual findings of the LA on the one hand and the NLRC and the CA on the other, the Court is constrained to resolve the factual question at hand.[30]

Petitioners attribute to respondent two separate acts of breach of trust: one is the acceptance of the FOC Astro Airlines ticket of Queroz; and the other is the grant of MATO to Queroz. For either of these acts to constitute a valid cause for the dismissal of respondent, there must be substantial evidence that he committed said acts intentionally, knowingly, and purposely, without justifiable excuse, to flout Gulf Air's policy regarding acceptance of tickets issued by other airlines and prior warning against the arbitrary issuance of a MATO, to the prejudice of its business interest and in betrayal of its trust and confidence.[31]

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[29] *Rollo*, pp. 31-33.

[30] *School of the Holy Spirit v. Taguiam*, G.R. No. 165565, July 14, 2008, 558 SCRA 223; and *Ballao v. Court of Appeals*, G.R. No. 162342, October 11, 2006, 504 SCRA 227.

[31] *Norsk Hydro (Phil.), Inc., v. Rosales, Jr.*, G.R. No. 162871, January 31, 2007, 513 SCRA 583.

In contrast to the findings of the LA, the concurrent view of the CA and the NLRC is that petitioners failed to prove the existence of a company policy prohibiting respondent from directly granting to Queroz travel and accommodation privileges; they instead found that the established company practice is that respondent may grant such privileges without need of prior authorization.[32]

Gulf Air maintains, however, that they presented sufficient evidence of company policies violated by respondent, specifically petitioner Gulf Air's Finance Manual and its May 17, 1989 Memorandum warning respondent against the arbitrary issuance of a MATO, which documentary evidence have greater probative value than the bare allegation of respondent that he was allowed to directly grant travel privileges to a passenger named Alkhalifa.[33]

Indeed, the records reveal that while respondent has public relations duties, the exercise thereof is subject to company policy.

Based on his Job Description as Airport Manager in Manila, respondent has the duty to:

11. ensure GF standard are offered to VIP/CIP and other government officials;

x x x x x x x x x

13. ensure that GF relations (with) different government entities at the airport is maintained.

x x x x x x x x x

19. coordinate with different Philippine government entities at NAIA.[34]

It cannot be doubted that respondent's public relations duties include entertaining requests of officials of government agencies for travel on board Gulf Air. In one incident cited by petitioners

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[32] CA Decision, *rollo*, pp. 66-67.

[33] Petition, *rollo*, pp. 34-35 and 39.

[34] *Rollo*, p. 818.

themselves, respondent interceded for a certain Deputy Collector Antonio Bautista (Bautista) of the "Customs and Immigration Department" to obtain free passage on board a Gulf Air flight to Singapore and Sydney; and acting upon the recommendation of respondent, herein co-petitioner Abdulla granted discounted passage to said government official.[35] The acceptance of the Astro Airline ticket of Queroz was likewise respondent's promotion of Gulf Air's public relations with Pascual of the Civil Aeronautics Board. While the LA had doubted that it was Pascual who requested passage for Queroz, this fact was eventually established through the testimony of petitioner Arevalo that Pascual had offered to reimburse petitioner Gulf Air for the costs of the travel and hotel accommodation of Queroz.[36]

However, the authority of respondent to promote public relations by accommodating requests of officials of government agencies for free or discounted passage on board petitioner Gulf Air is subject to limitations.

In the same incident involving the discounted passage of Bautista, respondent admitted[37] that he first made a recommendation to petitioner Abdulla for the grant of the request,[38] and it was only when petitioner Abdulla issued a Reduced Rate Travel & Cargo Authorization that he (respondent) allowed the discounted passage of Bautista.[39] The significance of this documentary evidence is clear: the authority of respondent to grant passage to officials of government agencies as a form of public relations promotion is circumscribed by company policy.

Gulf Air claims that when it comes to acceptance for passage of persons holding tickets issued by other airlines, the company policy is provided in Gulf Air Finance Manual, to wit:

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[35] CA *rollo*, pp. 50-51.

[36] Comment, citing TSN, September 9, 1994, pp. 55-57, and TSN, November 4, 1994, pp. 4-7, CA *rollo*, pp. 140-142.

[37] CA *rollo*, p. 133.

[38] *Rollo*, p. 278.

[39] *Id.* at 279.

2.16.2 Interline Carriers and Airlines Acting as Gulf Air's CSAs

x x x x x x x x x

2.16.3 Gulf Air has interline agreements with many airlines of the world. The list of these airlines is distributed by Marketing Division – Pricing and Interline Affairs (Appendix XXVII). The documents of only these airlines are accepted by Gulf Air and reversely Gulf Air documents are drawn only on these airlines, for international purposes. ***Therefore, before accepting documents of an airline with whom Gulf Air has no interline agreement, authority is obtained from Marketing Department under advice to Revenue Department***.[40] (Emphasis added)

Astro Airlines is not among the airlines with whom petitioner Gulf Air has an interline agreement; hence, under the foregoing manual, acceptance of Astro Airlines tickets requires prior authorization from Gulf Air Marketing Department and notice to the Revenue Department. Nothing in the Manual provides for exemption from this requirement.

Photocopy of the foregoing manual was presented by petitioner before the NLRC[41] and the CA.[42] Respondent objected to its admissibility on the ground that it is a mere photocopy and the contents thereof were not testified to during the proceedings.[43] However, as cited by petitioners, respondent virtually acknowledged the existence of a company policy on interline agreements in relation to the processing of requests by government officials for free passage, to wit:

ATTY. VILLANUEVA:
Q: Now, what is the procedure when a government official make a request to you in particular for a free of charge ticket?

MR. REYES:
A: We request him to write a letter to Gulf Air of his request to issue free ticket.

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[40] *Id.* at 219-222.

[41] Memorandum, CA *rollo*, p. 337, citing Reply to Motion for Reconsideration.

[42] *Id.* at 353.

[43] Opposition to Partial Motion for Reconsideration, *id.* at 446.

ATTY. VILLANUEVA:
Q: Supposed this was addressed to you, what do you do first?

MR. REYES:
A: The request was forwarded to Area Manager's Office and sent back to Ticket Office for ticket issuance.

ATTY. VILLANUEVA:
Q: At the time you accommodated this, not a Gulf Air ticket, an Astro Airlines free of charge ticket was there a list or listing of airlines in our office, Gulf Air Office, which have an interline agreement with Gulf Air?

MR. REYES:
A: Yes.

ATTY. VILLANUEVA:
Q: Now, a request by a Government official or by a guest dignitary, to say, was addressed to you, would you know if that request was later approved or disapproved, would you know that?
A: In most cases it is always approved, based on the strength of my recommendation.[44] (Emphasis added)

Moreover, that a mere photocopy of the manual was presented does not make said evidence any less significant. Labor proceedings are non-litigious in nature; hence, the technicalities of law and procedure and the rules obtaining in courts of law do not strictly apply. Rather, the hearing officer is given much leeway to ascertain for himself the facts of the case.[45]

However, on the matter of the issuance of a MATO, the May 17, 1989 Memorandum of petitioner Gulf Air to respondent does not specify the pertinent company policy. It merely invites respondent's attention to "several irregularities regarding MATO"

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[44] Petition, CA *rollo*, p. 15, citing TSN, November 15, 1993, pp. 50-53.

[45] *San Miguel Foods, Inc. v. San Miguel Corporation Employees Union-PTGWO*, G.R. No. 168569, October 5, 2007, 535 SCRA 133; *Shoemart, Inc. v. National Labor Relations Commission*, G.R. Nos. 90795-96, August 13, 1993, 225 SCRA 311.

without filling out the details.[46] It leaves much to surmises and speculations.

In sum, while it is established that respondent's public relations duties include the accommodation of requests by government officials such as Pascual of the Civic Aeronautics Board, in the exercise thereof, respondent must comply with the requirement under petitioner Gulf Air's manual that in accepting tickets issued by airlines that have no interline agreement with Gulf Air, prior authorization must be obtained from the Marketing Department, with notice to the Revenue Department. Without question, respondent did not comply with this requirement when he ordered the acceptance of the Astro Airlines ticket of Queroz. However, there is no evidence that respondent violated any company policy when he issued a MATO to Queroz.

The question that follows then is whether the violation committed by respondent amounts to willful breach of trust.

As Airport Manager, respondent occupies a position of such extreme sensitivity that the existence of some basis or reasonable ground for his involvement in any irregularity is enough to destroy the trust and confidence which petitioner Gulf Air had reposed in him.[47] However, it is settled that for breach of trust to constitute a valid cause for dismissal, the same must be willful. Ordinary breach of trust will not suffice.[48]

To establish that respondent willfully betrayed Gulf Air's trust and confidence by intentionally and knowingly disobeying its manual on interline agreements, Gulf Air cited a July 17, 1992 Memorandum in which respondent allegedly attempted to cover up the incident involving Queroz.[49] But then, respondent obtained

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[46] *Rollo*, p. 394.

[47] *Ectuban, Jr. v. Sulpicio Lines*, G.R. No. 148410, January 17, 2005, 448 SCRA 516.

[48] *Ventura v. Court of Appeals*, G.R. No. 182570, January 27, 2009; *Bristol Myers Squibb v. Baban*, G.R. No. 167449, December 17, 2008.

[49] *Rollo*, p. 397.

evidence, consisting of NBI Questioned Document Report No. 338-598,[50] that said Memorandum did not emanate from him. Unfortunately, this matter was not threshed out in any of the fora below. Neither did Gulf Air dispute said findings of the NBI. In effect, there is no evidence that respondent acted with malice in committing the violation of his employer's policies.

Thus, the CA and the NLRC correctly observed that the worst that respondent committed was an inadvertent infraction. For that, the extreme penalty of dismissal imposed on him by petitioners was grossly disproportionate. Taking into account the managerial position he held and the prior warning issued to him for failing to communicate with his superiors, the penalty commensurate to the violation he committed should be suspension for three months.[51] The period of his suspension is to be deducted from the period for which he is entitled to backwages as awarded by the NLRC and affirmed by the CA.

WHEREFORE, the petition is *PARTLY GRANTED*. The April 23, 2003 Decision and August 6, 2003 Resolution of the Court of Appeals are *MODIFIED* to the effect that instead of dismissal from service, respondent Roberto J.C. Reyes is deemed *SUSPENDED* for three months, to be deducted the total amount of backwages awarded to him by the National Labor Relations Commission, as modified by the Court of Appeals.

No costs.

SO ORDERED.

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

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[50] *Id.* at 255.

[51] *Janssen Pharmaceutica v. Silayro*, G.R. No. 172528, February 26, 2008; 546 SCRA 628; *C.F. Sharp & Co., Inc. v. Zialcita,* G.R. No. 157619, July 17, 2006, 495 SCRA 387.

THIRD DIVISION

[G.R. No. 161539. April 24, 2009]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., *petitioner, vs.* **FGU INSURANCE CORPORATION, HAPAG-LLOYD, HAPAG-LLOYD PHILS., INC., and DESMA CARGO HANDLERS, INC.,** *respondents.*

SYLLABUS

CIVIL LAW; DAMAGES; INTEREST; IMPOSITION OF INTEREST RATE OF 6% PER ANNUM, PROPER IN CASE AT BAR; RECKONING PERIOD.— A second look at petitioner's arguments shows that indeed, the interest rate of 6% should have been imposed, and not 12%, as affirmed by the Court. Also, it should have been reckoned from April 10, 1995, when respondent filed the complaint for sum of money, and not January 3, 1995, which was the date respondent paid the amount insured to the Republic Asahi Glass Corporation (RAGC). The claim in this case is one for reimbursement of the sum of money paid by FGU Insurance Corporation to RAGC. This is not one for forbearance of money, goods or credit. *Forbearance* in the context of the usury law is a contractual obligation of lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable. Thus the interest rate should be as it is hereby fixed at 6%. Moreover, the interest rate of 6% shall be computed from the date of filing of the complaint, *i.e.*, April 10, 1995. This is in accordance with the ruling that where the demand cannot be established with reasonable certainty, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Dollete Blanco Ejercito & Associates for respondent.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

In a Decision dated June 27, 2008, the Court denied the petition filed in this case and affirmed the CA Decision dated October 22, 2003 and Resolution dated January 8, 2004, finding petitioner liable for the full amount of the shipment which was lost while in its charge. Petitioner filed a motion for reconsideration, which was denied by the Court with finality per Resolution dated August 27, 2008.

Undaunted, petitioner filed the present second motion for partial reconsideration where it solely assails the award and reckoning date of the 12% interest imposed by the RTC on it adjudged liability. Petitioner contends that the complaint filed before the RTC is not one for loan or forbearance of money, but one for breach of contract or damages; hence, petitioner insists that the interest rate should be the legal rate of 6%, and not 12%. Petitioner also argues that the RTC reckoned the date when interest should accrue on the date when respondent FGU Insurance Corporation paid the amount insured, or on January 3, 1995. Petitioner contends that this is erroneous and the date should be reckoned from the time when respondent filed the complaint with the RTC, which is on April 10, 1995.

A second look at petitioner's arguments shows that indeed, the interest rate of 6% should have been imposed, and not 12%, as affirmed by the Court. Also, it should have been reckoned from April 10, 1995, when respondent filed the complaint for sum of money, and not January 3, 1995, which was the date respondent paid the amount insured to the Republic Asahi Glass Corporation (RAGC).

The claim in this case is one for reimbursement of the sum of money paid by FGU Insurance Corporation to RAGC. This is not one for forbearance of money, goods or credit. *Forbearance* in the context of the usury law is a contractual

obligation of lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable.[1] Thus the interest rate should be as it is hereby fixed at 6%. Moreover, the interest rate of 6% shall be computed from the date of filing of the complaint, *i.e.*, April 10, 1995. This is in accordance with the ruling that where the demand cannot be established with reasonable certainty, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.[2]

WHEREFORE, the second motion for partial reconsideration is *GRANTED*. The Decision dated June 27, 2008 is *MODIFIED*. The rate of interest on the principal amount of ₱1,875,068.88, as adjudged in the Regional Trial Court Decision dated July 1, 1999 in Civil Case No. 95-73532, and affirmed in the Court's Decision dated June 27, 2008, shall be six percent (6%) per annum computed from the date of filing of the complaint or April 10, 1995 until finality of this judgment. From the time this Decision becomes final and executory and the judgment amount remains unsatisfied, the same shall earn interest at the rate of 12% per annum until its satisfaction.

SO ORDERED.

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

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[1] *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-Purpose Cooperative, Inc.,* 425 Phil. 511, 523 (2002).

[2] *Gamboa v. Court of Appeals*, G.R. No. 117456, May 6, 2005, 458 SCRA 68, 77.

THIRD DIVISION

[G.R. No. 164681. April 24, 2009]

BERNARDINO V. NAVARRO, *petitioner, vs.* **P.V. PAJARILLO LINER, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; BACKWAGES; WHERE THE FAILURE OF EMPLOYEES TO WORK WAS NOT DUE TO THE EMPLOYER'S FAULT, THE BURDEN OF ECONOMIC LOSS SUFFERED BY THE EMPLOYEES SHOULD NOT BE SHIFTED TO THE EMPLOYER.— He never bothered to redeem his license at the soonest possible time when there was no showing that he was unlawfully prevented by respondent from doing so. Thus, petitioner should not be paid for the time he was not working. The Court has held that where the failure of employees to work was not due to the employer's fault, the burden of economic loss suffered by the employees should not be shifted to the employer. Each party must bear his own loss. It would be unfair to allow petitioner to recover something he has not earned and could not have earned, since he could not discharge his work as a driver without his driver's license. Respondent should be exempted from the burden of paying backwages.

2. ID.; ID.; ID.; ID.; THERE CAN BE NO WAGE IF THERE IS NO WORK PERFORMED; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The age-old rule governing the relation between labor and capital, or management and employee, of a "fair day's wage for a fair day's labor" remains as the basic factor in determining employees' wages. If there is no work performed by the employee, there can be no wage or pay — unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed, or otherwise illegally prevented from working, a situation which we find is not present in the instant case.

APPEARANCES OF COUNSEL

Nicanor G. Cuevas for petitioner.
Apolinario N. Lomabao, Jr. for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul the Decision[1] dated November 28, 2003 and the Resolution[2] dated July 19, 2004 of the Court of Appeals in CA- G.R. SP No. 67666.

P.V. Pajarillo Liner Inc. (respondent), a corporation engaged in the business of land transportation, employed Bernardino V. Navarro (petitioner) as a bus driver on April 20, 1995. Sometime in March 1996, petitioner, while on duty, was apprehended for picking up passengers in a non-loading zone (illegal terminal) along Ayala Avenue, Makati. His driver's license was confiscated by a Metro Manila Development Authority (MMDA) enforcer and a corresponding traffic violation receipt (TVR) was issued to him, which was valid as a temporary driver's license for seven days from date of apprehension. Before the expiration of the TVR, petitioner allegedly gave the same to respondent's Operations Manager Arnel Hegina[3] (Hegina) and requested the latter to redeem his license from the MMDA. Respondent was not able to redeem the license from the MMDA but merely secured a two-month extension for the validity of the TVR. Sometime in May 1996, petitioner was again apprehended along Shoemart, Makati by highway patrol operatives who demanded petitioner's driver's license. The record does not specify the

[1] Penned by Justice Ruben T. Reyes (now a retired member of this Court) and concurred in by Justices Edgardo P. Cruz and Noel G. Tijam; *rollo*, pp. 28-34.

[2] *Id.* at 35.

[3] In all the pleadings filed by petitioner as well as in the decisions of the LA, NLRC and CA, he was referred to as "Regina"; but based on the latter's own affidavit (*rollo*, p. 59), his real surname is Hegina.

violation. When petitioner presented his TVR, the operatives ordered him to drive the bus directly to the garage. After the incident, petitioner was not able to work for respondent again.[4]

On March 14, 1997, petitioner filed with the Labor Arbiter (LA), a complaint for illegal dismissal with damages against respondent, alleging that he was dismissed from the service on May 19, 1996; that as a bus driver, he worked for five days a week and from six in the morning up to eleven in the evening with a gross fare receipts average of ₱6,500.00; that from the amount of ₱6,500.00, he was entitled to a 9% commission and ₱50.00 incentive; that in cases of apprehension of respondent's driver due to violations involving illegal terminal or being "out of line," respondent was in charge of getting the driver's license from the MMDA; that when he was apprehended in March 1996 for illegal terminal, he gave the TVR to Hegina and requested the latter to redeem the license from the MMDA; that petitioner's license was not redeemed and respondent secured only two extensions of the TVR's validity for two months; that when he was again apprehended in May 1996 and upon arrival at the respondent's garage, he gave the extended TVR to Hegina and requested the latter to redeem his license from the MMDA; that Hegina informed him that his license would be redeemed the following day, but when petitioner tried to get his license from Hegina, the latter told him that he failed to get it because of heavy workload; that petitioner was asked to come back after one week with the assurance that his license would already be available, but no license was released; that he was constantly following up his license with respondent's office but was only given promises that his license was due for release; that respondent's refusal to redeem his license constituted constructive dismissal because he was deprived of his source of livelihood, as he was not able to perform his work as a bus driver without his license.

In its position paper, respondent claimed that petitioner abandoned his job as shown by the former's letter dated July 28, 1996 addressed to petitioner requiring the latter to

[4] NLRC Decision dated August 17, 2000; *rollo*, pp. 50-51.

explain why he should not be dismissed for neglecting his duty through prolonged absence; that after petitioner submitted his reply to respondent's letter, nothing was heard from him until he filed his complaint with the LA; that it was petitioner's obligation to redeem the driver's license; that petitioner's inaction to get back his license showed his lack of interest in resuming his job; and that respondent could not give back petitioner's work without his driver's license.

Petitioner filed his reply, arguing that in his August 8, 1996 letter to respondent's letter dated July 28, 1996, he had already brought to its attention that it should redeem his license for having been caught for illegal terminal, to wit:

Bilang tugon sa sulat ninyo ay ikinalulungkot kong sabihin sa inyo na hindi ako nagpabaya sa aking tungkulin bilang driver bagkus ay nasa management ang pagkukulang at ito'y tungkol sa hindi pagtubos ng aking TVR na nahuli sa Ayala ng illegal terminal na dapat ay sagutin ng ating kumpanya. Nagpabalik balik ako sa ating opisina dahil gusto kong makuha ang original license ko pero ang nangyari puro extension ***at hanggang sa tuluyan ng nawala dahil nadukutan ako****. At isa pa, nagpaalam ako kay Arnel na hindi muna ako makakalabas hangga't hindi pa nalulutas and problema ko*.[5] (Emphasis supplied)

that there was no response received from respondent; that it was only in its position paper filed with the LA that respondent raised the matter of not condoning or encouraging the act of using illegal terminal, and that it could not be held liable for petitioner's unlawful act. Petitioner added that it could not be denied that petitioner requested respondent to redeem his license, since the TVR was in respondent's possession.

In the Rejoinder, respondent argued that the TVR was submitted by petitioner when he was given an extension permit, and it was for record purposes as it was only a xerox copy.

On September 10, 1998, the LA rendered a decision[6] in favor of herein petitioner, the dispositive portion of which reads as follows:

[5] *Rollo,* p. 76.

[6] *Rollo,* pp. 61-64.

WHEREFORE, judgment is hereby rendered ordering respondents to reinstate complainant to his former position with full backwages which as of August 31, 1998 had already amounted to ₱175,500.00 and incentives in the amount of ₱35,100.00.[7]

In finding that petitioner was constructively dismissed, the LA said that respondent's claim of petitioner's negligence in the performance of his duties as a driver due to his alleged prolonged absences had been well explained by petitioner; that said absences could never be attributed to petitioner's fault, since he could not perform his usual duties as a driver without his license; that he was not remiss in following up the release of his license from respondent, which did not do its job.

The LA did not sustain respondent's claim that it was not the latter's policy to redeem the license of its drivers who were caught for illegal terminal, as respondent did not deny petitioner's allegation that he submitted the TVR to Hegina and that the office of respondent worked for the renewal of the period of its validity pending the release of petitioner's license; and respondent's policy of redeeming driver's license was further established by the affidavit of Marcelino Ibañez, one of respondent's drivers and the Chairman of the Board of the *Kilusang Manggagawa sa* PVP Liner. The LA then concluded that respondent's failure to redeem petitioner's license deprived him of the source of his livelihood without just and valid cause.

Respondent filed its appeal with the NLRC. The NLRC rendered its decision[8] dated August 17, 2000, the dispositive portion of which reads:

WHEREFORE, the appealed decision is MODIFIED in that respondent is ordered to reinstate complainant to his former position as bus driver without backwages.[9]

On the question of who should redeem petitioner's driver's license, the NLRC ruled that petitioner as the holder of the

[7] *Id.* at 64.

[8] *Rollo*, pp. 50-59; Commissioner Victoriano R. Calaycay, concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[9] *Id.* at 58.

license should be the one to redeem the same; that considering petitioner's allegation in his position paper, that he gave the TVR to Hegina and requested the latter to redeem his license, it was clear that petitioner was merely requesting him to redeem his license, which did not connote any obligation on Hegina's part; that as respondent failed to heed such request, it was incumbent upon petitioner to redeem his license, as it was necessary in the pursuit of his occupation as a bus driver. The NLRC did not believe petitioner's claim that he submitted the original TVR to respondent, because he could not have driven with only a photocopy of said document.

On the issue of constructive dismissal, the NLRC found that the evidence showed that respondent sent a notice to petitioner requiring him to explain his prolonged absences, to which petitioner submitted an explanation that he could not report for work, as his license was with the authorities and was waiting to be redeemed by respondent; and that no action was taken by the latter on the matter. Thus, the NLRC agreed with the LA that there was constructive dismissal; and petitioner should be reinstated upon presentation of his driver's license, but without backwages considering that he was equally at fault, as he did not bother to take proper steps to redeem his license.

Petitioner's motion for reconsideration was denied in a Resolution[10] dated September 29, 2000.

Petitioner filed a petition for *certiorari* with the CA. Respondent filed its Comment and petitioner his Reply thereto.

On November 28, 2003, the CA rendered herein assailed decision dismissing the petition for lack of merit.

The CA found that while an award of backwages presupposes a finding of illegal dismissal, not every case of illegal dismissal deserves an award of backwages, citing *Manila Electric Co. v. National Labor Relations Commission*,[11] *Cathedral School of Technology v. National Labor Relations Commission*,[12] and

[10] *Id.* at 60.

[11] G.R. No. 78763, July 12, 1989, 175 SCRA 277.

[12] G.R. No. 101438, October 13, 1992, 214 SCRA 551.

Durabuilt Recapping and Plant Company v. National Labor Relations Commission.[13] The CA further held that petitioner was the holder of the confiscated driver's license; thus, it was his duty to redeem his license; that while respondent previously took care of retrieving a confiscated driver's license, it was only a matter of accommodation, as there is no law or regulation making it an obligation of the employer to undertake retrieval of its erring driver's license; that when respondent failed to heed petitioner's request to redeem his license, a personal privilege and non-transferable, petitioner should have personally redeemed the same, which he did not; thus, he was not entitled to backwages.

Petitioner's motion for reconsideration was denied in the assailed Resolution dated July 19, 2004.

Hence, herein petition on the following grounds:

(1) the decision is inconsistent with the settled doctrine that doubts arising from the evidence must be resolved in favor of the employee;[14]

(2) the findings of the Court of Appeals that petitioner should be the one who should redeem his driver's license are grounded on speculations, surmises or conjectures;[15] and

(3) petitioner is entitled to reinstatement with full backwages considering that he was illegally dismissed from the service.[16]

The petition lacks merit.

For a correct perspective in the resolution of the present petition, it must be stressed that the finding of the LA that petitioner was constructively dismissed by respondent is already a settled issue. Respondent did not appeal from the finding that it constructively dismissed petitioner.

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[13] No. 76746, July 27, 1987, 152 SCRA 328.

[14] *Rollo*, p. 16.

[15] *Id.* at 18.

[16] *Rollo*, p. 21.

Thus, the Court is constrained to limit itself to the determination of whether petitioner is entitled to backwages; that is, whether the CA was correct in upholding the NLRC's finding that petitioner is not entitled to backwages, as he was equally at fault for not bothering to take proper steps to redeem his license.

The LA found that it was the obligation of respondent to redeem petitioner's driver's license and, therefore, petitioner was constructively dismissed by respondent. While affirming the constructive dismissal committed by respondent, the NLRC and the CA, however, held that petitioner as the holder of the license should be the one to redeem the same, as this was necessary in the pursuit of his occupation as a bus driver.

Petitioner was using the extended TVR when he was again caught sometime in May 1996 by highway patrol operatives and was ordered to drive directly to the garage.

Petitioner claimed that he gave the extended TVR to respondent for the latter to redeem the same. However, such claim was belied by petitioner's letter-reply dated August 8, 1996 to respondent's letter dated July 28, 1996, asking him to explain his prolonged absence. Petitioner wrote that the extended TVR was stolen from him. Such admission shows that the extended TVR had been in petitioner's possession in May 1996 until it was stolen from him, the date of which petitioner did not specify, wittingly or unwittingly. There is no showing that petitioner ever reported the loss of the extended TVR to respondent before he was asked to explain his prolonged absence in July 1996; or that he reported the loss to the MMDA. Thus, how could petitioner expect respondent to redeem his driver's license when the extended TVR was not in respondent's possession? Respondent could not be reasonably expected to redeem petitioner's driver's license while he, as owner of the license, did not take the proper steps to report the loss of the TVR to respondent or to the MMDA to get back his license. These circumstances show that petitioner was not at all faultless, as his violation caused the confiscation of his license.

Consequently, the Court agrees with the NLRC's conclusion that petitioner is not entitled to backwages.

He never bothered to redeem his license at the soonest possible time when there was no showing that he was unlawfully prevented by respondent from doing so. Thus, petitioner should not be paid for the time he was not working. The Court has held that where the failure of employees to work was not due to the employer's fault, the burden of economic loss suffered by the employees should not be shifted to the employer. Each party must bear his own loss.[17] It would be unfair to allow petitioner to recover something he has not earned and could not have earned, since he could not discharge his work as a driver without his driver's license. Respondent should be exempted from the burden of paying backwages.

The age-old rule governing the relation between labor and capital, or management and employee, of a "fair day's wage for a fair day's labor" remains as the basic factor in determining employees' wages. If there is no work performed by the employee, there can be no wage or pay — unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed,[18] or otherwise illegally prevented from working,[19] a situation which we find is not present in the instant case.

WHEREFORE, the petition for review is *DENIED*. The Decision dated November 28, 2003 and the Resolution dated July 19, 2004 of the Court of Appeals are *AFFIRMED*.

No costs.

SO ORDERED.

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

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[17] See *Durabuilt Recapping Plant and Co. v. National Labor Relations Commission, supra* note 13, at 334-335, citing *Social Security System v. SSS Supervisors' Union -CUGCO*, G.R. No. L-31832, October 23, 1982, 117 SCRA 746 .

[18] See *Caltex Refinery Employees Association (CREA) v. Brillantes*, G.R. No. 123782, September 16, 1997, 279 SCRA 218, 233; *Durabuilt Recapping Plant and Co. v. National Labor Relations Commission, supra* note 13*; Social Security System v. SSS Supervisors' Union, supra* note 17, citing *J.P. Heilbronn Co. v. National Labor Union*, 92 Phil. 575, 577-578.

[19] *Caltex Refinery Employees' Association (CREA) v. Brillantes, supra* note 18.

SECOND DIVISION

[G.R. No. 165927. April 24, 2009]

ERNESTO Z. GIDUQUIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT 3019, SECTION 3 (E) THEREOF; ELEMENTS.— The following elements need to be proven in order to constitute a violation of Section 3(e) of Republic Act 3019, *viz*: 1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them; 2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position; 3. The public officer acted with manifest partiality, evident bad faith or gross, inexcusable negligence; and 4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage or preference to such parties.

2. ID.; ID.; MODE OF COMMISSION.— There are two ways of violating Section 3(e), Republic Act No. 3019, to wit: (a) by causing any undue injury to any party, including the Government; (b) by giving any private party unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. The court *a quo* held that petitioner violated the above-quoted law by awarding or causing the award of the *pakiao* contracts without public bidding and causing their payment despite deficiencies in the construction works. We hold otherwise.

3. ID.; ID.; THE PROHIBITED ACTS OF THE ACCUSED MUST BE DONE WITH EVIDENT BAD FAITH OR WITH MANIFEST PARTIALITY.— In order to be held guilty of violating Section 3(e), R. A. No. 3019, in this case, the prohibited acts of the petitioner must have been done with evident bad faith or with manifest partiality. In *Sistoza v. Desierto, et al.*, we held that "mere bad faith or partiality are not enough for one to be held liable under the law since the act of bad faith

or partiality must be ... evident or manifest, respectively." Nowhere in the records of this case is such bad faith evident or partiality, manifest. In the absence of these elements, petitioner cannot be convicted of the offense charged.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT AND ARE EVEN CONCLUSIVE AND BINDING; PRINCIPLE NOT APPLICABLE TO CASE AT BAR.— Thus, while it is true that the "factual findings of the trial court are entitled to great weight and are even conclusive and binding" to this Court, this principle does not apply here. The findings of facts of the Sandiganbayan are not sufficiently established by evidence, leaving serious doubts in our minds regarding the culpability of petitioner.

APPEARANCES OF COUNSEL

Antonio R. Bautista & Partners for petitioner.

D E C I S I O N

TINGA, *J.*:

Petitioner Ernesto Z. Giduquio together with one Antonio T. Corpuz were charged with violation of Section 3 (e) of Republic Act No. 3019, as amended, in Criminal Case No. 23720 in an Information that reads as follows:

That in or about the year 1992, and for sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, being the Vice-President and Manager of the Small Island Grid, respectively, National Power Corporation (NPC)-Visayas, Cebu City, in such capacity, were in-charge of the management, direction, monitoring and control of the operation of the various diesel plants of cooperatives in the Island Grid, while in the performance of their official functions and taking advantage of their public positions, conniving and confederating together and mutually helping with (sic) each other, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously:

split or cause the splitting into twelve (12) schedules/phases of works the *pakiao* contracts and job orders, making it appear that the cost of each, does not exceed ₱100,000.00; award or cause to be awarded to one and single contractor the 12 schedules of the construction project; execute or by executing the said contract despite the fact that it was outside their scope; inflate the cost estimate to over 369.71%; award or cause the awarding of the contract to a contractor without the benefit of a public bidding; have the project inspected by the SIG people to the exclusion of the OPO Engineers and or cause the payment of the contracts despite several deficiencies in the construction works, thus accused, in the discharge of their official functions had given unwarranted benefits, advantage or preference to themselves and the contractor, to the damage and prejudice of the government.

CONTRARY TO LAW.[1]

The information charged the accused of having committed the following distinct acts through manifest partiality and evident bad faith:

1. split or cause the splitting into twelve (12) schedules/phases of works the pakiao contracts and job orders, making it appear that the cost of each, does not exceed ₱100,000.00;
2. awarded or caused to be awarded to one and single contractor the 12 schedules of the construction project;
3. executed the said contract despite the fact that it was outside their scope;
4. inflated the cost estimate to over 369.71%;
5. awarded or caused the awarding of the contact (sic) to a contractor without the benefit of a public bidding;
6. had the project inspected by SIG people to the exclusion of the OPO Engineers; and/or
7. caused the payment of the contracts despite several deficiencies in the construction work.

Following the arraignment and pre-trial, trial on the merits ensued.

[1] *Rollo*, pp. 44-45.

The prosecution presented Alexander Tan, Engr. Danilo Maglasang and Engr. Loubain Monterola as witnesses.

The prosecution established that in 1993, the Regional Director of the Commission on Audit (COA) of Cebu ordered a fact-finding inquiry on the alleged irregularities committed by certain officials of the NPC in the construction of power plants in the three islands of Cebu, namely, Olango, Guintarcan and Doong. After a review of the job orders, canvass papers, canvass of bids, *pakiao* labor contracts, NPC existing relevant policies and other pertinent documents, Alexander Tan, resident auditor of NPC, Visayas Regional Center and a member of the fact-finding team, prepared and submitted to the Cebu City COA Regional Director a report embodying the following findings:

a) there were splitting of contracts in which violated NPC Circular No. 92-34 which mandated that one project should be covered by one contract;

b) the Abstract of Canvass revealed that there were three other groups of workers who were interested hence, public bidding should have been conducted;

c) the person who conducted the spot canvass was under accused Giduquio;

d) NPC policies prohibited the construction of a structure under the *pakiao* system;

e) the cost estimates were inflated;

f) Giduqio (sic) approved the Certificates of Inspection and Acceptance and certified that the projects had been satisfactorily completed. Full payment to the contractors were made on the basis of his certifications;

g) Giduqio (sic) also certified that the expenses were necessary, lawful, and incurred under his direct supervision, the prices were reasonable and were not in excess of current rates in the locality, and that it was only after this certification that payment for the three projects were processed; and,

h) the required 10% retention was not implemented.[2]

[2] *Id.* at 46-47.

NPC Vice-president Antonio Corpuz likewise created a task force to inspect the three power plants. The task force found that there were indeed deficiencies in the three projects. Loubain Monterola, a mechanical engineer of NPC-Cebu Regional Office, and the designated team leader of the task force, testified that after due inspection of the construction of the power plants, he and his team had observed some deficiencies in the actual construction of the projects. He, however, said that the deficiencies were minor ones and in a follow-up inspection in 1995, saw that they had been corrected.[3]

After the prosecution rested its case, both the accused demurred to the prosecution's evidence.

On 30 October 2001, the Sandiganbayan granted the demurrer to evidence filed by Corpuz but denied that of petitioner's, leaving the latter as the lone accused in the case. In the same decision, the Sandiganbayan declared petitioner innocent of the first, second, third and sixth acts alleged in the Information. However, it found sufficient evidence against petitioner with respect to the other three remaining acts. Consequently, petitioner was required to present evidence to negate his presumptive guilt in respect to the three remaining charges.[4]

For his defense, petitioner and Thomas Agtarap were presented as witnesses.

Petitioner testified, among others, that a bidding was not necessary for a *pakiao* contract. Moreover, he alleged that there was no competition in the construction of the three projects. He also stated that he had merely dispatched Senior Engineer Villacarlos to conduct a spot canvass and that the latter had asked from among the local residents if they could perform the job. He also averred that the persons listed in the spot canvass had not made any offer.

Petitioner, however, admitted that he had recommended the full payment of the workers despite the fact that the construction

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[3] *Id.* at 48-49.

[4] *Id.* at 49, 55.

had not been fully completed as the NPC had incurred delay in the delivery of the construction supplies. Petitioner stated that the projects had been only less than 1% incomplete and would have taken only three days to complete. He also asserted that he had taken the following measures before recommending the full payment of the workers, to wit: (1) he had evaluated the projects and found that 99% had already been accomplished; (2) the five group leaders had signed a Letter of Guarantee that they would resume work once the materials have been delivered; (3) he had indicated in the Certificate of Inspection and Partial Acceptance that the contractor would be responsible to complete the work (and in fact, said deficiencies had been completed).[5]

Agtarap, then the Vice-President of NPC-Engineering Department, testified that he had certified all the spot canvasses prepared by petitioner; that the engineering committee had evaluated all documents forwarded by petitioner and that the petitioner did not participate in the splitting, preparation and award of the contract to a particular contractor as all contracts had been made in the head office on the basis of the recommendations of the engineering committee.[6] Agtarap also explained that a formal public bidding was dispensed with because of the absence of competition and the urgency of the matter.[7]

After trial, the Sandiganbayan held that there was reasonable doubt that petitioner committed the fourth act, *i.e.*, that of inflating the cost estimates.[8] The Sandiganbayan, though, found petitioner guilty of having committed the fifth and seventh acts, *i.e.*, awarding the contracts without public bidding and causing the payment of the contracts despite several deficiencies, respectively. It disposed as follows:

WHEREFORE, the Court finds accused **ERNESTO Z. GIDUQUIO** GUILTY, beyond reasonable doubt, for violation of Section 3(e) of

[5] *Id.* at 51.

[6] *Id.* at 52.

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

[8] In a Decision dated 30 August 2004; *Rollo*, pp. 44-63; Penned by Associate Justice Norberto Y. Geraldez with the concurrence of Associate Justices Gregory S. Ong and Efren N. De La Cruz.

R.A. No. 3019. Pursuant to Section 9 thereof, he is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, six (6) years and one (1) month as minimum, up to ten (10) years and one (1) month as maximum; and,

(B) Perpetual Disqualification from Public Office.

No civil liability is adjudged in view of the failure of the prosecution to present evidence on this matter and the fact that the projects were already completed.

SO ORDERED.[9]

With the denial of his motion for reconsideration, per the graft court's resolution of 10 November 2004, petitioner is now before us via the instant recourse.

In his Memorandum[10] dated 2 September 2005, petitioner asserts that there was no need for a public bidding in the award of the contracts and that in any event, he had no participation in the award thereof. He also maintains that he was justified in causing the payment of the contracts despite the non-completion of the construction work.[11]

There is merit in the petition.

The law violated is R. A. No. 3019, Section 3(e). It provides as follows:

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

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative

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[9] *Rollo*, pp. 61-62.

[10] *Id.* at 158-188.

[11] *Id.* at 166.

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.

The following elements need to be proven in order to constitute a violation of Section 3(e) of Republic Act 3019, *viz*:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;

2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;

3. The public officer acted with manifest partiality, evident bad faith or gross, inexcusable negligence; and

4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage or preference to such parties.[12]

There are two ways of violating Section 3(e), Republic Act No. 3019, to wit: (a) by causing any undue injury to any party, including the Government; (b) by giving any private party unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both.

The court *a quo* held that petitioner violated the above-quoted law by awarding or causing the award of the *pakiao* contracts without public bidding and causing their payment despite deficiencies in the construction works. We hold otherwise.

For one, the Court believes that the public bidding was reasonably dispensed with due to the urgency of the matter. Agtarap, petitioner's superior, pertinently stated that:

CHAIRMAN: So notwithstanding the fact that under the circular, if there are two or more *pakyaw* contractors who are offering their certain bids, you have to conduct a bidding, you disregard that condition because according to you this is an urgent matter which,

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[12] *Quibal v. Sandiganbayan*, 314 Phil. 66, 75-76 (1995).

under the law, you are authorized to disregard that particular provision in that circular?

T. AGTARAP: In that sense…

CHAIRMAN: That is what you are telling us, right, because of the urgency of the project?

T. AGTARAP: Yes, your Honor.[13]

It is well to recall that in the early 1990's, the country suffered from a crippling power crisis.[14] Power outages lasted 8-12 hours daily and power generation was badly needed. Addressing the problem, the NPC sought to attract investors in power plant operations by providing them with incentives, one of which was through NPC's assumption of payment of their taxes.[15] For the same purpose, NPC reconditioned existing power plants. In the small islands, it put up new power plants.

It likewise bears emphasis that Agtarap confirmed petitioner's non-participation in the award of the *pakiao* contracts, to wit:

ATTY. CASTEL:

Mr. Witness, when the *pakyaw* contract was made, was the name of the contractor already typewritten there?

A: Yes, sir.

Q: How about the contract price?

A: The same thing, sir, because that was already defined and identified.

Q: What was the participation of Mr. Giduquio in the preparation of the contract?

A: I mentioned that all these things were prepared in the Head office and therefore the evaluation, the typing…

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[13] TSN, 25 September 2003, pp. 54-56.

[14] *Purefoods v. Court of Appeals*, G.R. No. 128069, 19 June 2000, 333 SCRA 684, 688.

[15] *Batangas Power Corporation vs. Batangas City and National Power Corporation*, G.R. No. 152675, 28 April 2004, 428 SCRA 250, 251.

CHAIRMAN:

> … So accused Giduquio has no participation whatsoever to the preparation of that contract, right? That's according to the witness.

ATTY. CASTEL:

> What was the participation of Mr. Giduquio in the awarding of contract to a particular labor contract?
>
> A: Since the award is done in the Head Office, Giduquio did not participate in the awarding of the contract, sir.
>
> Q: By the way, Mr. Witness, who caused the labor schedules.. will you inform us who caused the *pakyaw* labor contract to be divided into different schedules?
>
> A: Sir, the different stages were already part of a typical concept made by the head Office as also required by us to check the different schedules (1) to expedite the work in far-flung areas; (2) the possibility that we can get labor within the community. That is why the decision of the management to have different schedules for this project.
>
> Q: So, that division is also caused by the Head Office?
>
> A: Yes, sir.[16]

It is also noteworthy that it was NPC Senior Vice-President Mr. Ramas, not petitioner, who signed the *pakiao* contracts as testified to by petitioner, to wit:

PROS. MONTEROSO

x x x x x x x x x

> Q: So, in other words, supposedly it should be you who should be the supposed signatory of the *pakyaw* contract?
>
> A: Yes, sir.
>
> Q: But you did not?
>
> A: Yes, sir.

JUSTICE FERRER:

> Q: You did not sign it?
>
> A: Yes, Your Honors.

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[16] TSN, 25 September 2003, pp. 22-23.

Q: Then who signed it?
A: The Senior Vice-President based in Diliman, Quezon City Mr. Ramas.

x x x x x x x x x

Q: You mean to say that the *pakyaw* contract was already signed in manila (sic) before it was sent to you?
A: Yes, Your Honors.

x x x x x x x x x

JUSTICE FERRER:

Q: So the *pakyaw* leader signed only after it was already signed by your superior?
A: Yes, Sir.[17]

And most importantly, it was petitioner's superiors who ordered him to implement the *pakiao* contracts.[18]

Anent the issue of premature payment, the Court believes that petitioner is justified in having caused payment as the construction works have been substantially finished at the time of the acceptance. Petitioner testified that:

Q: Why is that so? Why did you recommend payment despite the fact that the projects were not yet fully completed?
A: Okay, with this chart I prepared, you will notice the project consisting of twelve (12) schedules. These were broken down into different activities, like Schedule 1, it was completed. In other words, of the twelve (12) schedules, eight (8) were completed and only four (4) were not. Before payment was made, I evaluated the project as to the physical accomplishment. The report was based on Schedule 5 which was already 97.99% accomplished at that time. Schedule 6 was likewise 90.6 accomplished; And schedule 7, 99.6 % accomplished, so that Schedule 12 was already 99.12 accomplished. In other words, the total relative weight of the remaining level cost is 99.5%, or .39% is left. Considering the total project, what is this? This means the total level cost to complete the project is only ₱1,850.00 or the total is ₱267,025.00,

[17] TSN, 11 July 2002, pp. 15-18.

[18] TSN, 11 July 2002, pp. 11-12.

divide this by this, the remaining cost of labor against the total contract will amount only to .39% or less than .25%.[19]

In any event, the construction works were eventually completed proving lack of injury to the government. Significant of all is the lack of proof that petitioner committed the supposedly prohibited acts with manifest partiality and bad faith. To the contrary, the Court finds that petitioner in causing the payment was moved by sympathy for the plight of the workers, even while imposing safeguard measures for the government which belies claim of partiality, *viz.*:

Q: Considering that you [are] already recommending payments to the workers and there were still some of the materials to be installed, what preliminary measures did you take then?

A: You will notice that before I recommended payment, there was an evaluation of the project, whether it was completed or not. I tried to find out if it was really reasonable to pay the workers. And when the project was evaluated, it was already 99. 9% accomplished.

Q: And so, what did you do?

A: So, out of humanitarian consideration, I sympathized the plight of the workers, they are just ordinary fishermen, ordinary farmers, but some of them are skilled carpenters. I asked from them the letter of guarantee; that should the materials be delivered, they would resume the work. And so, when the materials were delivered, they performed and completed the job, and not only that, in the Certificate of Inspection I issued, it was so worded that it shall be the responsibility of the contractor to complete the work…

A: I am referring to this Certificate of Acceptance. This Certificate of Inspection and partial Acceptance which in no way relieved the contractor of the responsibility and obligation to accomplish the work, as required by the NPC. So, there were precautions.

AJ FERRER:

You mean to say that you have them signed the document before you paid for the whole project?

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[19] *Rollo*, pp. 174-175.

WITNESS:

Yes, your Honor.

AJ FERRER:

Q: You are admitting that even before the projects were 100% accomplished, you paid the pakyaw contractor?

WITNESS:

Something like that, your Honor, out of humanitarian reason.

AJ FERRER:

Q: And subsequently, when the materials came, they completed their work, without any extra cost from you?

WITNESS:

No, your Honor, it took about three (3) months after they completed the project that they received the payment. I was so worried, your Honor, because while I am receiving ₱32,000.00 monthly salary, and these people were in hunger, so x x x.[20]

In order to be held guilty of violating Section 3(e), R. A. No. 3019, in this case, the prohibited acts of the petitioner must have been done with evident bad faith or with manifest partiality. In *Sistoza v. Desierto, et al.*,[21] we held that "mere bad faith or partiality are not enough for one to be held liable under the law since the act of bad faith or partiality must be ... evident or manifest, respectively." Nowhere in the records of this case is such bad faith evident or partiality, manifest. In the absence of these elements, petitioner cannot be convicted of the offense charged.

Thus, while it is true that the "factual findings of the trial court are entitled to great weight and are even conclusive and binding" to this Court, this principle does not apply here. The findings of facts of the Sandiganbayan are not sufficiently established by evidence, leaving serious doubts in our minds regarding the culpability of petitioner.

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[20] *Id.* at 182-183.

[21] G.R. No. 144784, 388 SCRA, 307, 324, 326 (2002).

In sum, we find that the prosecution failed to prove by evidence beyond reasonable doubt the guilt of herein petitioner for violation of Section 3(e) of Republic Act No. 3019, as amended.

WHEREFORE, the petition is *GRANTED*. The Decision dated 30 August 2004 of the Sandiganbayan in Crim. Case No. 23720 is *REVERSED* and petitioner is *ACQUITTED* of the offense of violating Section 3(e) of Republic Act No. 3019, as amended. No costs.

SO ORDERED.

Carpio Morales (Acting Chairperson), Velasco, Jr., Leonardo-de Castro,*** and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166199. April 24, 2009]

THE SECRETARY OF JUSTICE, THE EXECUTIVE SECRETARY and THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION, *petitioners, vs.* **CHRISTOPHER KORUGA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW OVER ACT OF THE LEGISLATIVE OR EXECUTIVE DEPARTMENT, WHEN MAY BE EXERCISED BY THE COURT.— It is beyond cavil that the BI has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and

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* Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

** Additional member of the Second Division per Special Order No. 619.

that the BOC has jurisdiction over deportation proceedings. Nonetheless, Article VIII, Section 1 of the Constitution has vested power of judicial review in the Supreme Court and the lower courts such as the CA, as established by law. Although the courts are without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government and are not empowered to execute absolutely their own judgment from that of Congress or of the President, the Court may look into and resolve questions of whether or not such judgment has been made with grave abuse of discretion, when the act of the legislative or executive department is contrary to the Constitution, the law or jurisprudence, or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* OR PROHIBITION; FILING THEREOF BEFORE THE COURT OF APPEALS TO ASSAIL THE ORDER OF DEPORTATION ON GROUND OF ABUSE OF DISCRETION IS ALLOWED.— When acts or omissions of a quasi-judicial agency are involved, a petition for *certiorari* or prohibition may be filed in the CA as provided by law or by the Rules of Court, as amended. Clearly, the filing by respondent of a petition for *certiorari* and prohibition before the CA to assail the order of deportation on the ground of grave abuse of discretion is permitted.

3. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; GENERAL RULE; WORDS AND PHRASES USED IN A STATUTE SHOULD BE GIVEN THEIR PLAIN, ORDINARY, AND COMMON USAGE MEANING, ABSENT LEGISLATIVE INTENT TO THE CONTRARY; EXCEPTION.— The general rule in construing words and phrases used in a statute is that in the absence of legislative intent to the contrary, they should be given their plain, ordinary, and common usage meaning. However, a literal interpretation of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contract the evident meaning of the statute taken as a whole. After all, statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences.

4. ID.; ID.; SECTION 37 (A)(4) OF COMMONWEALTH ACT NO. 613 AS AMENDED, OTHERWISE KNOWN AS THE PHILIPPINE IMMIGRATION ACT OF 1940; CONSTRUED.— Were the Court to follow the letter of Section 37(a)(4) and make it applicable only to convictions under the Philippine prohibited drugs law, the Court will in effect be paving the way to an absurd situation whereby aliens convicted of foreign prohibited drugs laws may be allowed to enter the country to the detriment of the public health and safety of its citizens. It suggests a double standard of treatment where only aliens convicted of Philippine prohibited drugs law would be deported, while aliens convicted of foreign prohibited drugs laws would be allowed entry in the country. The Court must emphatically reject such interpretation of the law. Certainly, such a situation was not envisioned by the framers of the law, for to do so would be contrary to reason and therefore, absurd. Over time, courts have recognized with almost pedantic adherence that what is contrary to reason is not allowed in law. Indubitably, Section 37(a)(4) should be given a reasonable interpretation, not one which defeats the very purpose for which the law was passed. This Court has, in many cases involving the construction of statutes, always cautioned against narrowly interpreting a statute as to defeat the purpose of the legislator and stressed that it is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result of injustice or absurdity, and that therefore a literal interpretation is to be rejected if it would be unjust or lead to absurd results. Moreover, since Section 37(a)(4) makes no distinction between a foreign prohibited drugs law and the Philippine prohibited drugs law, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.* Thus, Section 37(a)(4) should apply to those convicted of all prohibited drugs laws, whether local or foreign.

5. POLITICAL LAW; ADMINISTRATIVE LAW; BUREAU OF IMMIGRATION; DEPORTATION OF AN ALIEN WHO WAS CONVICTED OF FOREIGN PROHIBITED DRUGS LAWS, NOT TAINTED WITH GRAVE ABUSE OF DISCRETION.— There is no dispute that respondent was convicted of Violation of the Uniform Controlled Substances Act in the State of Washington, USA for attempted possession of cocaine, as shown by the Order Deferring Imposition of Sentence (Probation). While he may have pleaded guilty to a lesser offense, and was not imprisoned but applied for and underwent a one-year probation,

still, there is no escaping the fact that he was convicted under a prohibited drugs law, even though it may simply be called a "misdemeanor drug offense." The BOC did not commit grave abuse of discretion in ordering the deportation of respondent.

6. ID.; ID.; ID.; WHEN AN ALIEN HAS ALREADY PHYSICALLY GAINED ENTRY IN THE COUNTRY, BUT SUCH ENTRY IS LATER FOUND UNLAWFUL, THE ALIEN CAN BE EXCLUDED ANYTIME AFTER IT IS FOUND THAT HE WAS NOT LAWFULLY ADMISSIBLE AT THE TIME OF HIS ENTRY.— It must be remembered that aliens seeking entry in the Philippines do not acquire the right to be admitted into the country by the simple passage of time. When an alien, such as respondent, has already physically gained entry in the country, but such entry is later found unlawful or devoid of legal basis, the alien can be excluded anytime after it is found that he was not lawfully admissible at the time of his entry. Every sovereign power has the inherent power to exclude aliens from its territory upon such grounds as it may deem proper for its self-preservation or public interest. The power to deport aliens is an act of State, an act done by or under the authority of the sovereign power. It is a police measure against undesirable aliens whose continued presence in the country is found to be injurious to the public good and the domestic tranquility of the people.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Bernas Law Office for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated September 14, 2004 and the Resolution[2] dated November 24, 2004

[1] Penned by Associate Justice Mariano C. del Castillo and concurred in by Associate Justices Romeo A. Brawner and Jose L. Sabio, Jr., CA *rollo*, p. 610.

[2] *Id.* at 677.

of the Court of Appeals (CA) in CA-G.R. SP No. 76578. The assailed Decision set aside the Resolution dated April 1, 2003 of the Secretary of the Department of Justice (DOJ) and the Judgment dated February 11, 2002 of the Board of Commissioners (BOC) of the Bureau of Immigration (BI), and dismissed the deportation case filed against Christopher Koruga (respondent), an American national, for violation of Section 37(a)(4) of Commonwealth Act No. 613, as amended, otherwise known as the Philippine Immigration Act of 1940; while the assailed Resolution denied petitioners' Motion for Reconsideration.

The factual background of the case is as follows:

Sometime in August 2001, then BI Commissioner Andrea Domingo received an anonymous letter[3] requesting the deportation of respondent as an undesirable alien for having been found guilty of Violation of the Uniform Controlled Substances Act in the State of Washington, United States of America (USA) for attempted possession of cocaine sometime in 1983.

On the basis of a Summary of Information,[4] the Commissioner issued Mission Order No. ADD-01-162[5] on September 13, 2001 directing Police Superintendent (P/Supt.) Lino G. Caligasan, Chief of the Intelligence Mission and any available BI Special Operations Team Member to conduct verification/validation of the admission status and activities of respondent and effect his immediate arrest if he is found to have violated the Philippine Immigration Act of 1940, as amended.

On September 17, 2001, respondent was arrested and charged before the Board of Special Inquiry (BSI) for violation of Section 37(a)(4) of the Philippine Immigration Act of 1940, as amended. The case was docketed as BSI-D.C. No. ADD-01-126. The Charge Sheet reads:

On September 17, 2001, at about 10:00 A.M., respondent was arrested by Intelligence operatives at his residence, located at 1001

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[3] CA *rollo*, p. 140.

[4] *Id.* at 139.

[5] *Id.* at 138.

MARBELLA CONDOMINIUM II, Roxas Boulevard, Malate, Manila, pursuant to Mission Order No. ADD-01-162;

That respondent was convicted and/or sentenced for Uniform Controlled Substance Act in connection with his being Drug Trafficker and/or Courier of prohibited drugs in the State of Washington, United States of America, thus, making him an undesirable alien and/or a public burden in violation of Sec. 37(4) [sic] of the Philippine Immigration Act of 1940, as amended.

CONTRARY TO LAW.[6]

On September 28, 2001, after filing a Petition for Bail[7] and Supplemental Petition for Bail,[8] respondent was granted bail and provisionally released from the custody of the BI.[9]

Following the submission of respondent's Memorandum[10] and the BI Special Prosecutor's Memorandum,[11] the BOC rendered a Judgment[12] dated February 11, 2002 ordering the deportation of respondent under Section 37(a)(4) of the Philippine Immigration Act of 1940, as amended.

On February 26, 2002, respondent filed a Motion for Reconsideration,[13] but it was denied by the BOC in a Resolution dated March 19, 2002.

Unaware that the BOC already rendered its Resolution dated March 19, 2002, respondent filed on April 2, 2002, a Manifestation and Notice of Appeal *Ex Abundanti Cautelam*[14] with the Office of the President, which referred[15] the appeal to the DOJ.

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[6] CA *rollo*, p. 141.

[7] *Id.* at 144.

[8] *Id.* at 154.

[9] *Id.* at 157.

[10] *Id.* at 159.

[11] *Id.* at 187.

[12] *Id.* at 243.

[13] *Id.* at 72.

[14] *Id.* at 103.

[15] *Id.* at 124.

On April 1, 2003, then DOJ Secretary Simeon A. Datumanong rendered a Resolution[16] dismissing the appeal. On April 15, 2003, respondent filed a Motion for Reconsideration[17] which he subsequently withdrew[18] on April 23, 2003.

On April 24, 2003, respondent filed a Petition for *Certiorari* and Prohibition[19] with the CA, docketed as CA-G.R. SP No. 76578, seeking to set aside the Resolution dated April 1, 2003 of the DOJ Secretary and the Judgment dated February 11, 2002 of the BOC.

On September 14, 2004, the CA rendered a Decision[20] setting aside the Resolution dated April 1, 2003 of the DOJ Secretary and the Judgment dated February 11, 2002 of the BOC and dismissing the deportation case filed against respondent. The CA held that there was no valid and legal ground for the deportation of respondent since there was no violation of Section 37(a)(4) of the Philippine Immigration Act of 1940, as amended, because respondent was not convicted or sentenced for a violation of the law on prohibited drugs since the U.S. Court dismissed the case for violation of the Uniform Controlled Substances Act in the State of Washington, USA filed against respondent; that petitioners further failed to present or attach to their pleadings any document which would support their allegations that respondent entered into a plea bargain with the U.S. Prosecutor for deferred sentence nor did they attach to the record the alleged order or judgment of the U.S. Court which would show the conviction of respondent for violation of the prohibited drugs law in the USA; that even if respondent was convicted and sentenced for the alleged offense, his deportation under Section 37(a)(4) is improper, since the prohibited drugs

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[16] *Id.* at 74.

[17] *Id.* at 126.

[18] *Id.* at 133.

[19] CA *rollo*, p. 9.

[20] *Supra* note 1.

law referred to therein refers not to a foreign drugs law but to the Philippine drugs law, then Republic Act No. 6425 or the "Dangerous Drugs Act of 1972"; that although the BOC is clothed with exclusive authority to decide as to the right of a foreigner to enter the country, still, such executive officers must act within the scope of their authority or their decision is a nullity.

Petitioners' Motion for Reconsideration[21] was denied by the CA in its presently assailed Resolution[22] dated November 24, 2004.

Hence, the present petition on the following grounds:

I. THE COURT OF APPEALS GRAVELY ERRED IN TAKING COGNIZANCE OF THE SUBJECT CASE WHICH FALLS UNDER THE EXCLUSIVE PREROGATIVE OF THE EXECUTIVE BRANCH OF THE GOVERNMENT.

II. ASSUMING *ARGUENDO* THAT IT COULD TAKE COGNIZANCE OVER THE CASE, THE COURT OF APPEALS GRAVELY ERRED IN FINDING AN ABUSE OF DISCRETION ON THE PART OF HEREIN PETITIONERS.

III. THE COURT OF APPEALS ERRED IN FINDING THAT THE CHARGES AGAINST THE HEREIN RESPONDENT WERE DROPPED.

IV. THE COURT OF APPEALS ERRED IN HOLDING THAT PRIOR CONVICTION IS REQUIRED BEFORE RESPONDENT COULD BE DEPORTED.[23]

Petitioners contend that the BI has exclusive authority in deportation proceedings and no other tribunal is at liberty to reexamine or to controvert the sufficiency of the evidence presented therein; that there was no grave abuse of discretion on the part of petitioners when they sought the deportation of respondent since he was convicted by the Supreme Court of the State of Washington for attempted Violation of the Uniform Controlled Substances Act and underwent probation in lieu of the imposition of sentence; that the dismissal of the charge

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[21] CA *rollo*, p. 630.

[22] *Supra* note 2.

[23] *Rollo*, pp. 36-37.

against respondent was only with respect to penalties and liabilities, obtained after fulfilling the conditions for his probation, and was not an acquittal from the criminal case charged against him; that there is a valid basis to declare respondent's undesirability and effect his deportation since respondent has admitted guilt of his involvement in a drug-related case.

On the other hand, respondent submits that the proceedings against him reek of persecution; that the CA did not commit any error of law; that all the arguments raised in the present petition are mere rehashes of arguments raised before and ruled upon by the CA; and that, even assuming that Section 37(a)(4) of the Philippine Immigration Act of 1940 does not apply, there is no reason, whether compelling or slight, to deport respondent.

There are two issues for resolution: (1) whether the exclusive authority of the BOC over deportation proceedings bars judicial review, and (2) whether there is a valid and legal ground for the deportation of respondent.

The Court resolves the first issue in the negative.

It is beyond cavil that the BI has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and that the BOC has jurisdiction over deportation proceedings.[24] Nonetheless, Article VIII, Section 1[25] of the Constitution has vested power of judicial review in the Supreme Court and the lower courts such as the CA, as established by law. Although the courts are without power to directly decide matters over which full discretionary authority has been delegated to the

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[24] *Board of Commissioners (CID) v. De la Rosa*, G.R. Nos. 95122-23, May 31, 1991, 197 SCRA 853, 874; *Lao Gi v. Court of Appeals*, G.R. No. 81798, December 29, 1989, 180 SCRA 756, 761; *Miranda v. Deportation Board*, 94 Phil. 531, 533 (1954).

[25] Article VIII, Section 1 of the 1987 Constitution, states:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

legislative or executive branch of the government and are not empowered to execute absolutely their own judgment from that of Congress or of the President,[26] the Court may look into and resolve questions of whether or not such judgment has been made with grave abuse of discretion, when the act of the legislative or executive department is contrary to the Constitution, the law or jurisprudence, or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[27]

In *Domingo v. Scheer*,[28] the Court set aside the Summary Deportation Order of the BOC over an alien for having been issued with grave abuse of discretion in violation of the alien's constitutional and statutory rights to due process, since the BOC ordered the deportation of the alien without conducting summary deportation proceedings and without affording the alien the right to be heard on his motion for reconsideration and adduce evidence thereon.

In *House of Sara Lee v. Rey*,[29] the Court held that while, as a general rule, the factual findings of administrative agencies are not subject to review, it is equally established that the Court will not uphold erroneous conclusions which are contrary to evidence, because the agency *a quo*, for that reason, would be guilty of a grave abuse of discretion.

When acts or omissions of a quasi-judicial agency are involved, a petition for *certiorari* or prohibition may be filed in the CA as provided by law or by the Rules of Court, as amended.[30] Clearly, the filing by respondent of a petition for *certiorari*

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[26] See *Tatad v. Secretary of the Department of Energy*, G.R. No. 124360, November 5, 1997, 281 SCRA 330, 347; *Ledesma v. Court of Appeals*, G.R. No. 113216, September 5, 1997, 278 SCRA 656, 681; *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18, 48-49.

[27] *Republic v. Garcia*, G.R No. 167741, July 12, 2007, 527 SCRA 495, 502; *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, January 13, 2004, 419 SCRA 141, 148.

[28] 466 Phil. 235 (2004).

[29] G.R. No. 149013, August 31, 2006, 500 SCRA 419.

[30] RULES OF COURT, Rule 65, Section 4.

and prohibition before the CA to assail the order of deportation on the ground of grave abuse of discretion is permitted.

This brings us to the second issue.

The settled rule is that the entry or stay of aliens in the Philippines is merely a privilege and a matter of grace; such privilege is not absolute or permanent and may be revoked. However, aliens may be expelled or deported from the Philippines only on grounds and in the manner provided for by the Constitution, the Philippine Immigration Act of 1940, as amended, and administrative issuances pursuant thereto.[31]

Respondent was charged with violation of Section 37(a)(4) of the Philippine Immigration Act of 1940, as amended, which provides:

> Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien.
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> x x x x x x x x x
>
> (4) Any alien who is convicted and sentenced for a violation of **the** law governing prohibited drugs;
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> x x x x x x x x x (Emphasis supplied)

Respondent contends that the use of the definite article "the" immediately preceding the phrase "law on prohibited drugs" emphasizes not just any prohibited drugs law but the law applicable in this jurisdiction, at that time, the Dangerous Drugs Act of 1972.[32]

The Court disagrees.

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[31] *Supra* note 28, at 269-270; 487.

[32] Repealed by Republic Act No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002" approved on June 7, 2002, or about four (4) months after the BOC rendered its Judgment on February 11, 2002.

The general rule in construing words and phrases used in a statute is that in the absence of legislative intent to the contrary, they should be given their plain, ordinary, and common usage meaning.[33] However, a literal interpretation of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contract the evident meaning of the statute taken as a whole.[34] After all, statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.[35] Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences.[36]

Were the Court to follow the letter of Section 37(a)(4) and make it applicable only to convictions under the Philippine prohibited drugs law, the Court will in effect be paving the way to an absurd situation whereby aliens convicted of foreign prohibited drugs laws may be allowed to enter the country to the detriment of the public health and safety of its citizens. It suggests a double standard of treatment where only aliens convicted of Philippine prohibited drugs law would be deported, while aliens convicted of foreign prohibited drugs laws would be allowed entry in the country. The Court must emphatically reject such interpretation of the law. Certainly, such a situation was not envisioned by the framers of the law, for to do so

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[33] Ruben E. Agpalo, *Statutory Construction* (1990), p. 131, citing *Central Azucarera Don Pedro v. Central Bank*, 104 Phil. 598 (1954); *Espino v. Cleofe*, G.R. No. 33410, July 13, 1973, 52 SCRA 92; *Philippine Acetylene Co. v. Central Bank*, 120 Phil. 829 (1964).

[34] *Solid Homes, Inc. v. Tan*, G.R. Nos. 145156-57, July 29, 2005, 465 SCRA 137, 149; *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 460; *In Re Allen*, 2 Phil. 630, 643 (1903).

[35] *Philippine Retirement Authority (PRA) v. Buñag*, G.R. No. 143784, February 5, 2003, 397 SCRA 27, 37; *Cosico, Jr. v. National Labor Relations Commission*, G.R. No. 118432, May 23, 1997, 272 SCRA 583, 591; *Commissioner of Internal Revenue v. Esso Standard Eastern, Inc.*, G.R. No. 28502-03, April 18, 1989, 172 SCRA 364, 370.

[36] *Commissioner of Internal Revenue v. Solidbank Corporation*, *supra*, note 35; *People v. Rivera*, 59 Phil. 236, 242 (1933).

would be contrary to reason and therefore, absurd. Over time, courts have recognized with almost pedantic adherence that what is contrary to reason is not allowed in law.

Indubitably, Section 37(a)(4) should be given a reasonable interpretation, not one which defeats the very purpose for which the law was passed. This Court has, in many cases involving the construction of statutes, always cautioned against narrowly interpreting a statute as to defeat the purpose of the legislator and stressed that it is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result of injustice or absurdity, and that therefore a literal interpretation is to be rejected if it would be unjust or lead to absurd results.[37]

Moreover, since Section 37(a)(4) makes no distinction between a foreign prohibited drugs law and the Philippine prohibited drugs law, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.*[38] Thus, Section 37(a)(4) should apply to those convicted of all prohibited drugs laws, whether local or foreign.

There is no dispute that respondent was convicted of Violation of the Uniform Controlled Substances Act in the State of Washington, USA for attempted possession of cocaine, as shown by the Order Deferring Imposition of Sentence (Probation).[39] While he may have pleaded guilty to a lesser offense, and was not imprisoned but applied for and underwent a one-year probation, still, there is no escaping the fact that he was convicted

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[37] *Soriano v. Offshore Shipping and Manning Corporation*, G.R. No. 78309, September 14, 1989, 177 SCRA 513, 519; *Bello v. Court of Appeals*, G.R. No. L-38161, March 29, 1974, 56 SCRA 509, 518; *Vda. de Macabanta v. Davao Stevedore Terminal Company*, G.R. No. L-27489, April 30, 1970, 32 SCRA 553, 558; *Automotive Parts & Equipment Co., Inc. v. Lingad*, G.R. No. L-26406, October 31, 1969, 30 SCRA 248, 256.

[38] *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 484; *Pilar v. Commission on Elections*, G.R. No. 115245, July 11, 1995, 245 SCRA 759, 763; *Commissioner of Internal Revenue v. Commission on Audit*, G.R. No. 101976, January 29, 1993, 218 SCRA 203, 214-215.

[39] CA *rollo*, p. 650.

under a prohibited drugs law, even though it may simply be called a "misdemeanor drug offense."[40] The BOC did not commit grave abuse of discretion in ordering the deportation of respondent.

The Court quotes with approval the following acute pronouncements of the BOC:

x x x We note that the **respondent admitted in his Memorandum dated 8 October 2001 that he pleaded guilty to the amended information where he allegedly attempted to have in his possession a certain controlled substance, and a narcotic drug**. Further, he filed a "Petition for Leave to Withdraw Plea of Guilty and Enter Plea of Not Guilty" to obtain a favorable release from all penalties and disabilities resulting from the filing of the said charge.

Evidently, the U.S. Court issued the Order of Dismissal in exchange for the respondent's plea of guilty to the lesser offense. Though legally allowed in the U.S. Law, We perceive that this strategy afforded the respondent with a convenient vehicle to avoid conviction and sentencing. Moreover, **the plea of guilty is by itself crystal clear acknowledgment of his involvement in a drug-related offense**. Hence, respondent's discharge from conviction and sentencing cannot hide the fact that he has a prior history of drug-related charge.

This country cannot countenance another alien with a history of a drug-related offense. The crime may have been committed two decades ago but it cannot erase the fact that the incident actually happened. This is the very core of his inadmissibility into the Philippines. Apparently, respondent would like Us to believe that his involvement in this drug case is a petty offense or a mere misdemeanor. However, the Philippine Government views all drug-related cases with grave concern; hence, the enactment of Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act of 1972" and the creation of various drug-enforcement agencies. While We empathize with the innocent portrayal of the respondent as a man of irreproachable conduct, not to mention the numerous written testimonies of good character submitted in his behalf, this incomplete and sanitized representation cannot, however, outweigh our commitment and sworn duty to safeguard public health and public safety. Moreover, while the U.S. Government may not have any law

[40] Letters dated September 19, 2001 and September 20, 2001 of Michael A. Newbill, Vice Consul of the U.S. Embassy in the Philippines, CA *rollo*, pp. 148 and 149.

enforcement interest on respondent, Philippine immigration authorities certainly do in the able and competent exercise of its police powers. Thus, **this case of the respondent is no different from a convicted felon abroad, who argues that he cannot be removed from the Philippines on the ground that the crime was committed abroad. Otherwise, it would open the floodgates to other similarly situated aliens demanding their admission into the country**. Indeed, respondent may not be a menace to the U.S. as a result of his being discharged from criminal liability, but that does not *ipso facto* mean that the immigration authorities should unquestionably admit him into the country.

x x x x x x x x x[41] (Emphasis supplied)

It must be remembered that aliens seeking entry in the Philippines do not acquire the right to be admitted into the country by the simple passage of time. When an alien, such as respondent, has already physically gained entry in the country, but such entry is later found unlawful or devoid of legal basis, the alien can be excluded anytime after it is found that he was not lawfully admissible at the time of his entry.[42] Every sovereign power has the inherent power to exclude aliens from its territory upon such grounds as it may deem proper for its self-preservation or public interest.[43] The power to deport aliens is an act of State, an act done by or under the authority of the sovereign power.[44] It is a police measure against undesirable aliens whose continued presence in the country is found to be injurious to the public good and the domestic tranquility of the people.[45]

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 76578 are *REVERSED and SET ASIDE*. The Judgment dated February 11, 2002 of the Board of Commissioners of the Bureau of Immigration ordering the deportation of respondent

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[41] CA *rollo*, p. 245.

[42] *Board of Commissioners (CID) v. Dela Rosa, supra* note 24, at 896.

[43] *Lao Tan Bun v. Fabre*, 81 Phil. 682 (1948).

[44] *In re McCulloch Dick*, 38 Phil. 41 (1918).

[45] *Forbes v. Chuoco Tiaco*, 16 Phil. 534 (1910).

Christopher Koruga under Section 37(a)(4) of the Philippine Immigration Act of 1940, as amended, is *REINSTATED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166748. April 24, 2009]

LAUREANO V. HERMOSO, as represented by his Attorney-in-Fact FLORIDA L. UMANDAP, *petitioner, vs.* **COURT OF APPEALS and HEIRS OF ANTONIO FRANCIA and PETRA FRANCIA, NAMELY: BENJAMIN P. FRANCIA, CECILIA FRANCIA, AMOS P. FRANCIA, JR., FRANCISCO F. VILLARICA, DANILO F. VILLARICA, RODRIGO F. VILLARICA, MELCHOR F. VILLARICA, JESUS F. VILLARICA, BENILDA F. VILLARICA, and ERNESTO F. VILLARICA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; LANDS OF PUBLIC DOMAIN; CLASSIFICATION.— Section 3, Article XII of the Constitution mandates that alienable lands of the public domain shall be limited to agricultural lands. The classification of lands of the public domain is of two types, *i.e*., primary classification and secondary classification. The primary classification comprises agricultural, forest or timber, mineral lands, and national parks. These are lands specifically mentioned in Section 3, Article XII of the Constitution. The same provision of the Constitution,

however, also states that agricultural lands of the public domain may further be classified by law according to the uses to which they may be devoted. This further classification of agricultural lands is referred to as secondary classification. Under existing laws, Congress has granted authority to a number of government agencies to effect the secondary classification of agricultural lands to residential, commercial or industrial or other urban uses.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; P.D. NO. 27; APPLICABILITY.— The petitioner in the instant case claims that he is entitled to the issuance of an emancipation patent under P.D. No. 27. The said decree promulgated by then President Ferdinand E. Marcos, on October 21, 1972, is entitled, "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISMS THEREFOR". However, the law specifically applied "to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share tenancy or lease tenancy, whether classified as landed estate or not."

3. ID.; ID.; ID.; AGRICULTURAL LAND, DEFINED; AGRICULTURAL ACTIVITY, DEFINED; CASE AT BAR.— For the parcels of land subject of this petition to come within the coverage of P.D. No. 27, it is necessary to determine whether the land is agricultural. Section 3(c) of R.A. No. 6657 defines agricultural land, as follows: (c) Agricultural Land refers to the land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land. and Section 3(b) specifies agricultural activity as: (b) Agriculture, Agriculture Enterprise or Agricultural Activity means cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical. On the basis of these definitions, the subject parcels of land cannot be considered as within the ambit of P.D. No. 27. This considering that the subject lots were reclassified by the DAR Secretary as suited for residential, commercial, industrial or other urban purposes way before petitioner filed a petition for emancipation under P.D. No. 27.

4. ID.; ID.; REPUBLIC ACT NO. 3844 ALREADY AMENDED BY REPUBLIC ACT NO. 6389; CONDITION IMPOSED ON THE LANDOWNER TO IMPLEMENT CONVERSION OF THE AGRICULTURAL LAND TO NON-AGRICULTURAL PURPOSES WITHIN A CERTAIN PERIOD, ALREADY DELETED.— The main contention of petitioner for the approval of the emancipation patent in his favor under P.D. No. 27 is the fact that respondents were not able to realize the actual conversion of the land into residential purposes. To bolster his claim, petitioner relies on Section 36 (1) of R.A. No. 3844. xxx. However, the provision of R.A. No. 3844 had already been amended by R.A. No. 6389, as early as September 10, 1971. Section 36 (1) of R.A. No. 3844, as amended. xxx. Under R.A. No. 6389, the condition imposed on the landowner to implement the conversion of the agricultural land to non-agricultural purposes within a certain period was deleted. With the enactment of the amendatory law, the condition imposed on the landowner to implement the conversion of the agricultural land to a non-agricultural purpose within a certain period was deleted. The remedy left available to the tenant is to claim disturbance compensation.

5. ID.; ID.; COMPREHENSIVE AGRARIAN REFORM LAW; LANDS DEVOTED TO AGRICULTURAL ACTIVITY AND THOSE THAT WERE PREVIOUSLY CONVERTED TO NON-AGRICULTURAL USES ARE OUTSIDE THE COVERAGE THEREOF.— In *Natalia Realty, Inc. v. Department of Agrarian Reform*, the Court held that lands not devoted to agricultural activity and those that were previously converted to non-agricultural uses are outside the coverage of the CARL, *viz.*: We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land*." The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands.*" xxx.

APPEARANCES OF COUNSEL

Wilfredo O. Arceo for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 15, 2004 and the Resolution[2] dated January 19, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 77546.

The case involves parcels of land located at Malhacan, Meycauyan, Bulacan, identified as Lot No. 3257 owned by Petra Francia and Lot 3415 owned by Antonio Francia. The lots comprises an area of 2.5 and 1.5850 hectares, respectively, and forms part of a larger parcel of land with an area of 32.1324 hectares co-owned by Amos, Jr., Benjamin, Cecilia, Petra, Antonio and Rufo, all surnamed Francia.[3]

Since 1978, petitioner and Miguel Banag (Banag) have been occupying and cultivating Lot Nos. 3257 and 3415 as tenants thereof. They filed a petition for coverage of the said lots under Presidential Decree (P.D.) No. 27.[4] On July 4, 1995, the Department of Agrarian Reform (DAR) issued an order granting the petition, the dispositive portion of which reads:

WHEREFORE, foregoing facts and jurisprudence considered, Order is hereby issued:

1. PLACING the subject two (2) parcels of land being tenanted by petitioners Laureano Hermoso and Miguel Banag situated at Malhacan, Meycauayan, Bulacan, owned by Amos Francia, *et al*. under the coverage of Operation Land Transfer pursuant to P.D. 27; and

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[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Regalado E. Maambong and Magdangal M. De Leon concurring; CA *rollo*, pp. 251-270.

[2] *Id.* at 371.

[3] *Rollo*, p. 24.

[4] *Id.* at 24.

2. DIRECTING the DAR personnel concerned to process the issuance of emancipation patents in favor of said Laureano Hermoso and Miguel Banag after a parcellary mapping have been undertaken by the Bureau of Lands over the subject landholdings.

SO ORDERED.[5]

Respondents filed an omnibus motion for reconsideration and reinvestigation. On December 9, 1995, the DAR affirmed with modification the earlier order, and disposed of the case as follows:

WHEREFORE, all premises considered, ORDER is hereby issued AFFIRMING the first dispositive portion of the Order, dated July 4, 1995, issued in the instant case, but MODIFYING the second dispositive portion of the same now to read, as follows:

1. PLACING the subject two (2) parcels of land being tenanted by petitioners Laureano Hermoso and Miguel Banag situated at Malhacan, Meycauayan, Bulacan, owned by Amos Francia, *et al.* under the coverage of Operation Land Transfer pursuant to P.D. 27; and

2. DIRECTING the DAR personnel concerned to hold in abeyance the processing of the emancipation patent of Miguel Banag until the issue of tenancy relationship in DARAB Cases Nos. 424-Bul'92 and 425-Bul'92 is finally resolved and disposed.

No further motion of any and/or the same nature shall be entertained.

SO ORDERED.[6]

In a separate development, petitioner and Banag filed with the Department of Agrarian Reform Adjudication Board (DARAB) consolidated Cases Nos. 424-BUL-92 and 425-BUL-92. The cases delved on whether both petitioner and Banag are tenants of respondents in the subject landholding. On June 3, 1996, the DARAB rendered a Decision[7] upholding the tenancy relationship of petitioner and Banag with the respondents. Respondents filed a motion for reconsideration but the same was denied. A petition

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[5] *Id.* at 25.

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

[7] Penned by DAR Assistant Secretary Lorenzo R. Reyes, with Undersecretary Hector D. Soliman and Assistant Secretaries Augusto P. Quijano and Sergio B. Serrano concurring; *id.* at 59-66.

for review on *certiorari* was filed before the CA. However, the petition was denied on technical grounds in a Resolution[8] dated October 9, 1996. A motion for reconsideration was filed, but the same was likewise denied in a Resolution[9] dated December 27, 1996. The case was eventually elevated to this Court in G.R. No. 127668. On March 12, 1997, the Court denied the petition for lack of verification,[10] and subsequently, also denied the motion for reconsideration in a Resolution[11] dated July 14, 1997.

Earlier, on January 20, 1997, Banag filed before the DAR, an urgent *ex-parte* motion for the issuance of an emancipation patent. On March 13, 1997, the DAR granted the motion.[12] On March 21, 1997, respondents filed a motion for reconsideration. They claimed that the lands involved have been approved for conversion to urban purposes in an Order[13] dated June 5, 1973 issued by the DAR Secretary. The conversion order stated that the Operation Land Transfer (OLT) under Presidential Decree (P.D.) No. 27 does not cover the subject parcels of land.[14] On March 10, 1998, the DAR issued an Order[15] affirming the March 13, 1997 order granting the motion for issuance of emancipation patent in favor of Banag. On March 30, 1998, respondents filed a notice of appeal and correspondingly filed their appeal memorandum.[16] On April 21, 2003, the Office of the President through the Deputy Executive Secretary rendered a Decision[17] denying

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[8] Penned by Associate Justice Portia Alino-Hormachuelos, with Associate Justices Artemon D. Luna and Ramon A. Barcelona concurring; CA *rollo*, pp. 139-141.

[9] *Id.* at 143-145.

[10] *Id.* at 146.

[11] *Id.* at 147.

[12] *Rollo*, pp. 27-28.

[13] Records, pp. 89-91.

[14] *Rollo*, p. 28.

[15] Penned by DAR Secretary Ernesto D. Garilao; *id.* at 53-56.

[16] *Id.* at 29.

[17] Penned by Deputy Executive Secretary Arthur P. Autea; *id.* at 76-79.

respondents' appeal. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the questioned Order dated 10 March 1998 of the DAR Secretary AFFIRMED *in toto*.
>
> Parties are required to INFORM this Office, within five (5) days from notice, of the dates of their receipt of this Decision.
>
> SO ORDERED.[18]

Respondents then filed with the CA a petition for review under Rule 43 of the Rules of Court. They maintained that P.D. No. 27 does not cover the subject parcels of land pursuant to the June 5, 1973 Order of the DAR Secretary reclassifying the lands and declaring the same as suited for residential, commercial, industrial or other urban purposes. Furthermore, the Housing and Land Use Regulatory Board (HLURB) reclassified the lands as early as October 14, 1978.

On October 15, 2004, the CA rendered the assailed Decision,[19] the *fallo* of which reads:

> WHEREFORE, the instant petition is hereby **GRANTED**. Accordingly, the assailed decision of the Office of the President is hereby **REVERSED** and **SET ASIDE**. A new decision is hereby rendered dismissing the Petition for Coverage under P.D. No. 27 filed by respondents [now herein petitioner].
>
> SO ORDERED.[20]

Petitioner filed a motion for reconsideration. On January 19, 2005, the CA rendered the assailed Resolution[21] denying the motion for reconsideration.

Hence, the instant petition.

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[18] *Id.* at 79.

[19] *Supra* note 1.

[20] CA *rollo*, p. 269

[21] *Supra* note 2.

The sole issue in this petition is whether Lot Nos. 3257 and 3415 are covered by P.D. No. 27.

Petitioner avers that the final and executory decision of this Court in G.R. No. 127668 affirming that he is a tenant of the landholding in question entitles him to avail of the right granted under PD 27. In other words, because of the finality of the decision declaring him a tenant of the landholding in question, in effect, the subject lots are considered as agricultural lands and are thus covered by P.D. No. 27. Parenthetically, we take judicial notice of the decision of the Court in G.R. No. 127668, in which the tenancy relationship between petitioner and respondents was upheld. That decision is already final and executory.

Respondents, for their part, claim that the lands were already declared suited for residential, commercial, industrial or other urban purposes in accordance with the provisions of Republic Act (R.A.) No. 3844 as early as 1973. Hence, they are no longer subject to P.D. No. 27.

We resolve to deny the petition.

Section 3, Article XII[22] of the Constitution mandates that alienable lands of the public domain shall be limited to agricultural lands.

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[22] Section 3, Article XII of the Constitution reads in full:

"Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

"Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefore."

The classification of lands of the public domain is of two types, *i.e.*, primary classification and secondary classification. The primary classification comprises agricultural, forest or timber, mineral lands, and national parks. These are lands specifically mentioned in Section 3, Article XII of the Constitution. The same provision of the Constitution, however, also states that agricultural lands of the public domain may further be classified by law according to the uses to which they may be devoted. This further classification of agricultural lands is referred to as secondary classification.[23]

Under existing laws, Congress has granted authority to a number of government agencies to effect the secondary classification of agricultural lands to residential, commercial or industrial or other urban uses.

Thus, Section 65 of R.A. No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988, which took effect on June 15, 1988, explicitly provides:

> Section 65. *Conversion of Lands.*— After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation.

On the other hand, Section 20 of R.A. No. 7160 otherwise known as the Local Government Code of 1991[24] states:

> SECTION 20. *Reclassification of Lands.* —
>
> (a) A city or municipality may, through an ordinance passed by the *sanggunian* after conducting public hearings for the purpose, authorize the reclassification of agricultural lands

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[23] Agrarian Law and Jurisprudence, Department of Agrarian Reform-United Nations Development Programme, 2000 ed., p. 6.

[24] Approved on October 10, 1991.

and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the *sanggunian* concerned: *Provided,* That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to the third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%): *Provided, further,* That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law," shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b) The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c) The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: *Provided,* That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d) Where the approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application

for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

But even long before these two trail-blazing legislative enactments, there was already R.A. No. 3844 or the Agricultural Land Reform Code, which was approved on August 8, 1963, Section 36 of which reads:

SECTION 36. *Possession of Landholding; Exceptions.*— Notwithstanding any agreement as to the period or future surrender, of the land, agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: *Provided,* That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more that five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: *Provided, further,* That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions;

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

The petitioner in the instant case claims that he is entitled to the issuance of an emancipation patent under P.D. No. 27. The said decree promulgated by then President Ferdinand E. Marcos, on October 21, 1972, is entitled, "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISMS THEREFOR". However, the law specifically applied "to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share tenancy or lease tenancy, whether classified as landed estate or not."

For the parcels of land subject of this petition to come within the coverage of P.D. No. 27, it is necessary to determine whether the land is agricultural. Section 3(c) of R.A. No. 6657 defines agricultural land, as follows:

(c) Agricultural Land refers to the land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.

and Section 3(b) specifies agricultural activity as:

(b) Agriculture, Agriculture Enterprise or Agricultural Activity means cultivation of the soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical.

On the basis of these definitions, the subject parcels of land cannot be considered as within the ambit of P.D. No. 27. This considering that the subject lots were reclassified by the DAR Secretary as suited for residential, commercial, industrial or other urban purposes way before petitioner filed a petition for emancipation under P.D. No. 27. The pertinent portions of the June 5, 1973 Order[25] read:

Pursuant to the provisions of Republic Act 3844, as amended, the said requests of the petitioners were referred to the National Planning Commission as well as to the Agrarian Reform Team Leader, Valenzuela, Bulacan for proper investigation.

The National Planning Commission in compliance therewith after due investigation and physical survey of the subject areas, favorably recommended the suitability of the same to residential, commercial, industrial or other urban purposes.

Similarly, the Agrarian Reform Team in Valenzuela, Bulacan after due investigation thereof found the parcels of land subject hereof highly suitable for conversion into urban purposes in view of his findings and verification of the location, facilities necessary for urban development and also, the low agricultural income thereof (unirrigated), of the said land. The Team Leader concerned in his recommendation submitted to this Office made mentioned (sic) that in his declaration of the suitability of the subject properties for urban purposes, he believes that the conformity of the tenants consisting of eleven (11) tenants are no longer needed so long as the petitioners are willing to pay the disturbance compensation as provided for by law. The petitioners manifested to the Team Leader

[25] *Supra* note 13.

concerned their willingness to pay each and every tenant the disturbance compensation according to law. To show further their sincerity to comply with the provisions of the law on disturbance compensation, and to show that their (petitioners) purpose of the instant request is not to evade the provisions of Decree 27, they stated in their letter-request that they will not eject any tenants therefrom, nor dispossessed (sic) them of their landholdings until after they are fully and justly paid the disturbance compensation according to law.

The subject parcels of land are not included in the land transfer operation according to the team's report.

It maybe mentioned in this connection, that from the report of the National Planning Commission submitted to this Office, it appears that the subject properties are strategically located in the urban center of the town of Meycauayan wherein there are already existing developed and occupied residential subdivisions and even low cost housing projects subsidized by funds from government financial institution. Likewise, there are also industrial establishments in its vicinity according to the National Planning Commission's report.

In view of the foregoing, and considering the parcels of land subject hereof to be suited for residential, commercial, industrial or other urban purposes as found and recommended by the National Planning Commission and the Agrarian Reform Team concerned, and considering further that the said parcels of land by reason of their location and the existence of developed and occupied residential subdivisions and industrial establishments in the immediate vicinity maybe considered as one of the possible areas to be reserved for urban development as contemplated in the Letter of Instruction No. 46 of the President, and considering finally, that the right of the agricultural tenants therein will be fully compensated and there will be no ejectment of tenants until after full payment thereof, as manifested by the petitioners, the instant requests of the petitioners should be, as hereby it is, given due course and the parcels of land subject thereof are hereby declared suited for residential, commercial, industrial or other urban purposes in accordance with the provisions of Republic Act 3844, as amended.

It is understood however, that no agricultural tenants and/or lessees shall be ejected from or dispossessed of their landholdings by virtue of this Order not until after they are duly and justly paid the disturbance compensation according to law, the amount of which maybe determined and fixed by the proper court in the absence of any mutual agreement

thereto by and between the agricultural lessees and the owner-petitioners.

SO ORDERED.[26]

The main contention of petitioner for the approval of the emancipation patent in his favor under P.D. No. 27 is the fact that respondents were not able to realize the actual conversion of the land into residential purposes. To bolster his claim, petitioner relies on Section 36 (1) of R.A. No. 3844, *viz*.:

SECTION 36. *Possession of Landholding; Exceptions*. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided; That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: **Provided, further, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions.**

x x x x x x x x x[27]

However, the provision of R.A. No. 3844 had already been amended by R.A. No. 6389, as early as September 10, 1971. Section 36 (1) of R.A. No. 3844, as amended, now reads:

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[26] *Id*.

[27] Section 36 (1), RA No. 3844; emphasis supplied.

SECTION 36. *Possession of Landholding; Exceptions*. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;

x x x x x x x x x[28]

Under R.A. No. 6389, the condition imposed on the landowner to implement the conversion of the agricultural land to non-agricultural purposes within a certain period was deleted. With the enactment of the amendatory law, the condition imposed on the landowner to implement the conversion of the agricultural land to a non-agricultural purpose within a certain period was deleted.[29] The remedy left available to the tenant is to claim disturbance compensation.

In *Natalia Realty, Inc. v. Department of Agrarian Reform*,[30] the Court held that lands not devoted to agricultural activity and those that were previously converted to non-agricultural uses are outside the coverage of the CARL, *viz*.:

We now determine whether such lands are covered by the CARL. Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land," it is referred to as "land devoted to agricultural activity as defined in this Act and *not classified as mineral, forest, residential, commercial or industrial land*." The deliberations of the Constitutional

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[28] Section 36 (1), RA No. 3844, as amended by RA No. 6389.

[29] *De Guzman v. Court of Appeals*, G.R. No. 156965, October 12, 2006, 504 SCRA 238, 249.

[30] G.R. No. 103302, August 12, 1993, 225 SCRA 278.

Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands.*"

Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as "agricultural lands." These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation. Even today, the areas in question continued to be developed as a low-cost housing subdivision, albeit at a snail's pace. This can readily be gleaned from the fact that SAMBA members even instituted an action to restrain petitioners from continuing with such development. The enormity of the resources needed for developing a subdivision may have delayed its completion but this does not detract from the fact that these lands are still residential lands and outside the ambit of the CARL.[31]

WHEREFORE, in view of the foregoing, the instant petition is *DENIED* for lack of merit. The Decision dated October 15, 2004 and the Resolution dated January 19, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 77546 are hereby affirmed. The case is remanded to the Provincial Agrarian Reform Adjudicator of Bulacan for the proper computation of the disturbance compensation of petitioner.

SO ORDERED.

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

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[31] *Id.* at 282-283; citing *Luz Farms v. Secretary of the Department of Agrarian Reform,* G.R. No. 86889, December 4, 1990, 192 SCRA 51, 57.

THIRD DIVISION

[G.R. No. 168734. April 24, 2009]

MARCELINO LOPEZ, FELISA LOPEZ, LEONARDO LOPEZ, and ZOILO LOPEZ, *petitioners, vs.* **JOSE ESQUIVEL, JR. and CARLITO TALENS,** *respondents.*

[G.R. No. 170621. April 24, 2009]

NOEL RUBBER & DEVELOPMENT CORP. doing business under the name of "NORDEC PHIL." and DR. POTENCIANO MALVAR, *petitioners, vs.* **JOSE ESQUIVEL, JR., CARLITO TALENS, MARCELINO LOPEZ, FELISA LOPEZ, LEONARDO LOPEZ, ZOILO LOPEZ, ATTY. SERGIO ANGELES, ATTY. GEORGE A. ANG CHENG, and THE REGISTER OF DEEDS OF MARIKINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; LAW OF THE CASE; EXPLAINED.— ***Law of the case*** **has been defined as the opinion delivered on a former appeal**. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. **It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case**, whether or not correct on general principles, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Thus, the court reviewing the succeeding appeal will not re-litigate the case but instead apply the ruling in the previous appeal. This enables the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case and upon any and subsequent appeals.

2. ID.; ID.; ID.; APPLICABLE ONLY IN THE SAME CASE BETWEEN THE SAME PARTIES.— Given the foregoing, it is apparent that the Decisions of this Court in *Santos*, *Cabuay*, and *Lopez*, cited by the Lopez siblings in their instant Petition, cannot be regarded as the law of the case herein. The law of the case applies only when (1) a question is passed upon by an appellate court, and (2) the appellate court remands the case to the lower court for further proceedings; the lower court and even the appellate courts on subsequent appeal of the case are, thus, bound by how such question had been previously settled. It must be emphasized, therefore, that the law of the case finds application only **in the same case between the same parties**.

3. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT (C.A. NO. 141), AS AMENDED; PROHIBITION ON ENCUMBRANCE OR ALIENATION OF ANY HOMESTEAD PATENT.— Section 118 of the Public Land Act, as amended, prohibits any encumbrance or alienation of lands acquired under homestead provisions from the date of the approval of application and for a term of five years from and after the date of issuance of the patent or grant. The same provision provides that no alienation, transfer, or conveyance of any homestead after five years and before 25 years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds. In this case, the subject property was included, whether correctly or erroneously, in the 19.4888-hectare land awarded to Hermogenes, by virtue of a homestead patent, issued on **7 February 1939**. The Quitclaim over the subject property, a 2.6950-hectare portion of the said 19.4888-hectare land, was executed by Hermogenes in Hizon's favor on **29 November 1965**. Between the date of issuance of the homestead patent to Hermogenes and that of the execution of the Quitclaim, more than **26 years** had passed. Therefore, the execution of the Quitclaim was no longer within the five-year period within which the land covered by the homestead patent issued to Hermogenes must not be encumbered or alienated; and was also beyond the period between five and 25 years following the issuance of patent within which approval of the Secretary of Environment and Natural Resources is still necessary to make the alienation or encumbrance valid.

4. ID.; ID.; ID.; THE APPROVAL OF THE SURVEY PLAN AND THE GRANT OF HOMESTEAD PATENT BY THE DIRECTOR OF LANDS AND THE BUREAU OF LANDS ENJOY THE PRESUMPTION OF REGULARITY.— It is worthy to note, however, that the subject property was part of the 19.4888-hectare land covered by the homestead patent awarded by the Bureau of Lands to Hermogenes. The 19.4888-hectare land was identified and measured in a survey conducted by a government surveyor and the resulting plan H-138612 was approved by the Director of Lands. The approval of survey plan H-138612 and the grant of the homestead patent over the 19.4888-hectare land in favor of Hermogenes, performed as part of the official functions of the Director of Lands and the Bureau of Lands, enjoy the presumption of regularity. Reasonable doubt is thus cast on the supposed mistake which resulted in the inclusion of the subject property in the 19.4888-hectare land awarded to Hermogenes by virtue of the homestead patent.

5. ID.; ID.; ID.; PROPERTY ERRONEOUSLY INCLUDED IN THE HOMESTEAD PATENT AWARDED TO THE PARTY MUST BE RETURNED TO THE STATE.— Even assuming that the homestead patent awarding the 19.4888-hectare land to Hermogenes did erroneously include the subject property, Hermogenes could not simply convey said property to Hizon, nor could Hizon easily recover the same, by virtue of a mere Quitclaim. Lands acquired under homestead patents come from the public domain. If the subject property was erroneously included in the homestead patent awarded to Hermogenes, then the subject property must be returned to the State and not to Hizon. Furthermore, the survey plan conducted and homestead patent issued in Hermogenes' name covered a 19.4888-hectare land; to exclude therefrom the 2.6950-hectare subject property (since it purportedly belonged to Hizon) would mean that Hermogenes actually acquired land with an area less than what he was awarded under the homestead patent. This complication reveals that any alleged mistake as regards the subject property is not a simple and private matter between Hermogenes and Hizon; but is primarily a problem between Hermogenes and the State, the latter having awarded the 19.4888-hectare land to the former by virtue of the homestead patent.

6. ID.; ID.; ID.; HOMESTEAD PATENT; RESIDENCY AND CULTIVATION REQUIREMENTS FOR HOMESTEAD GRANT; CASE AT BAR.— A homestead patent is one of the modes to acquire title to public lands suitable for agricultural purposes. Under the Public Land Act, as amended, a homestead patent is one issued to any citizen of this country, over the age of 18 years or the head of a family, who is not the owner of more than 24 hectares of land in the country. To be qualified, the applicant must show that he has resided continuously for at least one year in the municipality where the land is situated and must have cultivated at least one-fifth of the land applied for. In this case, the Bureau of Lands approved Hermogenes' application for homestead patent over the 19.4888-hectare land after finding him qualified for the same. In contrast, the only evidence supporting Hizon's claim to the subject property was the Quitclaim. There is no other proof that Hizon possessed, cultivated, and introduced improvements on the subject property. Neither is there any showing that after the execution of the Quitclaim, Hizon himself applied for a homestead patent over the subject property. In fact, it is undisputed that the subject property has always been in the possession of Hermogenes, then the Lopez Siblings. Hizon and Esquivel and Talens never came into the possession of the subject property even after the execution of the supposed deeds of conveyance in their favor.

7. ID.; ID.; ID.; ID.; THE APPLICANT MUST PERSONALLY COMPLY WITH THE LEGAL REQUIREMENTS FOR A HOMESTEAD GRANT.— The Court also cannot consider the subject property to have been held in trust by Hermogenes for and on behalf of Hizon. Settled is the rule that a homestead applicant must personally comply with the legal requirements for a homestead grant. The homestead applicant himself must possess the necessary qualifications, cultivate the land, and reside thereon. It would be a circumvention of the law if an individual were permitted to apply "in behalf of another," as the latter may be disqualified by or might not comply with the residency and cultivation requirements.

8. ID.; LACHES; DEFINED; DOCTRINE APPLIED AGAINST THE PRIVATE RESPONDENTS IN CASE AT BAR.— Even granting *arguendo,* that the Quitclaim is valid and transferred

ownership of the subject property from Hermogenes to Hizon, the latter and his successors-in-interest, Esquivel and Talens, are now barred by the statute of limitations and laches from asserting their rights to the subject property, after failing to exercise the same for an unreasonable length of time. *Laches* has been defined as the failure of or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it. Thus, the doctrine of laches presumes that the party guilty of negligence had the opportunity to do what should have been done, but failed to do so. In the instant case, when Esquivel and Talens filed with the RTC their application for registration of the subject property on 5 March 1993, **28 years** had passed since the execution by Hermogenes of the Quitclaim covering the subject property in favor of Hizon on 29 November 1965; and **25 years** elapsed from the execution by Hizon of the Deed of Absolute Sale of the subject property in favor of Esquivel and Talens on 26 August 1968. During these periods, without providing any reasons therefor, neither Hizon nor Esquivel and Talens took possession of the subject property or exercised in any other way their rights over the same.

9. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR RELIEF FROM JUDGMENT; AVAILABLE ONLY TO PARTIES IN THE PROCEEDINGS WHERE THE ASSAILED JUDGMENT IS RENDERED.— The ordinary remedies of a motion for new trial or reconsideration and a petition for relief from judgment are remedies available only to parties in the proceedings where the assailed judgment is rendered. In fact, it has been held that a person who was never a party to the case, or even summoned to appear therein, cannot make use of a petition for relief from judgment. Indubitably, Nordec Phils. and Dr. Malvar cannot avail themselves of the aforesaid ordinary remedies of motion for new trial, petition for relief from judgment, or appeal, because they were not parties to the proceedings in Civil Case No. 96-4193 in which the RTC Decision dated 11 January 2001 sought to be annulled was rendered. Nordec Phils. and Dr. Malvar also cannot seek the annulment of the 11 January 2001 Decision of the RTC in Civil Case No. 96-4193.

10. ID.; ID.; ANNULMENT OF JUDGMENT; WHEN AVAILABLE; A PERSON NEED NOT BE A PARTY TO THE JUDGMENT SOUGHT TO BE ANNULLED; IT IS ESSENTIAL THAT HE MUST PROVE THAT THE JUDGMENT WAS OBTAINED BY THE USE OF FRAUD AND COLLUSION AND HE WOULD BE ADVERSELY AFFECTED THEREBY.— An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered. The purpose of such action is to have the final and executory judgment set aside so that there will be a renewal of litigation. It is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process. A person need not be a party to the judgment sought to be annulled, and it is only essential that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and he would be adversely affected thereby.

11. ID.; ID.; ANNULMENT OF JUDGMENT ON GROUND OF FRAUD; LIES ONLY IF THE FRAUD IS EXTRINSIC OR COLLATERAL IN CHARACTER.— An action to annul a final judgment on the ground of fraud lies only if the fraud is extrinsic or collateral in character. Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.

12. ID.; ID.; ID.; LIES ONLY IF THE JUDGMENT SOUGHT TO BE SET ASIDE IS FINAL AND EXECUTORY.— It is, thus, settled that the purpose of a Petition for Annulment of Judgment is to have the final and executory judgment set aside so that there will be a renewal of litigation. If the judgment sought to be annulled, as in this case, is still on appeal or under review by a higher court, it cannot be regarded as final, and there can be no renewal of litigation because the litigation is actually still open and on-going. In this light, the arguments

of Nordec Phil. and Dr. Malvar that the judgments or final orders need not be final and executory for it to be annulled must fail. This Court, therefore, finds no error in the dismissal by the Court of Appeals of the Petition for Annulment of Judgment filed by Nordec Phil. and Dr. Malvar, on the ground of prematurity. Given that the 11 January 2001 Decision of the RTC in Civil Case No. 96-4193 was still pending appeal before this Court, the Court of Appeals could not take cognizance of the Petition for annulment of the same judgment, for if it had done so, then it would risk promulgating a ruling which could be contrary to and inconsistent with the ruling of this Court on the appeal of the judgment.

APPEARANCES OF COUNSEL

Angeles and Associates for Marcelino Lopez, *et al.*

Felino M. Ganal for Noel Rubber & Development Corp. and Dr. Potenciano Malvar.

George Ang Cheng for himself and for private respondents Jose Esquivel & Carlito Talens.

Paño Gonzales Relova & Associates for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court are two consolidated[1] Petitions for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure.

The petitioners in **G.R. No. 168734**, namely, Marcelino, Felisa, Leonardo and Zoilo, all surnamed Lopez (Lopez siblings), seek to reverse and set aside the Decision[2] dated 14 February 2005 and Resolution[3] dated 27 June 2005 of the Court of Appeals in CA-

[1] Per Resolution dated 20 March 2006, *rollo* (G.R. No. 168734), pp. 180-182.

[2] Penned by Associate Justice Vicente Q. Roxas with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring; *rollo* (G.R. No. 168734), pp. 27-35.

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

G.R. CV No. 70200. In its assailed Decision, the appellate court affirmed *in toto* the Decision[4] dated 11 January 2001 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Civil Case No. 96-4193, which (1) ordered the Lopez siblings to vacate and to convey to Jose Esquivel, Jr. (Esquivel) and Carlito Talens (Talens) a parcel of land, measuring 2.6950 hectares, situated in Barrio dela Paz, Antipolo, Rizal[5] (subject property); and (2) directed the Register of Deeds of Marikina, Metropolitan Manila,[6] to divest the Lopez siblings of their title over the subject property and to issue title over the same property in the names of Esquivel and Talens. In its assailed Resolution, the appellate court denied for lack of merit the Motion for Reconsideration of the Lopez siblings.

On the other hand, Noel Rubber and Development Corporation (Nordec Phil.) and Dr. Potenciano Malvar (Dr. Malvar), the petitioners in **G.R. No. 170621**, pray for the setting aside of the Resolutions dated 6 October 2005[7] and 16 November 2005[8] of the Court of Appeals in CA-G.R. SP No. 91428. The Court of Appeals, in its questioned Resolution dated 6 October 2005, dismissed for prematurity the Petition for Annulment of Judgment filed by Nordec Phil. and Dr. Malvar under Rule 47 of the 1997 Revised Rules of Civil Procedure, assailing the RTC Decision dated 11 January 2001 in Civil Case No. 96-4193, as they were not impleaded in said case, neither as indispensable nor necessary parties. The appellate court, in its other questioned Resolution dated 16 November 2005, denied the Motion for Amendment and/or Reconsideration of Nordec Phil. and Dr. Malvar.

The antecedent facts of both Petitions are recounted as follows:

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[4] Penned by Executive Judge Mauricio M. Rivera, *id.* at 117-123.

[5] Now Antipolo City.

[6] Now Marikina City.

[7] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring, *rollo* (G.R. No. 170621), pp. 684-685.

[8] *Id.* at 699-700.

G.R. No. 168734

Hermogenes Lopez (Hermogenes) was the father of the Lopez siblings. During Hermogenes' lifetime, he applied with the Bureau of Lands for a homestead patent over a parcel of land, with an area of 19.4888 hectares, located in Barrio dela Paz, Antipolo, Rizal. Hermogenes' application was docketed as Homestead Patent No. 138612. After ascertaining that the land was free from claim of any private person, the Bureau of Lands approved Hermogenes' application. In 1939, Hermogenes submitted his final proof of compliance with the residency and cultivation requirements of the Public Land Act. As a matter of course, the aforesaid parcel of land was surveyed by a government surveyor and the resulting plan H-138612 was approved by the Director of Lands on 7 February 1939. The Director of Lands, thereafter, ordered the issuance of the homestead patent in Hermogenes' name. The patent was subsequently transmitted to the Register of Deeds of Rizal for transcription and issuance of the corresponding certificate of title[9] in Hermogenes' name.[10]

Unaware that he had already been awarded a homestead patent over the 19.4888-hectare land, Hermogenes sold[11] the same to

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[9] Originally registered on 31 August 1944 as Original Certificate of Title No. P-736 pursuant to a homestead patent in the name of Hermogenes Lopez, Records, Volume II, p. 20.

[10] *Lopez v. Court of Appeals*, 446 Phil. 722 (2003).

[11] Prior to the execution of the Deed of Absolute Sale dated 31 July 1959, Hermogenes applied with the Land Registration Commission for the registration of the said 19.4888-hectare land in his name on 16 July 1959. This was docketed as LRC Case No. 2531. To his surprise, he found that the land was already registered in the names of Fernando Gorospe, Salvador de Tagle, Rosario de Tagle, Beatriz de Suzuarrequi, and Eduardo Santos (Gorospe, *et al.*), who collectively opposed his application.

Consequently, in December 1959, Hermogenes filed before the Court of First Instance (CFI) of Rizal a complaint for the annulment of the free patent and title of Gorospe, *et al.*, which was docketed as Civil Case No. 5957. Gorospe, *et al.* moved for the dismissal of Civil Case No. 5957 alleging that Hermogenes was not a real party in interest since he previously sold his right to the land to Ambrocio on 31 July 1959. Thus, Civil Case No. 5957 was dismissed.

Ambrocio Aguilar (Aguilar) by virtue of a Deed of Absolute Sale[12] dated 31 July 1959.

Years later, it was allegedly discovered that the subject property, with an area of 2.6950 hectares, was erroneously included in survey plan H-138612 of Hermogenes' property. The subject property supposedly formed part of the land owned by Lauro Hizon (Hizon), which adjoined that of Hermogenes. Resultantly, on 29 November 1965, Hermogenes executed a Quitclaim[13] over his rights and interests to the subject property[14] in Hizon's favor. Hizon, in turn, sold the subject property to Esquivel and Talens, as evidenced by a Deed of Absolute Sale of Unregistered Land[15] dated 26 August 1968.

Hermogenes died[16] on 20 August 1982. The Lopez siblings, as Hermogenes' heirs, filed an action with the RTC of Antipolo,

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Ambrocio instituted on 18 November 1976 a new civil action before the CFI of Rizal, docketed as Civil Case No. 24873. It was similar to Civil Case No. 5957 except for the change in plaintiff and the addition of the Bureau of Lands as co-defendant. On 15 April 1982, the CFI recognized Ambrocio the absolute owner of the 19.4888-hectare lot and declared OCT No. 537 and all subsequent certificates of title emanating therefrom (including those of Gorospe, *et al.*) void *ab initio*. This judgment of the CFI was affirmed *in toto* by the Court of Appeals in a Decision dated 18 August 1987; which was, in turn, affirmed by this Court in its Decision dated 13 September 1990 in G.R. No. 90380 (*Lopez v. Court of Appeals*, *id.*).

[12] Records, Volume I, pp. 60-62.

[13] Hermogenes waived and quitclaimed his rights, shares, interests, or participations over the subject property in favor of Lauro through the execution of the aforesaid Quitclaim because when the latter allegedly caused the survey of his land bordering that of Hermogenes, it was found out that the subject property, which is supposedly part of the land of Lauro, was included in Hermogenes property denominated as plan H-138612.

[14] On the basis of the Quitclaim executed by Hermogenes Lopez in favor of Lauro Hizon and the Deed of Absolute Sale of Unregistered Land executed by Hizon in favor of Esquivel and Talens, the subject property has an area of 37,978 square meters. However, as per technical descriptions of Lot 9181 of plan As-04-002615 Cad-29 Ext. Antipolo Cadastre, the accurate measurement of the subject property is only 26,950 square meters (*See* Records, Volume I, p. 7).

[15] Records, Volume I, p. 6.

[16] Evidenced by a Death Certificate, Records, Volume II, p. 33.

Rizal, Branch 71, for the cancellation of the Deed of Absolute Sale dated 31 July 1959, executed between Hermogenes and Aguilar, and which involved the entire 19.4888-hectare land. It was docketed as **Civil Case No. 463-A**. In a Decision[17] dated 5 February 1985, the RTC declared the aforesaid Deed of Absolute Sale null and void *ab initio* as it was made in violation of Section 118 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended. The said RTC Decision was affirmed *in toto* by the Court of Appeals in its Decision[18] dated 18 August 1987 in **CA-G.R. CV No. 06242**. In a Resolution[19] dated 13 April 1988, this Court denied Aguilar's appeal, docketed as **G.R. No. 81092**, for being filed late.

On 4 March 1993, on the basis of the Deed of Absolute Sale of Unregistered Land dated 26 August 1968 executed by Hizon in their favor, Esquivel and Talens filed an Application for Registration of the subject property with the RTC of Antipolo, Rizal, Branch 73. It was docketed as **LRC Case No. 93-1211**. The Lopez siblings filed an opposition to the application in LRC Case No. 93-1211, asserting, among other grounds, that: (1) they did not know the persons and personal circumstances of Esquivel and Talens who were not the former's adjoining property owners; (2) the subject property, which Esquivel and Talens sought to have registered, was already titled under the Torrens system and covered by Transfer Certificates of Title (TCT) No. 207990 to No. 207997[20] in the names of the Lopez siblings; and (3) Tax Declaration No. 04-10304 of Esquivel and Talens covering the subject property was spurious. The Lopez siblings also moved for the dismissal of LRC Case No. 93-1211 invoking the final and executory Decision[21] dated 5 February 1985 of

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[17] Penned by Executive Judge Antonio V. Benedicto, *rollo* (G.R. No. 168734), pp. 54-65.

[18] Penned by Associate Justice Celso L. Magsino with Associate Justices Jose A. R. Melo (now a retired member of this Court) and Esteban M. Lising, concurring. *Rollo* (G.R. No. 168734), pp. 66-70.

[19] *Rollo* (G.R. No. 168734), p. 71.

[20] Records, Volume I, pp. 8-22.

[21] Penned by Executive Judge Antonio V. Benedicto, *rollo* (G.R. No. 168734), pp. 54-65.

the RTC of Antipolo, Rizal, Branch 71, in Civil Case No. 463-A, which affirmed Hermogenes' title to the 19.4888-hectare land, that included the subject property.

The RTC rendered its Decision[22] on 4 April 1995 in LRC Case No. 93-1211, granting the Application for Registration of the subject property filed by Esquivel and Talens. Accordingly, the Lopez siblings filed a Motion for Reconsideration of the said RTC judgment. Acting on the Motion of the Lopez siblings, the RTC issued an Order[23] dated 23 May 1996 in which it corrected several errors in its earlier decision, *i.e.*, a typographical error on the area of the subject property, and a mistake in the conversion of the area of the subject property from square meters to hectares. The RTC also stated in the same Order that it could not direct the amendment of the TCTs in the names of the Lopez siblings, to exclude therefrom the subject property which was adjudged to Esquivel and Talens, as the RTC was sitting only as a land registration court. The RTC, thus, advised Esquivel and Talens to file an action for reconveyance of the subject property and only when Esquivel and Talens would succeed in such action could they subsequently cause the registration of the subject property in their names.

Following the advice of the RTC, Esquivel and Talens filed with the RTC of Antipolo, Rizal, Branch 73, on 2 October 1996, a Complaint[24] for Reconveyance and Recovery of Possession of the subject property against the Lopez siblings. The case was docketed as **Civil Case No. 96-4193**.

In their Complaint, Esquivel and Talens alleged that when the Lopez siblings had the land they inherited from Hermogenes registered, they included the subject property, which Hermogenes already conveyed to Hizon in the Quitclaim dated 29 November 1965. Hence, the subject property was erroneously included in TCTs No. 207990 to No. 207997, issued by the Register of Deeds of Marikina, Metro Manila, in the names of

[22] Penned by Judge Mauricio M. Rivera, Records, Volume I, pp. 23-38.

[23] *Id.* at 39-41.

[24] *Rollo* (G.R. No. 168734), pp. 107-109.

the Lopez siblings. The subject property is presently occupied and in the physical possession of the Lopez siblings.[25]

In their Answer with Compulsory Counterclaim, the Lopez siblings denied all the allegations of Esquivel and Talens. As their special defenses, the Lopez siblings called attention to the non-compliance by Esquivel and Talens with Section 5, Rule 7 of the 1997 Revised Rules of Civil Procedure, on non-forum shopping, considering that there was another case before the RTC of Antipolo, Rizal, Branch 71,[26] also involving the subject property and the issues on the genuineness and validity of the Deed of Absolute Sale of Unregistered Land dated 26 August 1968, executed by Hizon in favor of Esquivel and Talens. The Lopez siblings further averred that the cause of action of Esquivel and Talens was already barred by the statute of limitations and laches since they failed to assert their alleged rights to the subject property for 25 years.[27] The Lopez siblings additionally interposed that the Quitclaim involving the subject property, invoked by Esquivel and Talens, was ineffective, because by the time it was executed by Hermogenes in favor of Hizon on 29 November 1965, Hermogenes had already sold his entire 19.4888-hectare land, of which the subject property was part, to Aguilar on 31 July 1959. The Lopez siblings finally argued that the said Quitclaim was a nullity as it contravened Section 17[28] of the Public Land Act, as amended.[29]

[25] *Id.* at 108.

[26] The case was for Quieting of Title and Damages entitled, *Angelina Villarosa Hizon, Heirs of Lauro Hizon and Sergio F. Angeles v. Carlito Talens and Jose Esquivel, Jr.*, which was docketed as Civil Case No. 95-3693, Records, Volume I, pp. 53-59.

[27] Twenty-five years had lapsed since Esquivel and Talens purportedly purchased the subject property from Hizon in 1968, until they filed with the RTC their application for registration of the said property (LRC Case No. 93-1211) in 1993.

[28] **SECTION 17.** Before final proof shall be submitted by any person claiming to have complied with the provisions of this Chapter, due notice, as prescribed by the Secretary of Agriculture and Natural Resources, shall be given to the public of his intention to make such proof, stating therein the name and address of the homesteader, the description of the land, within its boundaries and area, the names of the witness by whom it is expected that the necessary facts will be established, and the time and place at which, and the name of the officer before whom, such proof will be made.

[29] *Rollo* (G.R. No. 168734), pp. 110-113.

On 11 January 2001, the RTC rendered a Decision in Civil Case 96-4193, granting the prayer of Esquivel and Talens for the reconveyance and recovery of possession of the subject property. The RTC held that the Deed of Absolute Sale dated 31 July 1959 between Hermogenes and Aguilar was already declared null and void *ab initio* by a court of competent jurisdiction. Therefore, the Lopez siblings were estopped from asserting said Deed to defeat the rights of Esquivel and Talens to the subject property. The RTC also ruled that Esquivel and Talens were not guilty of laches because as early as 1986, they had declared the subject property in their names for taxation purposes. Moreover, in 1993, Esquivel and Talens filed before the RTC an application for registration of the subject property, LRC Case No. 93-1222, where they obtained a favorable judgment. The RTC lastly found that the action for reconveyance of Esquivel and Talens was not yet barred by prescription as it was instituted within the 30-year prescriptive period.

The Lopez siblings filed an appeal of the aforementioned RTC Decision to the Court of Appeals, docketed as **CA-G.R. CV No. 70200**.

In their Appellants' Brief, the Lopez siblings assigned the following errors:

1. The trial court presided by Judge Mauricio M. Rivera erred in failing to dismiss this case for reconveyance on the grounds of: (a) prescription of action; and (b) laches;

2. [Hermogenes] was no longer the owner of the property when he executed the [quitclaim] dated [29 November 1965] because of the previous sale to third party on [31 July 1959];

3. There was (sic) no prior records in the Bureau of Lands or in the assessor's office that [Hizon], the predecessor-in-interest of the [Esquivel and Talens] is a landholder or a previous tax declarant;

4. The court *a quo* thru the same judge indiscreetly based primarily the appealed decision on its erroneous findings and conclusions in LRC Case No. 93-1211 contrary to the findings and conclusions of this Honorable Court among

> others in CA G.R. CV No. 07745, entitled *Ambrocio Aguilar v. Heirs of Fernando Gorospe, et al*. promulgated on 31 August 1989; in CA G.R. CV No. 06242, entitled *Marcelino Lopez, et al. v. Sps. Ambrocio [Aguilar] and Pelagia Viray* promulgated on 18 August 1987; and the findings and conclusions of the Supreme Court in G.R. No. 90380 entitled *Santos v. Court of Appeals* promulgated on 13 September 1990 among others.
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> 5. Having already erred in favor of the [Esquivel and Talens], the same presiding judge of the trial court erringly proceeded to conduct hearing and to decide this case despite the consolidation of Civil Case No. 95-3693 entitled *Angelina Hizon, et al. v. Carlito Talens, et al.*, involving the same subject property and the efficacy and validity of the [quitclaim] solely relied upon by the [Esquivel and Talens].[30]

On 14 February 2005, the Court of Appeals rendered its Decision dismissing the appeal of the Lopez siblings and affirming *in toto* the RTC Decision dated 11 January 2001. The appellate court ruled that the Lopez siblings were barred by the doctrine of estoppel *in pais* from challenging the Quitclaim executed by Hermogenes over the subject property in favor of Hizon on 29 November 1965 on the ground that Hermogenes no longer owned the subject property at that time. The Lopez siblings themselves, as Hermogenes' heirs, filed with the RTC Civil Case No. 463-A for the cancellation of the Deed of Absolute Sale involving the 19.4888-hectare land (which included the subject property), executed by Hermogenes in favor of Aguilar on 31 July 1959. The Lopez siblings obtained a favorable judgment in Civil Case No. 463-A as the RTC therein declared void *ab initio* the aforesaid Deed of Absolute Sale. Hence, the Lopez siblings are now estopped from asserting the validity of the same Deed of Absolute Sale so as to void or nullify the Quitclaim executed by Hermogenes in favor of Aguilar, on which Esquivel and Talens based their claim to the subject property. Any deviation by the Lopez siblings from their previous position would definitely cause injury and prejudice to Esquivel and Talens, who acted relying on the knowledge that the previous sale between

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[30] CA *rollo* (CA-G.R. CV No. 70200), pp. 163-164.

Hermogenes and Aguilar of the land, which included the subject property, was already adjudged void *ab initio*. The Lopez siblings, moreover, were only subrogated to whatever rights and interests their father Hermogenes still had over the subject property upon the latter's death in 1982. They were, thus, bound by the Quitclaim Hermogenes executed in 1965 involving the subject property.[31]

The Motion for Reconsideration of the aforesaid Decision filed by the Lopez siblings was denied by the Court of Appeals in a Resolution dated 27 June 2005.

The Lopez siblings are presently before this Court seeking the resolution of the following issues:

> I. Whether or not the [Court of Appeals] erred in applying the rule of estoppel in disregard of the law of the case doctrine (a) in the Decision promulgated on [13 September 1990] in G.R. No. 90380 entitled *Eduardo Santos v. The Honorable Court of Appeals*; (b) in the Decision ***[E]n [B]anc*** promulgated on [24 September 2002] in G.R. No. 123780, entitled *In Re: Petition Seeking for Clarification as to the Validity and Forceful Effect of Two (2) Final and Executory but conflicting Decisions of [this Court] Col. Pedro Cabuay, Jr. v. Marcelino Lopez, et al*; and (c) in the Decision promulgated on [5 March 2003] in G.R. No. 127827 entitled "*Eleuterio Lopez, et al. v. The Hon. Court of Appeals, Spouses Marcelino Lopez and Cristina Lopez, et al.*";
>
> II. Whether or not the [appellate court] was correct in applying the rule of ***estoppel in pais*** in disregard of the peremptory and [personal-to-the-applicant's-homestead] provisions of the Public Land Law or Commonwealth Act 141, as amended;
>
> III. Are the [Esquivel and Talens] and their predecessor-in-interest barred by the statute of limitations?
>
> IV. Are the [Esquivel and Talens] and their predecessor-in-interest guilty of laches?
>
> V. The quitclaim relied upon by [Esquivel and Talens] is intrinsically void and has violated the provisions of the Public Land Law.[32]

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[31] *Rollo* (G.R. No. 168734), pp. 33-34.

[32] *Id.* at 201-202.

The Lopez siblings aver that a deeper analysis of the assailed Decision of the Court of Appeals will reveal the latter's utter disregard for or deviation from the law of the case set by this Court in its Decisions in *Santos v. Court of Appeals*,[33] *Group Commander, Intelligence & Security Group, Philippine Army v. Dr. Malvar*,[34] and *Lopez v. Court of Appeals*,[35] where the issue on the validity of the homestead patent granted to Hermogenes, father of the Lopez siblings, was already passed upon. In these three Decisions, the Court already declared the homestead patent awarded to Hermogenes valid. Therefore, the Court of Appeals erred in applying the rule on estoppel in disregard of the doctrine of law of the case.

The Lopez siblings further argue that the assailed Decision of the Court of Appeals runs counter to the "personal-to-the-homestead-applicant" policy[36] provisions embodied in Sections 12, 13, and 17 of the Public Land Act, as amended, that this Court upheld in *Santos*, *Cabuay*, and *Lopez*. The Court precisely disregarded the rule on estoppel *in pais* or the principle of trust in said three cases as it had no room for application under the tenor or context of the mandatory personal-to-the-homestead-applicant policy provisions of the Public Land Act, as amended. It was, thus, erroneous for the appellate court to apply estoppel *in pais* in ruling against the Lopez siblings in its assailed judgment.

The Lopez siblings additionally avow that in the proceedings conducted on Hermogenes' homestead application by the Bureau of Lands, it was verified that the land applied for, which included the subject property, was disposable public land. If it was true that the subject property was only erroneously included in the homestead patent awarded to Hermogenes, then such an award

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[33] G.R. No. 90380, 13 September 1990, 189 SCRA 550.

[34] 438 Phil. 252 (2002).

[35] *Supra* note 10.

[36] This means that a homestead applicant must personally comply with the legal requirements for a homestead grant. He must possess the necessary qualifications. He must cultivate the land and reside on it himself. The applicant cannot apply for and on behalf of another as the latter may be disqualified or might not comply with the residency and cultivation requirements.

could only be challenged by the government in an action for reversion under Section 101 of the Public Land Act, as amended; or objected to by a private person under Section 102 of the same statute. Resultantly, Esquivel and Talens could not have availed themselves of the recourse prescribed by Section 38[37] of Act No. 496, otherwise known as the Land Registration Act, in their action for reconveyance of the subject property. Section 38 of the Land Registration Act may only be availed of by an aggrieved owner whose property was fraudulently included in a decree of registration. A decree of registration under the Land Registration Act merely confirms, but does not confer, ownership over private land so as to bring it under the operation of the Torrens system. The remedies provided under Sections 101 and 102 of the Public Land Act, on one hand, and Section 38 of the Land Registration Act, on the other, are exclusive of each other, considering the basic distinction in the subject matters thereof, *i.e.*, the award or grant of public land in the former, and the registration of private land in the latter.

The Lopez siblings also maintain that Hizon, predecessor-in-interest of Esquivel and Talens, who claimed ownership over the subject property, was duty bound to exercise the diligence

[37] SEC. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, x x x subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal herein before provided; x x x But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. x x x (As amended by Section 3, Act 3621; and Sec. 1, Act No. 3630).

of a good father of the family by opposing or taking exception to Hermogenes' homestead application, which included said property. Even after the homestead patent over the subject property was already awarded to Hermogenes, Hizon still had opportunity to protest the same before the Bureau of Lands, prior to the registration of said homestead patent with the Register of Deeds. For failing to take appropriate actions, Hizon, and his successors-in-interest, Esquivel and Talens, are now barred from doing so by the statute of limitations and laches.

Finally, the Lopez siblings assert that the reliance by the Court of Appeals on the legal efficacy of the Quitclaim, involving the subject property executed by Hermogenes in favor of Hizon, is misplaced. The reason for the renunciation, waiver, or repudiation by Hermogenes of his rights to the subject property in Hizon's favor, as stated in the said Quitclaim, is not a recognized cause or consideration for conveyance of a parcel of land subject of a homestead patent under the prohibitive and mandatory provisions of the Public Land Act, as amended. Moreover, whatever efficacy the Quitclaim had was already barred by the ruling of this Court *en banc* in *Cabuay* and *Lopez*.

The instant Petition is meritorious.

Since the issues in this case are interrelated, the Court shall discuss them concurrently.

***Law of the case* has been defined as the opinion delivered on a former appeal**. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. **It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case**, whether or not correct on general principles, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[38] Thus, the court reviewing the succeeding appeal will not re-litigate the case but instead apply

[38] *Cucueco v. Court of Appeals*, 484 Phil. 254, 267 (2004).

the ruling in the previous appeal. This enables the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case and upon any and subsequent appeals.[39]

Given the foregoing, it is apparent that the Decisions of this Court in *Santos*, *Cabuay*, and *Lopez*, cited by the Lopez siblings in their instant Petition, cannot be regarded as the law of the case herein. The law of the case applies only when (1) a question is passed upon by an appellate court, and (2) the appellate court remands the case to the lower court for further proceedings; the lower court and even the appellate courts on subsequent appeal of the case are, thus, bound by how such question had been previously settled. It must be emphasized, therefore, that the law of the case finds application only **in the same case between the same parties**.

The Petition at bar is without question separate and distinct from *Santos*, *Cabuay*, and *Lopez*, although they may all involve, in varying degrees, the homestead patent granted to Hermogenes over the 19.8222-hectare land, which included the subject property. First, *Santos*, *Cabuay*, and *Lopez*, directly tackled the validity of the homestead patent granted to Hermogenes over the 19.8222-hectare land; in the instant case, the validity of the homestead patent thus granted to Hermogenes is no longer in issue, but it is alleged herein that said patent erroneously included the subject property. Second, to recall, the instant Petition originated from Civil Case No. 96-4193, the Complaint for Reconveyance and Recovery of the subject property filed by Esquivel and Talens against the Lopez siblings before the RTC of Antipolo, Rizal, Branch 73. In no instance was a question or issue in Civil Case No. 96-4193 ever been previously raised to an appellate court. *Santos*, *Cabuay*, and *Lopez*, did not pass upon any question or issue raised before this Court from Civil Case No. 96-4193. And thirdly, despite the fact that all these cases may have common antecedent facts

[39] *Ariola v. Philex Mining Corporation*, G.R. No. 147756, 9 August 2005, 466 SCRA 152, 176-177.

and sometimes involved the same personalities, the Lopez siblings (herein petitioners) and Esquivel and Talens (herein respondents) were not parties in *Santos*, *Cabuay*, and *Lopez*.

The Court now proceeds to resolve the issue of whether Esquivel and Talens have a right to the reconveyance of the subject property based on the Quitclaim executed by Hermogenes in Hizon's favor on 29 November 1965. Such determination shall be dependent on whether the Quitclaim was executed beyond the period within which encumbrance or alienation of the land acquired by homestead patent is prohibited; and whether the Quitclaim effected a valid conveyance of the subject property from Hermogenes to Hizon.

Section 118 of the Public Land Act, as amended, prohibits any encumbrance or alienation of lands acquired under homestead provisions from the date of the approval of application and for a term of five years from and after the date of issuance of the patent or grant. The same provision provides that no alienation, transfer, or conveyance of any homestead after five years and before 25 years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds.

In this case, the subject property was included, whether correctly or erroneously, in the 19.4888-hectare land awarded to Hermogenes, by virtue of a homestead patent, issued on **7 February 1939**. The Quitclaim over the subject property, a 2.6950-hectare portion of the said 19.4888-hectare land, was executed by Hermogenes in Hizon's favor on **29 November 1965**. Between the date of issuance of the homestead patent to Hermogenes and that of the execution of the Quitclaim, more than **26 years** had passed. Therefore, the execution of the Quitclaim was no longer within the five-year period within which the land covered by the homestead patent issued to Hermogenes must not be encumbered or alienated; and was also beyond the period between five and 25 years following the issuance of patent within which approval of the Secretary of Environment

and Natural Resources is still necessary to make the alienation or encumbrance valid.[40]

Although it has been established that the Quitclaim was executed beyond any of the prohibitive and/or restrictive periods under the Public Land Act, as amended, the Court must next look into whether the Quitclaim had the effect of validly conveying the subject property to Hizon.

The pertinent portions of the Quitclaim in question read as follows:

> 2. That it has come to my personal knowledge that a boundary owner of my above-cited parcel of land by the name of [Hizon] has duly caused the survey of his land bordering mine x x x; that after the actual execution of the survey of the land of said [Hizon], it was found out that the land which has been in his possession for many many years or since time immemorial is within my plan denominated as H-138612;
>
> x x x x x x x x x
>
> 5. That in fairness and in justice to [Hizon], I herewith renounce, repudiate and unconditionally and irrevocably waive and quitclaim all my rights, shares, interests or participations on the above-described parcel of land in favor of [Hizon], of legal age, Filipino, married to Angelina Villarosa and a resident of Antipolo, Rizal, and for this purpose I am agreeable that my plan H-138612 be duly amended so as to segregate the above-described portion which is owned by the aforesaid [Hizon].[41]

It can be gleaned from the afore-quoted paragraphs of the Quitclaim that the intention of Hermogenes in executing the same was to restore to Hizon the subject property, which Hermogenes believed to have been mistakenly included in his homestead patent.

It is worthy to note, however, that the subject property was part of the 19.4888-hectare land covered by the homestead patent awarded by the Bureau of Lands to Hermogenes. The

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[40] See *Tinio v. Frances*, 98 Phil. 32, 37 (1955).

[41] *Rollo* (G.R. No. 168734), p. 131.

19.4888-hectare land was identified and measured in a survey conducted by a government surveyor and the resulting plan H-138612 was approved by the Director of Lands. The approval of survey plan H-138612 and the grant of the homestead patent over the 19.4888-hectare land in favor of Hermogenes, performed as part of the official functions of the Director of Lands and the Bureau of Lands, enjoy the presumption of regularity.[42] Reasonable doubt is thus cast on the supposed mistake which resulted in the inclusion of the subject property in the 19.4888-hectare land awarded to Hermogenes by virtue of the homestead patent.

Even assuming that the homestead patent awarding the 19.4888-hectare land to Hermogenes did erroneously include the subject property, Hermogenes could not simply convey said property to Hizon, nor could Hizon easily recover the same, by virtue of a mere Quitclaim. Lands acquired under homestead patents come from the public domain. If the subject property was erroneously included in the homestead patent awarded to Hermogenes, then the subject property must be returned to the State and not to Hizon. Furthermore, the survey plan conducted and homestead patent issued in Hermogenes' name covered a 19.4888-hectare land; to exclude therefrom the 2.6950-hectare subject property (since it purportedly belonged to Hizon) would mean that Hermogenes actually acquired land with an area less than what he was awarded under the homestead patent. This complication reveals that any alleged mistake as regards the subject property is not a simple and private matter between Hermogenes and Hizon; but is primarily a problem between Hermogenes and the State, the latter having awarded the 19.4888-hectare land to the former by virtue of the homestead patent.

A homestead patent is one of the modes to acquire title to public lands suitable for agricultural purposes. Under the Public Land Act, as amended, a homestead patent is one issued to any citizen of this country, over the age of 18 years or the head of a family, and who is not the owner of more than 24 hectares of land in the country. To be qualified, the applicant must show

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[42] *Heirs of Brusas, v. Court of Appeals,* 372 Phil. 47, 58 (1999).

that he has resided continuously for at least one year in the municipality where the land is situated and must have cultivated at least one-fifth of the land applied for.[43]

In this case, the Bureau of Lands approved Hermogenes' application for homestead patent over the 19.4888-hectare land after finding him qualified for the same. In contrast, the only evidence supporting Hizon's claim to the subject property was the Quitclaim. There is no other proof that Hizon possessed, cultivated, and introduced improvements on the subject property. Neither is there any showing that after the execution of the Quitclaim, Hizon himself applied for a homestead patent over the subject property. In fact, it is undisputed that the subject property has always been in the possession of Hermogenes, then the Lopez Siblings. Hizon and Esquivel and Talens never came into the possession of the subject property even after the execution of the supposed deeds of conveyances in their favor.

The Court also cannot consider the subject property to have been held in trust by Hermogenes for and on behalf of Hizon. Settled is the rule that a homestead applicant must personally comply with the legal requirements for a homestead grant. The homestead applicant himself must possess the necessary qualifications, cultivate the land, and reside thereon. It would be a circumvention of the law if an individual were permitted to apply "in behalf of another," as the latter may be disqualified by or might not comply with the residency and cultivation requirements.[44]

In the end, the Quitclaim dated 29 November 1965 could not have validly conveyed or transferred ownership of the subject property from Hermogenes to Hizon. It is null and void for being contrary to the provisions of the Public Land Act, as amended. As a result, Hizon acquired no right over the subject property which he could have sold to Esquivel and Talens; and the Deed of Absolute Sale of Unregistered Land dated 26 August 1968,

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[43] *Ramos-Balalio v. Ramos*, G.R. No. 168464, 23 January 2006, 479 SCRA 533, 540.

[44] *Lopez v. Court of Appeals*, *supra* note 10.

executed by Hizon in favor of Esquivel and Talens, is similarly void for lack of an object.

Even granting *arguendo*, that the Quitclaim is valid and transferred ownership of the subject property from Hermogenes to Hizon, the latter and his successors-in-interest, Esquivel and Talens, are now barred by the statute of limitations and laches from asserting their rights to the subject property, after failing to exercise the same for an unreasonable length of time.

Laches has been defined as the failure of or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it. Thus, the doctrine of laches presumes that the party guilty of negligence had the opportunity to do what should have been done, but failed to do so.[45]

In the instant case, when Esquivel and Talens filed with the RTC their application for registration of the subject property on 5 March 1993, **28 years** had passed since the execution by Hermogenes of the Quitclaim covering the subject property in favor of Hizon on 29 November 1965; and **25 years** elapsed from the execution by Hizon of the Deed of Absolute Sale of the subject property in favor of Esquivel and Talens on 26 August 1968. During these periods, without providing any reasons therefor, neither Hizon nor Esquivel and Talens took possession of the subject property or exercised in any other way their rights over the same.

Finally, concerning this Petition, is the issue of whether the Lopez siblings are estopped from questioning the validity of the Quitclaim, as ruled by the Court of Appeals? It bears to point out that the question of estoppel is relevant only if the Lopez siblings are challenging the validity of the Quitclaim on the ground that when Hermogenes executed the same, he had already previously sold his 19.4888-hectare land, which included

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[45] *Placewell International Services Corp. v. Camote*, G.R. No. 169973, 26 June 2006, 492 SCRA 761, 769.

the subject property, to Aguilar. In recollection, the Lopez siblings successfully had the said sale of the land by Hermogenes to Aguilar nullified. Since the Court herein refuses to give effect to the Quitclaim in question on other grounds already discussed above, the issue of estoppel actually loses relevance and need not be resolved anymore.

Considering the pronouncements of this Court that the Quitclaim covering the subject property executed by Hermogenes in favor of Hizon is null and void for being contrary to the provisions of the Public Land Act, as amended, on homestead grants; and that the Deed of Absolute Sale of the subject property executed by Hizon in favor of Esquivel and Talens is null and void for lack of a proper object, then Esquivel and Talens have no basis to ask for the reconveyance of the subject property. Hizon never owned the subject property and could never have sold the same to Esquivel and Talens.

G.R. No. 170621

A Petition for Annulment of Judgment was filed with the Court of Appeals by Nordec Phil., a corporation organized and existing under the laws of the Philippines; and Dr. Malvar, President and General Manager of petitioner Nordec Phil., docketed as **CA G.R. CV No. 91428**.

The Lopez siblings, Esquivel, and Talens, were named respondents in CA-G.R. CV No. 91428 (and also herein), being the parties in **Civil Case No. 96-4193**, wherein the RTC of Antipolo, Rizal, Branch 73, rendered the Decision dated 11 January 2001, which Nordec Phil. and Dr. Malvar were seeking to annull by the Court of Appeals. Atty. Sergio Angeles (Atty. Angeles) and Atty. George A. Ang Cheng (Atty. Ang Cheng) were similarly impleaded as respondents in said petition before the appellate court on account of their involvement as counsels for the parties in Civil Case No. 96-4193.

In its Decision dated 11 January 2001 in Civil Case No. 96-4193, the RTC granted the action for reconveyance of the subject property to Esquivel and Talens. The subject property, however, was already supposedly sold by Lopez siblings to Nordec Phil. and Dr. Malvar.

Nordec Phil. and Dr. Malvar alleged in their Petition for Annulment of Judgment that the Lopez siblings, the successors-in-interest of Hermogenes, were the registered owners of 15 parcels of land situated at Overlooking, Sumulong Highway, Barangay Sta. Cruz, (formerly Barrio dela Paz), Antipolo City, Rizal, covered by plan (LRC) Psd-3289610, with a total area of 19.4888 hectares.[46] Among these parcels of land were Lots 1, 2, 3, 4, 7 and 8, covered by TCTs No. 207990 to No. 207997[47] of the Registry of Deeds of Marikina City, with an aggregate area of 2.875 hectares, and which constituted the subject property.[48]

Beginning 20 April 1994, Nordec Phils. and Dr. Malvar purchased the aforementioned lots from the Lopez siblings and their assigns, namely, Atty. Angeles and Rogelio Amurao (Amurao),[49] as evidenced by several Deeds of Absolute Sale and Deeds of Conditional Sale. Immediately after making such purchases, Nordec Phils. and Dr. Malvar introduced large scale improvements on the subject property, among which were several business establishments,[50] at a cost of no less than ₱50,000,000.

In 1996, when the subject property was involved in Civil Case No. 96-4130 heard before the RTC of Antipolo, Rizal, Branch 74, entitled *Heirs of Elino Adia v. Heirs of Hermogenes Lopez*, it was Atty. Angeles who represented and protected the

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[46] Awarded to Hermogenes by virtue of Homestead Patent No. H-138612.

[47] *Rollo* (G.R. No. 170621), pp. 166-168.

[48] There is a small difference in the land area of the subject property claimed by Esquivel and Talens in G.R. No. 168734 (*i.e.*, 2.6950 hectares) *vis-à-vis* the one being claimed by Nordec Phils. and Dr. Malvar in G.R. No. 170621 (*i.e.*, 2.875 hectares). The variance may be due to the fact that Hizon, the predecessor-in-interest of Esquivel and Talens, laid claim only to the 2.6950 hectares which allegedly formed part of his property, without regard to how the entirety of Hermogenes' 19.8222-hectare land was subdivided into lots. Nordec Phils. and Dr. Malvar, however, purportedly bought particular lots from the Lopez siblings with an aggregate area of 2.875 hectares.

[49] Only with respect to the portions wherein they hold equitable title.

[50] This includes the following: (1) Kelly heights-Overlook Bar and Grill; (2) Cloud 9 Restaurant; (3) Celestial Inn; (4) The Cliff Restaurant; (5) Seventh Heaven; (6) Mountain Grill Restaurant; and (7) Convention Center (*See* CA *rollo* [CA G.R. CV No. 91428], pp. 122-159).

interest of Nordec Phils. and Dr. Malvar in said case by filing a Motion to Dismiss.[51] In *Cabuay, Jr.*, wherein Dr. Malvar and the Lopez siblings were named the respondents in the Petition Seeking for Clarification as to the Validity and Forceful Effect of the Two (2) Final and Executory but Conflicting Decisions of this Court involving the subject property, it was also Atty. Angeles who appeared for Nordec Phils. and Dr. Malvar.

Sometime after 2 August 2004, Atty. Angeles again informed Nordec Phil. and Dr. Malvar that there was another case filed against the Lopez siblings involving the subject property. The said case was the action for reconveyance filed by Esquivel and Talens, docketed as **Civil Case No. 96-4193** before RTC of Antipolo, Rizal, Branch 73, but which was already, by then, the subject of an appeal before the Court of Appeals, docketed as **CA-G.R. CV No. 70200** (and which would eventually reach this Court in G.R. No. 168734). Atty. Angeles, however, belittled this most recent case involving the subject property, and even showed to Nordec Phils. and Dr. Malvar the Motion to Resolve Appeal dated 2 August 2004, which Atty. Angeles filed in CA-G.R. CV No. 70200, together with the Brief for the Lopez siblings. Yet, Nordec Phils. and Dr. Malvar conducted their own inquiry and were surprised to discover that the Decision rendered by the RTC on 11 January 2001 in Civil Case No. 96-4193 was actually adverse to their rights and interest; and despite this, they were neither impleaded nor represented therein. Even Atty. Angeles, the supposed counsel for Nordec Phils. and Dr. Malvar, did not lift a finger to protect their rights in said case.

Further intensive investigation revealed to Nordec Phils. and Dr. Malvar that the 11 January 2001 Decision of the RTC in Civil Case No. 96-4193 was rendered under circumstances amounting to extrinsic fraud and lack or denial of due process, insofar as said Decision adversely affected their rights to and interests in the subject property. Among the circumstances that allegedly amounted to extrinsic fraud and lack or denial of due process were described by Nordec Phils. and Dr. Malvar. Among

[51] Annex P.

these: (1) when Esquivel and Talens instituted Civil Case No. 96-4193, they personally and through their caretakers, already knew that Nordec Phils. and Malvar already bought and took possession of the subject property, but Esquivel and Talens, through their counsel Atty. Ang Cheng deliberately failed to implead Nordec Phils. and Dr. Malvar; and (2) Atty. Angeles, who was supposed to protect the rights and interests of Nordec Phils. and Dr. Malvar, as their counsel, had an adverse personal interest in the subject property as he had unconscionably taken, by way of champertous attorney's fees, almost the whole of the 19.4888-hectare land inherited by the Lopez siblings from Hermogenes.

Given the foregoing circumstances and the unsuccessful attempt of Nordec Phil. and Dr. Malvar to intervene in CA-G.R. No. 70200, Nordec Phil. and Dr. Malvar opted to file with the Court of Appeals a Petition to annul the Decision dated 11 January 2001 of the RTC in Civil Case No. 96-4193, granting the reconveyance of the subject property to Esquivel and Talens. Their Petition was docketed as CA-G.R. SP No. 91428. Nordec Phil. and Dr. Malvar prayed in their Petition that the 11 January 2001 Decision of the RTC in Civil Case No. 96-4193 be annulled for the reason that they were not impleaded therein even if they were necessary, if not indispensable, parties. Nordec Phil. and Dr. Malvar additionally prayed that any writ of execution and other orders, which may have been or may thereafter be issued to enforce the said RTC decision, be declared ineffective, insofar as they and their assigns are concerned.

On 6 October 2005, the Court of Appeals issued its assailed Resolution in CA-G.R. SP No. 91428 dismissing the Petition of Nordec Phil. and Dr. Malvar. According to the said Resolution, the RTC Decision dated 11 January 2001 in Civil Case No. 96-4193 could not be the proper subject of the said Petition for Annulment of Judgment given that the very same decision was still pending appeal before this Court in G.R. No. 168734 and, thus, was not yet final and executory. In addition, should the Court of Appeals take cognizance of such a Petition, it could result in contrary and inconsistent rulings by the appellate court and this Court.

Nordec Phils. and Dr. Malvar filed a Motion for Amendment and/or Reconsideration of the dismissal of their Petition in CA-G.R. SP No. 91428, but it was denied by the Court of Appeals in a Resolution dated 16 November 2005.

Nordec Phils. and Dr. Malvar then filed the instant Petition assailing the Resolutions dated 6 October 2005 and 16 November 2005 of the Court of Appeals in CA-G.R. SP No. 91428.

In their Memorandum before this Court, Nordec Phils. and Dr. Malvar raised the following issues:

I. Do [Nordec Phils. and Dr. Malvar] have good standing and substantial defenses?

II. In view of all the documented and unrebutted circumstances detailed in the petition – not to mention the obviously pre-conceived and even incompatible claims of private respondents [Lopez siblings] and [Atty. Angeles] in their Comment that the sale to [Nordec Phils. and Dr. Malvar] is void and defective from the very start being signed by only one of the co-owners, simulated and only partially paid and that petitioners' rights have prescribed – was there extrinsic fraud and lack of due process insofar as [Nordec Phils. and Dr. Malvar] are concerned?

III. Considering all the foregoing and, more significantly, the admission of [Esquivel and Talens] in their separate Comment that they (as plaintiffs) purposely did not implead [Nordec Phils. and Dr. Malvar] because it was from the [Lopez siblings] alone that they are trying to recover the [subject property], is annulment of the judgment proper, at least insofar as the rights and interests of [Nordec Phils. and Dr. Malvar] are concerned?

IV. Inasmuch as [Nordec Phils. and Dr. Malvar] were not impleaded as defendants and were not parties to the appeal of the judgment affecting [the subject property], hence, the remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available to them – and so even their motion for intervention was not allowed – is it improper or premature for them to file an action for

annulment of the judgment while further appeal by the impleaded [Esquivel and Talens] is pending with this [Court]?

V. In view of the undisputed circumstances showing extrinsic fraud – and in view of the consolidation of G.R. No. 170621 with G.R. No. 168734, it is now proper or imperative for [this Court] to resolve the issues presented by annulling the impugned judgment of the [RTC of Antipolo City, Branch 73] without having to remand the case to the Court of Appeals.

Nordec Phils. and Dr. Malvar asseverate that they were not impleaded as defendants in Civil Case No. 96-4193 where the RTC rendered its Decision dated 11 January 2001, Nordec Phils. and Dr. Malvars rights to and interest in the subject property. The remedies of new trial, appeal, petition for relief or other appropriate remedies are also no longer available to Nordec Phils. and Dr. Malvar because of the extrinsic fraud committed upon them by the Lopez siblings, Esquivel, Talens, Atty. Angeles, and Atty. Ang Cheng; and of the lack of jurisdiction on the part of the RTC to take cognizance of Civil Case No. 96-4193 and to render the 11 January 2001 Decision therein. Even the Motion for Intervention of Nordec Phils. and Dr. Malvar in CA-G.R. No. 70200, the appeal of the 11 January 2001 Decision of the RTC, was not allowed by the Court of Appeals. Therefore, it is neither improper nor premature for Nordec Phil. and Malvar to file a Petition for the annulment of the said 11 January 2001 Decision of the RTC in Civil Case No. 96-4193, even though the said Decision, after being affirmed *in toto* by the Court of Appeals, is now pending appeal before this Court.

Nordec Phils. and Dr. Malvar additionally argue that the Court of Appeals resolved the question of procedure in a manner that was patently not in accordance with the 1997 Rules of Civil Procedure, particularly, when it held that (1) Rule 47 does not cover the judgment of the RTC in this particular case; and (2) Nordec Phils. and Dr. Malvar still had an adequate remedy in seeking intervention in G.R. No. 167834, the appeal to this Court of the RTC Decision dated 11 January 2001, as affirmed by the Court of Appeals.

Nordec Phils. and Dr. Malvar insist that since Rules 37, 38 and 41 of the 1997 Rules of Civil Procedure on motion for new trial, petition for relief, and appeal, respectively, simply mention "judgments or final orders," without making any distinction as to whether or not the same is final and executory; it should follow that where only the words "judgments or final orders" are similarly used in Rule 47 on annulment of judgments, then such words should be understood to also refer to all judgments or final orders, regardless of whether they are final and executory.

The issues and arguments raised by Nordec Phils. and Dr. Malvar all boil down to the question of whether the Court of Appeals erred in dismissing their Petition for Annulment of Judgment for being premature since the judgment sought to be annulled is still the subject of a Petition for Review before this Court, docketed as G.R. No. 168734, and is not yet final and executory.

The Court answers in the negative.

The ordinary remedies of a motion for new trial or reconsideration and a petition or relief from judgment are remedies available only to parties in the proceedings where the assailed judgment is rendered. In fact, it has been held that a person who was never a party to the case, or even summoned to appear therein, cannot make use of a petition for relief from judgment.[52] Indubitably, Nordec Phils. and Dr. Malvar cannot avail themselves of the aforesaid ordinary remedies of motion for new trial, petition for relief from judgment, or appeal, because they were not parties to the proceedings in Civil Case No. 96-4193 in which the RTC Decision dated 11 January 2001 sought to be annulled was rendered. Nordec Phils. and Dr. Malvar also cannot seek the annulment of the 11 January 2001 Decision of the RTC in Civil Case No. 96-4193.

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered. The purpose of such action is to have the final

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[52] *Alaban v. Court of Appeals*, G.R. No. 156021, 23 September 2005, 470 SCRA 697, 707-708.

and executory judgment set aside so that there will be a renewal of litigation. It is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process. A person need not be a party to the judgment sought to be annulled, and it is only essential that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and he would be adversely affected thereby.[53]

An action to annul a final judgment on the ground of fraud lies only if the fraud is extrinsic or collateral in character. Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[54]

It is, thus, settled that the purpose of a Petition for Annulment of Judgment is to have the final and executory judgment set aside so that there will be a renewal of litigation. If the judgment sought to be annulled, as in this case, is still on appeal or under review by a higher court, it cannot be regarded as final, and there can be no renewal of litigation because the litigation is actually still open and on-going. In this light, the arguments of Nordec Phil. and Dr. Malvar that the judgments or final orders need not be final and executory for it to be annulled must fail.

This Court, therefore, finds no error in the dismissal by the Court of Appeals of the Petition for Annulment of Judgment filed by Nordec Phil. and Dr. Malvar, on the ground of prematurity. Given that the 11 January 2001 Decision of the RTC in Civil Case No. 96-4193 was still pending appeal before this Court,

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[53] *Id.*

[54] *Id.*

the Court of Appeals could not take cognizance of the Petition for annulment of the same judgment, for if it had done so, then it would risk promulgating a ruling which could be contrary to and inconsistent with the ruling of this Court on the appeal of the judgment.

WHEREFORE, premises considered:

(a) The Petition in *G.R. No. 168734* is *GRANTED*. The Decision dated 14 February 2005 and Resolution dated 27 June 2005 of the Court of Appeals in CA-G.R. CV No.70200, affirming *in toto* the 11 January 2001 Decision of the Regional Trial Court of Antipolo City, Branch 73, in Civil Case No. 96-4193, are *REVERSED* and *SET ASIDE*. The Complaint for Reconveyance and Recovery of Possession of Jose Esquivel, Jr. and Carlito Talens in Civil Case No. 96-4193 is *DISMISSED*; and

(b) The Petition in *G.R. No. 170621* is hereby *DENIED*. The Resolutions dated 6 October 2005 and 16 November 2005 of the Court of Appeals in CA-G.R. SP No. 91428 are hereby *AFFIRMED*. No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170235. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAIME CADAG JIMENEZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY SUBSTANTIAL REASON TO JUSTIFY THE REVERSAL OF THE TRIAL COURT'S ASSESSMENTS AND CONCLUSIONS, THE REVIEWING COURT IS GENERALLY BOUND BY THE FORMER'S FINDINGS AND CONCLUSIONS.— It is elementary that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts" and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." This Court even recognizes a more stringent application of the rule if the said findings of the trial court are sustained by the appellate court. In the present case, we found no substantial reason to deviate from the findings of the trial and appellate courts.

2. ID.; ID.; ID.; FAILURE OF THE RAPE VICTIM TO RECALL MINOR DETAILS AND THE EXACT DATES OF THE INCIDENTS OF RAPE AND SEXUAL ASSAULT DOES NOT AFFECT THE VERACITY OF HER TESTIMONY.— The failure of AAA to recall minor details and the exact dates of the incidents of rape and sexual assault likewise does not affect the veracity of her testimony. These lapses are understandable taking into account the nature of these crimes she suffered at her young age. As we have held in a number of rape cases involving minor victims, the Court cannot impose the burden of exactness, detailedness, and flawlessness on the victim's recollection of her harrowing experiences.

3. ID.; ID.; ID.; NO STANDARD FORM OF BEHAVIOR CAN BE ANTICIPATED OF A RAPE VICTIM FOLLOWING HER DEFILEMENT.— Moreover, the credibility of AAA remains unaffected despite the purported lack of outward change in

her behavior during and after the rape incidents and sexual assaults, which according to accused-appellant is contrary to human experience. It is well-settled that no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.

4. ID.; ID.; ALIBI; NEGATIVE, SELF-SERVING, AND UNDESERVING OF ANY WEIGHT IN LAW UNLESS SUBSTANTIATED BY CLEAR AND CONVINCING PROOF.— We have duly considered the evidence and arguments presented by the accused-appellant. However, we cannot give any weight to his bare denials and uncorroborated alibis. Our ruling in *People v. Nieto* is in point: It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of *alibi* is likewise unavailing. *Firstly*, *alibi* is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. *Secondly*, *alibi* is unacceptable when there is a positive identification of the accused by a credible witness. *Lastly*, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. In the case at bar, accused-appellant claims that at the times/dates of the rapes charged against him he was at his place of work. Yet he failed to present any witness or documentary evidence to confirm his defense of *alibi*.

5. CRIMINAL LAW; INCESTUOUS RAPE; FAILURE TO PROVE EXACT DATES OF THE COMMISSION THEREOF, NOT FATAL.— The failure of the prosecution to prove the exact dates of the commission of the crimes charged is immaterial and would not warrant the reversal of accused-appellant's conviction. The exact time of the commission of the crime of rape is not a material ingredient of the said crime and it is sufficient if the acts complained of are alleged to have taken place as near to the actual date at which the offenses

are committed as the information or complaint will permit. The gravamen of the crime of rape is carnal knowledge of a woman through force, threat, or intimidation against her will or without her consent. As the exact date of the commission of the rape is not the essence of the crime and it is sufficient to allege in the information a date as near to the actual date of the offense as the circumstances allow, the dates of the rapes committed by the accused-appellant need not be proven exactly as alleged in the criminal informations.

6. ID.; ID.; ELEMENT OF VIOLENCE AND INTIMIDATION; THE FATHER'S MORAL ASCENDANCY AND INFLUENCE OVER HIS DAUGHTER SUBSTITUTES FOR VIOLENCE AND INTIMIDATION.— In *People v. Baun*, we also held that the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation in rape cases, thus: Settled is the rule that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation. The ascendancy or influence necessarily flows from the father's parental authority, which the constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants. In this case, we take the fact that none of the other family members woke from their sleep whenever the accused-appellant sexually ravished AAA consistent with the latter's testimony that she actually did not fight back or resist out of fear of her father. Fear, confusion and shame would also explain why she did not immediately let anyone know of her father's dastardly acts against her. Indeed, that it took AAA several months to break free from her silence and disclose her unspeakable experiences was the proximate result of the accused-appellant's abuse of his moral ascendancy and influence over AAA as a father.

7. ID.; QUALIFYING CIRCUMSTANCES; PARENTAL RELATIONSHIP; CANNOT BE APPRECIATED AGAINST THE ACCUSED IF NOT ALLEGED.— In sum, we find that the conviction of the accused-appellant on two counts of simple

rape to be in order. In view of the failure of the prosecution to allege in the criminal informations the aggravating/qualifying circumstance of parental relationship between AAA and the accused-appellant, he cannot be convicted of qualified rape for to do so would certainly be a denial of his right to be informed of the charges against him.

8. ID.; RAPE; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— However, this aggravating circumstance, which was duly proved during trial, may still be considered by the courts in the award of damages. Thus, the imposition of the penalty of *reclusion perpetua*, as well as the directive to accused-appellant to pay civil indemnity in the amount of Fifty Thousand Pesos (₱50,000.00) and moral damages also in the amount of Fifty Thousand Pesos (₱50,000.00), for each count of rape are all in accord with law and jurisprudence. Moreover, the Court agrees with plaintiff-appellee that the accused-appellant should be similarly ordered to pay exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) for each count of rape. Settled jurisprudence dictates that exemplary damages should be awarded in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters.

APPEARANCES OF COUNSEL

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

D E C I S I ON

LEONARDO-DE CASTRO, *J.*:

For review is the *Decision*[1] dated February 28, 2005 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00634 which affirmed the *Consolidated Decision*[2] dated July 28, 2000 of Branch 272, Regional Trial Court (RTC), Marikina City,

[1] Penned by Associate Justice Roberto A. Barrios with Associate Justices Amelita G. Tolentino and Vicente S. E. Veloso, concurring. *rollo*, pp. 3-16.

[2] CA *rollo*, pp. 15- 30.

convicting accused-appellant Jaime Cadag Jimenez of two counts of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the victim the amounts of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages on each count.

Consistent with our ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] this Court withholds the real name of the private complainant and her immediate family members as well as such other personal circumstance or information tending to establish her identity. The initials AAA would represent the private complainant and the initials BBB would refer to the mother of the private complainant.

To quote, the pertinent portions of the criminal information in each case:

CRIMINAL CASE NO. 97-1578

x x x x x x x x x

That in or about the last week of October, 1996, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) AAA, a 12-year old girl against her will and consent.

x x x x x x x x x

CRIMINAL CASE NO. 97-1579

x x x x x x x x x

That on or about the 8th day of August, 1996, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant, did then and there willfully,

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[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597, 599.

unlawfully and feloniously have carnal knowledge with (sic) AAA, a 12-year old girl against her will and consent.

x x x x x x x x x

Accused-appellant Jimenez pleaded not guilty upon arraignment.[5] The pre-trial conference followed and, thereafter, trial ensued.

The prosecution presented the testimonies of AAA,[6] Dr. Dennis Bellin[7] (the medico-legal officer who physically examined the complainant), SPO1 Lucy Mae Robles[8] (the police officer who initially conducted the investigation), and Rowena Villegas[9] (the social worker who responded to the aid of AAA). The documentary evidence for the prosecution consisted of the Medico-Legal Report No. M-833-97 of Dr. Dennis Bellin,[10] the *Voluntary Statements* executed by AAA on February 27, 1998 before SPO1 Lucy Mae Robles,[11] and the Certificate of Live Birth of AAA.[12] The defense, on the other hand, presented the testimonies of BBB[13] and that of the accused-appellant.[14]

After trial, the RTC convicted the accused-appellant. The trial court found that the accused-appellant was the biological father of AAA and he started raping his own daughter when she was only eleven (11) years old. However, the accused-appellant was only held criminally liable for two counts of *simple* rape in view of the failure of the prosecution to allege in the informations the qualifying circumstance of relationship of the accused-appellant with AAA.

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[5] Records, Folder 1, pp. 37-39.

[6] TSN dated February 3, 1999, pp. 3-26.

[7] TSN dated December 10, 1997, pp. 3-12.

[8] TSN dated March 29, 1999, pp. 2-18.

[9] TSN dated April 14, 1999, pp. 2-18.

[10] Records, Folder 2, marked as Exhibit "C".

[11] *Id.*, marked as Exhibit "D".

[12] *Id.*, marked as Exhibit "E".

[13] TSN dated May 24, 1999, pp. 4-12.

[14] TSN dated February 2, 2000, pp. 3-7.

This case was directly appealed to this Court. The accused-appellant filed his *Brief*[15] dated February 12, 2002 and *Reply Brief*[16] dated November 7, 2002 while the plaintiff-appellee filed its *Brief*[17] dated June 18, 2002. In a *Minute Resolution*[18] dated August 25, 2004, we referred this case to the CA for appropriate action conformably with our ruling in *People v. Mateo*.[19]

In its assailed decision, the CA recapitulated the evidence for the prosecution as follows:

> The testimony of complainant **AAA** was synthesized by the trial court as follows:
>
> > On direct examination, the witness testified:
> >
> > That on August 1996, she was 11 years old, that Jaime Jimenez is her father (at this juncture, the witness positively identified the accused, Jaime Jimenez in the courtroom); that her father raped her during the month of August 1996; that her father crawled on top of her and did what a husband does to his wife "*na nakapatong*" according to the herein witness, that it was the accused, Jaime Jimenez who did it to her; that said incident took place in their own house at … Marikina; that their house is a one-storey apartment; that they are five children in the family; that the name of her mother is BBB; that there is only one room in their house; that during the month of August 1996, they slept in the living room with her mother; that sometimes her father sleeps in the sala or in the room; that she could no longer remember what time in the evening the alleged rape incident happened; that one night in August 1996, her father touched her body and her breast and afterwards, undressed her; that the incident happened while her mother and siblings were sleeping; that the said incident happened inside their room; that she did not do anything because of fear; that her father after undressing her laid on top of her and started kissing her

[15] CA *rollo*, pp. 43-59.

[16] *Id.* at 111-115.

[17] *Id.* at 88-108.

[18] *Id.* at 131.

[19] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.

(the witness at this very moment was on the verge of crying); that according to the herein witness, she filed the case voluntarily and she knows that the person she is charging for rape is her own father; that after he (sic) father went on top of her, the former inserted his penis into her vagina; that the insertion of the penis into her vagina was so painful; that she did not tell her father anything since she was afraid that he might kill her; that the same incident happened around 5 to 6; that her father abused her again on November 1996 when she already had her period; that after her period, her father inserted again his finger into her vagina; that she cannot remember anymore how many times her father inserted his finger but she remembers that the last time her father inserted his finger into her vagina was around February of 1997; that she reported the incident of rape and act [of] lasciviousness to her classmate and to her religion teacher; that she could no longer remember how old was her classmate then; that she did not report the incident to her mother because of fear; that she finally gave her statement to the police sometime in February; that the said investigation (her statement) was reduced into writing and was signed by her (at this juncture, the herein victim witness identified said document in the court); that she was born on January 25, 1985 (at this point again, the witness identified and recognized her birth certificate when shown to her by her counsel); that she could still remember having been examined by the doctor of the PNP Crime Laboratory; that it was the social worker of Bantay-Bata who got hold of the medico legal certificate (at this point, the witness identified the said document in open court).

On cross-examination, the witness further alleged:

That she is now in Marilac Hills, that she is not living with her mother at present because the latter is telling her to withdraw the case against her father; that she really wanted to file this case against her father; that before she did not want his father to be incarcerated; that nobody convinced her to file this case and let her father be incarcerated; that she does not know if she wants her father to be put to death; that she could no longer recall of the incident that happened in August is the same thing that his (sic) father inserted his finger into her private part; that what she could only remember was that the last time she was abused by her father was on February of 1997; that she knew that it was her father's penis which was inserted

into her vagina because she was able to feel it; that the first time she has experience in sexual intercourse, as far as she can remember was in August of 1996 which was the very same incident that brought her to his court; that she was sure that his (sic) father's penis which was inserted into her vagina since her father even asked her to hold it but she refused in doing so; that the latest incident of sexual abuse was sometime in February 1997 when her father inserted his finger into her vagina; that that was the only time she filed this complaint.

Rowena Villegas said she is [a] social worker connected with ABS-CBN Foundation Bantay Bata 163 which initially took custody of AAA and assisted throughout the investigation and filing of this case. It was on February 28, 1997 when she was instructed by her immediate supervisor to bring her to the police station where she was investigated. On March 1, 1997 she accompanied AAA to the prosecutor's office for inquest which was conducted in the presence of her mother and [accused-appellant] himself. Though she asserted that she was raped by him, she cried and asked that her father be released.

SPO1 Lucy Mae Robles testified on the procedure and taking of the statement of AAA on February 28, 1997 on referral by Bantay Bata 163. Later she also took the statement of her mother BBB, and on her invitation [accused-appellant] was present at the investigation.

Dr. Dennis Bellin narrated that on February 28, 1997 he received a request from the Marikina police to conduct a medico legal examination on AAA who was there in the company of her mother. With their consent, he conducted an interview and the requested examination. AAA said she was sexually abused by her father on August 26, 1996, and he proceeded with his physical examination the findings and results of which are contained in his Medico Legal Report No. M-833-97 as follows:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3, 6, and 7 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

x x x x x x x x x

CONCLUSION

Subject is non-virgin state physically.

There are no signs of application of any form of violence.

REMARKS

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

TIME AND DATE COMPLETED: 1045h, 28 February 1997.[20]

The evidence for the defense, on the other hand, was summarized as follows:

BBB said that she knew and suspected nothing of the supposed rape until the teacher of AAA summoned her on February 27, 1997. AAA never complained to her about it and there was nothing out of the ordinary in her behaviour nor that of the accused-appellant. She was always home early, and the whole family slept together on the floor in their small sala.

The **accused-appellant** for his part denied that he ever (sic) raped AAA and that she charged him only because his wife BBB taught her to. At the time when the alleged rapes were supposed to have happened he was at work as a steelman at the Petron Mega Plaza. He could prove this by his daily time record, but which he could not produce because his wife did not get it as asked and his letter requests to the company have been unanswered. He could not go and get it himself

[20] *Supra* note 1, at pp. 6-9.

as he is already detained in the national penitentiary because he has been convicted for child abuse in another case filed by AAA.[21]

The CA rejected the contention of the accused-appellant that the prosecution failed to prove his guilt beyond reasonable doubt of the crimes charged and affirmed his convictions. The appellate court denied the motion for reconsideration of the accused-appellant in a *Resolution*[22] dated April 5, 2005. Thereafter, the case was elevated to this Court.

In a *Minute Resolution*[23] dated April 26, 2006, we gave the parties the option to file their respective supplemental briefs within a definite period. Subsequently, the accused-appellant filed his *Supplemental Brief*[24] dated May 29, 2006 while the plaintiff-appellee manifested[25] that it will no longer file any supplemental brief.

In the present appeal, the accused-appellant asserts that the prosecution failed to establish the exact dates of the commission of the crimes charged and that the failure of AAA to recall these dates with certainty likewise clouds the veracity of her testimony. He points out that the criminal informations allege that the rape incidents occurred on or about August 8, 1996 and the last week of October 1996 but AAA merely testified that she was raped 5 to 6 times sometime in August to October 1996. The accused-appellant also claims that AAA's reactions after the alleged rape incidents are suspicious and contrary to human experience. He points out that AAA first related her accusations to her classmate and teacher in school without satisfactorily explaining the reason why she failed to talk about it with her mother or report the same to the police at the most opportune time. He further points out that AAA testified that she was raped in the room of their house at a time when her mother and four siblings were sleeping in the same room. Under

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

[22] *CA rollo*, pp. 168-169.

[23] *Rollo*, p. 17.

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

[25] *Id.* at 27-29.

such a scenario, it was allegedly implausible that none of the said family members woke from their sleep during the times the accused-appellant purportedly raped AAA.

On the other hand, the plaintiff-appellee, through the Solicitor General, contends that AAA sufficiently narrated in court the material details on how, when, and where she was raped by her father. The exact dates of the commission of the crimes charged are allegedly not necessary to convict the accused-appellant. The plaintiff-appellee argues that it suffices that the months and year of the rape incidents and sexual assaults had been established as alleged.

The plaintiff-appellee further points out that the trial court failed to award exemplary damages in favor of AAA in accordance with prevailing jurisprudence. Thus, the plaintiff-appellee prays for an additional amount of twenty-five thousand pesos (₱25,000.00) in favor of AAA to set an example and deter fathers from sexually abusing their own daughters.

After a careful consideration of the issues raised in this appeal and the evidence on record, we affirm the conviction of the accused-appellant of the crimes charged and grant the exemplary damages prayed in favor of AAA.

It is elementary that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts" and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." [26] This Court even recognizes a more stringent application of the rule if the said findings of the trial court are sustained by the appellate court.

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[26] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

In the present case, we found no substantial reason to deviate from the findings of the trial and appellate courts.

The evidence for the prosecution supports the veracity of the testimony and credibility of AAA. In her *Voluntary Statement*[27] dated February 28, 1997, AAA vividly recounted to SPO1 Lucy Mae Robles the sexual ordeals that she suffered at the hands of her father as follows:

06.	*T*:	*Ano naman itong kasalanan ng papa mo kung meron man?*
	S:	*Dahil sa paggapang sa akin.*
07.	*T*:	*Paano ka ginapang ng papa mo?*
	S:	*Hinahalikan po niya ako sa pisngi ko, tapos hinihimas niya po ang suso ko tapos po hinahalikan rin po ang suso ko tapos hinahalikan din po niya ang pekpek ko. Tapos pagtulog na po sina mama at mga kapatid ko binubuhat po niya ako sa kuarto at hindi po niya sinisindihan o binubuksan ang ilaw. Pagnakahiga na po kami sa sahig ng kuarto inaalis niya po isa-isa ang short ko tapos ang panty ko tapos po dinadaganan na po niya ako na parang ginagawa ng mag-asawa.*
08.	*T*:	*Ano ang pakakaunawa mo sa sinasabi mo na ginagaw (sic) ng mag-asawa?*
	S:	*Pinapasok po ng papa ko ang titi niya sa pekpek ko.*
09.	*T*:	*Ano naman ang nararamdaman mo pagpinapasok ng papa mo ang titi niya sa pekpek mo?*
	S:	*Masakit po.*
10.	*T*:	*Ilang beses na ba ito ginawa ng papa mo sa pagpasok ng titi niya sa pekpek mo?*
	S:	*Simula po nuong August hanggang October 1996 mga lima o anim na beses po pinasok ni papa ang titi niya sa pekpek ko tapos simula naman po nuong niregla na ako ng November 5, 1996 daliri na lang po niya ang pinapasok niya sa pekpek ko hanggang Pebrero 12, 1997 mga alas siete (7) ng umaga.*

[27] *Supra* note 11.

AAA narrated again her unfortunate tale before the trial court and consistently testified to the material facts surrounding the rapes and sexual assaults committed by the accused-appellant against her, and unmistakably identified the offender as her own father (accused-appellant), thus:

Q: AAA, in August 1996, how old were you?
A: I was 11 years old, ma'am.

Q: By the way, do you know the person by the name Jaime Jimenez?
A: Yes, ma'am.

Q: Why do you know the person by the name Jaime Jimenez?
A: He is my father, ma'am.

x x x x x x x x x

Q: Miss witness, sometime during the month of August 1996, do you remember of (sic) any unusual incident that took place?
A: Yes, ma'am.

Q: What was that unusual incident that took place?
A: He raped me, ma'am.

Q: Miss witness, do you understand the meaning of the word "rape"?
A: Yes, ma'am.

Q: In the local language, what does it mean?
A: He crawled on top of me, he did what the husband and wife do, ma'am. "*Na magkapatong*".

Q: Who did this to you?
A: Jaime Jimenez, ma'am.

Q: You said Jaime Jimenez is your father?
A: Yes, ma'am.

Q: Where did this incident take place?

x x x x x x x x x

Q: At your own house?
A: Yes, ma'am.

Q: How big is your house miss witness?
A: It is an apartment, ma'am.

Q: How many floors are there in that apartment?
A: One storey apartment, ma'am.

Q: How many children are you in the family miss witness?
A: Five, ma'am.

x x x x x x x x x

Q: How many rooms are there in your house?
A: Only one, ma'am.

Q: During the month of August 1996, do you remember where you slept?

x x x x x x x x x

A: In the living room, ma'am.

Q: Who was with you sleeping in the living room?
A: We siblings and our mother, ma'am.

Q: How about your father, where does he sleep?
A: Sometimes he sleeps in the sala and sometimes in the room, ma'am.

Q: This incident that you mentioned in August 1996, what time did it happen if you remember?
A: I could not remember what time was that ma'am.

Q: Was that morning or in the evening or in the afternoon?
A: Night time, ma'am.

Q: Will you please describe what happened on that particular date sometime in August 1996?
A: One night in August 1996, he touched my body and my breast, ma'am.

Q: What else did your father do to you?
A: Afterwards he undressed me, ma'am.

x x x x x x x x x

Q: Now during the time that your father touched and mashed your breasts and undressed you, where was your mother and your siblings?
A: They were sleeping, ma'am.

Q: Where in particular in the house your father kissed, mashed your breasts and undressed you?
A: Inside the room, ma'am.

Q: Now what did you do when your father undressed you?
A: None, ma'am because I was afraid.

Q: What about your father, what did he do after undressing you?
A: He laid on top of me, ma'am.

x x x x x x x x x

Q: Miss witness, you said that after your father undressed, he laid on top of you, then what happened next?
A: He kissed me again, ma'am.

x x x x x x x x x

Q: I will again repeat my question. Miss witness, you said a while ago that after your father undressed you, he laid on you. What did your father do when he laid on top of you?
A: He inserted his penis into my vagina, ma'am.

Q: What did you feel when your father inserted his penis into your vagina?
A: It was painful, ma'am.

Q: What did you tell your father when he was doing that to you?
A: None, ma'am because I was afraid of him.

Q: Why were you afraid of your father miss witness?
A: Because he might kill me, ma'am.

Q: Miss witness when was the second time . . . . by the way, after that first incident of rape, what happened next?
A: He did the same thing, ma'am.

Q: How many times when you said, the same thing?
A: Around 5 to 6 times, ma'am.

Q: When was the last time that your father had inserted his penis into your private part?
A: Because that was November because on November 5 I had already my period, ma'am.

Q: After that period what happened next if any?
A: He just inserted his fingers, ma'am.

x x x x x x x x x

Q: When was the last time your father inserted his fingers into your private part?
A: That was around February, ma'am.

Q: Of what year?
A: February 1997, ma'am.[28]

In addition, AAA identified in court her birth certificate[29] which proved that she was born on January 25, 1985 and corroborated her claim that she was only 11 years old at the time she was raped and sexually assaulted by the accused-appellant. The medico-legal report of Dr. Dennis Bellin proved that AAA sustained deeply healed hymenal lacerations which supported her claim that she was sexually abused.

The failure of the prosecution to prove the exact dates of the commission of the crimes charged is immaterial and would not warrant the reversal of accused-appellant's conviction. The exact time of the commission of the crime of rape is not a material ingredient of the said crime and it is sufficient if the acts complained of are alleged to have taken place as near to the actual date at which the offenses are committed as the information or complaint will permit.[30] The gravamen of the crime of rape is carnal knowledge of a woman through force, threat, or intimidation against her will or without her consent.[31] As the exact date of the commission of the rape is not the essence of the crime and it is sufficient to allege in the information a date as near to the actual date of the offense as the circumstances allow, the dates of the rapes committed by the accused-appellant need not be proven exactly as alleged in the criminal informations.

The failure of AAA to recall minor details and the exact dates of the incidents of rape and sexual assault likewise does not

[28] *Supra* note 6, at pp. 4-10, 12-14.

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

[30] *People v. Dimapilis*, G.R. Nos. 128619-21, December 17, 1998, 300 SCRA 279.

[31] *People v. Teczon*, G.R. No. 174098, September 12, 2008, 565 SCRA 182, 188.

affect the veracity of her testimony. These lapses are understandable taking into account the nature of these crimes she suffered at her young age. As we have held in a number of rape cases involving minor victims, the Court cannot impose the burden of exactness, detailedness, and flawlessness on the victim's recollection of her harrowing experiences.[32]

Moreover, the credibility of AAA remains unaffected despite the purported lack of outward change in her behavior during and after the rape incidents and sexual assaults, which according to accused-appellant is contrary to human experience. It is well-settled that no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.[33] In *People v. Baun*,[34] we also held that the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation in rape cases, thus:

> Settled is the rule that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation. The ascendancy or influence necessarily flows from the father's parental authority, which the constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.[35]

In this case, we take the fact that none of the other family members woke from their sleep whenever the accused-appellant sexually ravished AAA consistent with the latter's testimony that she actually did not fight back or resist out of fear of her father. Fear, confusion and shame would also explain why she

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[32] *People v. Almendral*, G.R. No. 126025, July 6, 2004, 433 SCRA 440, 448, citing *People v. Villar*, 322 SCRA 393, 402; and *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 636.

[33] *People v. Crespo*, *supra* note 32 at 637.

[34] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584.

[35] *Id.* at 598.

did not immediately let anyone know of her father's dastardly acts against her. Indeed, that it took AAA several months to break free from her silence and disclose her unspeakable experiences was the proximate result of the accused-appellant's abuse of his moral ascendancy and influence over AAA as a father.

We have duly considered the evidence and arguments presented by the accused-appellant. However, we cannot give any weight to his bare denials and uncorroborated alibis. Our ruling in *People v. Nieto*[36] is in point:

> It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of *alibi* is likewise unavailing. *Firstly*, *alibi* is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. *Secondly*, *alibi* is unacceptable when there is a positive identification of the accused by a credible witness. *Lastly*, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.

In the case at bar, accused-appellant claims that at the times/dates of the rapes charged against him he was at his place of work. Yet he failed to present any witness or documentary evidence to confirm his defense of *alibi*.

In sum, we find that the conviction of the accused-appellant on two counts of simple rape to be in order. In view of the failure of the prosecution to allege in the criminal informations the aggravating/qualifying circumstance of parental relationship between AAA and the accused-appellant, he cannot be convicted of qualified rape for to do so would certainly be a denial of his right to be informed of the charges against him. However, this aggravating circumstance, which was duly proved during trial, may still be considered by the courts in the award of damages.

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[36] *Supra* note 26.

Thus, the imposition of the penalty of *reclusion perpetua*, as well as the directive to accused-appellant to pay civil indemnity in the amount of Fifty Thousand Pesos (₱50,000.00) and moral damages also in the amount of Fifty Thousand Pesos (₱50,000.00), for each count of rape are all in accord with law and jurisprudence.

Moreover, the Court agrees with plaintiff-appellee that the accused-appellant should be similarly ordered to pay exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) for each count of rape. Settled jurisprudence dictates that exemplary damages should be awarded in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters.[37]

WHEREFORE, in view of the foregoing, the *Decision* dated February 28, 2005 of the Court of Appeals in CA-G.R. CR-HC No. 00634 which affirmed the *Consolidated Decision* dated July 28, 2000 of Branch 272, Regional Trial Court, Marikina City, finding accused-appellant Jaime C. Jimenez guilty beyond reasonable doubt of two counts of simple rape and sentencing him to suffer the penalty of *reclusion perpetua*, as well as ordering him to pay the private complainant civil indemnity in the amount of Fifty Thousand Pesos (₱50,000.00) and moral damages also in the amount of Fifty Thousand Pesos (₱50,000.00), for each count, is hereby *AFFIRMED* with the *MODIFICATION* that accused-appellant is further ordered to pay the private complainant exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) for each count. No costs.

SO ORDERED.

Carpio (Acting Chairperson), Austria-Martinez,** Corona,* and *Velasco, Jr., *** JJ.,* concur.

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[37] *People v. Blancaflor*, G.R. No. 130586, January 29, 2004, 421 SCRA 354, 366.

* Acting Chairperson as per Special Order No. 623.

** Additional Member in lieu of Associate Justice Lucas P. Bersamin as per Special Order No. 626.

*** Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 624.

SECOND DIVISION

[G.R. No. 173210. April 24, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MACARIA L. TUASTUMBAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; JUDICIAL RECONSTITUTION OF TITLES; REPUBLIC ACT 26; SECTIONS 2(F) AND 3(F) THEREOF; SOURCE DOCUMENTS UPON WHICH RECONSTITUTION SHOULD ISSUE.— The governing law for judicial reconstitution of titles is R.A. No. 26. Sections 2 and 3 of RA 26 enumerate the sources upon which reconstitution should issue. Section 2 refers to source documents for reconstitution of the original certificate of title while Sec. 3 refers to sources for reconstitution of transfer certificates of title. The requirements of Secs. 2 and 3 are almost identical, referring to documents from official sources which recognize the ownership of the owner and his predecessors-in-interest. In *Republic v. Intermediate Appellate Court*, the Court ruled that "any other document" in Secs. 2(f) and 3(f) of RA 26 refers to documents similar to those previously enumerated therein, that is, those mentioned in Sections (a), (b), (c), (d) and (e). The Court reiterated this ruling in *Heirs of Dizon v. Hon. Discaya* and *Republic v. El Gobierno de las Islas Filipinas*. The documents alluded to in Secs. 2(f) and 3(f) must be resorted to in the absence of those preceding in order. If the petitioner for reconstitution fails to show that he had, in fact, sought to secure such prior documents and failed to find them, the presentation of the succeeding documents as substitutionary evidence is proscribed.

2. ID.; ID.; ID.; ID.; SECTIONS 12, 13 AND 15 THEREOF; JURISDICTIONAL REQUIREMENTS FOR AN ORDER FOR RECONSTITUTION TO ISSUE.— In relation to the foregoing, Secs. 12 and 13 of RA 26 requires compliance with additional jurisdictional requirements. Section 15 thereof also provides when an order for reconstitution should issue. From the foregoing, the following must be present for an order for

reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.

3. ID.; ID.; ID.; ID.; PRESUPPOSES THAT THE PROPERTY WHOSE TITLE IS SOUGHT TO BE RECONSTITUTED HAS ALREADY BEEN BROUGHT UNDER THE PROVISIONS OF THE TORRENS SYSTEM.— The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. RA 26 presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System.

4. ID.; ID.; ID.; NEITHER THE TAX DECLARATION AND REAL PROPERTY TAX CLEARANCE NOR THE REPORT OF THE LAND REGISTRATION AUTHORITY PROVES THE PRIOR VALID EXISTENCE OF THE CERTIFICATE OF TITLE.— The Extrajudicial Declaration of Heirs with Waiver of Inheritance Rights and Deed of Absolute Sale presented by respondent does not indicate that the property was registered in the name of the Legal Heirs of Sofia Lazo. Instead, said document identified and described Lot No. 7129 only through a Tax Declaration No. 04276. The CENRO certification merely certified that Sales Patent No. 43619 had been issued to the Heirs of Sofia Lazo on 21 July 1938. It does not show that the sales patent was caused to be filed with the Register of Deeds of the province where the property is located and that a certificate of title had been consequently issued, which should have been the normal sequence of events under Section 12 of Act No. 1120 or the Friar Lands Act upon payment by Sofia Lazo and her heirs of the final installment to the Government.

The certification from the Register of Deeds moreover categorically shows that no certificate of title over Lot No. 7129 was issued in the name of or claimed to be owned by the heirs of Sofia Lazo. The tax declaration and real property tax clearance under respondent's name also cannot be relied upon to establish the existence of the certificate of title as they merely prove payment of the realty taxes imposed on the property. The Blue Print of Advance Plan and Technical Description of Lot No. 7129 also do not prove the prior valid existence of the certificate of title as they are mere descriptions of Lot 7129. The LRA report also does not confirm the existence of the certificate of title but merely attests to the correctness of the plan and technical description which may subsequently be used as basis for the inscription of the technical description in the reconstituted title. The LRA report also states that the whole of the Talisay-Minglanilla Estate was subject of a registration case for which Decree No. 2787 was issued on 15 July 1908, but it does not indicate that Lot No. 7129 which is part of the Talisay-Minglanilla Estate was the subject of a separate registration proceeding resulting in the issuance of a decree of registration for said lot.

5. ID.; ID.; ID.; PRESUPPOSES THE EXISTENCE OF AN ORIGINAL CERTIFICATE OF TITLE WHICH WAS LOST OR DESTROYED.— At best, respondent's evidence may prove only that Lot No. 7129 was patented to Sofia Lazo and her heirs and that the same was later sold to respondent. We are not here making a categorical ruling on the ownership of Lot No. 7129, since ownership of the property is not the issue in this case. However, respondent is emphatic in her claim that ownership of the property has already been transferred from the Government to Sofia Lazo and her heirs by virtue of the issuance of Sales Patent No. 43619 on 21 July 1938. Indeed, jurisprudence has consistently held that under Act No. 1120, the equitable and beneficial title to the land passes to the purchaser the moment the first installment is paid and a certificate of sale is issued. When the purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title, at least in equity, retroacts to the time he first occupied the land, paid the first installment and was issued the corresponding certificate of sale. Furthermore, in the event of the death of the holder

of the certificate of sale before the issuance of the deed of conveyance, the interest of the holder of the certificate passes to his or her legal heirs, pursuant to Sec. 16 of Act No. 1120, as amended. However, in the case at bar, respondent failed to prove that an original certificate of title or transfer certificate of title actually existed. Lot No. 7129 may have actually been registered and the certificate of title thereto may have actually been issued, but the fact remains that this was not proven by the evidence presented in this case. There is also the possibility that the property had never been registered and that the certificate of title never issued. In that case, respondent's remedy may be another proceeding probably for the registration of title to Lot No. 7129 and not for reconstitution. Because reconstitution presupposes the existence of an original certificate of title which was lost or destroyed, if there is no such original certificate of title, there is actually nothing to reconstitute.

6. ID.; ID.; ID.; THE REPUBLIC IS NOT ESTOPPED FROM ASSAILING THE DECISION GRANTING THE PETITION IF, ON THE BASIS OF THE LAW AND THE EVIDENCE ON RECORD, SUCH PETITION HAS NO MERIT.— Respondent contends that fair play dictates that petitioner should have timely raised its objections to the petition for reconstitution during the hearings before the RTC. She claims it is unfair of petitioner to belatedly propound its opposition and for said opposition to be given merit at this time. The fact that no opposition is filed by a private party or by the Republic of the Philippines will not relieve respondent, as petitioner in the petition for reconstitution, of his burden of proving not only the loss or destruction of the title sought to be reconstituted but also that at the time the said title was lost or destroyed, he or his predecessor-in–interest was the registered owner thereof. The Republic is not estopped from assailing the decision granting the petition if, on the basis of the law and the evidence on record, such petition has no merit.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Singco and Cagara Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the Amended Decision[1] dated 23 June 2006 of the Court of Appeals in CA-G.R. CV No. 71071 entitled "*Macaria L. Tuastumban v. Republic of the Philippines*" which granted respondent Macaria L. Tuastumban's Motion for Reconsideration of its earlier Decision[2] dated 20 February 2006 and thereby affirmed with modification the Judgment[3] dated 11 December 2000 of the Regional Trial Court (RTC) of Cebu City, Branch 5. Said judgment granted respondent's petition for the reconstitution of a lost Original Certificate of Title (OCT).

On 8 November 1999, respondent filed a petition for reconstitution of the OCT covering Lot No. 7129, Flr-133, Talisay-Minglanilla Estate under Patent No. 43619 in the name of the Legal Heirs of Sofia Lazo, with a total land area of approximately 3,633 square meters. The OCT which was in the possession of the Register of Deeds of the Province of Cebu was allegedly either lost or destroyed during World War II. Respondent anchored her petition for reconstitution on Sec. 2(d) of Republic Act No. 26[4] (R.A. No. 26) which provides that an original certificate of title may be reconstituted from an authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued.

The RTC found the petition to be sufficient in form and substance and set the hearing of the petition on 29 March 2000.

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[1] *Rollo*, pp. 10-19. Penned by Executive Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr. of the Eighteenth Division.

[2] *Id.* at 117-127.

[3] *Id.* at 78-82. By Judge Ireneo Lee Gako, Jr.

[4] AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED (25 September 1946).

The RTC also directed the Branch Clerk of Court to publish a copy of the Notice of Hearing in the Official Gazette and to send copies thereof to the owners of the adjoining properties of Lot No. 7129, respondent's counsel, the Solicitor General, the Administrator of the Land Registration Authority and the Register of Deeds of Cebu Province.

On the scheduled hearing, the Branch Clerk of Court announced three times in open court to find out if there was any opposition to the petition. There being none, the court proceeded to receive respondent's exhibits to establish the jurisdictional facts. Thereupon, the RTC proceeded to try the case.

According to the Certification by the Community Environment and Natural Resources Office (CENRO) of Cebu City, Lot No. 7129 was granted to the heirs of Sofia Lazo via Patent No. 43619 issued on 21 July 1938. Respondent claims she bought the property from the said owners who are also her relatives, as evidenced by an *Extrajudicial Declaration of Heirs with Waiver of Inheritance Rights and Deed of Absolute Sale*. She claims that since the time of purchase, she has been occupying and possessing the land and paying the realty taxes thereon. Respondent prayed for reconstitution of the title covering the property since the title, supposedly on file and under the custody of the Register of Deeds of Cebu Province, had either been lost or destroyed during World War II as certified by said office. Cebu City Prosecutor Edilberto Ensomo, representing the Office of the Solicitor General, did not present any evidence against respondent.

Thus, on 11 December 2000, the RTC rendered its decision, the dispositive portion of which reads:

> WHEREFORE, the Register of Deeds, Province of Cebu is hereby ordered to reconstitute the lost Original Certificate of Title covering Lot No. 7129, Flr-133, Talisay-Minglanilla Estate, in the name of the Legal Heirs of Sofia Lazo based on Patent No. 43619 issued on 21 July 1938 by the Department of Environment and Natural Resources, Community Environment and Natural Resources Office, Cebu City, upon payment of the required fees.

Furnish copies of this Judgment to the Register of Deeds, Province of Cebu, the Administrator of the Land Registration Authority, the Office of the Solicitor General, Makati and counsel of the petitioner.

SO ORDERED.[5]

Petitioner interposed an appeal with the Court of Appeals which, on 20 February 2006,[6] granted the same and reversed the RTC judgment. The appellate court held that no proper reconstitution can be done since respondent did not utilize the sources of reconstitution provided under Sec. 2[7] of R.A. No. 26 in the order therein stated, merely presenting as it did a Certification from the CENRO that a patent had been issued over Lot No. 7129 in the name of the heirs of Sofia Lazo.

As found by the CA, respondent based her petition for reconstitution on the following documents: (a) Extrajudicial Declaration of Heirs with Waiver of Inheritance Rights and Deed of Absolute Sale dated 19 July 1999;[8] (b) CENRO Certification dated 31 May 1999 that Lot No. 7129 is patented in the name of the Legal Heirs of Sofia Lazo;[9] (c) Register of Deeds Certification dated 31 May 1999 that no certificate of title covering Lot No. 7129 was issued in the name of the legal heirs of Sofia Lazo and that all deeds/records were either burned

[5] *Id.* at 82.

[6] CA *rollo*, pp. 80-90.

[7] Section 2 of R.A. No. 26 reads: "Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title."

[8] RTC records, pp. 5-7.

[9] *Id.* at 11.

or lost during the last World War;[10] (d) Tax Declaration covering Lot No.7129 in the name of respondent;[11] (e) Blue Print of Advance Plan of Lot No. 7129;[12] (f) Technical Description of Lot No. 7129;[13] and (g) Real Property Tax Clearance.[14]

The CA held that respondent's proffered evidence fall under Sec. 2(f) of R.A. 26 which pertains to "any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title." Resort to the sources under Sec. 2(f) is justified only when the sources under Secs. 2(a) to (e) are unavailable. Respondent, though, had failed to lay the basis to warrant consideration of sources under Sec. 2(f). There was no proof of loss of the best source for reconstitution which is the owner's duplicate copy of the certificate of title; therefore, the succeeding sources for reconstitution cannot validly be considered.

However, upon a motion for reconsideration filed by respondent, the Court of Appeals in its Amended Decision of 23 June 2006 reversed itself and held that respondent has substantially complied with the requirements for reconstitution under RA 26.

The Court of Appeals traced the ownership of Lot No. 7129 based on the records of the Bureau of Lands, Friar Lands Division, now the CENRO of the DENR. It found that: The property was part of the Talisay-Minglanilla Friar Lands Estate covered by one mother title, OCT No. 188. Under Act No. 1120 or the Friar Lands Act, the whole estate was purchased by the Government of the Philippines and portions thereof were sold by installment to actual possessors. One such possessor was Sofia Lazo who was granted Sales Patent No. 43619 on 21 July 1938. This led to the issuance by the Philippine Government of a Deed of Conveyance which led to the issuance

[10] *Id.* at 12.

[11] *Id.* at 50.

[12] *Id.* at 42.

[13] *Id.* at 41.

[14] *Id.* at 51.

by the Register of Deeds of a transfer certificate of title (TCT) in favor of the Heirs of Sofia Lazo, and not an original certificate of title as claimed by respondent.

The Court of Appeals noted that aside from the CENRO Certification, blue print of Advance Plan and Technical Description of Lot No. 7129, respondent also offered in evidence a Report[15] from the Administrator of the Land Registration Authority (LRA) which indicated that:

> (2) The entire Talisay-Minglanilla Estate, Flr-133 of which Lot 7129 is a portion, appears in the records of this Authority to have been applied for registration of title in Court of Land Registration Case No. 3732 for which Decree No. 2787 was issued on 15 July 1908;
>
> (3) The plan and technical description of Lot 7129, Talisay-Minglanilla Estate, Flr-133, were verified correct by this Authority to represent the aforesaid lot and the same have been approved under (LRA) PR-18379 pursuant to the provisions of Section 12 of Republic Act No. 26.
>
> WHEREFORE, x x x, the plan and technical description having been approved, may be used as basis for the inscription of the technical description on the reconstituted certificate. Provided, however, that no certificate of title covering the same parcel of land exists in the office of the Register of Deeds concerned.[16]

The CA believed that these government records as duly certified and reported by the CENRO and the LRA uphold the prior existence of a certificate of title in favor of the Heirs of Sofia Lazo over Lot No. 7129. Since the Register of Deeds had already certified that no such copy of the title exists in its records, coupled with the fact that there were no private oppositors or claimants to the petition for reconstitution and the failure of herein petitioner Republic of the Philippines, represented by the Cebu City Prosecutor, to present any evidence against respondent or to object to any of respondent's offer of evidence, the Court of Appeals concluded that reconstitution should issue. Respondent's alleged failure to prove the loss of the owner's

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

[16] *Id.* at 37.

duplicate certificate of title was held to be justified by petitioner's failure to deny or oppose the allegation. As the allegation of loss was never specifically denied, the averment in respondent's petition was deemed admitted without need of evidence to prove the same. Thus, respondent properly resorted to the sources of reconstitution under Sec. 2(f) of R.A 26. The CA added that petitioner's objections were belatedly raised in the appeal before the appellate court and should be barred.

Thus, the *fallo* of the Amended Decision reads:

> WHEREFORE, premises considered, petitioner-appellee's Motion for Reconsideration is GRANTED. Thus, Our Decision dated 20 February 2006 is RECONSIDERED. Accordingly, the RTC Judgment dated 11 December 2000 is AFFIRMED WITH MODIFICATION that what is to be reconstituted is the lost Transfer Certificate of Title, and not Original Certificate of Title, over Lot No. 7129 in favor of the Legal Heirs of Sofia Lazo.
>
> SO ORDERED.

In this petition for review, petitioner alleges that the Court of Appeals erred in reversing its 20 February 2000 Decision considering the lack of legal and factual bases for the reconstitution. It argues that:

(1) The presentation of the required documents under Sec. 2, RA 26 is mandatory and jurisdictional and non-compliance therewith is fatal.

(2) The loss of the owner's duplicate copy of the alleged lost or destroyed certificate of title was not duly established.

(3) There was no factual or legal bases for reconstitution as there was no proof presented showing that a certificate of title covering Lot No. 7129 had been previously issued.[17]

Petitioner argues that the Certification from the CENRO presented by respondent is insufficient because Sec. 2(d) of RA 26 explicitly requires an authenticated copy of the decree of registration or patent pursuant to which the original certificate of title was issued. What must be presented is an authenticated

[17] *Rollo*, p. 40.

copy of the decree or registration patent and not a mere certification that the patent has been issued. The certification is mere hearsay especially since the issuing authority, a mere Records Officer I, was not even presented in court to identify the certification.

Petitioner also points out that respondent, during her testimony, made no mention of the owner's duplicate copy of the alleged lost certificate of title, which is the best source for reconstitution. Neither was there executed any affidavit of loss attesting to the circumstances of the loss of said owner's duplicate copy. The tax declaration presented by respondent cannot also be relied on since it is settled that tax declarations or realty tax payments are not conclusive evidence of ownership.

Petitioner also assails the Certification by the Register of Deeds of Cebu. The Certification, it is claimed, belies the fact that a certificate of title covering the subject property was issued prior to its loss since said Certification simply states that "according to the records of this office x x x no certificate of title covering Lot No. 7129, Flr-133, Talisay-Minglanilla Estate, Cebu, was issued in the name of and/or as claimed to be owned by the Legal Heirs of Sofia Lazo" and that "all deeds/records were either burned or lost during the last World War."

Petitioner concludes that since there was no evidence presented showing that an OCT or TCT had been issued prior to its alleged loss, there can be no legal or factual basis for its reconstitution. While there were certifications, technical descriptions and tax declarations presented, these are insufficient bases under RA 26. Respondent also did not make any reference to an OCT or TCT number but merely repeatedly mentioned an "original certificate of title covering Lot No. 7129."

The issue at bar is whether the documents presented by respondent constitute sufficient basis for the reconstitution of title to Lot No. 7129. We hold that respondent's evidence is inadequate.

The petition should be granted.

The governing law for judicial reconstitution of titles is R.A. No. 26. Sections 2[18] and 3[19] of RA 26 enumerate the sources upon which reconstitution should issue. Section 2 refers to source documents for reconstitution of the original certificate of title while Sec. 3 refers to sources for reconstitution of transfer certificates of title. The requirements of Secs. 2 and 3 are almost identical, referring to documents from official sources which recognize the ownership of the owner and his predecessors-in-interest.[20] In *Republic v. Intermediate Appellate Court*,[21] the Court ruled that "any other document" in Secs. 2(f) and 3(f) of RA 26 refers to documents similar to those previously enumerated therein, that is, those mentioned in Sections (a), (b), (c), (d) and (e). The Court reiterated this ruling in *Heirs of Dizon v. Hon. Discaya*[22] and *Republic v. El Gobierno de las Islas Filipinas.*[23] The documents alluded to in Secs. 2(f) and 3(f) must be resorted to in the absence of those preceding in order. If the petitioner for reconstitution fails to show that he had, in fact, sought to secure such prior documents and failed to find

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[18] See *supra* note 7.

[19] **Section 3.** Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of titles; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said documents, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost destroyed certificate of title.

[20] *Republic of the Philippines v. Lagramada*, G.R. No. 150741, 12 June 2008.

[21] No. 68303, 15 January 1988, 157 SCRA 62.

[22] 362 Phil. 536 (1999).

[23] G.R. No. 142284, 8 June 2005, 459 SCRA 533.

them, the presentation of the succeeding documents as substitutionary evidence is proscribed.[24]

In relation to the foregoing, Secs. 12[25] and 13[26] of RA 26 requires compliance with additional jurisdictional requirements.

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[24] *Republic of the Philippines v. Holazo*, G.R. No. 146846, 31 August 2004, 437 SCRA 345, 353.

[25] **Section 12.** Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Commissioner of Land Registration, or with a certified copy of the description taken from a prior certificate of title covering the same property.

[26] **Section 13.** The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having

Section 15[27] thereof also provides when an order for reconstitution should issue.

From the foregoing, the following must be present for an order for reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.[28] RA 26 presupposes that the property whose title is sought to be

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any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

[27] **Section 15.** If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and that the petitioner is the registered owner of the property or has an interest therein, that the said certificate of title was in force at the time it was lost or destroyed, and that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of reconstitution shall be issued. The clerk of court shall forward to the register of deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but such dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act.

[28] *Lee v. Republic of the Philippines*, G.R. No. 128195, 3 October 2001, 366 SCRA 524.

reconstituted has already been brought under the provisions of the Torrens System.[29]

Respondent anchored her petition for reconstitution on Sec. 2(d) of RA 26. Respondent however failed to present an authenticated copy of the decree of registration or patent pursuant to which the original certificate of title was issued. She relied on the CENRO certification which is however not the authenticated copy of the decree of registration or patent required by law. The certification plainly states only that Lot No. 7129 is patented in the name of the Legal Heirs of Sofia Lazo. It is not even a copy of the decree of registration or patent itself but a mere certification of the issuance of such patent.

Even if we base respondent's petition on Sec. 2(f) of R.A. No. 26 as the Court of Appeals did, and as respondent now argues in this petition, reconstitution would still not issue. Resort to other documents in Sec. 2(f) must be employed only when the documents earlier referred to in Secs. 2(a) to (e) do not avail. Respondent reasons that she can only rely on Sec. 2(f) because the required documents enumerated in Secs. 2(a) to (e) may only be procured from the Register of Deeds which had already certified that all such records were burned or destroyed in the last World War. She also adds that secondary evidence may now be presented in accordance with Sec. 5, Rule 130 of the Revised Rules on Evidence. Said section provides that when the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. The order of presentation of secondary evidence under Sec. 5, Rule 130 is existence, execution, loss, contents. The order may be changed if necessary in the discretion of the court.[30]

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[29] *Cabello v. Republic of the Philippines*, G.R. No. 142810, 18 August 2005, 467 SCRA 330.

[30] *Republic of the Philippines v. Verzosa*, G.R. No. 173525, 28 March 2008, 550 SCRA 382.

The problem though is that respondent has not established the issuance or existence of the certificate of title covering Lot No. 7129 nor of the other documents enumerated in Secs. 2(b) to (e) that would prove the existence, execution and contents of the certificate of title sought to be reconstituted. There is nothing in the evidence she presented that would show that Lot No. 7129 had been registered in the name of the Legal Heirs of Sofia Lazo and that the certificate of title in the name of the said heirs over said property had been issued.

The Extrajudicial Declaration of Heirs with Waiver of Inheritance Rights and Deed of Absolute Sale presented by respondent does not indicate that the property was registered in the name of the Legal Heirs of Sofia Lazo. Instead, said document identified and described Lot No. 7129 only through a Tax Declaration No. 04276. The CENRO certification merely certified that Sales Patent No. 43619 had been issued to the Heirs of Sofia Lazo on 21 July 1938. It does not show that the sales patent was caused to be filed with the Register of Deeds of the province where the property is located and that a certificate of title had been consequently issued, which should have been the normal sequence of events under Section 12[31] of Act

[31] **SECTION 12.** It shall be the duty of the Chief of the Bureau of Public Lands by proper investigation to ascertain what is the actual value of the parcel of land held by each settler and occupant, taking into consideration the location and quality of each holding of land, and any other circumstances giving its value. The basis of valuation shall likewise be, so far as practicable, such that the aggregate of the values of all the holdings included in each particular tract shall be equal to the cost to the Government to the entire tract, including the cost of surveys, administration and interest upon the purchase money to the time of sale. When the cost thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act at the office of the Chief of Bureau of Public Lands, in gold coin of the United States or its equivalent in Philippine currency, and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. The Chief of the Bureau of Public Lands shall, in each instance where a certificate is given to the settler

No. 1120 or the Friar Lands Act upon payment by Sofia Lazo and her heirs of the final installment to the Government. The certification from the Register of Deeds moreover categorically shows that no certificate of title over Lot No. 7129 was issued in the name of or claimed to be owned by the heirs of Sofia Lazo. The tax declaration and real property tax clearance under respondent's name also cannot be relied upon to establish the existence of the certificate of title as they merely prove payment of the realty taxes imposed on the property. The Blue Print of Advance Plan and Technical Description of Lot No. 7129 also do not prove the prior valid existence of the certificate of title as they are mere descriptions of Lot 7129. The LRA report also does not confirm the existence of the certificate of title but merely attests to the correctness of the plan and technical description which may subsequently be used as basis for the inscription of the technical description in the reconstituted title. The LRA report also states that the whole of the Talisay-Minglanilla Estate was subject of a registration case for which Decree No. 2787 was issued on 15 July 1908, but it does not indicate that Lot No. 7129 which is part of the Talisay-Minglanilla Estate was the subject of a separate registration proceeding resulting in the issuance of a decree of registration for said lot.

At best, respondent's evidence may prove only that Lot No. 7129 was patented to Sofia Lazo and her heirs and that the same was later sold to respondent. We are not here making a categorical ruling on the ownership of Lot No. 7129, since ownership of the property is not the issue in this case. However, respondent is emphatic in her claim that ownership of the property has already been transferred from the Government to Sofia Lazo and her heirs by virtue of the issuance of Sales Patent No. 43619 on 21 July 1938. Indeed, jurisprudence has consistently held that under Act No. 1120, the equitable and beneficial title to the land passes to the purchaser the moment the first installment is paid and a certificate of sale is issued. When the purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title,

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and occupant of any holding, take his formal receipt showing the delivery of such certificate, signed by said settler and occupant.

at least in equity, retroacts to the time he first occupied the land, paid the first installment and was issued the corresponding certificate of sale.[32] Furthermore, in the event of the death of the holder of the certificate of sale before the issuance of the deed of conveyance, the interest of the holder of the certificate passes to his or her legal heirs, pursuant to Sec. 16[33] of Act No. 1120, as amended. However, in the case at bar, respondent failed to prove that an original certificate of title or transfer certificate of title actually existed. Lot No. 7129 may have actually been registered and the certificate of title thereto may have actually been issued, but the fact remains that this was not proven by the evidence presented in this case. There is also the possibility that the property had never been registered and that the certificate of title never issued. In that case, respondent's remedy may be another proceeding probably for the registration of title to Lot No. 7129 and not for reconstitution. Because reconstitution presupposes the existence of an original certificate of title which was lost or destroyed, if there is no such original certificate of title, there is actually nothing to reconstitute.

One last point. Respondent contends that fair play dictates that petitioner should have timely raised its objections to the petition for reconstitution during the hearings before the RTC. She claims it is unfair of petitioner to belatedly propound its opposition and for said opposition to be given merit at this

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[32] *Dela Torre v. Court of Appeals*, G.R. No. 113095, 8 February 2000, 325 SCRA 11, citing *Director of Lands v. Rizal*, G.R. No. L-2925, 87 Phil. 806, 810 (1950); *Alvarez v. Espiritu*, G.R. No. L-18833, 14 SCRA 892, 897 (1965); *Fabian v. Fabian*, G.R. No. L-20449, 22 SCRA 231, 235 (1968); *Republic v. Heirs of Felix Caballero*, G.R. No. L-27473, 79 SCRA 177, 188-189 (1977).

[33] **SECTION 16.** In the event of the death of a holder of a certificate the issuance of which is provided for in section twelve hereof, prior to the execution of a deed by the Government to any purchaser, the interest of the holder of the certificate shall descend and deed shall be issued to the persons who under the laws of the Philippine Islands would have taken had the title been perfected before the death of the holder of the certificate, upon proof of compliance with all the requirements of the certificate. In case the holder of the certificate shall have sold his interest in the land before having complied with all the conditions thereof, the purchaser shall have all the rights of the holder of the certificate upon presenting his assignment to the Chief of the Bureau of Public Lands for registration.

time. The fact that no opposition is filed by a private party or by the Republic of the Philippines will not relieve respondent, as petitioner in the petition for reconstitution, of his burden of proving not only the loss or destruction of the title sought to be reconstituted but also that at the time the said title was lost or destroyed, he or his predecessor-in-interest was the registered owner thereof. The Republic is not estopped from assailing the decision granting the petition if, on the basis of the law and the evidence on record, such petition has no merit.[34]

WHEREFORE, in view of the foregoing, the petition is *GRANTED*. The Amended Decision dated 23 June 2006 of the Court of Appeals is hereby *REVERSED* and *SET ASIDE* and its Decision dated 20 February 2006 is *REINSTATED*.

SO ORDERED.

Carpio Morales[*] *(Acting Chairperson), Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 173834. April 24, 2009]

ISABELITA CUNANAN, CAROLYN CUNANAN and CARMENCITA F. NEMOTO, *petitioners, vs.* **JUMPING JAP TRADING CORPORATION, represented by REUBEN M. PROTACIO,** *respondent.*

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[34] *Republic of the Philippines v. Holazo*, G.R. No. 146846, 31 August 2004, 437 SCRA 345.

[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; THE POWER TO INSTITUTE ACTIONS NECESSARILY INCLUDES THE POWER TO EXECUTE THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.— Prefatorily, the Court agrees with the appellate court in affirming the trial court ruling that Protacio is authorized to institute the complaint against the petitioners. The certification issued by the majority of the directors clearly indicates that he is authorized to demand and collect the corporation's claims over the Ayala Alabang property and the institution of actions in court. The authority granted to Protacio is broad enough to enable him to take any legal action necessary to protect respondent's interest in the disputed property. This Court has also held that the power to institute actions necessarily includes the power to execute the verification and certification against forum shopping required in initiatory pleadings, such as the complaint in Civil Case No. 02-189.

2. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; NOTICE OF *LIS PENDENS;* PURPOSE.— A notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property. The filing of a notice of *lis pendens* charges all strangers with a notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire on the property is subject to the eventuality of the suit. Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.

3. ID.; ID.; ID.; ID.; WHEN DEEMED CANCELLED.— Under Section 77 of Presidential Decree (P.D.) No. 1529, a notice of *lis pendens* shall be deemed cancelled only upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal

thereof if there was a final judgment in favor of the defendant or the action was disposed of terminating finally all rights of the plaintiff over the property in litigation.

4. ID.; ID.; ID.; ID.; AN UNREGISTERED ORDER OF CANCELLATION OF NOTICE OF *LIS PENDENS* WILL NOT PRECLUDE THE SAID NOTICE FROM CONTINUING IN EFFECT.— There is no question that the Register of Deeds cancelled the notice of *lis pendens* annotated on TCT No. 213246 only on 23 July 2001 while the Cunanans and Carmencita executed the deed of real estate mortgage three days before, or on 20 July 2001. The Cunanans are bound by the notice of *lis pendens* because on the date they executed the mortgage deed with Carmencita the annotation was still subsisting and had not yet been cancelled. The Order dated 18 July 2001 dismissing the complaint and directing the cancellation of the notice of *lis pendens* did not improve the situations of the Cunanans simply because said Order was not registered at all and therefore did not preclude the notice of *lis pendens* from continuing in effect.

5. ID.; ID.; ID.; ID.; AN ORDER CANCELLING THE NOTICE OF *LIS PENDENS* WOULD HAVE NO EFFECT WHERE THE SAME WAS ISSUED AFTER THE EXECUTION OF THE MORTGAGE DEED.— Neither did the issuance and registration of the amended Order dated 23 July 2001, although it even commanded the Register of Deeds to cancel the notice of *lis pendens* apart from containing the same directives as those in the 18 July 2001 Order. The simple reason this time is the fact that the last order was issued after the execution of the mortgage deed. As the mortgage had already been executed and therefore deemed valid and effective between the parties as of the date of its execution, the Cunanans had taken a gamble on the result of the litigation referred to in the notice of *lis pendens* when they accepted the properties as security.

6. ID.; ID.; ID.; ID.; ONE WHO DEALS WITH PROPERTY REGISTERED UNDER THE TORRENS SYSTEM NEED NOT GO BEYOND THE SAME, BUT ONLY HAS TO RELY ON THE FACE OF THE TITLE; EXCEPTION; CASE AT BAR.— The result in the present case would still be the same even if the parties executed the mortgage deed after the Register

of Deeds had cancelled the notice of *lis pendens*. It is true that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the face of the title. He is charged with notice only of such burdens and claims as are annotated on the title. However, this principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser or mortgagee has knowledge of a defect or the lack of title in his vendor or mortgagor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser or mortgagee for value nor a purchaser or mortgagee in good faith. In the present case, the fact that the orders dismissing the case and directing the cancellation of the notice of *lis pendens* was not yet final and executory should have impelled the Cunanans to be wary of further developments, as in fact plaintiff filed a motion for reconsideration and the RTC granted the same. In short, the Cunanans' knowledge of the existence of a pending litigation involving the disputed property makes them mortgagees in bad faith. Hence, respondent could still recover the property from the Cunanans.

APPEARANCES OF COUNSEL

Viray Basa & Reyes Law Office for petitioners.
R.L. Moldez Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the 7 April 2006 decision of the Court of Appeals[2] and the 28

[1] *Rollo*, pp. 55-88.

[2] *Id.* at 10-44. Penned by Associate Justice Martin Villarama, Jr. and concurred in by Associate Justices Edgardo Sundiam and Japar Dimaampao. The dispositive portion reads as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision dated April 16, 2004

July 2006 resolution[3] of the same court denying petitioners' motion for reconsideration.

The pertinent facts as culled from the records follow.

Petitioner Carmencita Fradejas Nemoto (Carmencita) is the registered owner of a 618 square meter-lot, with the house and improvements thereon, located at No. 167 Pili Drive, Ayala Alabang Village, Muntinlupa City and covered by Transfer Certificate of Title (TCT) No. 213246.[4] She acquired the property by virtue of a deed of sale executed in her favor by Metropolitan Land Corporation (MLC).

On 22 March 2001, respondent Jumping Jap Trading Corporation (respondent), represented by its President, Rueben Protacio (Protacio), filed Civil Case No. 01-098 with the Regional Trial Court (RTC) of Muntinlupa City seeking the annulment of both the deed of sale and TCT No. 213246, as well as the reconveyance of the property. Respondent anchored the complaint on its alleged superior right over the property by virtue of the execution of a previous deed of conditional sale by MLC in its favor and its having paid ₱18,300,000.00 by itself using corporate funds and ₱5,000,000.00 by Protacio, or a total of ₱23,300,000.00 which was more than the ₱12,600,000.00 that the spouses Nemoto had paid on the purchase price of ₱35,900,000.00. It was allegedly agreed that Nobuyasu Nemoto (Nobuyasu), who is one of respondent's stockholders and also a friend of Protacio, would pay the remaining installment of ₱12,600,000.00 and reimburse the amount already paid by respondent and Protacio while the title, to be placed in the name of the minor daughter of spouses Nemoto, Sakura Nemoto, would be in respondent's possession.

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of the Regional Trial Court of Muntinlupa City, Branch 276 in Civil Case No. 02-189 is hereby AFFIRMED. However, nothing in this decision will affect the rights of appellants Isabelita Cunanan and Carolyn Cunanan as mortgagees in the event of reversal on appeal of the decision rendered by the RTC of Muntinlupa City, Branch 256 in Civil Case No. 01-098.

With costs against the defendants-appellants.

SO ORDERED.

[3] *Id.* at 46.

[4] *Id.* at 119-122.

However, MLC did not deliver the title to the property to respondent despite repeated oral demands. Respondent later discovered that a deed of absolute sale was executed between MLC and Carmencita with a stated consideration of ₱12,500,000.00 and that TCT No. 213246 was issued in the name of Carmencita.[5] Despite several demands and assurances in a span of more than three years, the spouses Nemoto still failed to pay the purchase price advanced by respondent and Protacio amounting to ₱23,400,000.00.

On 19 April 2001, respondent caused the annotation of a notice of *lis pendens* involving Civil Case No. 01-098 on TCT No. 213246. Despite the notice of *lis pendens*, Carmencita executed a deed of real estate mortgage[6] dated 20 July 2001 over the property in favor of petitioners Isabelita and Carolyn Cunanan (the Cunanans) as security for the payment of a ₱10 million loan plus interest, as well as all subsequent loans and obligations. She also executed a promissory note dated 22 July 2001,[7] undertaking to pay on or before 22 December 2001 the ₱10 million loan with interest of 3% per month.

In an Order dated 18 July 2001, the RTC dismissed the case and ordered the cancellation of the notice of *lis pendens*.[8] Subsequently, on 23 July 2001, the RTC issued an amended order[9] specifically ordering the Register of Deeds of Muntinlupa City to immediately cancel the notice of *lis pendens* on TCT No. 213246.[10] Within the same day, the Register of Deeds cancelled

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[5] *Id.* at 11. See also pp. 112-115.

[6] *Id.* at 226-231.

[7] *Id.* at 232-233.

[8] *Id.* at 219-225. Penned by Judge Alberto Lerma of RTC Branch 256 of Muntinlupa City. The dispositive portion reads as follows:

> Premises considered and viewed in proper perspective, the Court is of the ineluctable conclusion, and so holds, that plaintiff's motion to declare defendants in default is bereft of factual and legal basis and that defendants' motion to dismiss and cancel notice of *lis pendens* is granted.

[9] *Id.* at 234-240.

[10] *Id.* at 240.

the notice of *lis pendens* and, immediately thereafter, annotated the deed of real estate mortgage.[11]

The RTC subsequently granted respondent's motion for reconsideration of the amended order of dismissal in its order dated 24 October 2001.[12] Thereafter, the Register of Deeds of Muntinlupa City re-annotated the notice of *lis pendens* on 12 December 2001.[13]

Ultimately, the RTC decided Civil Case No. 01-098 in favor of respondent in a Decision[14] dated 26 February 2002.

In the meantime, the Cunanans effected the extra-judicial foreclosure of the mortgage on the property on 17 July 2002.[15] This prompted respondent to file on 12 August 2002 before the RTC of Muntinlupa City Civil Case No. 02-189[16] seeking the nullification of mortgage deed and the extra-judicial foreclosure proceedings, as well as the cancellation of the mortgage deed annotation on TCT No. 213246. In the complaint in that case,

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[11] *Id.* at 122.

[12] *Id.* at 245-246. The Order was penned by Presided by Judge Norma Perello for Judge Alberto Lerma voluntarily inhibited himself. The dispositive portion reads as follows:

> Accordingly, the ORDER dated July 23, 2001 is reconsidered and the COMPLAINT with Amended Verification admitted before answer. Defendants are directed to file their answer within the remaining period of time for them to do so, but not less than five (5) days from receipt hereof.
>
> The Registry of Deeds of Muntinlupa City is directed to maintain the Notice of *Lis Pendens* in Transfer Certificate of Title No. 213246 subject matter of this annulment case.
>
> IT IS SO ORDERED.

[13] *Id.* at 122.

[14] *Id.* at 144-166. On appeal, the Court of Appeals affirmed the judgment of the trial court in a decision promulgated on 24 March 2004 in CA-G.R. CV No. 74990. This Court denied petitioners' Rule 45 petition from the Court of Appeals' decision in a Resolution dated 22 September 2004 in G.R. No. 164043. See *rollo*, G.R. No. 164043.

[15] *Id.* at 167.

[16] *Id.* at 96-108.

from which the present case stemmed, respondent as plaintiff, averred that the mortgage deed was executed fraudulently and deceitfully to deprive respondent of its right over the property and that the Cunanans are mortgagees in bad faith since Civil Case No. 01-098 was still pending when the deed of real estate mortgage was executed in their favor.[17]

On 16 April 2004, the RTC rendered its decision[18] in favor of respondent. It found that the execution of the real estate mortgage was done in bad faith for Civil Case No. 01-098 was still pending as the dismissal thereof was not yet final and executory and the notice of *lis pendens* was not yet cancelled by the Register of Deeds. In fact, a timely motion for reconsideration of the order dismissing the complaint and canceling the notice of *lis pendens* was filed and granted.

On appeal, the Court of Appeals affirmed the decision of the trial court per its decision[19] of 7 April 2006. It found that the notice of *lis pendens* was subsisting at the time the contract of real estate mortgage was executed between the Cunanans and Carmencita. And even when the notice of *lis pendens* was cancelled on 23 July 2001, the Cunanans were aware that the proceedings

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[17] *Id.* at 102-103.

[18] *Id.* at 249-264. The dispositive portion reads as such:

PREMISES CONSIDERED, CARMENCITA FRADEJAS NEMOTO had no right to validly mortgage the property, hence the mortgage constituted by her over this same parcel is void. The mortgagees ISABELITA CUNANAN and CAROLYN CUNANAN, with malice of the defect of the ownership of the mortgage and bad faith, even greed, in a hurry to get the property, disregarded all measures of prudence, are not mortgagees in good faith, did not acquire any right to the property more than the Plaintiff.

Accordingly, the mortgage not legally constituted is hereby cancelled and lifted. The extrajudicial foreclosure did not vest any right on the purchaser and mortgagees and said proceedings also voided as there was no valid mortgage. The Preliminary injunction issued by this Court on 21 September 2002 is hereby made permanent. The Register of Deeds of Muntinlupa City is directed to so cancel such an encumbrance on Transfer Certificate of Title No. 213246 with the mortgage being void, should be cancelled, the foreclosure on the same void mortgage is likewise voided. There was no mortgage to foreclose.

IT IS SO ORDERED.

[19] Note 2.

in Civil Case No. 01-098 was not yet terminated, as in fact, the notice was subsequently re-annotated after the RTC had granted respondent's motion for reconsideration. Moreover, the Court of Appeals held that at the time of the extra-judicial foreclosure sale of the property the notice of *lis pendens* had been reinstated by the RTC and this tainted the Cunanans' status as purchasers at the foreclosure sale with bad faith.

Now, petitioners are before this Court.

Prefatorily, the Court agrees with the appellate court in affirming the trial court ruling that Protacio is authorized to institute the complaint against the petitioners. The certification issued by the majority of the directors clearly indicates that he is authorized to demand and collect the corporation's claims over the Ayala Alabang property and the institution of actions in court.[20] The authority granted to Protacio is broad enough to enable him to take any legal action necessary to protect respondent's interest in the disputed property. This Court has also held that the power to institute actions necessarily includes the power to execute the verification and certification against forum shopping[21] required in initiatory pleadings, such as the complaint in Civil Case No. 02-189.

The sole remaining issue is whether or not the Cunanans are bound by the notice of *lis pendens* which was ordered cancelled by the RTC.

A notice of *lis pendens*[22] is an announcement to the whole world that a particular real property is in litigation, serving as a

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[20] *Rollo*, p. 109. RESOLVED, that pursuant to paragraph "h," Art. IV, Sec. of the By-Laws of this Corporation, the President, Mr. Rueben Protacio is hereby authorized to collect, receive and/or demand any amount of money or similar claims in relation to and connected with the Ayala Alabang Property including the institution of appropriate court actions.

[21] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, 14 October 2005, 473 SCRA 151,161-162.

[22] 1997 RULES OF CIVIL PROCEDURE, Rule 13, Sec. 14. *Notice of lis pendens.*—In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the

warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property.[23] The filing of a notice of *lis pendens* charges all strangers with a notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire on the property is subject to the eventuality of the suit.[24] Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.[25]

Under Section 77 of Presidential Decree (P.D.) No. 1529,[26] a notice of *lis pendens* shall be deemed cancelled only upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof if there was a final judgment in favor of the defendant or the action was disposed of terminating finally all rights of the plaintiff over the property in litigation.

Given the antecedent facts in the present case, the Court should deny the petition.

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property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. **Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.**

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the right of the party who caused it to be recorded.

[23] *AFP Mutual Benefit Association, Inc. v. Court of Appeals*, G.R. No. 104769, 3 March 2000, 327 SCRA 203, 214-215.

[24] *Laroza v. Guia*, 134 SCRA 341 (1985).

[25] *Eduardo Fernandez, et. al. v. Court of Appeals*, G.R. No. 115813, 16 October 2000, 343 SCRA 184, 194. Citing *Tan, et al. v. Lantin, et al.*, 142 SCRA 423, 425 (1986). See *Po Lam v. Court of Appeals*, G.R. No. 116220, 6 December 2000, 347 SCRA 86, 96-97.

[26] Property Registration Decree.

There is no question that the Register of Deeds cancelled the notice of *lis pendens* annotated on TCT No. 213246 only on 23 July 2001 while the Cunanans and Carmencita executed the deed of real estate mortgage three days before, or on 20 July 2001. The Cunanans are bound by the notice of *lis pendens* because on the date they executed the mortgage deed with Carmencita the annotation was still subsisting and had not yet been cancelled. The Order dated 18 July 2001 dismissing the complaint and directing the cancellation of the notice of *lis pendens* did not improve the situations of the Cunanans simply because said Order was not registered at all and therefore did not preclude the notice of *lis pendens* from continuing in effect.

Neither did the issuance and registration of the amended Order dated 23 July 2001, although it even commanded the Register of Deeds to cancel the notice of *lis pendens* apart from containing the same directives as those in the 18 July 2001 Order. The simple reason this time is the fact that the last order was issued after the execution of the mortgage deed. As the mortgage had already been executed and therefore deemed valid and effective between the parties as of the date of its execution, the Cunanans had taken a gamble on the result of the litigation referred to in the notice of *lis pendens* when they accepted the properties as security.

The result in the present case would still be the same even if the parties executed the mortgage deed after the Register of Deeds had cancelled the notice of *lis pendens*. It is true that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the face of the title. He is charged with notice only of such burdens and claims as are annotated on the title. However, this principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser or mortgagee has knowledge of a defect or the lack of title in his vendor or mortgagor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser or mortgagee for value nor a purchaser

or mortgagee in good faith.[27] In the present case, the fact that the orders dismissing the case and directing the cancellation of the notice of *lis pendens* was not yet final and executory should have impelled the Cunanans to be wary of further developments, as in fact plaintiff filed a motion for reconsideration and the RTC granted the same. In short, the Cunanans' knowledge of the existence of a pending litigation involving the disputed property makes them mortgagees in bad faith. Hence, respondent could still recover the property from the Cunanans.

Petitioners mistakenly rely on the Court's holding in *Po Lam v. Court of Appeals*.[28] The case involves a dispute over two parcels of lands with notice of *lis pendens* annotated on the titles. The trial court declared the predecessor-in-interest of the petitioner spouses Po Lam as owners of the properties and ordered the cancellation of the notice of *lis pendens* on both titles. The Register of Deeds was only able to cancel the annotation on one of the titles. During the pendency of the appeal to the Court of Appeals, the two properties were sold to the petitioners. It was only after four years that the petitioners had the notice of *lis pendens* on the title of the other property cancelled. New certificates of titles were issued to petitioners. In declaring that the spouses Po Lam are not purchasers in bad faith, we ruled, thus:

> A possessor in good faith has been defined as "one who is unaware that there exists a flaw which invalidates his acquisition of the thing (See Article 526, Civil Code). Good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title (*Piño v. CA*, 198 SCRA 434 [1991]). **In this case, while petitioners bought Lot No. 2581 from LAHCO while a notice of *lis pendens* was still annotated thereon, there was also existing a court order canceling the same. Hence, petitioners cannot be considered as being "aware of a flaw which invalidates their acquisition of the thing" since the alleged flaw, the notice of *lis pendens*, was already being ordered cancelled at the time of the purchase. On this ground alone, petitioners can already be considered buyers in good faith.** (Emphasis ours.)

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[27] *Sandoval v. Court of Appeals*, 329 Phil. 48 (1996); *Leung Yee vs. F.L. Strong Machinery Co.*, 37 Phil. 644.

[28] G.R. No. 116220, 6 December 2000, 347 SCRA 86.

More importantly, however, the notice of *lis pendens* inscribed on TCT No. 2581 was cancelled on May 20, 1974, pursuant to the order of the trial court in Civil Case No. 2953. **Felix Lim did not move for the reinstatement of the cancelled notices of *lis pendens*.** What is the effect of this cancellation? To follow the prior ruling of the Court in the instant case, the cancellation of the notice of *lis pendens* would have no effect. Regardless of the cancellation of the notice of *lis pendens*, the Po Lam spouses are still considered as having notice of a possible defect in the title of LAHCO, making them purchasers in bad faith.[29] (Emphasis ours.)

In the *Po Lam* case, the Register of Deeds only cancelled the notice of *lis pendens* on one of the titles that were in dispute. It was almost a year passed when the trial court's order was annotated on the title of the other property. The spouses Po Lam purchased both properties at the same time several months after the trial court declared their predecessor-in-interest as owner of the properties and ordered the cancellation of the notice of *lis pendens*. There was no finding that the spouses Po Lam were aware of any pending litigation over the property for no motion for reconsideration or motion for reinstatement of the notice of *lis pendens* was filed with the trial court. The Court had no choice but to give effect to the trial court's order and considered the petitioners as buyers in good faith.

In the present case, the mortgage deed was executed even before the Register of Deeds had the chance to cancel the annotated notice of *lis pendens* on the title of the disputed property. Moreover, the RTC's orders had not even attained finality when the mortgage deed was executed. The respondent in fact filed on 2 August 2001 a motion for reconsideration of the trial court's order and sought the reinstatement of the cancelled notice of *lis pendens*. On 24 October 2001, the trial court reconsidered its previous ruling and ordered the reinstatement of the notice of *lis pendens*.

WHEREFORE, the Court *AFFIRMS* the decision of the Court of Appeals in CA-G.R. CV No. 82588. Cost against petitioners.

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[29] *Id.* at 94-95.

SO ORDERED.

Carpio Morales[*] *(Acting Chairperson), Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

FIRST DIVISION

[G.R. No. 176531. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROMEO BANDIN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF ACCUSED; THE VICTIM'S IDENTIFICATION OF THE ACCUSED BY HIS VOICE ACCEPTED, PARTICULARLY WHERE THE SAME HAS KNOWN THE ACCUSED FOR A LONG TIME.— In this case, we find no reason to overturn the conclusion arrived at by the trial court as affirmed by the CA. It held that AAA's testimony was credible as she delivered her testimony in a clear, direct and positive manner. Through his voice, she positively identified appellant as the man who sexually abused her. Identification of an accused by his voice has been accepted, particularly in cases where, as in this case, the victim has known the perpetrator for a long time.

2. ID.; ID.; DEFENSES OF DENIAL AND ALIBI; CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE TESTIMONIES OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.— Consequently, appellant's defense of denial and alibi must crumble in the

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[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

face of AAA's positive and clear identification of him as the perpetrator of the crime. Denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.

3. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF REDUCED TO ₱30,000.00 IN CASE AT BAR.— However, we deem it fit to reduce the amount of exemplary damages awarded to private complainant from ₱50,000 to ₱30,000 in line with recent jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

For review is the September 23, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00152. It affirmed with modification the August 29, 2000 decision[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 18 in Criminal Case No. 93-1761 which found appellant Romeo Bandin guilty of the crime of rape[3] and sentenced him to suffer the penalty of *reclusion perpetua*.

The complaint read:

That on or about May 21, 1993, at 12.30 P.M., (sic) more or less, at Tagpangi, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with force

[1] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. of the Twenty-Third Division of the Court of Appeals. *Rollo*, pp. 5-18.

[2] Penned by Judge Edgardo T. Lloren. CA *rollo*, pp. 66-75.

[3] As penalized under Art. 335 of the Revised Penal Code.

and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with complainant-victim, AAA,[4] a 16 [-year] old woman, against her will.

CONTRARY TO and in violation of Article 335 of the Revised Penal Code.[5]

Cagayan de Oro City, Philippines. July 22, 1993.

On August 20, 1993, the trial court issued a warrant of arrest. It could not be served on appellant, however, as he could not be found.

On May 4, 1994, another warrant of arrest was issued. This was returned on January 20, 1999. On the same date, appellant was committed to the city correctional officer of Cagayan de Oro City.

On arraignment, appellant entered a plea of not guilty. Thereafter, pre-trial and trial ensued.

The prosecution presented two witnesses, namely: the victim, AAA, and Dr. Aziel Diel,[6] a pathologist of the Northern Mindanao Regional Training Hospital who conducted the vaginal examination of AAA.

During the trial, the prosecution established that on May 21, 1993, AAA and her older sister, BBB,[7] went to sleep in their hut in Agora, Tagpangi, Cagayan de Oro City at about

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[4] "The Court shall withhold the real name of victim-survivor and shall use fictitious initials instead to represent her. 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." (*People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.)

[5] CA *rollo*, p. 9.

[6] One of her assignments in the said hospital was to conduct physical examination of rape victims. She claimed that she had already examined more or less one hundred (100) rape victims. See CA decision, *rollo*, p. 7.

[7] It was said that BBB's left eye was totally blind, while her right eye had blurred vision. She was not presented as a witness for AAA. She died on August 19, 1998. *Id.*, p. 6.

7:00 p.m. Their other siblings and parents were then in Batinay and Lanao del Norte, respectively.

AAA woke up at past midnight because she felt a heavy burden on top of her. It was a naked man who was holding her tightly and who uttered in a commanding voice, "Don't move!" She recognized the man's voice as belonging to her brother-in-law, the appellant in this case.

Thereafter, appellant removed the victim's short pants and underwear. AAA covered her genitals with her right hand and pleaded with her brother-in-law to stop. Appellant, however, proceeded to remove AAA's hand from her genitals, spread her legs and immediately inserted his penis inside her vagina. She shouted for help several times but no one responded. She was too frightened to resist appellant because he was armed with a long firearm which he placed beside her.

Meanwhile, AAA's sister, BBB, was awakened because of the commotion. Fearing that she would be appellant's next victim, she ran out of the house.

Finally, after having his way with the victim, appellant warned her to keep silent about the incident; otherwise, he would kill her and her parents. Subsequently, appellant fled from the scene, leaving the victim crying from the pain she felt in her vagina. She then discovered that there was blood and semen in it. Alarmed, she went to the house of her aunt, CCC, which was about ten meters away from their house. Once there, she relayed the whole incident to CCC.

The victim also reported the incident to her father the following morning. However, it took her father several days to decide on what to do as he was afraid of appellant who was a member of the Citizen Auxiliary Force Geographical Unit (CAFGU) in Tagpangi, Cagayan de Oro City.

AAA finally submitted herself a week later to a physical examination conducted by Dr. Diel. The medical certificate revealed that "there were healed lacerations at three and six o'clock positions which were irregular, sharp and coaptated."[8]

[8] *Id.*, p. 7.

Citing NBI[9] statistics, Dr. Diel stated that this indicated that sexual intercourse had indeed occurred.

For its part, the defense presented the testimonies of appellant and his fellow CAFGU members, Isidro Encoy[10] and Junifer Baal. Appellant's defense hinged on denial and alibi. He contended that he did not rape AAA. He claimed that he was sleeping in the bunker of the CAFGU station in Tagpangi, Cagayan de Oro City, which was about two kilometers away from AAA's house. His testimony was corroborated by Encoy and Baal.

He further asserted that his in-laws merely fabricated the charges against him because they blamed him for the death of his daughter which caused his wife, DDD (AAA's other sister), to become insane.

On rebuttal, AAA denied fabricating the charges leveled against her brother-in-law. She countered that she would not want to undergo humiliation just to get back at appellant. She also denied harboring any hatred against appellant because she was only 4 years old when her niece (appellant's daughter) died in 1980. Had she really wanted to concoct a rape case against her brother-in-law, she could have done so sooner.

After trial on the merits, the RTC found that AAA positively identified appellant and categorically pointed to him as the one who raped her. Weighing the evidence of the prosecution against that of the defense, the trial court found appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision[11] read:

WHEREFORE, finding accused **ROMEO BANDIN GUILTY beyond reasonable doubt** of the crime of rape punishable by the Revised Penal Code, Article 335, and there being two generic aggravating circumstances with the use of weapon and dwelling, without any mitigating circumstance, the said accused is hereby sentenced to serve an imprisonment of ***RECLUSION PERPETUA.***

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[9] The National Bureau of Investigation.

[10] Also referred to as Isidro Ingkoy in the decision of the RTC.

[11] CA *rollo*, pp. 27-28.

He is also directed to pay the complainant the sum of Fifty Thousand Pesos (₱50,000.00) as actual damages, another Fifty Thousand (₱50,000.00) as moral damages, plus another Fifty Thousand (₱50,000.00) as exemplary damages. The period of his preventive imprisonment shall be credited in his favor.

SO ORDERED.

The case was forwarded to this Court on automatic review but we referred it to the CA in accordance with *People v. Mateo.*[12] The CA affirmed the RTC decision with modifications. It held that since the complaint contained no allegations pertaining to the aggravating circumstances of dwelling and use of deadly weapon, the same cannot be appreciated in the imposition of the penalty. The dispositive portion of the CA decision thus read:

WHEREFORE, the instant appeal is hereby ***DISMISSED*** for lack of merit. The assailed decision is hereby AFFIRMED with the modification that the aggravating circumstances of dwelling and use of deadly weapon, the same not having been alleged in the **Complaint**, be not appreciated. No costs.

SO ORDERED.

We affirm the decision of the CA with modifications.

In this case, we find no reason to overturn the conclusion arrived at by the trial court as affirmed by the CA. It held that AAA's testimony was credible as she delivered her testimony in a clear, direct and positive manner. Through his voice, she positively identified appellant as the man who sexually abused her. Identification of an accused by his voice has been accepted, particularly in cases where, as in this case, the victim has known the perpetrator for a long time.[13]

Consequently, appellant's defense of denial and alibi must crumble in the face of AAA's positive and clear identification

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

[13] *People v. Intong*, 466 Phil. 733, 742 (2004), citing *People v. Avillano*, 336 Phil. 534, 542 (1997).

of him as the perpetrator of the crime. Denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[14]

However, we deem it fit to reduce the amount of exemplary damages awarded to private complainant from ₱50,000 to ₱30,000 in line with recent jurisprudence.[15]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR HC No. 00152 is hereby *AFFIRMED with MODIFICATIONS*. Romeo Bandin is hereby found guilty beyond reasonable doubt of rape. He is sentenced to *reclusion perpetua* and ordered to pay the victim AAA ₱50,000 civil indemnity, ₱50,000 moral damages and ₱30,000 exemplary damages.

SO ORDERED.

Carpio[*] *(Acting Chairperson), Austria-Martinez,*[**] *Velasco, Jr.,*[***] and *Leonardo-de Castro, JJ.*, concur.

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[14] *People v. Delim, et al.*, G.R. No. 175942, 13 September 2007, 533 SCRA 366, 379.

[15] *People v. Abellera,* G.R. No. 166617, 3 July 2007, 526 SCRA 329, 343.

[*] Per Special Order No. 623 dated April 17, 2009.

[**] Per Special Order No. 626 dated April 21, 2009.

[***] Per Special Order No. 624 dated April 17, 2009.

SECOND DIVISION

[G.R. No. 177163. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX BALAGAT,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN A CRIMINAL CASE OPENS THE ENTIRE CASE FOR REVIEW.— An appeal in a criminal case opens the entire case for review. The reviewing tribunal can correct errors though unassigned in the appeal, or even reverse the trial court's decision on grounds other than those raised as errors by the parties.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); CHAIN OF CUSTODY RULE; FAILURE TO PROVE THE EVIDENCE'S CHAIN OF CUSTODY IS FATAL; CASE AT BAR.— By Taasin's claim, he turned over the *shabu* to PO2 Ricardo Cristobal (Cristobal) who marked it with "AMB" and prepared the request for laboratory examination; and the buy-bust team members were the ones who brought the request, together with the specimen, to the laboratory for examination. The records show, however, that the specimen examined by the forensic chemist was delivered by PO3 Arnel Cave (Cave) who does not appear to have been part of the buy-bust team. Cave did not even take the witness stand. *Apropos* is this Court's pronouncement in *People v. Dismuke:* "x x x [T]he prosecution failed to prove that the specimens examined by the forensic chemist were the ones purportedly sold by the accused to PO3 Labrador. According to the latter, when they arrived at their headquarters after the buy-bust operation, he turned over the accused to their investigator, a certain Reynaldo Lichido, for proper disposition and investigation. Lichido also "immediately prepared the referral to the PC Laboratory for examination in order to be sure if the specimen is positive." What the forensic chemist examined were the contents of "two transparent plastic bag [*sic*] containing flowering tops with rolling papers suspected

to be marijuana" transmitted by PNP Inspector Asuncion Santos, Officer-in-Charge of the District Dangerous Enforcement Division of the Northern Police District Command. Both Lichido and Santos were not presented by the prosecution to testify in this case. Thus, there is no evidence to prove that what were allegedly sold by the accused to PO3 Labrador were actually the ones turned over to Lichido, that what the latter received were turned over to Santos, and that what Santos transmitted to the forensic chemist were those allegedly sold by the accused. The failure to establish the evidence's chain of custody is damaging to the prosecution's case." On this score, the Court finds the prosecution's failure to prove the evidence's chain of custody to merit appellant's acquittal.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Editha Arciaga-Santos for defendant-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Alex Balagat (appellant) was, by Information filed before the Regional Trial Court (RTC) of Pasig City, charged with violating Section 5, Article 11 of Republic Act No. 9165 as follows:

That on or about the 16th day of September 2002, in the Municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer, PO2 Erwin Taasin, one (1) heat-sealed transparent plastic sachet containing 0.03 grams of white crystalline substance, which were found positive to the test for methamphetamine hydrochloride, also known as "*shabu*", which is a dangerous drug, in consideration of the amount of Php 100.00, in violation of the above-cited law.[1] (Underscoring supplied)

During the pre-trial, the parties stipulated

[1] Records, p. 1.

that [Forensic Chemist Annalee R. Forro] received the Request for Laboratory Examination dated September 16, 2002 and the specimen **allegedly** confiscated from the accused, that upon her examination, the specimen marked in the Chemistry Report No. D-1834-02E A to I proved positive for methamphetamine hydrochloride, a dangerous drug while specimen J to M gave negative result.[2] (Emphasis and underscoring supplied)

Via the testimonies of its witnesses PO1 Erwin Taasin (Taasin) and PO2 Mario Madarang (Madarang), the following version of the prosecution[3] is culled:

At 5:30 PM of September 16, 2002, Taasin, then stationed at the Station Drug Enforcement Unit (SDEU), Office of the San Juan Metro Manila Police Station, received a report from an informant that someone was selling *shabu* at Tabing-Ilog Street, Barangay Salapan, San Juan. The informant described the suspect as wearing short pants and a red *sando* with the words "bugle boy" printed thereon. The SDEU chief thus organized a buy-bust team composed of Taasin who was designated poseur buyer, PO1 Romeo G. Lañada (Lañada), and Madarang.

On reaching Tabing-Ilog Street in a private car at around 6:00 PM of September 16, 2002, Taasin alighted and, at a distance of 25 meters, saw appellant who matched the description given by the informant.

Taasin thereupon approached appellant, told him "*Ii-score ako ng piso,*" and handed appellant a previously marked ₱100 bill. Appellant took the bill in exchange for which he handed therein a plastic sachet of suspected *shabu*.

Lañada and Madarang at once approached appellant who repaired to his 15-meter away house where he was apprehended. They recovered the buy-bust money from appellant. As a man, later identified to be Wilfredo Rodriguez (Rodriguez) and a woman, later identified to be Jennifer Narvaes (Jennifer), were sitting

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[2] *Id.* at 46-47.

[3] TSN, August 7, 2003, pp. 1-19; TSN, January 29, 2004, pp. 2-14.

on a plywood bed in front of which were drug paraphernalia, the team also apprehended the two and confiscated the paraphernalia. A plastic sachet of suspected *shabu* and a plastic bag containing four small plastic sachets also of suspected *shabu* were also seized from appellant's house.

Taasin turned over to an investigator at the SDEU Office the plastic sachet recovered from appellant on which the investigator marked "AMB." When tested, the contents of the plastic sachet yielded positive for the presence of *shabu*.[4]

In his defense,[5] appellant claimed as follows: He was arguing with Jennifer in his house when Rodriguez arrived to collect from him service charge for laundry. As he started talking with Rodriguez, two persons entered his house, one of whom drew a gun saying "*Huwag kayong kikilos, diyan lang kayo.*" The two frisked him and took money from Jennifer who voluntarily gave them *shabu* which she took from her brassiere.

The two armed men then searched the house, boarded him and his companions on a vehicle, and brought them to the San Juan Police Station where he and Rodriguez were detained.

Madarang soon asked him for ₱30,000 in exchange for his liberty. On the advice of his (appellant's) brother, Romeo Balagat (Romeo), he did not heed the demand.

By Decision dated April 20, 2005,[6] Branch 157 of the Pasig City RTC convicted appellant, disposing as follows:

> WHEREFORE, the Court finds accused ALEX BALAGAT *Y* MAKIGANGAY **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer *Life Imprisonment* and to pay a fine of PHP 500,000.00.
>
> The evidence subject of the instant case are forfeited in favor of the Government and the Officer-in-Charge of this Court is directed

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[4] Records, p. 98, Exhibit "D".

[5] TSN, April 22, 2004, pp. 2-9; TSN, May 6, 2004, pp. 2-19; TSN, June 3, 2004, pp. 2-11; TSN, July 22, 2004, pp. 2-12.

[6] Records, pp. 225-232.

to cause their immediate transmittal to the Philippine Drug Enforcement Agency (PDEA) for disposal in accordance with law.

SO ORDERED.

On appeal before the Court of Appeals, appellant alleged that the trial court

I. X X X GROSSLY MISAPPRECIATED THE FACTS AND CIRCUMSTANCES OF THE CASE;

II. X X X ERRED IN GIVING CREDENCE TO THE EVIDENCE OF THE PROSECUTION DESPITE THE FACT THAT THE WITNESSES' ACTS INDICATE AN ULTERIOR AND SINISTER MOTIVE IN THE FILING OF THE CASE. STATED OTHERWISE, IT IS ERROR FOR THE TRIAL COURT TO DECLARE THAT THE ACCUSED-APPELLANT'S DENIAL CANNOT BE GIVEN WEIGHT DUE TO THE OBVIOUS SHOWING OF ILL-MOTIVE ON THE PART OF THE POLICE;

III. X X X ERRED IN NOT GIVING WEIGHT TO THE EVIDENCE PRESENTED BY THE ACCUSED-APPELLANT WHICH CLEARLY NEGATES THE SUPPOSED OCCURRENCE OF THE BUY-BUST OPERATION; AND

IV. X X X ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT.[7]

The Court of Appeals, by Decision of October 23, 2006,[8] affirmed the RTC decision.

Hence, the present appeal.[9] Appellant filed a Supplemental Brief,[10] while the Solicitor General manifested that she would no longer file a Supplemental Brief.

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

[8] *Id.* at 99-109. Penned by Court of Appeals Associate Justice Juan Q. Enriquez, Jr. with the concurrence of then Court of Appeals Associate Justice Ruben T. Reyes (now retired Associate Justice of the Court) and Associate Justice Vicente S.E. Veloso.

[9] CA *rollo*, p. 110.

[10] *Rollo*, pp. 19-24.

An appeal in a criminal case opens the entire case for review. The reviewing tribunal can correct errors though unassigned in the appeal, or even reverse the trial court's decision on grounds other than those raised as errors by the parties.[11]

From a review of the records of the case, the Court entertains nagging doubts on whether the substance allegedly confiscated from appellant was the same specimen examined and established to be a regulated drug.

As stated early on, the prosecution and the defense stipulated during the pre-trial

> that [Forensic Chemist Annalee R. Forro] received the Request for Laboratory Examination dated September 16, 2002 and the specimen **allegedly** confiscated from the accused, that upon her examination, the specimen marked in the Chemistry Report No. D-1834-02E A to I proved positive for methamphetamine hydrochloride, a dangerous drug while specimen J to M gave negative result.[12] (Underscoring and emphasis supplied)

The stipulation referred to the chemist's receipt of an "allegedly" confiscated specimen which tested positive for *shabu*. In other words, there is no certainty that what was submitted and subjected for chemical examination was the specimen obtained from appellant.

By Taasin's claim, he turned over the *shabu* to PO2 Ricardo Cristobal (Cristobal) who marked it with "AMB" and prepared the request for laboratory examination; and the buy-bust team members were the ones who brought the request, together with the specimen, to the laboratory for examination.[13] The records show, however, that the specimen examined by the forensic chemist was delivered by PO3 Arnel Cave (Cave)[14] who does not appear to have been part of the buy-bust team. Cave did

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[11] *People v. Miranda*, G.R. No. 174773, October 2, 2007, 534 SCRA 552, 563-564.

[12] *Supra* note 2.

[13] TSN, August 7, 2003, pp. 9-11.

[14] Records, p. 97, Exhibit "C".

not even take the witness stand. *Apropos* is this Court's pronouncement in *People v. Dismuke*:[15]

> x x x [T]he prosecution failed to prove that the specimens examined by the forensic chemist were the ones purportedly sold by the accused to PO3 Labrador. According to the latter, when they arrived at their headquarters after the buy-bust operation, he turned over the accused to their investigator, a certain Reynaldo Lichido, for proper disposition and investigation. Lichido also "immediately prepared the referral to the PC Laboratory for examination in order to be sure if the specimen is positive." What the forensic chemist examined were the contents of "two transparent plastic bag [*sic*] containing flowering tops with rolling papers suspected to be marijuana" transmitted by PNP Inspector Asuncion Santos, Officer-in-Charge of the District Dangerous Enforcement Division of the Northern Police District Command. Both Lichido and Santos were not presented by the prosecution to testify in this case. Thus, there is no evidence to prove that what were allegedly sold by the accused to PO3 Labrador were actually the ones turned over to Lichido, that what the latter received were turned over to Santos, and that what Santos transmitted to the forensic chemist were those allegedly sold by the accused. The failure to establish the evidence's chain of custody is damaging to the prosecution's case.[16] (Underscoring supplied)

On this score, the Court finds the prosecution's failure to prove the evidence's chain of custody to merit appellant's acquittal. Dwelling on the assigned errors is thus rendered unnecessary.

WHEREFORE, the Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Appellant, Alex Balagat, is *ACQUITTED* of the crime charged.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is *DIRECTED* to immediately release appellant from detention unless he is being held for some other lawful cause, and to inform this Court within five days of action taken thereon.

SO ORDERED.

*Tinga, Velasco, Jr., Leonardo-de Castro,** and *Brion, JJ.,* concur.

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[15] G.R. No. 108453, July 11, 1994, 234 SCRA 51.

[16] *Id.* at 60-61.

* Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

SECOND DIVISION

[G.R. No. 177220. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUBEN ROBLES *y* NOVILINIO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; TRIAL COURT'S FINDINGS OF FACT ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION.— Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.

2. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.

3. ID.; ID.; CHAIN OF CUSTODY RULE; ELABORATED.— The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs, it being the very *corpus delicti* of the crime. Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from appellant. Hence, the Court has adopted the chain of custody rule. As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to

the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

4. ID.; ID.; ID.; THE *CORPUS DELICTI* OF THE CRIME MUST BE IDENTIFIED WITH UNWAVERING EXACTITUDE.— A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Thus, the *corpus delicti* should be identified with unwavering exactitude.

5. ID.; ID.; ID.; NOT OBSERVED IN CASE AT BAR.— The Court finds that the prosecution failed to clearly establish the chain of custody of the seized plastic sachet containing *shabu* subject of the alleged sale. PO2 Besoña and PO3 Malicse did not adequately explain how the *corpus delicti* transferred hands from the time it was supposedly confiscated from appellant to the time it was presented in court as evidence. PO2 Besoña testified that he turned over the sachet of *shabu* to SPO3 Ocfemia when appellant was arrested. No explanation was given, however, as to how the substance reached the crime laboratory for examination. PO2 Besoña did not mark the substance immediately after the apprehension of appellant. While PO2 Besoña claimed that it was marked by an investigator in his presence, he did not state at what precise point of the operation the marking took place. Both the investigator who purportedly made the marking and SPO3 Ocfemia were not presented in court to testify on what transpired before and after the substance was turned over to them. PO3 Malicse's testimony is not of any help on the question of chain of custody either, for he in fact admitted not having seen the transaction between PO2 Besoña and appellant. As the Court explained in its earlier-quoted ruling in *Malillin,* the chain of custody rule requires that testimony be presented about **every link in the chain,** from the moment the item was picked up to the time it is offered

in evidence. The testimonies of PO2 Besoña and PO3 Malicse fell short of this standard. Moreover, they did not describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession thereof.

6. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS NEGATES THE OPERATION OF THE PRESUMPTION OF REGULARITY ACCORDED TO POLICE OFFICERS.— Additionally, the Court notes further that nothing on record shows compliance by the buy-bust team with the procedural requirements of Section 21, paragraph 1 of Article II of R.A. No. 9165 with respect to custody and disposition of confiscated drugs. There was no physical inventory and photograph of the items allegedly confiscated from appellant. There was likewise no explanation offered for the failure to observe the rule. The failure of the police to comply with the procedure in the custody of seized drugs raises doubt as to their origins, and negates the operation of the presumption of regularity accorded to police officers.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Challenged in this appeal is the December 4, 2006 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00306[1] affirming the June 18, 2004 Decision of Branch 259 of the Regional Trial Court of Parañaque City in Crim. Case No. 02-0842-3 finding Ruben Robles *y* Novilinio *alias Bombay* (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with the concurrence of Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with illegal sale and illegal possession of *shabu* in two separate Amended Informations, both dated August 27, 2002, reading:

First Amended Information

That on or about the 5th day of July 2002, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously give away, distribute and sell to a customer for ₱100.00 pesos one (1) small heat sealed transparent plastic sachet containing crystalline substances (*shabu*), weighing 0.09 gram, which when examined were found positive for Methylamphetamine Hydrochloride (*shabu*), a dangerous drug, in violation of the above-cited law.[2]

Second Amended Information

That on or about the 5th day of July 2002, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) heat sealed transparent plastic sachet containing white crystalline substance which when examined was found to be positive for Methylamphetamine Hydrochloride (*shabu*), weighing 0.16 gram, a dangerous drug, in violation of the above-cited law.[3]

One Leogando Pilapil (Pilapil) was also indicted for illegal possession of *shabu* under a similarly worded Amended Information of even date.[4]

On arraignment, appellant and Pilapil pleaded not guilty.[5]

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[2] Records, p. 12.

[3] *Id.* at 13.

[4] *Id.* at 14.

[5] *Id.* at 20.

The combined testimonies of PO2 Marlou Besoña (PO2 Besoña)[6] and PO3 Elorde Malicse (PO3 Malicse)[7] of the Drug Enforcement Unit (DEU) of the Parañaque City Police Station reflect the following version of the prosecution:

At around 5:00 in the afternoon of July 5, 2002, the above-named witnesses received a report from a confidential informant that a certain *alias Bombay,* later identified to be appellant, was peddling *shabu* along Dimasalang Street, Barangay Baclaran, Parañaque City. DEU Chief Wilfredo Calderon immediately constituted a buy-bust team composed of PO2 Besoña, PO3 Malicse, SPO3 Hyacinth Ocfemia (SPO3 Ocfemia), SPO1 Mario Vidallon (SPO1 Vidallon), and PO3 Elmer Magtanong (PO3 Magtanong). PO2 Besoña was designated poseur-buyer.

The buy-bust team proceeded to the target area wherein the informant pinpointed appellant as the *shabu* peddler. With his back-up team members strategically positioned, PO2 Besoña approached appellant and asked, *"Puwede bang umiskor?"* (May I have a fix?). Appellant asked how much to which PO2 Besoña replied ₱100. Appellant thereafter told PO2 Besoña, *"Akin na."* (Give it to me).

PO2 Besoña thereupon tendered a marked ₱100 bill to appellant who, in exchange, handed over a transparent plastic sachet containing a white crystalline substance. PO2 Besoña at once raised his right hand as a pre-arranged signal, prompting the other team members to close in and arrest appellant. PO2 Besoña turned over the substance to SPO3 Ocfemia, and the marked money to SPO1 Vidallon. The team also arrested Pilapil, who was then with appellant, as a similar substance was recovered from him.

Appellant and Pilapil, were brought to the Parañaque City Police Station for investigation. The members of the team executed a *Pinagsamang Sinumpaang Salaysay* (Joint Sworn Statement)[8]

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[6] TSN of August 4, 2003, Records, pp. 42-83.

[7] TSN of November 10, 2003, Records, pp. 91-115.

[8] Records, p. 2.

which additionally stated that at the time of appellant's arrest, he voluntarily surrendered two more transparent plastic sachets both containing the same white crystalline substance.

A total of four transparent plastic sachets each containing a white crystalline substance were thus recovered from appellant and Pilapil which, when subjected to laboratory tests, were found positive for methylamphetamine hydrochloride (*shabu*).[9]

For their part, appellant[10] and Pilapil[11] gave their side as follows:

Between 5:00 PM and 6:00 PM, Pilapil was at Bagong Silang Street, Baclaran, Parañaque City playing *cara y cruz* with about ten to eleven persons. Appellant was eating barbecue at corner Dimasalang and Bagong Silang Streets, around nine meters away from Pilapil and his companions when four persons in civilian clothes carrying short firearms suddenly arrived. The players scampered away, but Pilapil and an unnamed companion were left behind and arrested.

Pilapil and his companion were boarded on an owner-type jeep which headed toward appellant. Appellant was frisked, hence, he demanded for an explanation, peeving the arresting men who handcuffed him and ordered to join Pilapil and his companion in the jeep.

Appellant, Pilapil and his companion were first brought to the Parañaque Community Hospital for a medical check-up, and then to the Coastal Police Station. At the station, they were frisked but no *shabu* was recovered from their person or shown to them. Pilapil's money amounting to ₱400 was confiscated, however.

Pilapil's companion was released in the evening as his relatives came to pick him up. Appellant and Pilapil, on the other hand, were detained and eventually charged.

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[9] *Id.* at 3.

[10] TSN of May 20, 2004, Records, pp. 171-206.

[11] TSN of April 27, 2004, Records, pp. 136-165.

By Decision dated June 18, 2004,[12] the trial court found appellant guilty of both illegal sale and illegal possession of *shabu.* Pilapil was acquitted. Thus the trial court disposed:

> WHEREFORE, PREMISES CONSIDERED, **finding Ruben Robles GUILTY** beyond reasonable doubt of Violation of Section 5 Art. II RA 9165 for unlawfully selling 0.09 gram of Methamphetamine Hydrochloride (*shabu*). He is hereby sentenced to a penalty of life imprisonment and to pay a fine of ₱500,000.00 and sentenced also to 12 years imprisonment and to pay a fine of ₱300,000.00 for Violation of Section 11 Art. II RA 9165 for illegal possession of 0.16 gram of Methamphetamine Hydrochloride (*shabu*).
>
> For insufficiency of evidence and failure of the prosecution to present that quantum of proof necessary to overcome the constitutional presumption of innocence in favor of the accused, the Court hereby pronounces **Leogardo** (sic) **Pilapil NOT GUILTY** of Violation of Section 11 Art. II RA 9165 for alleged possession of 0.09 gram of Methamphetamine Hydrochloride.
>
> The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of Ruben Robles from Parañaque City Jail to New Bilibid Prisons, Muntinlupa City. He is further directed to forward all specimen in these cases to the Philippine Drugs Enforcement Agency for proper disposition.[13]

In convicting appellant, the trial court relied on the presumption that law enforcement officers have performed their duties regularly and the rule that denial as a defense is inherently weak.

By Decision of December 4, 2006,[14] the Court of Appeals sustained appellant's conviction for illegal sale of *shabu*, but exonerated him on the charge of illegal possession. It found, among other things, that the elements of illegal sale were sufficiently established by the testimonies of PO2 Besoña and PO3 Malicse.

On the charge of illegal possession, the appellate court held that the records bore discrepancies in the identity of the illegal

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[12] Records, pp. 223-228.

[13] *Id.* at 228.

[14] CA *rollo,* pp. 69-77.

substance which, coupled with the prosecution's failure to distinguish the *shabu* subject of the sale from that found in appellant's possession, warranted appellant's acquittal on reasonable doubt.

Appellant now seeks relief from this Court.

In his Supplemental Brief,[15] appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He questions, among other things, the forensic laboratory examination results and the chain of custody of the *shabu* subject thereof, as in fact the appellate court itself found that the prosecution failed to distinguish the *shabu* allegedly sold by him from that found in his possession.

The appeal is impressed with merit.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[16]

In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.[17] The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs, it being the very *corpus delicti* of the crime.[18] Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from appellant. Hence, the Court has adopted the chain of custody rule.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence

[15] *Rollo*, pp. 30-42.

[16] *People v. Pedronan*, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 188.

[17] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[18] *Vide People v. Almeida*, 463 Phil. 637, 648 (2003).

sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[19] (Underscoring supplied)

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.[20] Thus, the *corpus delicti* should be identified with unwavering exactitude.[21]

The Court finds that the prosecution failed to clearly establish the chain of custody of the seized plastic sachet containing *shabu* subject of the alleged sale. PO2 Besoña and PO3 Malicse did not adequately explain how the *corpus delicti* transferred hands from the time it was supposedly confiscated from appellant to the time it was presented in court as evidence.

PO2 Besoña testified that he turned over the sachet of *shabu* to SPO3 Ocfemia when appellant was arrested. No explanation was given, however, as to how the substance reached the crime laboratory for examination. PO2 Besoña did not mark the substance immediately after the apprehension of appellant. While

[19] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[20] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008.

[21] *Zarraga v. People*, G.R. No. 162064, March 14, 2006, 484 SCRA 639, 647.

PO2 Besoña claimed that it was marked by an investigator in his presence,[22] he did not state at what precise point of the operation the marking took place. Both the investigator who purportedly made the marking and SPO3 Ocfemia were not presented in court to testify on what transpired before and after the substance was turned over to them.

PO3 Malicse's testimony is not of any help on the question of chain of custody either, for he in fact admitted not having seen the transaction between PO2 Besoña and appellant.[23]

As the Court explained in its earlier-quoted ruling in *Malillin*, the chain of custody rule requires that testimony be presented about **every link in the chain**, from the moment the item was picked up to the time it is offered in evidence. The testimonies of PO2 Besoña and PO3 Malicse fell short of this standard. Moreover, they did not describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession thereof.

Additionally, the Court notes further that nothing on record shows compliance by the buy-bust team with the procedural requirements of Section 21, paragraph 1 of Article II of R.A. No. 9165[24] with respect to custody and disposition of confiscated

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[22] TSN of August 4, 2003, Records, pp. 72-74.

[23] TSN of November 10, 2003, Records, pp. 114-115.

[24] Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

drugs. There was no physical inventory and photograph of the items allegedly confiscated from appellant. There was likewise no explanation offered for the failure to observe the rule.

The failure of the police to comply with the procedure in the custody of seized drugs raises doubt as to their origins,[25] and negates the operation of the presumption of regularity accorded to police officers.[26]

WHEREFORE, the appeal is *GRANTED*. The assailed decision is *REVERSED* and *SET ASIDE*. Appellant, Ruben Robles *y* Novilinio, is *ACQUITTED* on reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is *ORDERED* to cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.*, concur.

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[25] *Vide People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758.

[26] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.

[*] Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

SECOND DIVISION

[G.R. No. 177333. April 24, 2009]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR) represented by ATTY. CARLOS R. BAUTISTA, JR., *petitioner, vs.* **PHILIPPINE GAMING JURISDICTION INCORPORATED (PEJI), ZAMBOANGA CITY SPECIAL ECONOMIC ZONE AUTHORITY, *et al.,*** *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; REPUBLIC ACT NO. 7903, SECTION 7(F) THEREOF; CONSTRUED.— The Court finds that, indeed, R.A. No. 7903 does not authorize the ZAMBOECOZONE Authority to operate and/or license games of chance/gambling. Section 7(f) of R.A. No. 7903 authorizes the ZAMBOECOZONE Authority "[t]o operate on its own, either directly or through a subsidiary entity, or license to others, tourism-related activities, including **games, amusements and recreational and sports facilities.**" It is a well-settled rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The plain meaning rule or *verba legis*, derived from the maxim *index animi sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum.* From the words of a statute there should be no departure. The words "game" and "amusement" have definite and unambiguous meanings in law which are clearly different from "game of chance" or "gambling." In its ordinary sense, a "game" is a sport, pastime, or contest; while an "amusement" is a pleasurable occupation of the senses, diversion, or enjoyment. On the other hand, a "game of chance" is "a game

in which chance rather than skill determines the outcome," while "gambling" is defined as "making a bet" or "a play for value against an uncertain event in hope of gaining something of value." A comparison of the phraseology of Section 7(f) of R.A. No. 7903 with similar provisions in the three cited statutes creating ECOZONES shows that while the three statutes, particularly R.A. No. 7922 which authorized the Cagayan Economic Zone Authority to directly or indirectly operate gambling and casinos within its jurisdiction, categorically stated that such power was being vested in their respective administrative bodies, R.A. No. 7903 did not.

2. ID.; ID.; ID.; ID.; SPIRIT AND REASON OF THE STATUTE, WHEN MAY BE PASSED UPON.— The spirit and reason of the statute may be passed upon where a literal meaning would lead to absurdity, contradiction, injustice, or defeat the clear purpose of the lawmakers. Not any of these instances is present in the case at bar, however. Using the literal meanings of "games" and "amusement" to exclude "games of chance" and "gambling" does not lead to absurdity, contradiction, or injustice. Neither does it defeat the intent of the legislators. The lawmakers could have easily employed the words "games of chance" and "gambling" or even "casinos" if they had intended to grant the power to operate the same to the ZAMBOECOZONE Authority, as what was done in R.A. No. 7922 enacted a day after R.A. No. 7903. But they did not.

3. ID.; ID.; ID.; DOCTRINE OF RESPECT FOR ADMINISTRATIVE OR PRACTICAL CONSTRUCTION; APPLICATION THEREOF; ZAMBOECOZONE AUTHORITY NOT GRANTED POWER TO OPERATE GAMES OF CHANCE.— The Court takes note of the above-mentioned Opinion of the Office of the President which, after differentiating the grant of powers between the Cagayan Special Economic Zone and the ZAMBOECOZONE Authority, states that while the former is authorized to, among other things, operate gambling casinos and internet gaming, as well as enter into licensing agreements, the latter is not. xxx. Both PAGCOR and the Ecozones being under the supervision of the Office of the President, the latter's interpretation of R.A. No. 7903 is persuasive and deserves respect under *the doctrine of respect for administrative or practical construction*. In applying said doctrine, courts often

refer to several factors which may be regarded as bases thereof — factors leading the courts to give the principle controlling weight in particular instances, or as independent rules in themselves. These factors include the **respect due the governmental agencies charged with administration, their competence, expertness, experience, and informed judgment and the fact that they frequently are the drafters of the law they interpret; that the agency is the one on which the legislature must rely to advise it as to the practical working out of the statute,** and practical application of the statute presents the agency with unique opportunity and experiences for discovering deficiencies, inaccuracies, or improvements in the statute. In fine, Section 7(f) did not grant to the ZAMBOECOZONE Authority the power to operate and/or license games of chance/gambling.

APPEARANCES OF COUNSEL

Bautista Consolacion Gloria Apigo Salvosa Sevilla Noblejas Siosana Sagsagat Papica Bagasbas De Guzman for petitioner.

Cerilles Navarro Nuval and Go Law Offices for Zamboanga Special Economic Zone Authority.

D E C I S I O N

CARPIO MORALES, *J.*:

Before the Court is a petition for Prohibition.

Republic Act No. 7903 (R.A. No. 7903), which was enacted into law on February 23, 1995, created the Zamboanga City Special Economic Zone (ZAMBOECOZONE) and the ZAMBOECOZONE Authority. Among other things, the law gives the ZAMBOECOZONE Authority the following power under Sec. 7 (f), *viz*:

Section 7.

x x x x x x x x x

(f) To operate on its own, either directly or through a subsidiary entity, or license to others, tourism-related activities, including games, amusements and recreational and sports facilities;

x x x x x x x x x

Apparently in the exercise of its power granted under the above provision, public respondent ZAMBOECOZONE Authority passed Resolution No. 2006-08-03 dated August 19, 2006 approving the application of private respondent Philippine E-Gaming Jurisdiction, Inc. (PEJI) to be a Master Licensor/ Regulator of on-line/internet/electronic gaming/games of chance.

PEJI forthwith undertook extensive advertising campaigns representing itself as such licensor/regulator to the international business and gaming community, drawing the Philippine Amusement and Gaming Corporation (PAGCOR) to file the present petition for Prohibition which assails the authority of the ZAMBOECOZONE Authority to operate, license, or regulate the operation of games of chance in the ZAMBOECOZONE.

PAGCOR contends that R.A. No. 7903, specifically Section 7(f) thereof, does not give power or authority to the ZAMBOECOZONE Authority to operate, license, or regulate the operation of games of chance in the ZAMBOECOZONE. Citing three (3) statutes, which it claims are in *pari materia* with R.A. No. 7903 as it likewise created economic zones and provided for the powers and functions of their respective governing and administrative authorities, PAGCOR posits that the grant therein of authority to operate games of chance is clearly expressed, but it is not similarly so in Section 7(f) of R.A. No. 7903.

Thus PAGCOR cites these three statutes and their respective pertinent provisions:

Republic Act No. 7227, or the "Bases Conversion and Development Authority Act" enacted on March 13, 1992:

Section 13. The Subic Bay Metropolitan Authority. –

x x x x x x x x x

(b) Powers and functions of the Subic Bay Metropolitan Authority. – The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and functions:

x x x x x x x x x

(7) To operate directly or indirectly or license tourism-related activities subject to priorities and standards set by the Subic Authority including games and amusements, except horse-racing, dog-racing and casino gambling which shall continue to be licensed by the Philippine Amusement and Gaming Corporation (PAGCOR) upon recommendation of the Conversion Authority; to maintain and preserve the forested areas as a national park;

x x x x x x x x x

Republic Act No. 7922 or the "Cagayan Economic Zone Act of 1995" enacted on February 24, 1995:

Section 6. Powers and Functions of the Cagayan Economic Zone Authority – The Cagayan Economic Zone Authority shall have the following powers and functions:

x x x x x x x x x

(f) To operate on its own, either directly or through a subsidiary entity, or license to others, tourism-related activities, including games, amusements, recreational and sports facilities such as horse-racing, dog-racing gambling, casinos, golf courses, and others, under priorities and standards set by the CEZA;

x x x x x x x x x

And Republic Act No. 7916 or the "Special Economic Zone Act of 1995," enacted on February 24, 1995 authorizing other economic zones established under the defunct Export Processing Zone Authority (EPZA) and its successor Philippine Economic Zone Authority (PEZA) to establish casinos and other games of chance under the license of PAGCOR by way of the *ipso facto* clause, *viz*:

SECTION 51. *Ipso Facto Clause*. — All privileges, benefits, advantages or exemptions granted to special economic zones under Republic Act No. 7227 shall *ipso facto* be accorded to special economic zones already created or to be created under this Act. The free port status shall not be vested upon the new special economic zones.

PAGCOR maintains that, compared with the above-quoted provisions of the ecozone-related statutes, Section 7(f) of R.A.

No. 7903 does not categorically empower the ZAMBOECOZONE Authority to operate, license, or authorize entities to operate games of chance in the area, as the words "games" and "amusement" employed therein do not include "games of chance." Hence, PAGCOR concludes, ZAMBOECOZONE Authority's grant of license to private respondent PEJI encroached on its (PAGCOR's) authority under Presidential Decree No. 1869 *vis-a-vis* the above-stated special laws to centralize and regulate all games of chance.

ZAMBOECOZONE Authority, in its Comment,[1] contends that PAGCOR has no personality to file the present petition as it failed to cite a superior law which proves its claim of having been granted exclusive right and authority to license and regulate all games of chance within the Philippines; and that, contrary to PAGCOR's assertion, the words "games" and "amusements" in Section 7(f) of R.A. No. 7903 include "games of chance" as was the intention of the lawmakers when they enacted the law.

In its Reply *Ex Abundante Ad Cautelam*,[2] PAGCOR cites the November 27, 2006 Opinion[3] rendered by the Office of the President through Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, the pertinent portions of which read:

> Coming to the issue at hand, the ZAMBOECOZONE Charter simply allows the operation of tourism-related activities including games and amusements without stating any form of gambling activity in its grant of authority to ZAMBOECOZONE.
>
> x x x x x x x x x
>
> In view of the foregoing, we are of the opinion that under its legislative franchise (RA 7903), the ZAMBOECOZONE **is not authorized** to enter into any gaming activity by itself unless expressly authorized by law or other laws specifically allowing the same. (Emphasis and underscoring supplied)

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[1] *Rollo*, pp. 75-85.

[2] *Id.* at 99-109.

[3] Annex "A" of Reply, *id.* at 111-113.

The Court finds that, indeed, R.A. No. 7903 does not authorize the ZAMBOECOZONE Authority to operate and/or license games of chance/gambling.

Section 7(f) of R.A. No. 7903 authorizes the ZAMBOECOZONE Authority "[t]o operate on its own, either directly or through a subsidiary entity, or license to others, tourism-related activities, including **games, amusements and recreational and sports facilities**."

It is a well-settled rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[4]

The plain meaning rule or *verba legis*, derived from the maxim *index animi sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum.* From the words of a statute there should be no departure.[5]

The words "game" and "amusement" have definite and unambiguous meanings in law which are clearly different from "game of chance" or "gambling." In its ordinary sense, a "game" is a sport, pastime, or contest; while an "amusement" is a pleasurable occupation of the senses, diversion, or enjoyment.[6] On the other hand, a "game of chance" is "a game in which chance rather than skill determines the outcome," while "gambling"

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[4] Vide *National Food Authority (NFA) v. Masada Security Agency, Inc.*, G.R. No. 163448, March 8, 2005, 453 SCRA 70, 79; *Philippine National Bank v. Garcia, Jr.*, G.R. No. 141246, September 9, 2002, 388 SCRA 485, 487, 491.

[5] *Id*.

[6] *Black's Law Dictionary*, Sixth Edition, West Publishing Co., St. Paul, Minnesota, U.S.A., 1990, pp. 679 and 84.

is defined as "making a bet" or "a play for value against an uncertain event in hope of gaining something of value."[7]

A comparison of the phraseology of Section 7(f) of R.A. No. 7903 with similar provisions in the three cited statutes creating ECOZONES shows that while the three statutes, particularly R.A. No. 7922 which authorized the Cagayan Economic Zone Authority to directly or indirectly operate gambling and casinos within its jurisdiction, categorically stated that such power was being vested in their respective administrative bodies, R.A. No. 7903 did not.

The spirit and reason of the statute may be passed upon where a literal meaning would lead to absurdity, contradiction, injustice, or defeat the clear purpose of the lawmakers.[28] Not any of these instances is present in the case at bar, however. Using the literal meanings of "games" and "amusement" to exclude "games of chance" and "gambling" does not lead to absurdity, contradiction, or injustice. Neither does it defeat the intent of the legislators. The lawmakers could have easily employed the words "games of chance" and "gambling" or even "casinos" if they had intended to grant the power to operate the same to the ZAMBOECOZONE Authority, as what was done in R.A. No. 7922 enacted a day after R.A. No. 7903. But they did not.

The Court takes note of the above-mentioned Opinion of the Office of the President which, after differentiating the grant of powers between the Cagayan Special Economic Zone and the ZAMBOECOZONE Authority, states that while the former is authorized to, among other things, operate gambling casinos and internet gaming, as well as enter into licensing agreements, the latter is not. The relevant portions of said Opinion read:

The difference in the language and grant of powers to CEZA and ZAMBOECOZONE is telling. To the former, the grant of powers is not only explicit, but amplified, while to the latter the grant of power is merely what the law (RA 7903) states. Not only are the differences in language telling, it will be noted that both charters of CEZA and ZAMBOECOZONE were signed into law only one (1) day apart from each other, *i.e.*, February 23, 1995 in the case of

[7] *Id*. at 679.

ZAMBOECOZONE and February 24, 1995 in the case of CEZA. x x x **Accordingly, both laws have to be taken in the light of what Congress intended them to be, and the distinction that the lawmakers made when they enacted the two laws.**

Coming to the issue at hand, the ZAMBOECOZONE Charter simply allows the operation of tourism-related activities including games and amusements without stating any form of gambling activity in its grant of authority to ZAMBOECOZONE. On the other hand, the grant to CEZA included such activities as horse-racing, dog-racing and gambling casinos.

x x x x x x x x x

In view of the foregoing, we are of the opinion that **under its legislative franchise (RA 7903), the ZAMBOECOZONE is not authorized to enter into any gaming activity by itself unless expressly authorized by law or other laws specifically allowing the same.** (Emphasis supplied)

Both PAGCOR and the Ecozones being under the supervision of the Office of the President, the latter's interpretation of R.A. No. 7903 is persuasive and deserves respect under *the doctrine of respect for administrative or practical construction*. In applying said doctrine, courts often refer to several factors which may be regarded as bases thereof – factors leading the courts to give the principle controlling weight in particular instances, or as independent rules in themselves. These factors include the **respect due the governmental agencies charged with administration, their competence, expertness, experience, and informed judgment and the fact that they frequently are the drafters of the law they interpret; that the agency is the one on which the legislature must rely to advise it as to the practical working out of the statute,** and practical application of the statute presents the agency with unique opportunity and experiences for discovering deficiencies, inaccuracies, or improvements in the statute.[8]

In fine, Section 7(f) did not grant to the ZAMBOECOZONE Authority the power to operate and/or license games of chance/ gambling.

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[8] *Asturias v. Commissioner of Customs*, G.R. No. L-19337, September 30, 1969, 29 SCRA 617, 623.

WHEREFORE, the petition is *GRANTED*. Public respondent Zamboanga Economic Zone Authority is *DIRECTED* to *CEASE* and *DESIST* from exercising jurisdiction to operate, license, or otherwise authorize and regulate the operation of any games of chance. And private respondent Philippine Gaming Jurisdiction, Incorporated is *DIRECTED* to *CEASE* and *DESIST* from operating any games of chance pursuant to the license granted to it by public respondent.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 178301. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO "Botong" MALIBIRAN,** *accused,* and **BEVERLY TIBO-TAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS NO STANDARD FORM OF BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE, STARTLING OR FRIGHTFUL EXPERIENCE.— Appellant's seeming indifference or lack of emotions cannot be categorically quantified as an *indicium* of her guilt. There is no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence. It has already been stated

[*] Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

that witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, some may faint and others may be shocked into insensibility.

2. ID.; CRIMINAL PROCEDURE; TRIAL; AN ACCUSED HAS THE RIGHT TO DECLINE TO TESTIFY WITHOUT ANY INFERENCE OF GUILT DRAWN FROM HIS FAILURE TO BE ON THE WITNESS STAND.— Also, appellant's failure to testify in her defense should not be taken against her. The Court preserves the rule that an accused has the right to decline to testify at the trial without any inference of guilt drawn from his failure to be on the witness stand. The constitutional right to be presumed innocent still prevails.

3. ID.; ID.; ADMISSIBILITY; HEARSAY RULE; EXCEPTION THERETO; DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS; EVIDENCE AS TO THE MAKING OF SUCH STATEMENT IS NOT SECONDARY BUT PRIMARY, FOR THE STATEMENT ITSELF MAY CONSTITUTE A FACT IN ISSUE OR BE CIRCUMSTANTIALLY RELEVANT AS TO THE EXISTENCE OF SUCH A FACT.— The hearsay rule states that a witness may not testify as to what he merely learned from others either because he was told, or he read or heard the same. This is derived from Section 36, Rule 130, Revised Rules of Court, which requires that a witness can testify only to those facts that he knows of or comes from his personal knowledge, that is, that are derived from his perception. Hearsay testimony may not be received as proof of the truth of what he has learned. The law, however, provides for specific exceptions to the hearsay rule. One is the doctrine of independently relevant statements, where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact. The witness who

testifies thereto is competent because he heard the same, as this is a matter of fact derived from his own perception, and the purpose is to prove either that the statement was made or the tenor thereof. In this case, Oswaldo's testimony that he overheard a conversation between Rolando and appellant that they would fetch a man in Bulacan who knew how to place a bomb in a vehicle is admissible, if only to establish the fact that such statement was made and the tenor thereof. Likewise, Janet may testify on matters not only uttered in her presence, since these may be considered as independently relevant statements, but also personally conveyed to her by appellant and Rolando.

4. ID.; ID.; CREDIBLITY OF WITNESSES; ABSENT PALPABLE ERROR, THE SUPREME COURT GENERALLY DEFERS TO THE FINDINGS OF THE TRIAL COURT WHEN CREDIBILTY OF WITNESSES IS IN ISSUE.— While the defense may have presented Security Guard Romulo to refute the testimony of Oswaldo, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court, considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial. Thus, in the absence of any palpable error, this Court defers to the trials court's impression and conclusion that, as between Oswaldo and Romulo, the former's testimony deserved more weight and credence.

5. ID.; ID.; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; REQUISITES IN ORDER TO BE SUFFICIENT FOR CONVICTION.— There is nothing on record to convince the Court to depart from the findings of the RTC. On the contrary, the testimony of Janet as corroborated by Oswaldo, though circumstantial, leaves no doubt that appellant had in fact conspired with Rolando in bringing about the death of her husband Reynaldo. As a rule of ancient respectability now molded into tradition, circumstantial evidence suffices to convict, only if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

6. ID.; ID.; CONSPIRACY; MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE; DIRECT PROOF OF PREVIOUS AGREEMENT TO COMMIT AN OFFENSE IS NOT NECESSARY.— xxx. Based on the foregoing, the testimonies of Janet and Oswaldo clearly link appellant to the planning of the crime. True, as intimated by appellant, she may not have been at the scene of the crime at the time of the explosion; but then again, if she was, then she would have suffered the same fate as Reynaldo. Moreover, the nature of the crime and the manner of its execution, *i.e.*, *via* a booby trap, does not demand the physical presence of the perpetrator at the very time of its commission. In fact, the very manner in which it was carried out necessitated prior scheming and execution for it to succeed. Thus, appellant's absence from the actual scene of the crime does not negate conspiracy with Rolando in plotting the death of her husband. A conspiracy exists even if not all the parties committed the same act, but the participants performed specific acts that indicated unity of purpose in accomplishing a criminal design. Moreover, direct proof of previous agreement to commit an offense is not necessary to prove conspiracy — conspiracy may be proven by circumstantial evidence.

7. ID.; ID.; FLIGHT, WHEN UNEXPLAINED, IS A CIRCUMSTANCE FROM WHICH AN INFERENCE OF GUILT MAY BE DRAWN.— What sealed appellant's fate was that, as observed by the RTC, there were already outstanding warrants of arrest against appellant and Rolando as early as September 11, 1997; yet they evaded arrest and were only arrested on December 4, 1998. It is well settled that flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. "The wicked flee, even when no man pursueth; but the righteous are as bold as a lion." Appellant did not even proffer the slightest explanation for her flight.

8. CRIMINAL LAW; PARRICIDE; APPELLANT IS GUILTY THEREOF; IMPOSABLE PENALTY.— All told, this Court is convinced beyond a reasonable doubt that appellant is guilty of the crime as charged. Moreover, considering the manner in which appellant and Rolando planned and executed the crime, the RTC was correct in appreciating the aggravating circumstances of treachery, evident premeditation, and use of explosives. Thus,

appellant is guilty of the crime of Parricide as provided in the Revised Penal Code xxx. Moreover, the Revised Penal Code provides for death as the proper penalty: Article 63. Rules for the application of indivisible penalties. x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof: When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. However, as observed by the CA, with the effectivity of Republic Act (R.A.) No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law is *reclusion perpetua*. The applicability of R.A. No. 9346 is undeniable in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restrigenda.* Penal laws that are favorable to the accused are given retroactive effect. In addition, appellant is not eligible for parole pursuant to Section 3 of R.A. No. 9346 xxx.

9. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— In the recent case of *People v. Regalario,* the Court stated: While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still ₱75,000.00. x x x the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As to the award of moral and exemplary damages x x x. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. If a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct.

However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to Republic Act No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00 while the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00. Consistent therewith, the RTC's award should be modified: the civil indemnity should be increased to ₱75,000.00, and moral damages to ₱75,000.00. Moreover, although not awarded by the RTC and pursuant to *Regalario*, exemplary damages in the amount of ₱30,000.00 is likewise warranted because of the presence of the aggravating circumstances of intent to kill, treachery, evident premeditation and the use of explosives. The imposition of exemplary damages is also justified under Art. 2229 of the Civil Code in order to set an example for the public good. However, the award of ₱80,000.00 by the RTC as actual damages is deleted for lack of competent evidence to support it. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the court. In lieu thereof, appellant should pay temperate damages in the amount of ₱25,000.00, said amount being awarded in homicide or murder cases when no evidence of burial and funeral expenses is presented in the trial court, and in accordance with prevailing jurisprudence. Under Article 2224 of the Civil Code, temperate damages "may be awarded when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

10. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEAL BY ANY OF SEVERAL ACCUSED; EFFECT.— Since Rolando did not appeal the decision of the CA, only portions of this judgment that are favorable to Rolando may affect him. On the other hand, portions of this judgment that are unfavorable to Rolando cannot apply to him. Thus, he cannot be made liable to pay for exemplary damages, as the same were not awarded by the RTC. However, he benefits from this Court's finding that, instead of actual damages, only temperate damages should be awarded to the heirs of the victim.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jose R. Bawalan for accused-appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

For review is the November 13, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02167 which affirmed the Joint Decision[2] dated September 23, 2003 of the Regional Trial Court (RTC), Special Court for Heinous Crimes, Branch 156, of Pasig City, Metro Manila, finding Rolando "Botong" Malibiran (Rolando) and Beverly Tibo-Tan (appellant) guilty of Murder and Parricide, respectively, and sentencing them to suffer the penalty of *reclusion perpetua*.

The conviction arose from the death of Reynaldo Tan (Reynaldo) on February 5, 1995. The antecedents that led to Reynaldo's death, however, go way back in the 70's when Reynaldo left his common-law wife, Rosalinda Fuerzas (Rosalinda), and their two (2) children, Jessie and Reynalin, in Davao, and went to Manila to seek greener pastures. While in Manila, Reynaldo met and had a relationship with appellant. They eventually married in 1981. Reynaldo and appellant begot three (3) children – Renevie, Jag-Carlo and Jay R.

In 1984, Reynaldo's and Rosalinda's paths crossed again and they resumed their relationship. This led to the "souring" of Reynaldo's relationship with appellant; and in 1991, Reynaldo moved out of the conjugal house and started living again with Rosalinda, although Reynaldo maintained support of and paternal ties with his children.

On that fateful day of February 5, 1995, Reynaldo and appellant were in Greenhills with their children for their usual Sunday gallivant.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Noel G. Tijam and Arturo G. Tayag, *rollo*, pp. 3-50.

[2] CA *rollo*, pp. 62-78.

After finishing lunch at the Kimpura restaurant, the family separated at around 2:00 o'clock in the afternoon to do some shopping. Later, they regrouped and purchased groceries at Unimart. At around 4:00 o'clock in the afternoon, the family stepped out of the shopping mall and Reynaldo proceeded to the parking lot to get his red Honda Accord, while the rest of his family stayed behind and waited. Immediately thereafter, the family heard an explosion coming from the direction where Reynaldo parked his car. Appellant and Renevie got curious and proceeded to the parking lot. There, they saw the Honda Accord burning, with Reynaldo lying beside the driver's seat, burning, charred and bleeding profusely. A taxi driver named Elmer Paug (Elmer) appeared and pulled Reynaldo out of the car. Reynaldo was then rushed to the Cardinal Santos Medical Hospital where he eventually died because of the severe injuries he sustained.[3] The underlying cause of his death was Multiple Fracture & Multiple Vascular Injuries Secondary to Blast Injury.[4]

An investigation was conducted by the police after which two separate Informations for Murder and Parricide, dated September 10, 1997, were filed against appellant, Rolando and one Oswaldo Banaag (Oswaldo).

The Information in Criminal Case No. 113065-H accused Rolando and Oswaldo of the crime of Murder, to wit:

> On February 5, 1995, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating with Beverly Tibo-Tan, and three other individuals whose identities are still unknown, did then and there willfully, unlawfully, and feloniously, with intent to kill, treachery, evidence (sic) premeditation and with the use of explosion, plan, plant the explosive, and kill the person of Reynaldo C. Tan, by placing said grenades on the driver's side of his car, and when said victim opened his car, an explosion happened, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death.
>
> The accused Oswaldo, without having participated in said crime of murder as principal, did and there willfully, unlawfully and

[3] TSN, January 27, 1999.

[4] RTC Records, Volume II, p. 8, Death Certificate.

feloniously take part, as an accomplice, in its commission, by cooperating in the execution of the offense by previous and simultaneous acts.

Contrary to law.[5]

The Information in Criminal Case No. 113066-H accused appellant of the crime of Parricide, to wit:

On February 5, 1995, in San Juan Metro Manila and within the jurisdiction of this Honorable Court, the accused, while still married to Reynaldo C. Tan, and such marriage not having been annulled and dissolved by competent authority, conspiring and confederating with Rolando V. Malibiran, and three other individuals whose identities are still unknown, did then and there willfully, unlawfully and feloniously with intent to kill, treachery, evidence (sic) premeditation and with the use of explosion, plan, plant the explosive, and kill the person Reynado C. Tan, by placing said grenades on the driver's side of his car, and when said victim opened his car, an explosion happened, thereby inflicting upon the latter mortal wound which was the direct and immediate cause of his death.

Contrary to law.[6]

Rolando and appellant pleaded not guilty on arraignment.[7] Their co-accused, Oswaldo, was later discharged and utilized as one of the prosecution witnesses.

The prosecution presented Jessie Tan, Inspector Silverio Dollesin, Elmer Paug, Police Inspector Wilson Lachica, Supervising Investigating Agent Reynaldo Olasco, Rosalinda Fuerzas, Janet Pascual (Janet), and Oswaldo, as its witnesses.

For its part, the defense presented the following witnesses, namely: Renevie Tan, Romulo Bruzo (Romulo), Tessie Luba, Emily Cuevas, Jose Ong Santos, Victorino Feliz, Virgilio Dacalanio and accused Rolando. Appellant did not testify in her behalf.

The RTC summed up the testimonies, as follows:

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[5] Records, Vol. I, pp. 1-3.

[6] Records, Vol. I, pp. 77-79.

[7] Records, Vol. I, p. 222.

THE EVIDENCE FOR THE PROSECUTION

1. Jessie Tan, a son of Reynaldo with Rosalinda Fuerzas, testified that he moved to Manila from Davao in 1985 to study at the instance of his father Reynaldo and to enable then to bring back time that had been lost since his father left his mother Rosalinda and the latter's children in Davao (TSN, Jan. 27, p.14); In 1991 Reynaldo moved to their house because his relationship with Beverly was worsening, and to exacerbate matters, Beverly had then a lover named Rudy Pascua or Pascual, a contractor for the resthouse of Reynaldo. Reynaldo and Beverly were then constantly quarreling over money (TSN, February 10, 1999, pp. 28-29); Jessie had heard the name of Rolando Malibiran sometime in 1994 because one day, Reynaldo came home before dinner feeling mad since he found Rolando Malibiran inside the bedroom of Beverly at their White Plains residence; Reynaldo had his gun with him at the time but Malibiran ran away (TSN, January 27, 1999, pp. 19-21). He eventually came to learn about more details on Rolando Malibiran from Oswaldo Banaag, the family driver of Beverly who was in the house at White Plains at the time of the incident (*Ibid.* p. 22). One night in December of the same year (1994) Jessie overheard Reynaldo talking to Beverly over the phone, with the latter fuming mad. After the phone conversation he asked his father what happened because the latter was already having an attack of hypertension and his father told him that Beverly threatened him and that "he, (Reynaldo) will not benetit (sic) from his money if he will continue his move for separation" (p. 40 *ibid.*). This threat was taped by Reynaldo in his conversation with Beverly (Exh. "B") Jessie himself has received threat of his life over the phone in 1989 (p. 30 *ibid.*).

At the lounge at Cardinal Santos Hospital, on the day of the mishap, Jessie testified on the emotional state of his mother Rosalinda while in said Hospital; that she was continuously crying while she was talking to Jessie's uncle. When asked where Beverly was and her emotional state, he said that Beverly was also at the lounge of the said hospital, sometimes she is seated and then she would stand up and then sit again and then stand up again. He did not see her cry "*hindi ko po syang nakitang umiyak*" (pp. 52-23 *ibid.*). When asked if his father had enemies when he was alive, he said he knows of no one (p. 54 *ibid.*). Jessie was informed by his mother (Rosalinda) few months after the death of Reynaldo that there was a letter by Rosalinda addressed to his uncle which stated that "if something happened to

him, Beverly has a hand in it" (p. 56 *ibid.*, Exh. "D" Letter dated March 24, 1999)

On cross examination, he admitted having gone to Mandaluyong City Jail and talked with Oswaldo Banaag about latter's claim that both accused have planned to kill his father. When asked if he knows the consequences if Beverly is convicted, on the matter of Conjugal Partition of Property, Jessie knows that Beverly's share would be forfeited. Counsel confirmed Jessie's request of whatever property of his father remaining shall shared equally by the legitimate and illegitimate children. Thus, Jessie confirmed as the agreement between them (p. 28, March 24, 1999 TSN).

2. Mr. Salonga, a locksmith in Greenhills Supermarket whose work area is at the entrance door of the grocery of Unimart testified that he can duplicate any key of any car in five (5) minutes. And that he is accessible to any one passing to Greenhills Shopping Complex (p. 45, March 24, 1999 TSN). The Honda Car representative on the other hand testified that the Honda Accord of the deceased has no alarm, that the Honda Accord key can be duplicated without difficulty. And the keyless entry device of the said vehicle can be duplicated (pp. 46-47 *ibid.*, Stipulation. Order p. 335 record Vol. 1).

3. Insperctor (sic) Selverio Dollesin, the Chief of the Bomb Disposal Unit of the Eastern Police District, and the Police Officer who conducted the post aftermath report of the incident whose skills as an expert was uncontroverted, testified that the perpetrator knew who the intended vicitim was and has reliable information as to his position when opening the vehicle. If the intended victim does not usually drive and usually sits on the rear portion of the vehicle (p. 49, April 14, 1999 TSN) Inspector Dollesin's conclusion states that the device (bomb) was placed in front of the vehicle in between the driver's seat and the front door because the perpetrator had information about the victim's movements, otherwise he could have placed the device underneath the vehicle, in the rear portion of the vehicle or in any part thereof (p. 53 ibid). He testified that persons who have minimal knowledge can set up the explosive in the car in five (5) minutes (p. 65 *ibid.*). The explosion will commence at about 4-7 seconds (p. 66 *ibid.*).

4. Elmer Paug, the taxi driver, testified that on February 5, 1995 he was just dropping a passenger to Greenhills Shopping Complex when he heard a loud explosion at the parking level. Being curious of the incident he hurriedly went out to look for a parking, then

proceeded to the area where the explosion occurred. He saw a man wearing a shirt and short who is about to give assistance to a man who was a down on the ground bloodied. Finding that the man could not do it on his own, Elmer rushed through to give aid. He held both arms of the victim, grabbed him in the wrists and dragged him out and brought him farther to the burning car. (pp. 7 July 7, 1999 TSN). The man lying on the pavement has burnt fingers and hair, chest bloodied and skin already sticking to Elmer's clothes (p. 8 *Ibid.*). He noticed two women at about two armlength from the car where he was. The younger woman shouted "*Daddy, Daddy, kaya mo iyan*". She was crying had wailing (p. 10 *ibid.*). He said that the older woman gestured her left hand exclaimed in a not so loud voice "*wala bang tutulong sa amin*?" while her right hand clutched her shoulder bag (p. 11 *ibid.*). When asked if the older woman appears to be alarmed, Elmer testified that he cannot say, and said she looked normal; he did not notice her crying. Neither of the two female rendered assistance to drag the victim, they just followed him when he pulled him out. The older woman never touched the victim. (p. 12 ibid). Considering that his Taxi is quite far where the victim was lying, he flagged a taxi, and the victim was brought to Cardinal Santos Hospital (pp. 15-16 *ibid.*).

On cross examination, he was asked what the meaning of normal is, and he said "*natural Parang walang nangyari*" It looks like nothing happened (p. 42 *ibid.*). Her (sic) was uncertain as to whether the two females joined the deceased in the taxi cab (p. 43) as he left.

5. Police Inspector Wilson Lachica testified that he was the police officer who investigated the case. In the Cardinal Santos Hospital he was able to interview Beverly Tan. He asked her name, address, name of the victim, how the incident happened and who their companions were. She answered those questions in a calm manner (p. 13, Sept. 21, 1999 TSN). As per his observation which was told to his superiors, he has not seen remorse on the part of the victim, (meaning the wife) for an investigator that is unusual. Based on his more than six years of experience as an investigator, whenever a violent crime happened, usually those relatives and love ones appears hysterical, upset and restless. Her reaction at the time according to him is not normal, considering that the victim is her husband. He interviewed persons close to the victim even at the wake at Paz Funeral in Quezon City. He was able to interview the daughter of the lady-accused; the other lady and family or relatives of the victim, the same with the driver of the lady accused. He came to know the identity

of the policeman linked with the lady accused, named Rolando Malibiran. He testified that he obtained the information that he desired from the widow nonchalantly and marked with blithe unconcern, which in his observation is unusual since she is supposed to be the one who would diligently push through in the investigation. When asked the level of interest as regards accused Malibiran, witness testified that because of the manner of the commission of the crime through the use of explosives, only a trained person can do that job (pp. 15-16 *ibid.*).

6. Supervising Investigating Agent Reynaldo Olasco testified that his only observation on the demeanor of Beverly Tan is that she did not give her statement readily without the assistance of her counsel which for the investigator is quite irregular. Considering that she is the legal wife, he could not see the reason why Beverly would bring a counsel when she is supposed to be the complainant in the case (p. 11, April 5, 2000 TSN). He testified that after having interviewed a representative from Honda, they had set aside the possibility that it was a third party who used pick lock in order to have access to the Honda Accord and the presumption is that the duplicate key or the main key was used in opening the car. The assessment was connected with the statement of Renevie that she heard the clicking of all the locks of the Honda Accord, which she was sure of when they left the car in the parking lot (p. 12 *ibid.*). In 1998 they arrested Rolando Malibiran in Candelaria Quezon, he was fixing his owner type jeep at that time. The arresting officers waited for Beverly Tan, and after thirty minutes they were able to arrest Beverly Tan on the same place (p. 8, May 31, 2000 TSN). They searched the premises of the place where they reside and found a white paper which he presumed to be "*kulam*" because there's some oracle words inscribe in that white piece of paper and at the bottom is written the same of Jessie (pp. 8-9 *ibid.*). On cross examination, he admitted that 70% of the information on the case was given by Oswaldo Banaag through the persistence of the NBI which convinced him to help solve the case. It was disclosed to the investigating officer after he was released, that's the only time he gave in to the request (p. 14, May 31, 2000 TSN). As to how the NBI operatives effected the arrest, it was through an information from the Lucena Sub-Office (p. 17, *Ibid.*).

7. Rosalinda Fuerzas testified that her life in Makati was "*medyo magulo lnag* (sic) *kase nanggugulo sya sa amin*." When asked who this "*siya*" was, she said Beverly. That one day Beverly called on her and harassed her, and one day she received a murder letter threatening

that she (Rosalinda) would be around the newspaper saying that she would be killed, like what they did in the news papers, *puputu-putulin iyong mga dodo o anuman dahil mang-aagaw daw ako* (Rosalinda) *ng asawa* (p. 11 *ibid.*, June 27, 2000 TSN). She stated that her husband wanted to separate with Beverly because he found out that the latter has paramour named Rudy Pascua contractor of Jollibee (pp. 13-14 *ibid.*). She had never seen Beverly appeared to be lonely when her husband was then kidnapped. A telephone conversation with Beverly was recorded by Reynaldo which was a quarrel regarding money. In the Cardinal Santos Hospital, she did not see Beverly's appearance to be lonely but appeared to be a criminal, and Beverly did not cry (pp. 13-17 *ibid.*). She mentioned the letter of Reynaldo that if something happened to him, Beverly is the one who killed him (p. 26 *Ibid.;* pp. 24-25, Exh. "D", Vol. 1-A Record).

8. Janet Pascual testified that she was able to know Rolando Malibiran, because on March 1993 when she was in White Plains, Beverly showed her a picture of him (Malibiran) and said to her that he is her boy friend. Witness told her that he was handsome. She was close to Beverly that she frequently stayed in White Plains when Beverly and Reynaldo is no longer living in the same roof. They played mahjong, chat and has heard Beverly's hurtful emotions by reason of her philandering husband Reynaldo. Beverly told her of how she felt bad against underwear not intented for her (p. 9, Oct. 11, 2000 TSN); that on August 1994, Malibiran told Beverly that he has a "*kumapre*" who knows how to make "*kulam*" for an amount of ₱10,000.00. That Reynaldo would just sleep and never wake up. Witness testified that they went to Quiapo to buy the needed ingredients but nothing happened (p. 14 *Ibid.*). The accused wanted to kill Reynaldo in a way that they would not be suspected of having planned it, and for him just to die of "*bangungot*". She testified that they wanted to separate their properties but it did not push through, referring to Beverly and Reynaldo. That Beverly heard of the house being built in Corinthian intended for Rosalinda and family. In July 1994 Malibiran told witness testified that she heard this on their way to Batangas, it was Beverly's birthday (p. 16 ibid). On October 1994 she asked by Malibiran to convince Beverly to marry him, this was asked at the time when Beverly was in Germany (p. 17 *ibid.*).

When asked whether Beverly and Rolando ever got married the witness testified that the two got married on November 8, 1994. (p. 155 Vol. 1-A records Exh. "JJ" Certificate of Marriage). That she executed an affidavit of corroborating witnesses for Beverly

and Malibiran to facilitate the processing of their exemption in obtaining marriage license requirement (p. 128 *Ibid.;* Exh. "BB"). She is an employee of the Municipality of San Juan. After getting married they discussed how Malibiran would get inside the car of Reynaldo. On December of 1994, Beverly was able to duplicate Reynaldo's key at the time when they have shopped for many things, Reynaldo asked her to bring the goods to the car in the compartment as the kids would still shop (p. 17 *ibid.*). After having done so, she proceeded to a key duplicator in Virra Mall and had the key duplicated. Thereafter on the succeeding days or weeks, she was able to give the duplicate to Malibiran. That they would use the grenade since Malibiran has one in his house but his only problem is how to get inside the car and place the grenade (p. 18, Oct. 11, 2000 TSN; *Vide* p. 35 *ibid.*).

As to when the killing would take place, the witness heard that they will do it during the baptism of the child of Gloria, Rolando Malibiran's sister. They chose that date so that they would not be suspected of anything and that pictures would be taken in the baptism to reflect that Malibiran took part in the same (pp. 17-18 ibid). During Reynaldo's internment when asked whether Beverly looked sad, witness said that she did not see her sad (p. 20 *ibid.*). On February 8, 1995, during the wake, witness met Malibiran in a canteen in White Plains and they rode a Canter owned by Beverly, on the road while the vehicle was cruising along Katipunan Avenue near Labor Hospital, Malibiran told her among others that on the day he placed a grenade on Reynaldo's car he saw a security guard roving and so what he did was to hurriedly tie the wire in the grenade (p. 21 *ibid.*) not connected with the wire unlike the one intended for Reynaldo which has a connection (p. 21 *ibid.*). As far as she knows, there were four or five grenades placed. She told this secret to another friend so that in case something happened to her, it was the doing of Malibiran and Beverly.

On Cross examination, she was asked whether Malibiran did it alone, she said that he has a look out as what Malibiran told him (p. 26 *ibid.*). When confronted why she was testifying only now, she said she was bothered by her conscience. As to how did she get the information of key duplication, she said that it was told to her by Beverly (p. 35 *ibid.*). It was also disclosed that she did ask Atty. Morales for a sum of ₱5,000.00 for he (sic) to buy medicine.

9. Oswaldo Banaag (or Banaag) testified that Beverly told him that she and Malibiran had a relationship (p. 39, April 1994 TSN). He testified that on April 10, 1994 Beverly asked him to look for a hired gunman, if he could not find one, he just look for a poison that would kill Reynaldo, ten thousand (₱10,000.00) pesos was given him for this (p. 14 *Ibid.*). In his sworn statement he said that Beverly asked him to seek means for Reynaldo to die. That she will pay any amount just for him to get out of her life. He has driven for her in going to Hilltop Police Station, Taytay Rizal to see Rolando Malibiran. That Malibiran blames Beverly of the reason why Reynaldo is still alive and then volunteered himself to remedy the situation, that he would seek a man that would kill Reynaldo he made an example of a man they killed and threw in Antipolo "*Bangin*" with Beverly, Malibiran and two other persons who appear to be policeman because they have something budging in their waste [sic] which is assumed to be a gun, they went to Paombong Bulacan via Malabon. He heard that they would fetch a man in Bulacan that knows how to place a bomb in a vehicle. Near the sea they talked to a person thereat. From Paombong they rode a *banca* and went to an islet where the planning was discussed as to how much is the fee and how the killing will be had. They ordered him to return back to the vehicle and just fetched them in Binangonan.

He swore that on February 5, 1995 around 10:30 a.m. Beverly asked one of her siblings to call Reynaldo for them to be picked up because every Sunday, the family would go out for recreation. Around 12:00 pm he was asked by Beverly to follow where they will go and when they are already parked, he was instructed to fetch Malibiran in Caltex, Katipunan near Shakeys and bring them to the place where Reynaldo was parked. In the Caltex station he saw Malibiran with two persons who looked like policemen and another person he previously saw in Bulacan. He drove the L300 Van, and brought them to the parking lot where Reynaldo's Honda Car was parked and Malibiran told him just drove [sic] in the area and come back. At around 3:00 p.m. after half an hour he saw Malibiran and company and I picked them up. He heard from the person in Bulacan "*Ayos na, siguradong malinis ito.*" Then he was asked to drive them to Hilltop Police Station. He discovered the death of Reynaldo when he saw and read newspaper, he called Beverly to confirm this incident and he was asked to be hired again and drove for her. When he was in White Plains already, he was asked by Beverly and Malibiran not to squeal what he knows of, otherwise, his life will just be endangered.

That Beverly and Malibiran were lovers since March 1993, when they met each other in a piggery in Marikina. There was an incident that Reynaldo saw Malibiran in their own bedroom, and there was almost a gunshot incident, he was there because he was asked to drive the vehicle. Beverly Tan's source of money was from Reynaldo Tan, that he (Banaag) was asked frequently by Beverly who in turn would give it to Malibiran (Exh. "y", pp. 122-125 Vol. 1-A, Sworn Statement November 29, 1996).

On March 29, 1996 he was no longer driving for Beverly because he was arrested by the Presidential Anti-Crime Commission for his alleged involvement in the kidnapping of the father of the classmate of Renevie Tan. He was later on acquitted (p. 16, Feb. 20, 2001 TSN) and released from incarceration on May 7, 1997. When asked whether Jessie Tan helped him to be acquitted in the kidnapping case, he said no (p. 16 *ibid.*).

On Cross examination, he was asked how many times did Jessie Tan visit him in prison, he said that it was Atty. Olanzo who visited him for about six times and that he saw Jessie when he was already out of jail (pp. 24-25 *ibid.*). He testified that there was one incident when Reynaldo and Mabiliran almost had a shootout in the bedroom downstairs because Malibiran was inside the bedroom where Beverly was, Reynaldo have a gun at that time bulging in his waste [sic] (p. 40 *ibid.*).

Further on Cross, he testified that sometime in June 1994, he with Beverly went to Hilltop Police Station and fetched Malibiran and company to go to Paombong Bulacan, they passed by Malabon before going to Bulacan. When they reached the bridge near the sea, they rode a *banca*, about six of them plus the one rowing the boar (sic) towards an Island. In the Island, there was one person waiting (pp. 44-45 *ibid.*). He stayed there for just for about ten (10) minutes, and during that period, at about one arms length he overheard their conversation concerning a man to bring the bomb in the car. When asked who was in the *banca* then, he said it was Beverly, Botong (Malibiran), Janet and the man they picked up at Hilltop. He was told to return the L300 and just wait for them in Binangonan, hence he rode a *banca* to return to the bridge and then drove the L300 Van towards Binangonan (p. 50 *ibid.*). When asked if he knows that Malibiran is engaged in the fishing business of *bangus*, he had no idea (p. 45 *ibid.*).

DEFENSE EVIDENCE

For the defense, in opposition to the testimony of Elmer Paug, it called to the witness stand Renevie Tan. She testified that she believe that her mother (Beverly) did not kill her dad because she was with them at the time of the incident (p. 6 Feb. 5, 2002 TSN). That it is not true that they did nothing when his dad was lying on the ground at the time of the incident. That her mom screamed at that time and did tried to pull her dad who was under the car that she kept going around to find a safer place to pull him out because the car was burning and so they could not pick her dad without burning. Her mother tried crawling underneath the car so she can reach him but he pulled her mom aside and pulled dad risking himself from burning (p. 11 *ibid.*). She found out that the person who helped them was the taxi driver, Elmer Paug.

That a driver of a Ford Fiera or Toyota Tamaraw of some kind of delivery van boarded her dad with her mom and headed for Cardinal Santos Hospital. She said that if (sic) is not true that her mom appeared unaffected or acting normal as if nothing happened. That it is likewise not true when Elmer Paug said that he alone carried her dad's body, and said that there was another man who helped put her dad on the car (p. 14 *ibid.*). She swore that her mom was shocked and was crying at that time (pp. 112-115, Exh. "U" Sworn Statement of Renevie Tan). She admitted that it was only the taxi driver who pulled out his dad from the danger area to a safer place at about four (4) meters, while Elmer Paug was dragging her dad, they where there following him (p. 43 February 5, 2002, TSN). That she touched her father when they where (p. 45 *ibid.*). It was confirmed in her testimony that it was the taxi drivers who looked for a taxi cab (p. 46 *ibid.*). She asked if she observed whether her mom carried a portion of her dad's body or arms, hands, legs or buttocks of her father, she said she could not remember (p. 7-8, February 12, 2002 TSN). When asked whether her mom has a shoulder bag at that time, she could not remember.

She testified that her parents keep quarreling to each other may be in 1988-89 and stopped in 1991. It was a once a month quarrel (pp. 23-24 *ibid.*). A certain Janet Pascual frequently stayed in their house in the months of October 1994 until February of 1995, and her mom's relationship with Janet was cordial (pp. 27-28, *ibid.*). As regards to Malibiran, she knows him at the month of August or September of 1994 but no knowledge of a marriage that took place

between her mom and Malibiran on November of the same year (p. 30 *ibid.*).

Romulo Bruzo, the security guard of Tan Family at White Plains testified that there was an offer of half a million to him by an unknown person and a demand for him to leave the employ of Beverly Tan and a threat to his life should he testify before the Court. He testified that Banaag was a family driver of the Tan in White Plains from March 1993 until August 1994, after said date, he was taken by Reynaldo Tan as driver at Winreach. He testifies that the statement of Oswaldo Banaag that he came over to White Plains on February 5, 1995, drove the L300 Van and followed the family to Greenhills Shopping Complex is false. Because at that time, the L300 was still parked inside White Plains, it was just a concocted statement of Banaag because he has a grudge on Mrs. Tan as she did not help him when he was incarcerated in Camp Crame (pp. 47-48 *ibid.*).

He was told by Banaag that they were supposed to kidnap the three siblings of Beverly Tan but he took pity on them because Beverly is a nice person to him. He stated that Jessie Tan helped him to be acquitted (p. 49 *ibid.*) and promised good job and house to live in.

As regards Janet Pascual, he testified that he had an altercation with her (Janet) because there was an instruction for him by Renevie for Janet not to let inside the house. That Janet got mad at them because she is not been [sic] treated the way Renevie's mom did not to her. Likewise, Renevie has refused to give her ₱5,000.00 allowance as her mom did before to Janet for the latter's medicine (pp. 50-51).

On account of said incident, she made a threatening remark that if she will not be treated fairly and the ₱5,000.00 allowance be not given to her, she will go to the Tan Brother and she will testify Mrs. Tan. When asked whom she was angry of Bruzo said it was against Renevie and Atty. Morales. She was angry with the latter because she thought that Atty. Morales was telling Renevie not to give her allowance anymore and refuse access inside the white plains (p. 51 *ibid.*).

When asked if he knows Malibiran, he said that he was able to join him twice when there was a delivery of rejected bread for fish feeds in Bulacan. That he saw him eight (8) times in a month in 1994 and just twice a week in the month of August, September and October of said year. (p. 52 *ibid.*). He also saw him on July of 1994 on the occasion of Beverly's Birthday.

That on February 5, 1994, Beverly called on him to relay to Roger to fetch the three kids in Green Hills. When asked the tone of Beverly at the time of the phone call, he said the tone was that she was scared and confused (p. 63 *ibid.*).

Tessie Luba, the caretaker of Manila Memorial Park testified that she was paid by Beverly to take care of the tomb of Reynaldo and that in some points in time Jessie took over and later her services were not availed of anymore (p. 23, April 30, 2002 TSN). That she saw Beverly with Banaag on November 1996 (p. 8 *ibid.*) and Jessie with Banaag in one occasion in going to the tomb on November 1997 (p. 47 *ibid.*) and in April 2001 (p. 20 *ibid.*).

Emily Cuevas, one of the friends of Beverly testified that Janet Pascual is a back fighter and a traitor, that Janet tried to convince her to testify against Beverly and if witness will be convinced, Janet will receive a big amount of money about three (3) million from another source. Testified that it is not true that Beverly and Malibiran orchestrated or masterminded the death of Reynaldo, and that Janet testified because she needed money because she is sick and diabetic (p. 7, May 21, 2002 TSN). She knows such fact by heart that they are innocent and that they are good people (p. 20 *ibid.*).

Victorino Felix, a police officer testified that Malibiran is a member of the Aquarius Multi-Purpose Cooperative, a cooperative that is engaged in the culture of fish particularly "Bangus" at Laguna De Bay particularly Bagumbong, Binangonan, Laguna.

He testified that sometime in 1994, he together with Malibiran waited at Tropical Hut, Cainta for them to be picked up for Bulacan to purchase fingerlings. They were fetched by an L300 Van driven by Oswaldo Banaag and they were around six or seven at that time that headed first to Dampalit, Malabon, Metro Manila to meet the owner of the fish pond, finding that the owner thereof was already in Bulacan they proceeded thereat, at Taliptip, Bulacan. In said place, they left the L300 Van along the bridge, near the sea and from there they rode a motor *banca* in going to the fingerlings ponds. He testified that Oswaldo was not with them in going to the pond from Taliptip (pp. 11-13, Sept. 3, 2002 TSN). When asked where he was, he said he drove the L300 back (p. 14 *ibid.*). The pond was about three kilometers from Talilip, and they were able to buy fingerlings, loaded it in another water transport going to Laguna Lake from Bulacan traversing Pasig River and thereafter they returned back to Binangonan (p. 15 *ibid.*).

On Cross, he testified that has met Banaag many times because he used to deliver rejected for bangus feeds, but said that it was only once when Banaag drove with him, that is sometimes in 1994 (p. 20 *ibid.*). He testified that Malibiran together with him went to Talilip, Bulacan to procure some fingerlings sometime in June 1995 to mid 1996 (Joint Order, Sept. 3, 2002, p. 366 Vol. III record).

Virgilio Dacanilao testified that on February 5, 1995 at about 12:00 noon he was at the residence of one Gloria Malibiran Santos and from there, he saw accused Rolando Malibiran together with his wife and children, witness' parents-in-law and sisters-in-law. When asked who his parents-in-law is, he said Fernando Malibiran and Jovita Malibiran, the parents of Rolando Malibiran (p. 5, Sept. 17, 2002 TSN). He said that they left the occasion at around 5:00pm and at that time, accused Malibiran, with Boy Santos and Eduardo was still playing "*pusoy*". When asked if there was such a time that Malibiran left the house of Gloria Santos, he said, he did not go out of the house sir (pp. 5-7 *ibid.*).

On Cross examination, it was disclosed that he knows Malibiran at the time witness was still his wife, the sister of Malibiran, that was sometime in 1988. When asked if he considered Malibiran to be close to him as the brother of his wife, he said yes sir (p. 10 *ibid.*). Asked if his relationship with him is such that he would place Malibiran in a difficult situation, he answered, it depends on the situation (p. 11 *ibid.*). Witness was asked how long it would take to reach Unimart Supermarket from his residence in Malanday, he estimate it to be more or less half an hour (p. 13 *ibid.*). He testified that no game was ever stop [sic] on the reason that they have to wait for Malibiran.

Said witness testimony was corroborated by Jose Ong Santos, the father of the child who was baptized on said occasion. He testified that he played "*pusoy*" with Malibiran at around 2:00pm, until 6:30 to 7:00 pm and there was never a time that Malibiran left the table where they were playing except when he feels like peeing (p. 10 July 16, 2002 TSN). It was estimated at abut (sic) five times, and it took him about three to five minutes everytime he would rise to pee and return to the table. That Malibiran may have left their house at around 6:30 or 7:00 in the evening on February 5, 1995 (p. 11, *ibid.*).

On Cross examination, he testified that the idea of baptism was rushly scheduled, because he won in a cockfight three to four days before the baptism of his child at about February 1 or 2 of 1995.

That amount was about ₱50,000.00 (pp. 20-21 *ibid.*). Malibiran did not take any participation in the baptism nor was he present at the church, but was already at the reception with his family, for lunch. He testified that Malibiran left by call of nature, to pee, about four to five times and a span of five minutes (p. 31 *ibid.*).

Accused Rolando Malibiran in his Counter-Affidavit said that he does intelligence work for seven years. He doesn't know Banaag as to reckless discuss a supposed plot to kill somebody within his hearing. That would be inconsistent with the entire training and experience as a police officer. Especially when the expertise is intelligence work. Banaag drove for them in June or July 1995 not in June of 1994 (for months after the death of Reynaldo) [pp. 147-152, Exh. "HH" Vol. 1-a record].

He testified that he met Banaag sometime in the last quarter of 1993 at the piggery of Beverly Tan (pp. 12-13, Oct. 8, 2002 TSN). He admitted that he was with Banaag using the L300 Van of Beverly in one occasion, in 1994 when they purchased fingerlings from Bulacan. They procured the same because their cooperative was culturing "*bangus*" in Barangay Bombon, Binangonan, Rizal (pp. 14-15). He testified that in Bulacan, Banaag was left at the foot of the bridge where the L300 was parked (p. 19 *ibid.*) and heard that Beverly told Banaag to go back, in White Plains (p. 21, *ibid.*). After procuring the fingerlings, they rode a big *banca* called "pituya" then they went back to Pritil, Binangonan. In Pritil, they waited for Banaag (p. 26 *ibid.*).

He denied having met Janet Pascual on Wednesday at about February 8, 1995 because since Tuesday (February 7, 1995) he was already confined in the Camp by Order of his Unit Commander, Chief Inspector Florentin Sipin (p. 5, January 21, 2003 TSN) because he was under investigation by the Presidential Anti-Crime Commission. He admitted that he met Beverly in the last quarter of 1993 (p. 8, October 22, 2002) but denied having intimate relations with her (p. 21 *ibid.*).

He testified that he met Janet Pascual only once, on November 1994, but said that they never talked (p. 12, November 12, 2002 TSN). He denied having married Beverly Tan nor did he ever requested Janet Pascual to secure a license for them to get married. He denied having had a trip with Janet in Bulacan and admitted that he went to Zamables once, with Beverly, kids and *yaya* as well as his father (p. 25, *ibid.*), that was sometime in 1994, before Reynaldo died. He testified that

he used his own vehicle with his father in going to Zamables. He denied seeing Reynaldo; he said he just heard him based on his conversation with Beverly Tan which took place in the piggery in Marikina. In sum, the place of incidents where he managed to meet and talk with Beverly Tan was in the piggery in Marikina; at Camp station in Taytay Rizal; in Bulacan when they procured fingerlings in Binangonan; Malabon; Zambales; White Plains and Cainta. (pp. 30; 32; 35 *ibid.*).

He testified that he was arrested in Candelaria Quezon on December 1998 (p. 11 January 21, 2003) but denied living with Beverly Tan at the time of the arrest. He said he just saw Beverly thirty (30) minutes after his arrest in the town proper of Candelaria, Quezon (p. 21, *ibid.*). He denied that he uttered the remark "its better to kill Rene since you are not benefiting from him" (p. 38 *ibid.*); never have access to grenades; never asked Beverly Tan how he could get inside Reynaldo's Car never claimed to be a sharp shooter and had never went to Batangas uttering the remarks mentioned by Janet Pascual nor went to Batangas at the time of Beverly's birthday.

On Cross examination, he said that he never talk to Janet at the time of his restriction and thereafter. He had no commercial dealing with Janet nor have any romantic relations with her (p. 8, *ibid.*). It was only when the case was filed he was able to talk to her (p. 5, February 4, 2003 TSN). He testified that he evaded arrest because there was a pending petition for review filed by his lawyer before the Department of Justice despite the fact that there is an existing warrant of arrest which he found out at the end of 1997 (p. 15 *ibid.*).

On September 23, 2003, the RTC found Rolando guilty of Murder and appellant, of Parricide. The dispositive portion of the Joint Decision reads as follows:

WHEREFORE, the Court finds both accused guilty beyond reasonable doubt as charged. Accused Rolando Malibiran for the crime of Murder in Criminal Case No. 113065-H and accused Beverly Tibo-Tan for Parricide in Criminal Case No. 113066-H defined and penalized under Article 248 and Article 246, respectively, of the Revised Penal Code, as amended, in relation to Republic Act No. 7659 with the attendant circumstances of treachery, evident premeditation and use of explosion and sentencing both accused the supreme penalty of DEATH, and ordering them to pay jointly and severally to the heirs of Reynaldo Tan the amount of Fifty Thousand (₱50,000.00)

Pesos as indemnity for death, Eighty Thousand (₱80,000.00) Pesos as actual damages; Fifty Thousand (₱50,000.00) as moral damages; and to pay the costs.

SO ORDERED.[8]

Appellant then appealed to this Court; the appeal was, however, referred to the CA pursuant to *People v. Mateo*.[9]

In its Decision dated November 13, 2006, the CA affirmed the Decision of the RTC. The CA, however, took judicial notice of Republic Act No. 9346 prohibiting the imposition of the death penalty and thus reduced the penalty to *reclusion perpetua*. The dispositive portion of the said Decision reads as follows:

WHEREFORE, premises considered, the joint decision dated September 23, 2003 of the Regional Trial Court, Special Court for Heinous Crimes, Branch 156, Pasig City in Criminal Case No. 113065-H for Murder and Criminal Case No. 113066-H for Parricide is hereby AFFIRMED with Modification in that the supreme penalty of death imposed on both accused-appellants is hereby reduced to *RECLUSION PERPETUA*.

SO ORDERED.[10]

As manifested by the Office of the Solicitor General (OSG), Rolando did not file a Motion for Reconsideration or a Notice of Appeal from the CA Decision.[11] For all intents and purposes, the judgment of conviction as to Rolando became final and executory on December 14, 2006. This was confirmed by CA Resolution dated January 29, 2007, which noted that "pursuant to the report dated January 23, 2007 of the Judicial Records Division that no motion for reconsideration or notice of appeal had been filed by counsel for appellant Rolando Malibiran, entry of judgment is issued against said appellant x x x."[12]

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[8] Records, Vol. I, p. 78.

[9] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.

[10] CA *rollo*, p. 353.

[11] *Rollo*, p. 59.

[12] CA *rollo*, p. 360.

This review shall therefore pertain only to appellant Beverly Tibo-Tan's conviction.

Appellant and the OSG were required by the Court in its Resolution dated October 3, 2007 to file supplemental briefs, if they so desired. The OSG filed a Manifestation and Motion that it would no longer file any supplemental brief. As regards appellant, records show that, as of even date, she had not filed any supplemental brief, despite due notice.[13]

In the Brief she filed with the Court prior to the endorsement of the case to the CA, appellant raised the following assignment of errors:

I.

THE REGIONAL TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT BEVERLY TIBO TAN GUILTY OF THE CRIME OF PARRICIDE BASED MERELY ON CIRCUMSTANCIAL EVIDENCE, THE REQUISITES THEREOF NOT HAVING BEEN SUBSTANTIALLY ESTABLISHED;

II.

THE REGIONAL TRIAL COURT SHOULD HAVE NOT APPRECIATED THE TESTIMONY OF PROSECUTION WITNESS OSWALDO BANAAG AS ITS BASIS FOR ESTABLISHING CONSPIRACY BETWEEN ACCUSED-APPELLANT MALIBIRAN AND ACCUSED-APPELLANT BEVERLY TAN, SUCH TESTIMONY BEING HEARSAY ON SOME PARTS AND REPLETE WITH INCONSISTENCIES;[14]

Before proceeding to the merits of appellant's arguments, the Court takes note of the RTC's observation regarding appellant's stoic stance during and after the incident and her non-presentation as witness. The RTC took this negatively against appellant. The Court differs therefrom.

Appellant's seeming indifference or lack of emotions cannot be categorically quantified as an *indicium* of her guilt. There is

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[13] *Rollo*, p. 64.

[14] CA *rollo*, p. 353.

no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence. It has already been stated that witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, some may faint and others may be shocked into insensibility.[15]

Also, appellant's failure to testify in her defense should not be taken against her. The Court preserves the rule that an accused has the right to decline to testify at the trial without any inference of guilt drawn from his failure to be on the witness stand.[16] The constitutional right to be presumed innocent still prevails.

This notwithstanding, the totality of the circumstantial evidence presented against appellant justifies her conviction of the crime of Parricide.

Appellant claims that the circumstantial evidence proven during trial only shows that there was a possibility that appellant may have conspired with Rolando, but nevertheless claims that it came short of proving her guilt beyond reasonable doubt.[17]

Appellant further argues that the testimony of Oswaldo was in some parts hearsay and replete with inconsistencies.[18] Specifically, appellant contends that the testimony of Oswaldo that "he overheard a conversation between Malibiran (Rolando) and Beverly (appellant) that they will fetch a man in Bulacan that knows how to place a bomb in a vehicle" is hearsay.[19]

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[15] *Rivera v. Court of Appeals*, G.R. No. 125867, May 31, 2000, 332 SCRA 416.

[16] *Arroyo Jr. v. Court of Appeals*, G.R. No. 96602, November 19, 1991, 203 SCRA 750; *People v. Gargoles*, No. L-40885, May 18, 1978, 83 SCRA 282.

[17] CA *rollo*, p. 124.

[18] CA *rollo*, p. 124.

[19] *Id.* at 124-125.

Likewise, in her Reply Brief,[20] appellant claims that the testimony of Janet is hearsay.

Contrary to the claim of appellant, the testimonies of Oswaldo and Janet are not covered by the hearsay rule.

The hearsay rule states that a witness may not testify as to what he merely learned from others either because he was told, or he read or heard the same. This is derived from Section 36, Rule 130, Revised Rules of Court, which requires that a witness can testify only to those facts that he knows of or comes from his personal knowledge, that is, that are derived from his perception. Hearsay testimony may not be received as proof of the truth of what he has learned.[21]

The law, however, provides for specific exceptions to the hearsay rule. One is the doctrine of independently relevant statements, where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[22] The witness who testifies thereto is competent because he heard the same, as this is a matter of fact derived from his own perception, and the purpose is to prove either that the statement was made or the tenor thereof.[23]

In this case, Oswaldo's testimony that he overheard a conversation between Rolando and appellant that they would fetch a man in Bulacan who knew how to place a bomb in a vehicle is admissible, if only to establish the fact that such statement was made and the tenor thereof. Likewise, Janet may testify on matters not only uttered in her presence, since these may be

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[20] *Id.* at 272-282.

[21] *Fullero v. People*, G.R. No. 170583, September 12, 2007, 533 SCRA 97.

[22] *People v. Lobrigas*, G.R. No. 147649, December 17, 2002, 394 SCRA 170.

[23] *People v. Cusi, Jr.*, No. L- 20986, August 14, 1965, 14 SCRA 944; *Cornejo, Sr. v. Sandiganbayan*, No. 58831, July 31, 1987, 152 SCRA 559.

considered as independently relevant statements, but also personally conveyed to her by appellant and Rolando.

Appellant further argues that Oswaldo's testimony to the effect that he drove the L300 van of the Tan family and brought Rolando to the parking lot where Reynaldo's Honda Accord was parked, was refuted by defense witness Romulo, the security guard of the Tan family. Romulo testified that the L300 van never left White Plains on the day of the incident.[24]

While the defense may have presented Security Guard Romulo to refute the testimony of Oswaldo, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court, considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.[25] Thus, in the absence of any palpable error, this Court defers to the trials court's impression and conclusion that, as between Oswaldo and Romulo, the former's testimony deserved more weight and credence.

There is nothing on record to convince the Court to depart from the findings of the RTC. On the contrary, the testimony of Janet as corroborated by Oswaldo, though circumstantial, leaves no doubt that appellant had in fact conspired with Rolando in bringing about the death of her husband Reynaldo. As a rule of ancient respectability now molded into tradition, circumstantial evidence suffices to convict, only if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

The case of the prosecution was primarily built around the strength of the testimonies of Janet and Oswaldo. The salient portions of Janet's testimony are extensively quoted hereunder:

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[24] CA *rollo*, p.125.

[25] *People v. Navida*, G. R. No. 132239-40, December 4, 2000, 346 SCRA 821, 830.

[26] RULES OF COURT, Rule 134, Section 4.

Q. Anything else significant that happened in the remaining of 1994, Ms. Pascual?
A. After they were married, they talked about what they're gonna do for Rene.

Q. Where did they discuss it?
A. Inside the car, Botong was asking Beverly how would he be able to get inside the car since he has no key and Beverly said that she can do something about it and so it was in the last week of November 1994 of first week of December 1994 when they shopped for so many things.

Q. Who is (sic) with him?
A. Rene, Beverly and her three kids. Rene asked her since Rene and kids would still shop, Rene asked her to brings the goods to the car in the compartment.

Q. And then?
A. And after Beverly placed the things inside the compartment, she had with her the key, she proceeded to a key duplicator in Virra Mall and had the key duplicated.

Q. When did she give the key to Malibiran, if you know?
A. That was already December, I cannot recall the exact date, sir.

Q. Why did Mr. Malibiran need the key?
A. Because they planned, since they cannot use the gun Butch said that they would use grenade instead because he had a grenade in his house. But their only problem is how to get inside the car.

COURT:
Who is Butch?

A. Mr. Malibiran, your Honor.

COURT:
Butch and Botong are one and the same person?

A. Yes, your Honor.

Q. Did they discuss how, where and when they would planted the grenade in the car of Rene?
A. I heard from them that they would do it during the baptismal of the child of Gloria who is the sister of Butch.

Q. And Butch is Botong?
A. Botong, sir.

Q. Do you know when that *binyag* when supposed to be held?
A. The baptismal be held on February 5, 1995, sir.

Q. Why did they choose that date of the *binyag*?
A. So that if a picture was taken during the baptism, there would be witnesses that they were in the baptism, they would not be suspected that they have something to do with that.[27]

x x x x x x x x x

Q. What day of the week was this?
A. Sunday, Ma'm.

Q. What kind of kind [sic] was duplicated?
A. The key in the new car of Rene the Honda Accord.

Court:

But in the first place, you were not there when it was duplicated? How you were [sic] able to know that it was indeed duplicated?

A. **Because after Beverly had duplicated the key, she told me that she was able to have the key duplicated and she told me how she did it and she told me that she will give the key to Butch.**

Q. Did she show you the duplicated key?
A. *Ginanoon niya lang*.

Q. What does it looked [sic] like?
A. *Iyong mahaba na malaki. Hindi ko na inano basta susi, nag-iisa*.

Q. On what occasion did she tell you about this?
A. None, I was just in White Plains.

Q. When was this?
A. That was December, 1994.

Q. What was their decision when they will execute the plan?
A. It will be during the baptismal of the child of Gloria because Butch is one of the sponsors.[28] (Emphasis Supplied)

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[27] TSN, October 11, 2000, pp. 17-19.

[28] TSN, October 11, 2000, pp. 35-36.

In addition, Oswaldo testified on the occurrences on the day of the incident, in this wise:

Q. Why did you go to Greenhills?
A. I was told by Ate Beverly to follow them wherever they go.

Q. What time did she tell you to go there?
A. After lunch, sir.

Q. What vehicle did you use to follow her?
A. L300, sir.

Q. Upon whose instruction?
A. Ate Beverly, sir.

Q. Did you in fact follow her?
A. Yes, sir.

Q. What time did they reach. the[W]hiteplains?
A. Almost 1 o'clock, sir.

Q. Incidentally, who was with Beverly?
A. Kuya Rene Tan, Beverly Tan, Renebie, Jag and JR.

Q. What car did they use?
A. Honda Accord.

Q. Color?
A. Red, sir.

Q. Who drived [sic]?
A. Kuya Rene, sir.

Q. What part of Greenhills did they go?
A. The parking lot infront [sic] of Unimart, sir.

Q. What did you do when they come [sic] to Greenhills?
A. When I found out they already parked and Kuya Rene got in I went straight to Katipunan.

Q. Why?
A. Because I was told by Ate to fetch Botong.

Q. Where in Katipunan?
A. In Caltex near Shakeys.

COURT:
Who is Botong?

A. Rolando Malibiran, Your Honor.

Q. The accused in this case?
A. Yes, your Honor.[29]

x x x x x x x x x

Q. You picked up Malibiran at Caltex on February 5, 1995?
A. Yes, sir.

Q. What time was that?
A. Around 2 o'clock, sir.

Q. Who if any was with him?
A. Two guys. One whom I saw in [sic] Bulacan and the one whom we *sinakay* at Hilltop.

Q. When did you go in [sic] Bulacan?
A. In June 1994, sir.

Q. With whom?
A. Botong, Beverly, Janet, I and two guys in Hilltop because that is the instruction of Beverly.

Q. Do you know the name of the two guys from Hilltop?
A. If given the chance I can recognize them but I do not know them by name.

Q. What did you do in Bulacan?
A. We went to the Island near the sea.

Q. What did you do at that Island?
A. They talked to a person.

Q. What if you know the date [sic] all about?
A. As far as I remember they talked about the plans about the killing of Kuya Rene.[30]

x x x x x x x x x

Q. Where did they ride on Feb. 5, 1995?
A. In Katipunan, sir.

Q. What did they ride?
A. L300 that I was driving, sir.

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[29] TSN, February 21, 2001, pp. 6-8.

[30] TSN, February 21, 2001, pp. 9-10

Q. Where if any did you go after picking them up?
A. From Caltex we proceeded to Greenhills.

Q. Why?
A. Because that is the instruction of Ate Beverly. Where they were, I will drop them there.

Q. Did you do that?
A. Yes, sir.

Q. Where exactly did you drop them on?
A. In the place where Kuya Rene was parked.[31]

x x x x x x x x x

COURT: x x x What happened while they were inside the vehicle while you were going back to the place as instructed by Beverly?

A. After that I brought them where the car of Kuya Rene was parked, Your Honor. Before they alighted, Botong asked, *dito na ba*?[32]

Atty. Rondain:
So you replied *Opo, dyan po pumasok si Kuya Rene*?

A. After I alighted they just go [sic] around.

Q. Where?
A. In Greenhills, sir.

Q. Then, what happened?
A. After half an hour I saw Kuya Botong, the three of them. Then they stopped me and the three of them boarded the vehicle.

Q. What happened?
A. After they boarded, the man from Bulacan said, *ano pare, malinis na paggawa nito*. Then, I was told by Botong to bring them to Hilltop.[33]

Based on the foregoing, the testimonies of Janet and Oswaldo clearly link appellant to the planning of the crime. True, as

[31] TSN, February 21, 2001, p. 11.

[32] TSN, February 21, 2001, p. 12.

[33] TSN, February 21, 2001, p. 12-13.

intimated by appellant, she may not have been at the scene of the crime at the time of the explosion;[34] but then again, if she was, then she would have suffered the same fate as Reynaldo. Moreover, the nature of the crime and the manner of its execution, *i.e.*, *via* a booby trap, does not demand the physical presence of the perpetrator at the very time of its commission. In fact, the very manner in which it was carried out necessitated prior scheming and execution for it to succeed. Thus, appellant's absence from the actual scene of the crime does not negate conspiracy with Rolando in plotting the death of her husband. A conspiracy exists even if not all the parties committed the same act, but the participants performed specific acts that indicated unity of purpose in accomplishing a criminal design.[35] Moreover, direct proof of previous agreement to commit an offense is not necessary to prove conspiracy — conspiracy may be proven by circumstantial evidence.[36]

The testimonies of Janet and Oswaldo established the following set of circumstances which, if taken collectively, show the guilt of appellant: that appellant and Rolando conspired, planned and agreed to kill Reynaldo using a grenade; that appellant duplicated the key to the red Honda Accord of Reynaldo so that Rolando could gain access to the car; that appellant thereafter gave the duplicate key to Rolando; that on February 5, 1995, appellant told Oswaldo to follow the red Honda Accord of Reynaldo until the latter parked the car; that appellant told Oswaldo to thereafter pick up Rolando at Katipunan and bring the latter to where Reynaldo parked his red Honda Accord. Reynaldo died soon after due to injuries he sustained from an explosion caused by grenades planted in his car.

Another notable fact is that according to the expert opinion of Inspector Selverio Dollesin, Chief of the Bomb Disposal Unit of the Eastern Police District, the perpetrator had information about the victim's movements. Dollesin also observed that the

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[34] CA *rollo*, p. 125.

[35] *Acejas III v. People*, G.R. No. 156643, June 27, 2006, 493 SCRA 292.

[36] *Tigoy v. Court of Appeals*, G.R. No. 144640, June 26, 2006 492 SCRA 539.

perpetrator knew his intended victim, since the grenade was specifically placed in between the driver's seat and the front door. That the perpetrator knew the victim's movements was further corroborated by the affidavits executed by the Tan children, Renevie[37] and Jag Carlo,[38] attesting that while they spent their Sundays with their father, this was the only time that they spent a Sunday in Greenhills. Only someone who had close personal contact with Reynaldo would know his movements, where the car would be parked, and that he was the one who usually drove the red Honda Accord, such that it was precisely positioned to ensure damage to the intended victim.

There is no doubt that, based on the testimony of Janet, it was Rolando who planted the grenades inside the car of Reynaldo, to wit:

Q. Where did you go?
A. When I was inside the Canter, Botong (Rolando) was asking me while the vehicle was moving slowly. He asked me what happened in the funeral parlor.

Q. And what did you say?
A. I told him that Major Penalosa called me for an interview but I did not say anything.
Then were already in front of the V. Luna Hospital.

COURT:
What Hospital?

A. V. Luna, your Honor, along Katipunan.

COURT:
Luna in Katipunan?

A. V. Luna is going to Katipunan, your Honor. It was Labor Hospital, your Honor and not V. Luna. **Then Botong told me that on the day he placed the grenade, he was seeing a guard roving and so what he did since he was already perspiring at that time he hurriedly tied the wire in the grenade.**

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[37] Exhibit "U", Envelope of Exhibits.

[38] Exhibit "V", Envelope of Exhibits.

Atty. Rondain:
Iqoute na lang natin.

COURT:
Dinali-dali niyang ibinuhol ang alambre. That's her term.[39] (Emphasis Supplied)

What sealed appellant's fate was that, as observed by the RTC, there were already outstanding warrants of arrest against appellant and Rolando as early as September 11, 1997; yet they evaded arrest and were only arrested on December 4, 1998.[40] It is well settled that flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. "The wicked flee, even when no man pursueth; but the righteous are as bold as a lion."[41] Appellant did not even proffer the slightest explanation for her flight.

All told, this Court is convinced beyond a reasonable doubt that appellant is guilty of the crime as charged. Moreover, considering the manner in which appellant and Rolando planned and executed the crime, the RTC was correct in appreciating the aggravating circumstances of treachery, evident premeditation, and use of explosives. Thus, appellant is guilty of the crime of Parricide as provided in the Revised Penal Code, to wit:

Article 246. Parricide—Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, **or his spouse**, shall be guilty of parricide and shall be punished by *reclusion perpetua* to death. (Emphasis Supplied)

Moreover, the Revised Penal Code provides for death as the proper penalty:

Article 63. Rules for the application of indivisible penalties.

x x x x x x x x x

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[39] TSN, October 11, 2000, p. 21.

[40] CA *rollo*, p. 296.

[41] *People v. Abatayo*, G.R. No. 139456, July 7, 2004, 433 SCRA 562; *People v. Lobrigas*, *supra* note 22.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

However, as observed by the CA, with the effectivity of Republic Act (R.A.) No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law is *reclusion perpetua*.[42] The applicability of R.A. No. 9346 is undeniable in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restrigenda*. Penal laws that are favorable to the accused are given retroactive effect.[43]

In addition, appellant is not eligible for parole pursuant to Section 3 of R.A. No. 9346, which states:

SECTION 3. Persons convicted with *reclusion perpetua*, or those whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Lastly, as to the award of damages, the RTC awarded the following amounts: (1) ₱50,000.00 as civil indemnity for death, (2) ₱80,000.00 as actual damages, and (3) ₱50,000.00 as moral damages.

In the recent case of *People v. Regalario*,[44] the Court stated:

While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still ₱75,000.00. x x x the said award is not dependent on the actual imposition of the death penalty but on the fact that

[42] *People v. Ortoa*, G.R. No. 176266, August 8, 2007, 529 SCRA 536, 555.

[43] *People v. Canuto*, G.R. No. 166544, July 27, 2007, 528 SCRA 366.

[44] G.R. No. 174483, March 31, 2009.

qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

As to the award of moral and exemplary damages x x x. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. If a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to Republic Act No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00 while the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.

Consistent therewith, the RTC's award should be modified: the civil indemnity should be increased to ₱75,000.00, and moral damages to ₱75,000.00.

Moreover, although not awarded by the RTC and pursuant to *Regalario*, exemplary damages in the amount of ₱30,000.00 is likewise warranted because of the presence of the aggravating circumstances of intent to kill, treachery, evident premeditation and the use of explosives. The imposition of exemplary damages is also justified under Art. 2229 of the Civil Code in order to set an example for the public good.[45]

However, the award of ₱80,000.00 by the RTC as actual damages is deleted for lack of competent evidence to support it. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the court.[46] In lieu thereof, appellant should pay temperate damages in the amount of ₱25,000.00, said amount being awarded in homicide or murder

[45] *People v. Dacillo*, G.R. No. 149368, April 14, 2004, 427 SCRA 528.

[46] *People v. Bonifacio*, G.R. No. 133799, February 5, 2002, 376 SCRA 134.

cases when no evidence of burial and funeral expenses is presented in the trial court,[47] and in accordance with prevailing jurisprudence.[48] Under Article 2224 of the Civil Code, temperate damages "may be awarded when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

Finally, Section 11, Rule 122 of the Rules of Court provides that:

> An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Since Rolando did not appeal the decision of the CA, only portions of this judgment that are favorable to Rolando may affect him. On the other hand, portions of this judgment that are unfavorable to Rolando cannot apply to him. Thus, he cannot be made liable to pay for exemplary damages, as the same were not awarded by the RTC.[49] However, he benefits from this Court's finding that, instead of actual damages, only temperate damages should be awarded to the heirs of the victim.

WHEREFORE, the Court of Appeals Decision dated November 13, 2006 and Resolution dated September 23, 2003, finding appellant Beverly Tibo-Tan guilty beyond reasonable doubt of Parricide and sentencing her to suffer the penalty of *RECLUSION PERPETUA* are hereby *AFFIRMED*. Appellant is ineligible for parole and is further ordered to pay, jointly and severally with Rolando Malibiran, the heirs of Reynaldo Tan the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as temperate damages. In addition, appellant is solely liable to pay the heirs of Reynaldo Tan the amount of ₱30,000.00 as exemplary damages.

Costs *de oficio*.

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[47] *People v. Dacillo, supra* note 45.

[48] *People v. Notarion*, G.R. No. 181493, August 28, 2008; *People v. Ausa*, G.R. No. 174194, March 20, 2007, 518 SCRA 602; *People v. Astudillo*, G.R. No. 141518, April 29, 2003, 401 SCRA 723.

[49] *People v. Gandia*, G.R. No. 175332, February 6, 2008, 544 SCRA 115.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178873. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ILLUSTRE LLAGAS *a.k.a.* NONOY LLAGAS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ACCUSED'S CHANGE OF THEORY CONSTRUED AGAINST HIS INNOCENCE.— In the main, appellant submits in his Appellant's Brief filed before the appellate court that his act of answering a phone call from his wife "on the very same date and time that he was allegedly raping [AAA] is more of an evidence of consensual sexual intercourse and not of forced carnal knowledge." Such change of theory on appeal can only be construed against his innocence, however. For while before the trial court appellant denied having had sexual intercourse with AAA on April 16, 2003, he admitted having done so but on February 28 or 29, 2003 and with AAA's consent.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE CREDIBILITY OF A RAPE VICTIM IS AUGMENTED WHERE THERE IS ABSOLUTELY NO EVIDENCE WHICH SUGGESTS THAT SHE COULD HAVE BEEN ACTUATED BY ILL-MOTIVE TO TESTIFY AGAINST ACCUSED.— AAA's following vivid account, quoted *verbatim*, which was punctuated with her crying, of how she was sexually assaulted by appellant clearly shows the total

absence of consensual sex as claimed by him xxx. The trial and appellate courts found AAA's straightforward, candid, and spontaneous testimony credible as it bears the hallmarks of a truthful witness, unflawed by inconsistencies or contradictions. The credibility of a rape victim is augmented where, as here, there is absolutely no evidence which even remotely suggests that she could have been actuated by ill-motive to testify against appellant.

3. ID.; ID.; ID.; DELAY IN MAKING A CRIMINAL ACCUSATION DOES NOT NECESSARILY WEAKEN THE CREDIBILITY OF WITNESS WHERE SUCH DELAY IS SATISFACTORILY EXPLAINED.— As for AAA's one week delay in reporting the rape, she did not know what to do as she feared appellant's threat that he would kill her if she told anybody of the incident. It has been held that delay or vacillation in making a criminal accusation does not necessarily weaken the credibility of a witness where, as here, such delay is satisfactorily explained.

4. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF WARRANTED WHERE THE QUALIFYING CIRCUMSTANCE OF USE OF DEADLY WEAPON ATTENDED THE COMMISSION OF THE CRIME OF RAPE.— Respecting the civil aspect of the case, the Court finds that AAA is also entitled to an award of exemplary damages which jurisprudence pegs at ₱25,000 as it was proven, although not alleged in the information, during the trial that the use of deadly weapon attended the commission of the crime. It bears stating that while such circumstance cannot be appreciated for the purpose of fixing a heavier penalty, it can be considered as basis for an award of exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

By Information filed on May 28, 2003 before the Regional Trial Court of Baguio City, docketed as Criminal Case No. 21514-R, Illustre Llagas (appellant) was charged with rape as follows:

> That on or about the 16th day of April, 2003, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of violence and intimidation, have carnal knowledge of the said complainant [AAA],[1] against her will and consent.[2]

The prosecution gave the following version of the incident:

AAA worked as a waitress at a restaurant and karaoke bar[3] in Baguio City.[4] Her work schedule was from 5:00 p.m. to 1:00 a.m. of the next day. As she was residing in La Trinidad, she often slept at the house of her co-worker, BBB,[5] in Baguio City.

On February 24, 2003,[6] appellant, BBB's cousin, whose wife was an overseas worker in Hongkong, met AAA in BBB's house. From then on, appellant would sometimes bring food to BBB's house where the three of them would take lunch and watch television (TV) together.[7]

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[1] Pursuant to Section 44 of Republic Act (R.A.) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the victim is withheld to protect her privacy. Fictitious initials are used instead to represent her. Likewise, the personal circumstances or any other information tending to establish or compromise her identity, as well as those of her family members, shall not be disclosed.

[2] CA *rollo*, p. 11.

[3] Name of place withheld for the same reason stated in note 1.

[4] Transcript of Stenographic Notes (TSN), March 18, 2004, pp. 5-7.

[5] Fictitious initials are used for the same reason stated in note 1.

[6] TSN, *supra*, at 8-11.

[7] *Id.*, December 8, 2004, pp. 3-5, 9-10, 13-16.

On April 16, 2003, as previously agreed, appellant and AAA met at 2:00 p.m. in front of McDonald's, Center Mall, Baguio City as she was going to buy his cellphone. Appellant, having told AAA that he left the phone charger at his house at Km. 4, Asin Road, Baguio City, suggested that they go there to get it. AAA demurred, saying she would go somewhere and he could just give it to her the following day. He persisted, however, assuring her that they would not be alone since his mother and sister were there. With that assurance, AAA relented.[8]

Via a taxi, appellant and AAA repaired to appellant's house. On finding that they were alone in the house, AAA tried to leave but appellant quickly locked the door. When she insisted to leave, he boxed her twice on the stomach causing her to sit. She begged for mercy, but he would hear none of it. When she struggled to leave, he strangled her on the neck, threatening her not to shout or else he would kill her. He then took a knife from a table and aimed it at her chest. He pulled her inside a room but she struggled, so he boxed her again on the stomach, rendering her weak. He finally succeeded in pulling her inside the room and putting her on the bed. She tried to push him away but failed as he was still holding a knife. He kissed her, removed her T-shirt, pants, and panties. He then removed his shirt and pants, went on top of her and inserted his penis into her vagina while she was crying helplessly. After ejaculating, he stood up and sneered at her, saying she would not be able to go out of the house anymore. While she was crying, his cellphone rang. It was a call from his wife. While he was talking with his wife, she swiftly took the opportunity to escape.

AAA went home to Sison, Pangasinan. Still shocked and not knowing what to do, she went to San Fabian of the same province and related the incident to her uncle, a policeman. With the assistance of her uncle, she filed a complaint against appellant for rape before the police authorities in Baguio City.[9]

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[8] *Id.*, May 24, 2004, pp. 4-8.

[9] *Id.* at 8-24.

Dr. Lorelle Coquia, a physician of the Baguio City General Hospital, found AAA to be coherent and oriented as to date, time, and place. Since it was already more than a week from the occurrence of the incident, the doctor found no evident injury on AAA's body, but discovered a healed laceration in her hymen at 3:00 o'clock and 9:00 o'clock positions, which could have been caused by a penetrating trauma like that of an erect male organ.[10]

Appellant, denying the accusation that he raped AAA on April 16, 2003, claimed that he had had sexual intercourse with her, but on February 28 or 29, 2003 while they were watching TV at BBB's house; and that it happened by mutual consent.

By Decision[11] of March 26, 2005, the trial court (Branch 6) found appellant guilty of rape, disposing as follows:

> WHEREFORE, premises considered, the Court finds the accused Illustre Llagas also known as Nonoy Llagas guilty of Rape as defined and penalized under Art. 266-A in relation to Art. 266-B Chapter 3 Title 8 of the Revised Penal Code as amended by Sec. 2 of Republic Act 8353 and sentences him to suffer the penalty of *Reclusion Perpetua*, to indemnify the offended party x x x the sum of ₱50,000.00 as Civil Indemnity and the sum of ₱100,000.00 as Moral Damages for the pain and anguish suffered by her, both without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> The accused Illustre Llagas being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.
>
> SO ORDERED.

Before the Court of Appeals to which appellant appealed his conviction, he faulted the trial court

I

… IN FINDING THAT ACCUSED-APPELLANT USED FORCE AND INTIMIDATION WHEN IN FACT THE SEXUAL INTERCOURSE

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[10] TSN, July 5, 2004, pp. 12-15.

[11] CA *rollo*, pp. 11-20.

WAS WITH THE MUTUAL CONSENT OF THE PRIVATE COMPLAINANT AND THE ACCUSED-APPELLANT.

II

… IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE WEAK EVIDENCE PRESENTED BY THE PROSECUTION AGAINST HIM.

III

… IN AWARDING ONE HUNDRED THOUSAND PESOS (₱100,000.00) AS MORAL DAMAGES FOR BEING NOT IN ACCORDANCE WITH THE PREVAILING JURISPRUDENCE.[12]

The *People*, through the Office of the Solicitor General (OSG), maintained that, except for the award of moral damages which should be reduced to ₱50,000, the appealed decision, being in conformity with the law and evidence, should be affirmed.[13]

The appellate court, by Decision[14] of April 13, 2007 in CA-G.R. CR-HC No. 01407, affirmed the factual findings of the trial court, but modified the award of moral damages by reducing it from ₱100,000 to ₱50,000, consistent with prevailing jurisprudence.[15] The appellate court thus disposed:

> WHEREFORE, the decision of the RTC, Branch 6, Baguio City, in Criminal Case No. 21514-R appealed from is **AFFIRMED** with the **MODIFICATION** that the amount of moral damages is reduced to ₱50,000.00.
>
> SO ORDERED.[16] (Emphasis in the original)

Hence, appellant's present appeal. In separate Manifestations, appellant and the OSG found it no longer necessary to file their respective supplemental briefs.

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[12] Brief for the Appellant, *id.* at 35.

[13] Brief for the Appellee, *id.* at 95.

[14] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Martin S. Villarama, Jr. and Arturo G. Tayag. CA *rollo*, pp. 102-112.

[15] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[16] CA *rollo*, p. 112.

In the main, appellant submits in his Appellant's Brief filed before the appellate court that his act of answering a phone call from his wife "on the very same date and time that he was allegedly raping [AAA] is more of an evidence of consensual sexual intercourse and not of forced carnal knowledge"[17] (Underscoring supplied).

Such change of theory on appeal can only be construed against his innocence, however. For while before the trial court appellant denied having had sexual intercourse with AAA on April 16, 2003, he admitted having done so but on February 28 or 29, 2003 and with AAA's consent.

But even if the Court were to credit appellant's change of position when the case reached the appellate court, his citation of his having received his wife's phone call as negating the use of force or intimidation is illogical, to say the least. For it was, in fact, on account of his talking to his wife on the phone that AAA found the opportunity to escape.

AAA's following vivid account, quoted *verbatim*, which was punctuated with her crying, of how she was sexually assaulted by appellant clearly shows the total absence of consensual sex as claimed by him:

Q You said earlier that the accused mentioned his mother and a sister in the house. Were those two inside the house when you arrived?

A When I was already inside the house I noticed that there is no person inside so I asked him, "Where is your mother and your sister?" and he said "they just left for a while and they will be coming back soon."

x x x x x x x x x

Q So what else happened after that?

A I was already standing and I have the intention of going out but he suddenly locked the door.

Pros. Tabangin:
We put on record the observation that the witness is now starting to cry.

[17] *Id.* at 42-43 (underscoring supplied).

Q All right, so what happened after the locking of the door? May we have a recess, Your Honor.

Court:
All right, get hold of yourself.

Pros. Tabangin:
Q All right, how did he lock the door?
A He pushed the doorknob, sir.

Q Then, what happened after he locked the door?
A He suddenly boxed me twice on my stomach.

Q And what happened to you after you were boxed on your stomach?
A I was forced to sit because I was hurt of the x x x blow from him and I pleaded to him saying, "*Maawa ka* (have mercy)."

Q Where in the house did this take place?
A In the living room near the bedroom, sir.

Q And you were forced to sit, where? On the floor?
A Yes, sir, on the floor.

Q And what else did he do after boxing you twice?
A He choked me on my neck and said, "Do not shout or else I will kill you."

Q How did he choke your neck? Will you demonstrate?
A (Witness demonstrating the way she was choked by putting her hands on her neck.)

Pros. Tabangin:
And what did you feel as the accused was choking you with his two hands?
A I coughed for the forcible tightening of my neck with his two hands.

Q How long did he choke your neck?
A For a while but then he suddenly took hold of a knife from the table and pointed it on my chest.

Q What kind of knife was that?
A Kitchen knife, sir.

x x x x x x x x x

Q And after pointing the knife on [*sic*] your chest, what did he do next?
A He pulled me inside the room but I was struggling so he boxed me again on my stomach.

x x x x x x x x x

Q And what happened to you after you were boxed for the third time?
A I became weak and I could no longer fight him so he continued pulling me inside the room.

Q Then what happened inside the room?
A While we were inside the room he put me on the bed and I was trying to push him away but still the knife was with him so I cannot fight him anymore.

x x x x x x x x x

Pros. Tabangin:
You said earlier that you pleaded for mercy from him. What else did you tell him, if there was any?
A I was pleading for mercy but he does not hear me and I am already weak and still the knife was beside him.

Court:
Put it on record that the witness is continuously crying at this point. Continue.

Pros. Tabangin:
Then, after he laid you down on the bed, what did he do to you?
A While I was on the bed he kept on kissing me, then (he) removed my upper shirt and pants and he removed everything. I was naked.

Q And after removing all your clothes, what did he do next?
A He went on top of me and he inserted his penis into my vagina.

Q By the way, you said that all your clothes were removed by him, how about the accused was he wearing anything?
A He removed also his t-shirt and pants.

Q When he was removing his shirt and pants, how about you, how did you feel?
A I kept on crying because the knife is [*sic*] still there beside him.

Q You said that he inserted his penis into your vagina, how long did he remain on top of you?
A For a while because after ejaculating he stood up.

Q And after standing up, what did he do next?
A He was even sneering telling me that I cannot get out from that house anymore.

Q And what about you, what did you do also?
A I continued crying, sir, and while we were inside the room, the cellphone rang and he received the call so he went out of the room.

Q So, when he went out of the room, what did you do also?
A I immediately put on my clothes, sir.

Q And after putting on your clothes, what did you do?
A I got out from the room but I noticed he could see me so I was afraid to go out.

Q So, what did you do next?
A I was inside the sala walking to and fro thinking how to escape.

Q And what else happened?
A I notice that he was still talking with his wife thru the cellfone and I even heard saying "Noynoy" and I heard him telling to the wife that "there [is] no woman here in the house and I don't want to be imprisoned again."

Q And what did you say that the accused was talking with his wife?
A Yes because that was the call he was waiting, the call of his wife.

Q "Noynoy" is the same accused?
A Yes, sir.

Q All right, and were you able to get out of the house eventually?
A Yes sir.[18] (Underscoring supplied)

The trial and appellate courts found AAA's straightforward, candid, and spontaneous testimony credible as it bears the hallmarks of a truthful witness, unflawed by inconsistencies or contradictions. The credibility of a rape victim is augmented where, as here, there is absolutely no evidence which even

[18] TSN, May 24, 2004, pp. 11-17.

remotely suggests that she could have been actuated by ill-motive to testify against appellant.[19]

Appellant goes on to attack AAA's character as a witness as he finds her weeklong delay in reporting the rape to the authorities to be an indication that she "could have easily fabricated an elaborate scheme to destroy the life of appellant."[20]

Appellant's position fails to impress. There is nothing in the records to indicate that AAA has a debased character to prompt her to weave an untruthful tale just to ruin another's life. On the contrary, the records depict her as a decent, resourceful, and hardworking Filipina trying to earn a living while waiting for a job abroad.

As for AAA's one week delay in reporting the rape, she did not know what to do as she feared appellant's threat that he would kill her if she told anybody of the incident.[21] It has been held that delay or vacillation in making a criminal accusation does not necessarily weaken the credibility of a witness where, as here, such delay is satisfactorily explained.[22]

Respecting the civil aspect of the case, the Court finds that AAA is also entitled to an award of exemplary damages which jurisprudence pegs at ₱25,000 as it was proven, although not alleged in the information, during the trial that the use of deadly weapon attended the commission of the crime. It bears stating that while such circumstance cannot be appreciated for the purpose of fixing a heavier penalty, it can be considered as basis for an award of exemplary damages.[23]

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[19] *People v. Manallo*, G.R. No. 143704, March 28, 2003, 400 SCRA 129, 141.

[20] Brief for the Appellant, CA *rollo*, p. 43.

[21] TSN, May 24, 2004, pp. 20-24.

[22] *People v. Astorga*, G.R. No. 110097, December 22, 1997, 283 SCRA 420, 432; *People v. Aleman*, G.R. No. L-39776, February 20, 1981, 102 SCRA 765, 774.

[23] *People v. Custodio*, G.R. No. 176062, July 4, 2008, 557 SCRA 293, 304-305, citing *People v. Dagami*, 461 Phil. 139 (2003) and other cases.

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 01407 is *AFFIRMED*, with the *MODIFICATION* that appellant Illustre Llagas a.k.a. Nonoy Llagas is *ORDERED* to pay the private complainant the sum of Twenty Five Thousand Pesos (₱25,000) as exemplary damages.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 179955. April 24, 2009]

JOSE SY BANG (deceased), ILUMINADA TAN, ZENAIDA SY, REYNALDO SY BANG, JOSE SY BANG, JR., WILSON SY BANG, ROBERT SY BANG, ESTELITA SY, MA. THERESA SY, MARY JANE SY, CARMELO SY BANG, BENEDICT SY BANG, EDWARD SY BANG, ANTHONY SY BANG, EDWIN SY BANG and MA. EMMA SY, *petitioners, vs.* **ROSAURO SY (deceased), ENRIQUE SY (deceased) and JULIET SY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL REVIEW IS WARRANTED WHEN THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE REGIONAL TRIAL COURT.— Undoubtedly, the

[*] Additional member in lieu of Justice Leonardo A. Quisumbing who is on Official leave.

resolution of this issue would necessarily involve a factual review of the respective evidence of the parties. Such a task is warranted under the circumstances given that the findings of fact of the Court of Appeals are contrary to those of the RTC.

2. ID.; CIVIL PROCEDURE; PETITION FOR RELIEF FROM JUDGMENT ON GROUND OF FRAUD; THE FRAUD MUST BE EXTRINSIC OR COLLATERAL; EXTRINSIC OR COLLATERAL FRAUD, EXPLAINED.— After a thorough examination of the evidence on record, the Court concludes that there is merit in the present Petition. Section 1 of Rule 38 of the Rules of Court provides that when a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. Where fraud is the ground, the fraud must be extrinsic or collateral. The extrinsic or collateral fraud that invalidates a final judgment must be such that it prevented the unsuccessful party from fully and fairly presenting his case or defense and the losing party from having an adversarial trial of the issue. There is extrinsic fraud when a party is prevented from fully presenting his case to the court as when the lawyer connives to defeat or corruptly sells out his client's interest. Extrinsic fraud can be committed by a counsel against his client when the latter is prevented from presenting his case to the court.

3. CIVIL LAW; LAND REGISTRATION; QUIETING OF TITLE; CONFORMITY OF THE OTHER PETITIONERS FOR THE DISMISSAL OF THE PETITION FOR QUIETING OF TITLE SHOULD BE ESTABLISHED BY COMPETENT EVIDENCE.— Even if, for the sake of argument, the Court concedes that the petitioners Sy Bang brothers indeed gave their consent to Atty. Eduardo Santos to move for the dismissal of the Petition for Quieting of Titles, there was utter lack of evidence to prove that said three petitioners were authorized by the other 12 petitioners to act on their behalf, so that the consent of the petitioners Sy Bang brothers would have bound the other petitioners. The other 12 petitioners stand to lose substantial interest in the disputed properties by the dismissal of the Petition for Quieting of Titles, and their conformity to such a move could not be merely assumed, but should be established by competent evidence.

4. REMEDIAL LAW; CIVIL PROCEDURE; RELIEF FROM JUDGMENT; GRANT THEREOF WARRANTED IN CASE AT BAR.— Petitioners were able to establish, by a preponderance of evidence, that Atty. Eduardo Santos committed extrinsic fraud against them. By virtue of his Manifestation filed on 19 April 2002, without petitioners' knowledge and consent, thus inducing the RTC to dismiss the Petition for Quieting of Titles, Atty. Eduardo Santos deprived petitioners of the opportunity to fully and fairly present their case in court. Such is the very definition of extrinsic fraud, which entitles the petitioners to the grant of their Petition for Relief from the Order dated 6 May 2002 of the RTC in Civil Case No. 96-81.

5. ID.; EVIDENCE; PREPONDERANCE OF EVIDENCE; EXPLAINED.— Preponderant evidence means that, as a whole, the evidence adduced by one side outweighs that of the adverse party. In determining where the preponderance of evidence lies, a trial court may consider all the facts and circumstances of the case, including 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, the probability or improbability of their testimonies, their interest or want thereof, and their personal credibility. Applying this rule, the RTC significantly and convincingly held that the weight of evidence was in petitioners' favor; and the Court affirms this ruling.

APPEARANCES OF COUNSEL

Joyas Mendoza Dauz & Garcia Law Offices for petitioners.
Herminio F. Valerio for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated

[1] *Rollo,* pp. 12-51.

[2] Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Portia Aliño-Hormachuelos and Edgardo F. Sundiam (now deceased), concurring; *rollo*, pp. 54-69.

29 May 2007 and the Resolution[3] dated 19 September 2007 of the Court of Appeals in CA-G.R. CV No. 82746. In its assailed Decision, the appellate court reversed and set aside the Order[4] dated 22 March 2004 of the Regional Trial Court (RTC) of Lucena City, Branch 57, in Civil Case No. 96-81, which granted the Petition for Relief of herein petitioners and ordered the reinstatement of the previously dismissed Petition for Quieting of Title. The assailed Resolution of the Court of Appeals denied the Motion for Reconsideration of its earlier Decision.

The instant case arose from a controversy over the estate of the deceased Sy Bang. Petitioner Jose Sy Bang is one of the five children of the late Sy Bang with his first wife, Ba Nga. Petitioner Iluminada Tan is the wife of Jose Sy Bang, while the rest of the petitioners are their children, except for Anthony Sy Bang who is their nephew. Respondents Rosauro Sy, Enrique Sy and Juliet Sy,[5] on the other hand, are three of the eight children of the late Sy Bang with his second wife, Rosita Ferrera Sy.

Complaint for Partition of Estate

In 1971, Sy Bang died intestate, leaving numerous properties and businesses. In 1980, the heirs of Sy Bang from his second marriage filed a Complaint for Partition before the RTC against the petitioner spouses Jose Sy Bang and Iluminada Tan, as well as the other heirs of Sy Bang. Said case was docketed as **Civil Case No. 8578**. A notice of *lis pendens* was then annotated on several certificates of title covering properties involved in the case. In the course of the partition proceedings, the RTC rendered on 8 June 1982 a Third Partial Decision. The pertinent portion of its *fallo* provided:

WHEREFORE, the Court hereby renders this Third Partial Decision:

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[3] *Rollo*, pp. 71-72.

[4] Penned by Judge Rafael R. Lagos; *rollo*, pp. 92-95.

[5] In other parts of the records, Juliet Sy is sometimes referred to as Juliet Sy-Maunahan or as Julieta Sy. Also, in the Memorandum for the Petitioners (*rollo*, p. 180) and the Memorandum for the Respondents (*rollo*, p. 157), only Rosauro Sy and Juliet Sy were named as respondents without an explanation as to why Enrique Sy was omitted.

(a) Declaring that **all the properties, businesses, or assets, their income, produce, & improvements, as well as all the rights, interests, or participations in the names of defendants Jose Sy Bang & his wife Iluminada Tan and their children, defendants Zenaida & Ma. Emma, both surnamed Sy, and defendants Julian Sy and his wife Rosa Tan, as belonging to the estate of Sy Bang**, including the properties in the names of said defendants which are enumerated in the complaints in this case and all those properties, rights and interests which said defendants may have concealed or fraudulently transferred in the names of other persons, their agents or representatives; (Emphasis ours.)

The aforementioned Third Partial Decision of the RTC was appealed to the Court of Appeals, docketed as **CA-G.R. No. 17686**. In a Resolution dated 6 May 1993, the appellate court affirmed the said Third Partial Decision of the RTC. Petitioners' appeal of the adverse Resolution of the appellate court in CA-G.R. No. 17686 is docketed as **G.R. No. 114217**, still pending before this Court.

In the meantime, it appears that the annotations of the notice of *lis pendens* on the certificates of title covering the disputed properties in Civil Case No. 8578 were eventually cancelled by the Register of Deeds of Lucena City.[6] On the belief that petitioner Jose Sy Bang had been transferring some of the properties subject of the partition proceedings, as well as purchasing properties from the funds of Sy Bang's estate, and had said properties registered in his own and his children's names, respondents wrote a letter to the Register of Deeds of Lucena City, asking for the re-annotation of the notice of *lis pendens* on Transfer Certificates of Title (TCTs) No. T-61067, No. T-61068, No. T-61069, No. T-66130, No. T-54805, No. T-60721, No. T-57809 and No. T-47765. These TCTs were all in the names of the petitioner spouses Jose Sy Bang and Iluminada Tan and their children. The Register of Deeds of Lucena City, however, denied[7] respondents' request for re-annotation, ruling that the notice of *lis pendens* can only be re-annotated on the titles upon order of the court on a petition filed

[6] The records of the instant case do not include the complete records of the proceedings before the Registry of Deeds of Lucena City.

[7] Records, Vol. I, p. 6.

for this purpose. This prompted respondents to file an appeal before the Land Registration Authority (LRA) of the unfavorable ruling of the Register of Deeds of Lucena City, docketed as **Consulta No. 2471**. In a Resolution[8] dated 3 February 1999, the LRA upheld the denial of respondent's request for re-annotation, considering that Section 108 of the Property Registration Decree[9] provides that any error, mistake or omission committed in entering a certificate of title or of any memorandum thereon may be corrected only upon order of the court.[10]

Petition for Quieting of Titles

To forestall respondents' attempts to interfere with their property rights, petitioners filed on 17 June 1996, a Petition for Quieting of Titles with Prayer for the Issuance of Writ of Prohibition,[11] docketed as **Civil Case No. 96-81**. Petitioners claimed therein that they were the absolute owners of the parcels of land (subject lots) covered by TCTs No. T-61067, No. T-61068, No. T-61069, No. T-66130, No. T-54805, No. T-60721, No. T-57809 and No. T-47765, which were all acquired through their individual efforts and with the use of their personal resources.

On 19 July 1996, respondents filed a Motion to Dismiss[12] the Petition in Civil Case No. 96-81. In an Order[13] dated

[8] *Rollo*, pp. 73-75.

[9] Presidential Decree No. 1529.

[10] The pertinent portion of Section 108 provides:

SEC. 108. Amendment and alteration of certificates. – No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance (now Regional Trial Court). xxx

[11] Records, Vol. I, pp. 1-5.

[12] The grounds invoked in the Motion to Dismiss are: (1) the suit filed by petitioners was between family members and no efforts towards a compromise was alleged to have been made; (2) petitioners' cause of action was barred by a prior judgment, *i.e.*, by Civil Case No. 8578; (3) or at least, there was another action pending, which involved the same parties, the same issue and the same subject matter; (4) the petition violated the rule against forum shopping; and (5) there was non-joinder of indispensable parties. (Records, Vol. I, pp. 30-53.)

[13] Records, Vol. I, p. 115.

4 March 1997, the RTC denied said Motion to Dismiss after finding that the grounds cited therein were not indubitable. Respondents' Motion for Reconsideration of the 4 March 1997 Order was likewise denied by the RTC in another Order[14] dated 14 April 1997. Respondents, thus, filed a Petition for *Certiorari* before the Court of Appeals, docketed as **CA-G.R. SP No. 44043**. In a Decision[15] dated 28 August 1997, the Court of Appeals dismissed respondents' Petition in CA-G.R. SP No. 44043 for lack of merit. Similarly ill-fated was respondents' Motion for Reconsideration which was denied by the appellate court in a Resolution dated 5 May 1998. Respondents no longer appealed to this Court the dismissal of its Petition in CA-G.R. SP No. 44043 by the Court of Appeals.

Thereafter, complying with the order of the RTC, respondents filed their Answer to the Petition in Civil Case No. 96-81.[16] The parties then submitted their respective pre-trial briefs, and the case was set for trial. However, before the case was heard, petitioner Jose Sy Bang died on 11 September 2001.[17] On 9 October 2001, the RTC ordered[18] Atty. Eduardo Santos, counsel for petitioners, to submit within ten days an authority from the heirs of Jose Sy Bang for them to be substituted, as well as to secure the conformity of the other heirs who were yet to be impleaded or substituted to be continuously represented by Atty. Eduardo Santos. This directive was then reiterated in an Order[19] dated 4 December 2001.

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[14] *Id.* at 133.

[15] The Court of Appeals held that most of the petitioners were nephews and nieces of petitioners; thus the former were not included in the term "family members." More importantly, the grounds of *res judicata* or *litis pendentia* cannot be invoked to bar the action for quieting of titles, since the ruling of the RTC in Civil Case No. 8578 regarding the ownership of the disputed properties was at most provisional, said court being a probate court with limited jurisdiction. The subsequent case for quieting of title was, in fact, necessary for a final determination of the question of ownership over the subject properties. (Records, Vol. I, pp. 149-162.)

[16] Records, Vol. I, pp. 202-207.

[17] Certificate of Death of Jose Sy Bang, Records, Vol. I, p. 308.

[18] Records, Vol. I., p. 318.

[19] *Id.* at 327.

Without complying with the above orders, Atty. Eduardo Santos manifested[20] in open court, on 18 April 2002, that he intended to file a Motion to Withdraw the Petition for Quieting of Titles. The next day, on 19 April 2002, Atty. Eduardo Santos filed a Manifestation,[21] signed only by himself, which recited:

MANIFESTATION

COMES NOW [the] undersigned counsel for and in (sic) behalf of the [herein petitioners] and before this Hon. Court most respectfully manifests, (sic) that:

1. Due to the death of his client Jose Sy Bang, **his wife, [petitioner] Iluminada Tan and children have decided to move for the dismissal of the above case**, considering that the Resolution of the Land Registration Authority as well as the judgment of the Court of Appeals in CA-G.R. No. (sic) SP No. 44043 are enough legal protection of their rights and ownership over the realties in *litis*.

Wherefore, premises considered, he moves that the above case be dismissed **pursuance (sic) to the desire of the litigant (sic) Iluminada Tan and the heirs of the late Jose Sy Bang**.

Lucena City
April 19, 2002

Respectfully submitted:

(SGD)Eduardo R. Santos
Counsel for the [petitioners]
(Emphasis ours.)

Atty. Eduardo Santos filed a second Manifestation[22] on 6 May 2002, which stated:

MANIFESTATION

COMES NOW [the] undersigned counsel for and [on] behalf of the [herein petitioners] and before this Hon. Court most respectfully manifests, (sic) that:

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[20] *Id.* at 331.

[21] *Rollo*, p.170.

[22] *Id.* at 171.

1. Pursuance (sic) to his previous statement in open court that the [petitioners] have already evinced no desire to prove damages they suffered due to the attempt of [herein respondents] to cast shadow of doubts (sic) on their eight (8) certificates of titles (sic) through a wrongful annotations (sic), he reiterates the same thru (sic) this manifestation.

2. After the ruling of the Land Registration Authority and supported by the final decision of the Court of Appeals in CA-G.R. Sp. No. 44043, entitled *Juliet Sy, et*. (sic) *al. vs. Judge Federico Tanada, et*. (sic) *al*., his clients find no more necessity to continue the hearing of the above case.

WHEREFORE, premises considered, it is prayed that this manifestation be noted.

Lucena City, May 6, 2002

Respectfully submitted:
(signed)
(SGD)**EDUARDO R. SANTOS**
Counsel for the [petitioners]
x x x

Conforme:
(signed)
ROBERT SY BANG

On even date, the RTC issued an Order,[23] treating the first Manifestation filed by Atty. Eduardo Santos on 19 April 2002

[23] The Order dated 6 May 2002 provides:

At the hearing on April 18, 2002, Atty. Eduardo R. Santos, [herein petitioners'] counsel, manifested that his clients are no longer interested in pursuing this case and he moved that he be given a period of ten (10) days to file the necessary motion to withdraw or dismiss the case. On April 19, 2002, Atty. Eduardo Santos filed a Manifestation stating that due to the death of his client, Jose Sy Bang, the latter's heirs decided to move for the dismissal of this case considering that the LRA Resolution as well as the judgment of the Court of Appeals in C.A.G.R. SP No. 44043 are enough legal protection of their rights over the subject properties. This Court, therefore, treats said manifestation as [petitioners'] motion to dismiss this case. Finding merit in said motion, this Court grants the same. The [herein respondents] are directed to inform this Court whether they shall pursue their counter-claims against the [petitioners] in this case.

as a motion to dismiss Civil Case No. 96-81 and granted the same. Subsequently, in an Order[24] dated 18 June 2002, the RTC dismissed Civil Case No. 96-81 entirely, together with respondents' counterclaims.

Petition for Relief

On 23 September 2002, petitioners, now represented by a new counsel, Atty. Vicente M. Joyas, filed a Petition for Relief[25] from the Order dated 6 May 2002 of the RTC in Civil Case No. 96-81. Petitioners averred that contrary to the claim of Atty. Eduardo Santos, petitioners Iluminada Tan and the other heirs of Jose Sy Bang were never consulted or informed of the manifestation that sought the dismissal of their Petition for Quieting of Titles. Atty. Eduardo Santos was allegedly able to secure the signature of petitioner Robert Sy Bang in the Manifestation dated 6 May 2002 by misrepresenting to the latter that the relief being sought in Civil Case No. 96-81 had been satisfactorily granted by the Court of Appeals and the LRA, and that the only thing left to be litigated was the amount of damages, which might as well be waived by signing the said Manifestation. Atty. Eduardo Santos was also said to have collected full payment of his fees by misrepresenting to petitioner Carmelo Sy Bang that petitioners had already won Civil Case No. 96-81, and that there was no more need to litigate the same on the merits.

Petitioners further claimed that Atty. Eduardo Santos continued misinforming them about their case. On 21 June 2002, Atty. Eduardo Santos wrote petitioner Iluminada Tan a letter assuring her that the 28 August 1997 Decision of the Court of Appeals in CA-G.R. SP No. 44043, which recognized that the lots in question were the fruits of her family's labor, could not be legally questioned anymore as entry of judgment was already made in said case. Atty. Eduardo Santos further stated in his

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WHEREFORE, in view of the foregoing, [petitioners'] complaint is ordered DISMISSED and the [respondents] are given ten (10) days to comply with the above directive of this Court. (Records, Vol. I, p. 334.)

[24] Records, Vol. I, p. 335.

[25] Named as respondents were Rosauro Sy, Enrique Sy, Juliet Sy and LRA Administrator Reynaldo Maulit; records, Vol. II, pp. 336-342.

letter to petitioner Iluminada Tan that he had also served petitioners' interests well in Civil Case No. 96-81, the Petition for Quieting of Titles, given the declaration by the appellate court in CA-G.R. SP No. 44043 that the subject lots were the gains from petitioners' labor, which foreclosed any future claim of a third party.

However, upon petitioners' perusal of the Court of Appeals Decision dated 28 August 1997 in CA-G.R. SP No. 44043, it was disclosed to them that none of Atty. Eduardo Santos' representations concerning the same was actually contained therein. Petitioners lamented the fact that the Order dated 6 May 2002 of the RTC, dismissing Civil Case No. 96-81 upon the manifestation and motion of Atty. Eduardo Santos, had already become final and executory when they first came to know of said Order on 29 July 2002.

In an Order[26] dated 23 September 2002, the RTC found petitioners' Petition for Relief to be sufficient in form and substance and, thus, directed respondents to file their answer thereto.

Atty. Eduardo Santos filed on 7 October 2002 a Manifestation[27] before the RTC, wherein he refuted petitioners' allegation that he did not consult petitioners before he moved for the dismissal of Civil Case No. 96-81. Atty. Eduardo Santos asserted that after the death of petitioner Jose Sy Bang, he met with several of the remaining petitioners, particularly, brothers Jose Sy Bang, Jr., Robert Sy Bang, and Carmelo Sy Bang (Sy Bang brothers), who were supposed to testify on their family's acquisition of the subject lots. Since the subject lots were purchased with money loaned from various banks in Lucena City, petitioners Sy Bang brothers decided to consult first with the managers of the creditor banks. Petitioners Sy Bang brothers then learned that the banks had no more records of the loans extended to their father, the late petitioner Jose Sy Bang. This prompted Atty. Eduardo Santos to advise them that their only alternative was to move for the withdrawal of the Petition for Quieting of

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[26] Records, Vol. II, p. 423.

[27] *Id.* at 425-429.

Titles, considering that the ruling of the LRA in Consulta No. 2471 and the judgment of the Court of Appeals in CA-G.R. SP No. 44043 were adequate protection from any challenge to the titles to the subject lots in petitioners' names. Given the foregoing, petitioners could not claim that Atty. Eduardo Santos did not previously advise them of his move to withdraw the Petition for Quieting of Titles in Civil Case No. 96-81.

On 17 October 2002, respondents filed a Motion to Dismiss[28] petitioners' Petition for Relief on the ground that it was not accompanied by an affidavit of merit stating the alleged fraud committed by Atty. Eduardo Santos, as well as the facts constituting petitioners' good and substantial causes of action. Respondents likewise objected to the fact that the Verification attached to the Petition was signed by only one of the petitioners, Benedict Sy Bang. The Petition for Relief was filed on behalf of several petitioners and the ground relied upon was fraud, which could have been true for only one of the petitioners; so respondents insisted that the Verification of the Petition should have been personally signed by all of the petitioners.

In an Order[29] dated 11 November 2002, the RTC denied respondents' Motion to Dismiss, reasoning that the recitals in the Petition for Relief on how Atty. Eduardo Santos allegedly committed fraud by having the Petition for Quieting of Titles dismissed without authorization from petitioners, constituted the merits of the Petition for Relief. Given that the said recitals were verified and under oath, they were equivalent to the required affidavit of merit. Lastly, applying a liberal construction of the Rules of Court, the signing by only one of the petitioners of the Verification attached to the Petition for Relief should already be considered substantial compliance with said rules.

Thereafter, the Petition for Relief was set for hearing and trial thereon ensued.

Petitioner Benedict Sy Bang took the witness stand for the petitioners. According to petitioner Benedict Sy Bang's testimony,

[28] *Id.* at 430-434.

[29] *Id.* at 444-445.

he and the other petitioners were not informed by Atty. Eduardo Santos that he was going to seek the dismissal of petitioners' Petition for Quieting of Titles in Civil Case No. 96-81. Petitioners were also not given a copy of the first Manifestation prepared by Atty. Eduardo Santos, asking for the dismissal of the Petition for Quieting of Titles, before it was filed with the RTC on 19 April 2002.[30] Although petitioners knew that an order was already issued by the RTC in Civil Case No. 96-81, they thought that it was favorable to them, as Atty. Eduardo Santos was demanding that he be paid his attorney's fees after claiming that petitioners already won the case. Upon verification, petitioners were surprised and dismayed to learn, only around 29 July 2002, that their Petition for Quieting of Titles in Civil Case No. 96-81 was actually dismissed by the RTC.[31]

Petitioners also intended to present petitioner Robert Sy Bang as a witness before the RTC to testify on the following matters: that it was Atty. Eduardo Santos who caused him to sign the second Manifestation that was filed with the RTC on 6 May 2002; that when the second Manifestation was filed, the RTC had already issued an Order of Dismissal; and that the other petitioners had no knowledge of the Manifestations made by Atty. Eduardo Santos, which resulted in the dismissal of their Petition for Quieting of Titles. However, counsel for the respondents declared that his clients were willing to admit petitioner Robert Sy Bang's testimony without need for him to actually testify.[32] Petitioners then proceeded to mark, as documentary evidence, the Manifestations filed by Atty. Eduardo Santos on 19 April 2002 and 6 May 2002, respectively; as well as the Order of the RTC dated 6 May 2002, which dismissed the Petition for Quieting of Titles in Civil Case No. 96-81. Thereafter, petitioners rested their case.

On 10 June 2003, respondents filed a Demurrer to Evidence.[33] Respondents maintained that, in addition to the absence of an

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[30] TSN, 3 February 2003, Records, Vol. 2, pp. 519-520.

[31] *Id.* at 548-549.

[32] TSN, 19 May 2003, Records, Vol. 2, p. 555.

[33] Records, Vol. II, pp. 459-465.

affidavit of merit and the improper verification of the Petition for Relief, petitioners' evidence failed to prove any mistake, fraud, accident, or excusable negligence that would justify their Petition.

The RTC denied the Demurrer to Evidence in an Order[34] dated 11 August 2003, holding that there was sufficient evidence based on the records – which included the testimonies of petitioners Benedict Sy Bang and Robert Sy Bang – to establish the alleged fraud committed upon the petitioners by Atty. Eduardo Santos. Thus, it directed respondents to present their evidence to refute the same.

Respondents did not present any witnesses and, instead, filed their Formal Offer of Documentary Evidence,[35] which the RTC admitted in an Order[36] dated 9 January 2003. Among the documentary evidence respondents offered was the Manifestation filed by Atty. Eduardo Santos on 7 October 2002 (marked as Exhibit 4) and paragraph 6[37] thereof (marked as Exhibit 4-A), which stated that it was inaccurate for petitioners to assert that they were not informed of the impending move for the dismissal of their Petition for Quieting of Titles.

On 22 March 2004, the RTC issued an Order finding that Atty. Eduardo Santos indeed committed fraud against the petitioners. Relevant portions of said Order read:

In this case, the fraud refers to the unauthorized manifestation of Atty. Eduardo Santos dated April 19, 2002. The fraud is highlighted by the fact that there was really no basis for Atty. Eduardo Santos to represent that [herein petitioner] Iluminada Tan and her children had decided to move for the dismissal of the quieting of

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[34] *Id.* at 470-472.

[35] *Id.* at 482-497.

[36] *Id.* at 503.

[37] Paragraph 6 reads:

It was simply inaccurate for the heirs of the late Jose Sy Bang to assert that they were not informed of/consulted on his impending move to withdraw/dismiss Civil Case No. 96-81, for it was lengthily discussed with the three Sy Bang siblings, Dr. Carmelo Sy, Mr. Robert Sy and Mr. Jose Sy Bang.

title case due to the resolution of the Land Registration Authority in the abovementioned Consulta and the cited judgment of the Court of Appeals, CA-G.R. No. SP-44043. That Court of Appeals judgment did not touch on the merits of the quieting of title case and the Land Registration Authority resolution of the Consulta was dated way back February 3, 1999. If indeed these were valid reasons to move for the dismissal of the case, Atty. Eduardo Santos could have easily suggested to his clients that the case be dismissed upon their own motion as early as 1998 or 1999 when the said Court of Appeals decision and Land Registration Authority Consulta were issued. But surprisingly, **it was only when Atty. Eduardo Santos brought up the issue of his attorney's fees in 2002 when he decided to file the unauthorized manifestation dated April 19, 2002. This lack of authority is supported by the fact that after filing that April 19, 2002 manifestation, and after this Court had in fact dismissed the quieting of title case on May 6, 2002, Atty. Eduardo Santos still filed another manifestation dated May 6, 2002 stating that his clients find (sic) no more necessity to continue the hearings in this case.** On this manifestation, however, he decided to secure the conformity of one of the [petitioners] namely (sic) Robert Sy Bang. In doing so, he prevented the [petitioners] from presenting all of their case with the Court and thus, preventing a fair submission of the quieting of title controversy.

While the court notes that Atty. Eduardo Santos also filed a manifestation with the court with respect to the petition for relief which was marked as Exhibits-"4" and "4-A", (sic) the statements therein with respect to Atty. Eduardo Santos (sic) allegations that he did in fact inform some of the co-petitioners in this case of his intention to file a dismissal motion on the case, cannot be given any credibility or weight by the Court. First of all, the Court believes that those matters are privileged arising from an attorney-client relationship. Secondly, Atty. Eduardo Santos was never put to the stand wherein he could have been cross-examined by petitioners' counsel. Lastly, the court (sic) believes that those allegations in Exhibits-"4" and "4-A" were made only by Atty. Eduardo Santos after sensing that his twin manifestations of April 19, 2002 and May 6, 2002 were basically asking for the same result, that is, the dismissal of the case. The Court therefore is of the belief that **the final order dated May 6, 2002 dismissing the case, must be set aside. It is true that clients are bound by the mistakes of the lawyers, but this was not just a simple mistake. If in fact it was negligence on the part of Atty. Eduardo Santos, this amounted to gross**

negligence bordering on fraud as petitioners herein were deprived of their opportunity to fully present their evidence in the quieting of title controversy. (Emphasis ours.)

In the end, the RTC decreed:

WHEREFORE, premises considered, the petition for relief is granted and the order dismissing the quieting of title case dated May 6, 2002 is set aside and cancelled. Therefore, the quieting of title case is hereby reinstated and hearing on the same is set on APRIL 23, 2004 at 8:30 o'clock in the morning.

Respondents filed an appeal of the afore-mentioned Order before the Court of Appeals, docketed as CA-G.R. CV No. 82746.

On 29 May 2007, the Court of Appeals promulgated its assailed Decision, ruling in respondents' favor based on the following ratiocination:

The sole issue to be resolved in this appeal is whether the trial court was correct in granting the petition for relief from judgment filed by [herein petitioners].

We rule to reverse the Order dated March 22, 2004 of the trial court.

x x x x x x x x x

Under Section 1, Rule 38 of the Rules of Court, the court may grant relief from judgment only "*[w]hen a judgment or final order is entered, or any other proceeding is taken against a party in any court through fraud, accident, mistake, or excusable negligence*." In their petition for relief from judgment in the trial court, [petitioners] contended that judgment was entered against them through "fraud" because they were allegedly told by their counsel that their case was already a "won" case because of the decision of this Court in CA-G.R. SP No. 44043 and the LRA's Resolution in Consulta No. 2471 dated February 3, 1999. This is not the fraud contemplated under Section 1. "Fraud" must be extrinsic or collateral, that is, the kind which prevented the aggrieved party from having a trial or presenting his case to the court. x x x.

Furthermore, [petitioners] did not present evidence of fraud or deception employed on them by [respondents] to deprive them of [the] opportunity to present their case to the court. They, however,

assert that the misrepresentation of their counsel that they had won the case amounts to extrinsic fraud which would serve as basis for their petition for relief from judgment.

We disagree.

We hold that when a party retains the services of a lawyer, he is bound by his counsel's actions and decisions regarding the conduct of the case. This is true especially where [petitioners] do not complain against the manner their counsel handles the suit. The Supreme Court stated in ***PABLO T. TOLENTINO vs. HON. OSCAR LEVISTE***,

> **Litigants represented by counsel should not expect that all they need to do is to sit back, relax and await the outcome of their case. To agree with petitioner's stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging negligence on the part of his counsel. The Court will not countenance such ill-informed argument which contradicts long-settled doctrines of trial and procedure.**
>
> **We reiterate the rule that a client is bound by the mistakes of his counsel except when the negligence of his counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. Only when the application of the general rule would result in serious injustice should the exception apply. We find no reason to apply the exception in this case.**

By no means were [petitioners] deprived by [respondents] of their day in court.

x x x x x x x x x

Under Section 1, the "negligence" must be excusable and generally imputable to the party because if it is imputable to the counsel, it is binding on the client. To follow a contrary rule and allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel. What the aggrieved litigant should do is seek administrative sanctions against the erring counsel and not ask for the reversal of the court's ruling.

x x x x x x x x x

Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to

present his case "(1) *where [the] reckless or gross negligence of counsel deprives the client of due process of law*; (2) *when [the rule's] application will result in outright deprivation of the client's liberty or property*; or (3) *where the interests of justice so require*."

None of these exceptions obtain here.

For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown.

Here the alleged fraud committed by [petitioners'] counsel was not duly proven. It was not proven that the lawyer connived with the other party for his client's defeat or corruptly sold out his clients' interest.

x x x x x x x x x

Since we ruled that there was no extrinsic fraud to justify the petition for relief, we find it unnecessary to discuss the other issues. (Emphasis supplied.)

Hence, the dispositive portion of the Decision of the appellate court stated:

WHEREFORE, the appeal is hereby **GRANTED**. The Order dated March 22, 2004 of the Regional Trial Court of Lucena City, Branch 57, [is] **REVERSED** and **SET ASIDE**. **ACCORDINGLY**, the Civil Case No. 96-81 for Quieting of Title with Prayer for the Issuance of Writ of Prohibition, is hereby **DISMISSED**.

Petitioners filed a Motion for Reconsideration,[38] but it was denied by the Court of Appeals in its assailed Resolution[39] dated 19 September 2007.

Still undeterred, petitioners instituted before this Court the present Petition for Review, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THERE WAS EXTRINSIC FRAUD COMMITTED BY PETITIONERS' FORMER COUNSEL WHICH PREVENTED THE PETITIONERS FROM THE OPPORTUNITY (sic) TO FULLY

[38] CA *rollo*, pp. 115-147.

[39] *Rollo*, pp. 71-72.

PRESENT THEIR EVIDENCE IN THE QUIETING OF TITLE CONTROVERSY.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO DULY RECOGNIZE THAT ATTY. EDUARDO SANTOS, FORMER COUNSEL OF THE PETITIONERS, WAS GUILTY OF GROSS NEGLIGENCE WHICH PREVENTED THE HEREIN PETITIONERS FROM FULLY PRESENTING THEIR CASE. BY VIRTUE OF COUNSEL'S UNPROFESSIONAL CONDUCT, PETITIONERS MUST NOT BE BOUND, MUCH MORE DAMAGED, BY SAID GROSS NEGLIGENCE AND TECHNICAL FRAUD.

III.

WHETHER OR NOT THE COURT OF APPEALS OVERLOOKED TO CONSIDER CERTAIN SUBSTANTIAL AND RELEVANT FACTS, WHICH, HAD THEY BEEN PROPERLY CONSIDERED, WOULD HAVE JUSTIFIED A DIFFERENT CONCLUSION – ONE THAT CONCURS WITH THE FINDINGS AND CONCLUSION OF THE REGIONAL TRIAL COURT.

Essentially, the issue which this Court is tasked to resolve in the Petition at bar is whether petitioners' Petition for Relief should be granted on the ground of extrinsic fraud.

Undoubtedly, the resolution of this issue would necessarily involve a factual review of the respective evidence of the parties. Such a task is warranted under the circumstances given that the findings of fact of the Court of Appeals are contrary to those of the RTC.[40]

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[40] In a petition for review under Rule 45 of the Rules of Court, only errors of law may be reviewed. By way of exceptions, questions of fact may be determined by the Court when: (1) the conclusion of the Court of Appeals is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed

After a thorough examination of the evidence on record, the Court concludes that there is merit in the present Petition.

Section 1 of Rule 38 of the Rules of Court provides that when a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

Where fraud is the ground, the fraud must be extrinsic or collateral.[41] The extrinsic or collateral fraud that invalidates a final judgment must be such that it prevented the unsuccessful party from fully and fairly presenting his case or defense and the losing party from having an adversarial trial of the issue. There is extrinsic fraud when a party is prevented from fully presenting his case to the court as when the lawyer connives to defeat or corruptly sells out his client's interest.[42] Extrinsic fraud can be committed by a counsel against his client when the latter is prevented from presenting his case to the court.[43]

Petitioners base their Petition for Relief on the alleged extrinsic fraud committed by Atty. Eduardo Santos who, without petitioners' knowledge and consent, filed on 19 April 2002 the Manifestation that induced the RTC to dismiss, in an Order dated 6 May 2002, petitioners' Petition for Quieting of Titles, thus, outrightly depriving petitioners of their day in court.

To recall, petitioners presented the testimonies of petitioners Benedict Sy Bang and Robert Sy Bang to prove their averment

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by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. [See *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, 11 November 2005, 474 SCRA 500, 506, citing *Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 (1998)].

[41] *Garcia v. Court of Appeals*, G.R. No. 96141, 2 October 1991, 202 SCRA 228, 233.

[42] *Laxamana v. Court of Appeals*, 176 Phil. 397, 406 (1978).

[43] *Mercado v. Security Bank Corporation*, G.R. No. 160445, 16 February 2006, 482 SCRA 501, 514.

of fraud on the part of Atty. Eduardo Santos. Petitioner Benedict Sy Bang testified that petitioners had no knowledge of Atty. Eduardo Santos' intention to have their Petition for Quieting of Titles dismissed; and that Atty. Eduardo Santos misled petitioners into believing that the RTC resolved said Petition in petitioners' favor, so he could already collect his attorney's fees. It was only upon petitioners' verification on 29 July 2002 that they discovered that their Petition for Quieting of Titles was actually dismissed by the RTC. In petitioner Robert Sy Bang's testimony, he explained that Atty. Eduardo Santos caused him to sign the second Manifestation seeking the dismissal of the Petition for Quieting of Titles. However, when the second Manifestation, signed by petitioner Robert Sy Bang, was filed with the RTC on 6 May 2002, the same court had already issued on the same day an Order granting the dismissal of the Petition for Quieting of Titles, apparently acting on the first Manifestation signed by Atty. Eduardo Santos himself and submitted on 19 April 2002. Petitioner Robert Sy Bang further affirmed in his testimony that the other petitioners were ignorant of the Manifestations filed by Atty. Eduardo Santos with the RTC praying for the dismissal of their Petition for Quieting of Titles.

Respondents first filed a Demurrer to Evidence, but it was denied by the RTC, which ruled that there was sufficient evidence based on the records to *prima facie* establish the alleged fraud committed upon the petitioners by Atty. Eduardo Santos. The RTC, thus, ordered respondents to present their evidence.

Respondents no longer presented any witnesses and, instead, filed a Formal Offer of Documentary Evidence, which consisted of: (1) petitioners' Petition for Quieting of Titles with Prayer for the Issuance of Writ of Prohibition; (2) respondents' letter to the Register of Deeds of Lucena City, asking for the re-annotation of the notice of *lis pendens* on the TCTs covering the properties in dispute; (3) the second Manifestation, signed by petitioner Robert Sy Bang, filed before the RTC by Atty. Eduardo Santos on 6 May 2002, seeking the dismissal of the Petition for Quieting of Titles; (4) page 20 of the Transcript of Stenographic Notes taken on 3 February 2003, wherein petitioner Benedict Sy Bang stated that petitioners only came to know of

the dismissal of their Petition for Quieting of Titles in the latter part of July 2002; (5) page 21 of the Transcript of Stenographic Notes taken on 3 February 2003, wherein petitioner Benedict Sy Bang narrated that when Atty. Eduardo Santos demanded more attorney's fees for having won Civil Case No. 96-81 for petitioners, petitioners verified and were able to secure a copy of the 6 May 2002 Order of the RTC, which actually dismissed their Petition for Quieting of Titles; (6) petitioners' Petition for Relief from the RTC Order dated 6 May 2002 in Civil Case No. 96-81, which granted the dismissal of their Petition for Quieting of Titles; and (7) the Manifestation filed on 7 October 2002 by Atty. Eduardo Santos before the RTC in the Petition for Relief.

The Court readily observes that, save for one, the documentary evidence submitted by respondents does not exactly contradict, and is even consistent with, petitioners' version of the events. Only the Manifestation filed by Atty. Eduardo Santos before the RTC on 7 October 2002, in response to the Petition for Relief filed by petitioners, is actually contrary to petitioners' allegations and evidence in support of said Petition.

In his Manifestation of 7 October 2002, Atty. Eduardo Santos insisted that he consulted and discussed in detail his move, together with three of the petitioners — the petitioners Sy Bang brothers, Jose Sy Bang, Jr., Robert Sy Bang, and Carmelo Sy Bang — to have the Petition for Quieting of Titles dismissed. Respondents point out that the said Manifestation was not opposed or rebutted by the petitioners; hence, it sufficiently negated petitioners' claim of fraud committed by their own counsel.

The Court is not convinced.

Atty. Eduardo Santos' Manifestation, filed on 7 October 2002, only stated that after petitioners Sy Bang brothers found out that the bank records, which could have proven that their father Jose Sy Bang borrowed money to buy the disputed properties, could no longer be found, Atty. Eduardo Santos advised the petitioners Sy Bang brothers that their only alternative was to have the Petition for Quieting of Titles dismissed. Atty. Eduardo Santos even explicitly admitted in said Manifestation his belief

that the ruling of the LRA in Consulta No. 2471 and the judgment of the Court of Appeals in CA-G.R. SP No. 44043 were already adequate protection against any challenge to petitioners' titles to the properties in question. Nowhere, however, in the Manifestation could the Court find a clear and categorical statement that petitioners Sy Bang brothers, in fact, agreed to adopt the advice of Atty. Eduardo Santos to have the Petition for Quieting of Titles dismissed. Neither can it be gleaned from said Manifestation whether petitioners Sy Bang brothers were aware of and amenable to the filing of the first Manifestation, which Atty. Eduardo Santos signed by himself and filed with the RTC on 19 April 2002, seeking the dismissal of the Petition for Quieting of Titles.

Even if, for the sake of argument, the Court concedes that the petitioners Sy Bang brothers indeed gave their consent to Atty. Eduardo Santos to move for the dismissal of the Petition for Quieting of Titles, there was utter lack of evidence to prove that said three petitioners were authorized by the other 12 petitioners to act on their behalf, so that the consent of the petitioners Sy Bang brothers would have bound the other petitioners. The other 12 petitioners stand to lose substantial interest in the disputed properties by the dismissal of the Petition for Quieting of Titles, and their conformity to such a move could not be merely assumed, but should be established by competent evidence.

Likewise, although petitioner Robert Sy Bang may have come to know of the move to have the Petition for Quieting of Titles dismissed when he signed the second Manifestation filed with the RTC by Atty. Eduardo Santos on 6 May 2002, such knowledge by petitioner Robert Sy Bang cannot be imputed to the rest of the petitioners. To reiterate, petitioner Robert Sy Bang was only one of the 15 petitioners who filed the Petition for Quieting of Titles. It may also do well for respondents to remember that part of petitioner Robert Sy Bang's testimony, which respondents readily admitted without subjecting to cross-examination, was that the other petitioners had no knowledge of the two Manifestations submitted by Atty. Eduardo Santos to the RTC, both praying for the dismissal of petitioners' Petition

for Quieting of Titles. More importantly, petitioner Robert Sy Bang only signed the second Manifestation. On the same date that the second Manifestation was filed with the RTC, *i.e.*, 6 May 2002, the same court already issued an Order granting the first Manifestation, which sought the dismissal of the Petition for Quieting of Titles. Again, there is no showing that petitioner Robert Sy Bang was aware of the filing of the first Manifestation.

Furthermore, Atty. Eduardo Santos' Manifestation, filed on 7 October 2002, in response to petitioners' Petition for Relief, is inconsistent with his Manifestation, which was earlier filed on 19 April 2002, praying for the dismissal of the Petition for Quieting of Titles. In his earlier Manifestation, Atty. Eduardo Santos expressly claimed that it was the decision and the desire of petitioner Iluminada Tan, spouse of the late petitioner Jose Sy Bang, and their children, to move for the dismissal of the Petition for Quieting of Titles. Such statement was unqualified. In the later Manifestation, however, Atty. Eduardo Santos averred that he consulted with and obtained the consent of only three of the petitioners before he moved for the dismissal of the Petition for Quieting of Titles. Evidently, Atty. Eduardo Santos made misleading statements and was less than candid in his Manifestation, filed on 19 April 2002, about the purported consent of petitioners to his move to have the Petition for Quieting of Titles dismissed.

To make matters worse, Atty. Eduardo Santos did not bother to inform petitioners of the 6 May 2002 Order of the RTC dismissing the Petition for Quieting of Titles. The testimony of petitioner Benedict Sy Bang, that petitioners were led to believe they had already won the case and that they only found out about the RTC Order dated 6 May 2002 on 29 July 2002, was unrefuted by any of respondents' evidence. If indeed the move for the dismissal of the Petition for Quieting of Titles was with petitioners' consent, there was no reason for Atty. Eduardo Santos to conceal from petitioners the issuance of the 6 May 2002 Order of the RTC granting such dismissal.

In petitioners' favor is the fact that, within two months from finding out on 29 July 2002 about the RTC Order dated

6 May 2002, dismissing their Petition for Quieting of Titles, petitioners secured the services of another counsel and filed a Petition for Relief on 23 September 2002 to seek remedy for the unfortunate situation they found themselves in. Said circumstances show that petitioners were not at all neglectful in the pursuit of their case as respondents would have this Court believe.

Preponderant evidence means that, as a whole, the evidence adduced by one side outweighs that of the adverse party. In determining where the preponderance of evidence lies, a trial court may consider all the facts and circumstances of the case, including 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, the probability or improbability of their testimonies, their interest or want thereof, and their personal credibility. Applying this rule, the RTC significantly and convincingly held that the weight of evidence was in petitioners' favor; and the Court affirms this ruling.[44]

Petitioners were able to establish, by a preponderance of evidence, that Atty. Eduardo Santos committed extrinsic fraud against them. By virtue of his Manifestation filed on 19 April 2002, without petitioners' knowledge and consent, thus inducing the RTC to dismiss the Petition for Quieting of Titles, Atty. Eduardo Santos deprived petitioners of the opportunity to fully and fairly present their case in court. Such is the very definition of extrinsic fraud, which entitles the petitioners to the grant of their Petition for Relief from the Order dated 6 May 2002 of the RTC in Civil Case No. 96-81.

WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court is hereby *GRANTED*. The assailed Decision dated 29 May 2007 and the Resolution dated 19 September 2007 of the Court of Appeals in CA-G.R. CV No. 82746 are hereby *REVERSED AND SET ASIDE*. The RTC of Lucena City, Branch 57, is hereby directed to proceed with reasonable dispatch in setting the Civil Case No. 96-81 for Quieting of Title with Prayer for the Issuance of Writ of Prohibition for further hearing. No costs.

[44] *Trinidad v. Court of Appeals*, 352 Phil. 12, 35-36 (1998).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180640. April 24, 2009]

HUTAMA-RSEA JOINT OPERATIONS, INC., *petitioner, vs.* **CITRA METRO MANILA TOLLWAYS CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); JURISDICTION.— The CIAC shall have jurisdiction over a dispute involving a construction contract if said contract contains an arbitration clause (nothwithstanding any reference by the same contract to another arbitration institution or arbitral body); or, even in the absence of such a clause in the construction contract, the parties still agree to submit their dispute to arbitration.

2. ID.; ID.; ID.; ID.; AN ARBITRATION CLAUSE IN A CONSTRUCTION CONTRACT DEEMED AN AGREEMENT TO SUBMIT AN EXISTING OR FUTURE CONTROVERSY TO CIAC JURISDICTION NOTWITHSTANDING REFERENCE TO A DIFFERENT ARBITRATION INSTITUTION; CASE AT BAR.— Under Section 1, Article III of the CIAC Rules, an arbitration clause in a construction contract shall be deemed as an agreement to submit an existing or future controversy to CIAC jurisdiction, "**notwithstanding**

the reference to a different arbitration institution or arbitral body in such contract x x x." Elementary is the rule that when laws or rules are clear, it is incumbent on the court to apply them. When the law (or rule) is unambiguous and unequivocal, application, not interpretation thereof, is imperative. Hence, the bare fact that the parties herein incorporated an arbitration clause in the EPCC is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. The arbitration clause in the construction contract *ipso facto* vested the CIAC with jurisdiction. This rule applies, regardless of whether the parties specifically choose another forum or make reference to another arbitral body. Since the jurisdiction of CIAC is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract. The parties will not be precluded from electing to submit their dispute to CIAC, because this right has been vested in each party by law.

3. ID.; ID.; ID.; RATIONALE FOR CREATION OF CIAC.— Moreover, the CIAC was created in recognition of the contribution of the construction industry to national development goals. Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, Executive Order No. 1008 expressly mandates the CIAC to **expeditiously** settle construction industry disputes and, for this purpose, vests in the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by the parties involved in construction in the Philippines.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated 23 May 2007 and Resolution[3] dated 16 November 2007 of the Court of Appeals in CA-G.R. SP No. 92504.

The facts, culled from the records, are as follows:

Petitioner HUTAMA-RSEA Joint Operations Incorporation and respondent Citra Metro Manila Tollways Corporation are corporations organized and existing under Philippine laws. Petitioner is a sub-contractor engaged in engineering and construction works. Respondent, on the other hand, is the general contractor and operator of the South Metro Manila Skyway Project (Skyway Project).

On 25 September 1996, petitioner and respondent entered into an Engineering Procurement Construction Contract (EPCC) whereby petitioner would undertake the construction of Stage 1 of the Skyway Project, which stretched from the junction of Buendia Avenue, Makati City, up to Bicutan Interchange, Taguig City. As consideration for petitioner's undertaking, respondent obliged itself under the EPCC to pay the former a total amount of US$369,510,304.00.[4]

During the construction of the Skyway Project, petitioner wrote respondent on several occasions requesting payment of the former's interim billings, pursuant to the provisions of the EPCC. Respondent only partially paid the said interim billings, thus, prompting petitioner to demand that respondent pay the

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[1] *Rollo,* pp. 17-65.

[2] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Rosalinda Asuncion Vicente and Sesinando E. Villon, concurring; *rollo,* pp. 70-83.

[3] *Rollo,* pp. 115-116.

[4] Construction Industry Arbitration Commission (CIAC) records, Folder 1, Annex A.

outstanding balance thereon, but respondent still failed to do so.[5]

The Skyway Project was opened on 15 December 1999 for public use, and toll fees were accordingly collected. After informing respondent that the construction of the Skyway Project was already complete, petitioner reiterated its demand that respondent pay the outstanding balance on the interim billings, as well as the "Early Completion Bonus" agreed upon in the EPCC. Respondent refused to comply with petitioner's demands.[6]

On 24 May 2004, petitioner, through counsel, sent a letter to respondent demanding payment of the following: (1) the outstanding balance on the interim billings; (2) the amount of petitioner's final billing; (3) early completion bonus; and (4) interest charges on the delayed payment. Thereafter, petitioner and respondent, through their respective officers and representatives, held several meetings to discuss the possibility of amicably settling the dispute. Despite several meetings and continuous negotiations, lasting for a period of almost one year, petitioner and respondent failed to reach an amicable settlement.[7]

Petitioner finally filed with the Construction Industry Arbitration Commission (CIAC) a Request for Arbitration, seeking to enforce its money claims against respondent.[8] Petitioner's Request was docketed as CIAC Case No. 17-2005.

In its Answer *ad cautelam* with Motion to Dismiss, respondent averred that the CIAC had no jurisdiction over CIAC Case No. 17-2005. Respondent argued that the filing by petitioner of said case was premature because a condition precedent, *i.e.*, prior referral by the parties of their dispute to the Dispute Adjudication Board (DAB), required by Clause 20.4 of the EPCC, had not been satisfied or complied with. Respondent asked the CIAC to dismiss petitioner's Request for Arbitration in CIAC

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[5] CIAC records, Folder 2, Annexes I-EE.

[6] *Id.*, Folder 2, Annexes FF-PPP.

[7] *Id.*, Folder 2, Annexes QQQ-VVV.

[8] *Id.*, Folder 1.

Case No. 17-2005 and to direct the parties to comply first with Clause 20.4 of the EPCC.[9]

After submission by the parties of the necessary pleadings on the matter of jurisdiction, the CIAC issued on 30 August 2005, an Order in CIAC Case No. 17-2005, favoring petitioner. The CIAC ruled that it had jurisdiction over CIAC Case No. 17-2005, and that the determination of whether petitioner had complied with Clause 20.4 of the EPCC was a factual issue that may be resolved during the trial. It then ordered respondent to file an Answer to petitioner's Request for Arbitration.[10]

After respondent and petitioner filed an Answer and a Reply, respectively, in CIAC Case No. 17-2005, the CIAC conducted a preliminary conference, wherein petitioner and respondent signed the "Terms of Reference" outlining the issues to be resolved, *viz*:

(1) Is prior resort to the DAB a precondition to submission of the dispute to arbitration considering that the DAB was not constituted?;

(2) Is [herein petitioner] entitled to the balance of the principal amount of the contract? If so, how much?;

(3) Is [petitioner] entitled to the early compensation bonus net of VAT due thereon? If so, how much?;

(4) Was there delay in the completion of the project? If so, is [herein respondent] entitled to its counterclaim for liquidated damages?;

(5) Is [petitioner] entitled to payment of interest on the amounts of its claims for unpaid billings and early completion bonus? If so, at what rate and for what period?;

(6) Which of the parties is entitled to reimbursement of the arbitration costs incurred?[11]

Respondent, however, subsequently filed an Urgent Motion requesting that CIAC refrain from proceeding with the trial proper of CIAC Case No. 17-2005 until it had resolved the issue of whether prior resort by the parties to DAB was a condition

[9] *Id.*, Folder 3, Annex D.

[10] *Id.*, Annex H.

[11] *Id.*, Annex L.

precedent to the submission of the dispute to CIAC.[12] Respondent's Urgent Motion was denied by the CIAC in its Order dated 6 December 2005.[13]

Respondent filed a Motion for Reconsideration of the CIAC Order dated 6 December 2005.[14] The CIAC issued, on 12 December 2005, an Order denying respondent's Motion for Reconsideration.[15] It held that prior resort by the parties to DAB was not a condition precedent for it to assume jurisdiction over CIAC Case No. 17-2005. Aggrieved, respondent assailed the CIAC Order dated 12 December 2005 by filing a special civil action for *certiorari* and prohibition with the Court of Appeals,[16] docketed as CA-G.R. SP No. 92504.

On 23 May 2007, the Court of Appeals rendered its Decision in CA-G.R. SP No. 92504, annulling the 12 December 2005 Order of the CIAC, and enjoining the said Commission from proceeding with CIAC Case No. 17-2005 until the dispute between petitioner and respondent had been referred to and decided by the DAB, to be constituted by the parties pursuant to Clause 20.4 of the EPCC. The appellate court, thus, found that the CIAC exceeded its jurisdiction in taking cognizance of petitioner's Request for Arbitration in CIAC Case No. 17-2005 despite the latter's failure to initially refer its dispute with respondent to the DAB, as directed by Clause 20.4 of the EPCC.

The dispositive portion of the 23 May 2007 Decision of the Court of Appeals reads:

> WHEREFORE, the instant petition is **GRANTED** and the order of the Arbitration Tribunal of the Construction Industry Arbitration Commission dated December 12, 2005 is hereby **ANNULED** and **SET ASIDE** and, instead, [CIAC, members of the Arbitral Tribunal,[17]

[12] *Id.*, Annex M.

[13] *Id.*, Annex O.

[14] *Id.*, Annex R.

[15] CA records, pp. 53-56.

[16] *Id.*, at 2-47.

[17] Atty. Alfredo F. Tadiar, Dean Custodio O. Parlade and Engr. Joel J. Marciano.

and herein petitioner], their agents or anybody acting in their behalf, are enjoined from further proceeding with CIAC Case No. 17-2005, promulgating a decision therein, executing the same if one has already been promulgated or otherwise enforcing said order of December 12, 2005 until the dispute has been referred to and decided by the Dispute Adjudication Board to be constituted by the parties in accordance with Sub-Clause 20.4 of the Engineering Procurement Construction Contract dated September 25, 1996.

Petitioner filed a Motion for Reconsideration of the aforementioned Decision but this was denied by the Court of Appeals in a Resolution dated 16 November 2007.

Hence, petitioner filed the instant Petition for Review before us raising the sole issue of whether CIAC has jurisdiction over CIAC Case No. 17-2005.

Section 4 of Executive Order No. 1008[18] defines the jurisdiction of CIAC, thus:

SECTION 4. *Jurisdiction*. - The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. **For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.**

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Emphasis ours.)

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[18] Also known as the Construction Industry Arbitration Law; took effect on 4 February 1985.

Further, Section 1, Article III of the CIAC Rules of Procedure Governing Construction Arbitration[19] (CIAC Rules), provides:

> SECTION 1. *Submission to CIAC Jurisdiction*. – **An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission**. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.
>
> An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration.
>
> It may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams or any other modes of communication. (Emphasis ours.)

Based on the foregoing provisions, the CIAC shall have jurisdiction over a dispute involving a construction contract if said contract contains an arbitration clause (nothwithstanding any reference by the same contract to another arbitration institution or arbitral body); or, even in the absence of such a clause in the construction contract, the parties still agree to submit their dispute to arbitration.

It is undisputed that in the case at bar, the EPCC contains an arbitration clause in which the petitioner and respondent explicitly agree to submit to arbitration any dispute between them arising from or connected with the EPCC, under the following terms and conditions:[20]

> CLAIMS, DISPUTES and **ARBITRATION**
>
> x x x x x x x x x

[19] Approved and promulgated on 23 August 1988.

[20] *Supra*, note 4.

20.3 Unless the member or members of the Dispute Adjudication Board have been previously mutually agreed upon by the parties and named in the Contract, the parties shall, within 28 days of the Effective Date, jointly ensure the appointment of a Dispute Adjudication Board. Such Dispute Adjudication Board shall comprise suitably qualified persons as members, the number of members being either one or three, as stated in the Appendix to Tender. If the Dispute Adjudication Board is to comprise three members, each party shall nominate one member for the approval of the other party, and the parties shall mutually agree upon and appoint the third member (who shall act as chairman).

The terms of appointment of the Dispute Adjudication Board shall:

(a) incorporate the model terms published by the *Fédération Internationale des Ingénieurs-Conseils* (FIDIC),

(b) require each member of the Dispute Adjudication Board to be, and to remain throughout the appointment, independent of the parties,

(c) require the Dispute Adjudication Board to act impartially and in accordance with the Contract, and

(d) include undertakings by the parties (to each other and to the Dispute Adjudication Board) that the members of the Dispute Adjudication Board shall in no circumstances be liable for breach of duty or of contract arising out of their appointment; the parties shall indemnify the members against such claims.

The terms of the remuneration of the Dispute Adjudication Board, including the remuneration of each member and of any specialist from whom the Dispute Adjudication Board may require to seek advice, shall be mutually agreed upon by the Employer, the Contractor and each member of the Dispute Adjudication Board when agreeing such terms of appointment. In the event of disagreement, the remuneration of each member shall include reimbursement for reasonable expenses, a daily fee in accordance with the daily fee established from time to time for arbitrators under the

administrative and financial regulations of the International Centre for Settlement of Investment Disputes, and a retainer fee per calendar month equivalent to three times such daily fee.

The Employer and the Contractor shall each pay one-half of the Dispute Adjudication Board's remuneration in accordance with its terms of remuneration. If, at any time, either party shall fail to pay its due proportion of such remuneration, the other party shall be entitled to make payment on his behalf and recover if from the party in default.

The Dispute Adjudication Board's appointment may be terminated only by mutual agreement of the Employer and the Contractor. The Dispute Adjudication Board's appointment shall expire when the discharge referred to in Sub-Clause 13.12 shall have become effective, or at such other time as the parties may mutually agree.

It, at any time, the parties so agree, they may appoint a suitably qualified person to replace (or to be available to replace) any or all members of the Dispute Adjudication Board. The appointment will come into effect if a member of the Dispute Adjudication Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. If a member so declines or is unable to act, and no such replacement is available to act, the member shall be replaced in the same manner as such member was to have been nominated.

If any of the following conditions apply, namely:

(a) the parties fail to agree upon the appointment of the sole member of a one-person Dispute Adjudication Board within 28 days of the Effective Date,

(b) either party fails to nominate an acceptable member, for the Dispute Adjudication Board of three members, within 28 days of the Effective Date,

(c) the parties fail to agree upon the appointment of the third member (to act as chairman) within 28 days of the Effective Date, or

(d) the parties fail to agree upon the appointment of a replacement member of the Dispute Adjudication

Board within 28 days of the date on which a member of the Dispute Adjudication Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the person or administration named in the Appendix to the Tender shall, after due consultation with the parties, nominate such member of the Dispute Adjudication Board, and such nomination shall be final and conclusive.

20.4 If a dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of the Employer's Representative, the dispute shall initially be referred in writing to the Dispute Adjudication Board for its decision, with a copy to the other party. Such reference shall state that it is made under this Sub-Clause. The parties shall promptly make available to the Dispute Adjudication Board all such information, access to the Site, and appropriate facilities, as the Dispute Adjudication Board may require for the purposes of rendering its decision. No later than the fifty-sixth day after the day on which it received such reference, the Dispute Adjudication Board, acting as a panel of expert(s) and not as arbitrator(s), shall give notice of its decision to the parties. Such notice shall include reasons and shall state that it is given under this Sub-Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence, and the Contractor and the Employer shall give effect forthwith to every decision of the Dispute Adjudication Board, unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either party is dissatisfied with the Dispute Adjudication Board's decision, then either party, on or before the twenty-eighth day after the day on which it received notice of such decision, may notify the other party of its dissatisfaction. If the Dispute Adjudication Board fails to give notice of its decision on or before the fifty-sixth day after the day on which it received the reference, then either party, on or before the twenty-eighth day after the day on which the said period

of fifty-six days has expired, may notify the other party of its dissatisfaction. In either event, such notice of dissatisfaction shall state that it is given under this Sub-Clause, such notice shall set out the matters in dispute and the reason(s) for dissatisfaction and, subject to Sub-Clauses 20.7 and 20.8, no arbitration in respect of such dispute may be commenced unless such notice is given.

If the Dispute Adjudication Board has given notice of its decision as to a matter in dispute to the Employer and the Contractor and no notice of dissatisfaction has been given by either party on or before the twenty-eighth day after the day on which the parties received the Dispute Adjudication Board's decision, then the Dispute Adjudication Board's decision shall become final and binding upon the Employer and the Contractor.

20.5 Where notice of dissatisfaction has been given under Sub-Clause 20.4, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 Any dispute in respect of which:

(a) the decision, if any, of the Dispute Adjudication Board has not become final and binding pursuant to Sub-Clause 20.4, and

(b) amicable settlement has not been reached,

shall be finally decided by international arbitration. The arbitration rules under which the arbitration is conducted, the institution to nominate the arbitrator(s) or to administer the arbitration rules (unless named therein), the number of arbitrators, and the language and place of such arbitration shall be as set out in the Appendix to Tender. The arbitrator(s) shall have full power to open up, review and revise any decision of the Dispute Adjudication Board.

Neither party shall be limited, in the proceedings before such arbitrator(s), to the evidence or arguments

previously put before the Dispute Adjudication Board to obtain its decision.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the parties and the Dispute Adjudication Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

20.7 Where neither party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 and the Dispute Adjudication Board's related decision, if any, has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6. The provisions of Sub-Clauses 20.4 and 20.5 shall not apply to any such reference.

20.8 When the appointment of the Dispute Adjudication Board and of any replacement has expired, any such dispute referred to in Sub-Clause 20.4 shall be finally settled by arbitration pursuant to Sub-Clause 20.6. The provisions of Sub-Clauses 20.4 and 20.5 shall not apply to any such reference. (Emphasis ours.)

Despite the presence of the afore-quoted arbitration clause in the EPCC, it is respondent's position, upheld by the Court of Appeals, that the CIAC still cannot assume jurisdiction over CIAC Case No. 17-2005 (petitioner's Request for Arbitration) because petitioner has not yet referred its dispute with respondent to the DAB, as directed by Clause 20.4 of the EPCC. Prior resort of the dispute to DAB is a condition precedent and an indispensable requirement for the CIAC to acquire jurisdiction over CIAC Case No. 17-2005.[21]

It is true that Clause 20.4 of the EPCC states that a dispute between petitioner and respondent as regards the EPCC shall be initially referred to the DAB for decision, and only when the parties are dissatisfied with the decision of the DAB should

[21] *Rollo*, pp. 292-344.

arbitration commence. This does not mean, however, that the CIAC is barred from assuming jurisdiction over the dispute if such clause was not complied with.

Under Section 1, Article III of the CIAC Rules, an arbitration clause in a construction contract shall be deemed as an agreement to submit an existing or future controversy to CIAC jurisdiction, "**notwithstanding** the reference to a different arbitration institution or arbitral body in such contract x x x." Elementary is the rule that when laws or rules are clear, it is incumbent on the court to apply them. When the law (or rule) is unambiguous and unequivocal, application, not interpretation thereof, is imperative.[22]

Hence, the bare fact that the parties herein incorporated an arbitration clause in the EPCC is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties.[23] The arbitration clause in the construction contract *ipso facto* vested the CIAC with jurisdiction.[24] This rule applies, regardless of whether the parties specifically choose another forum or make reference to another arbitral body.[25] Since the jurisdiction of CIAC is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract.[26] The parties will not be precluded from electing to submit their dispute to CIAC, because this right has been vested in each party by law.[27]

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[22] See *De Guzman v. Sison*, 407 Phil. 351, 368 (2001).

[23] *Heunghwa Industry Company Limited v. DJ Builders Corporation*, G.R. No. 169095, 8 December 2008.

[24] *Id.*

[25] *Id.*

[26] *Buazon v. Court of Appeals*, G.R. No. 97749, 19 March 1993, 220 SCRA 182, 187; *China Chang Jiang Energy Corporation (Philippines) v. Rosal Infrastructure Builders*, G.R. No. 125706, 30 September 1996.

[27] *Id.*, *China Chang Jiang Energy Corporation (Philippines) v. Rosal Infrastructure Builders*, G.R. No. 125706, 30 September 1996.

In *China Chang Jiang Energy Corporation (Philippines) v. Rosal Infrastructure Builders*,[28] we elucidated thus:

What the law merely requires for a particular construction contract to fall within the jurisdiction of CIAC is for the parties to agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the *Tesco* case, the law does not mention that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over such disputes. **Rather, it is plain and clear that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specially choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, *i.e.*, E.O. No. 1008.**

x x x x x x x x x

Now that Section 1, Article III [CIAC Rules of Procedure Governing Construction Arbitration], as amended, is submitted to test in the present petition, we rule to uphold its validity with full certainty. However, this should not be understood to mean that the parties may no longer stipulate to submit their disputes to a different forum or arbitral body. **Parties may continue to stipulate as regards their preferred forum in case of voluntary arbitration, but in so doing, they may not divest the CIAC of jurisdiction as provided by law. Under the elementary principle on the law on contracts that laws obtaining in a jurisdiction form part of all agreements, when the law provides that the Board acquires jurisdiction when the parties to the contract agree to submit the same to voluntary arbitration, the law in effect, automatically gives the parties an alternative forum before whom they may submit their disputes. That alternative forum is the CIAC. This, to the mind of the Court, is the real spirit of E.O. No. 1008, as implemented by Section 1, Article III of the CIAC Rules.** (Emphases ours.)

Likewise, in *National Irrigation Administration v. Court of Appeals*,[29] we pronounced that:

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[28] *Id*.

[29] 376 Phil. 362, 375 (1999).

Under the present Rules of Procedure [CIAC Rules of Procedure Governing Construction Arbitration], for a particular construction contract to fall within the jurisdiction of CIAC, it is merely required that the parties agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the *Tesco* case, the law as it now stands does not provide that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over the same. Rather, it is plain and clear that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, *i.e.,* E.O. No. 1008.

We note that this is not a case wherein the arbitration clause in the construction contract named another forum, not the CIAC, which shall have jurisdiction over the dispute between the parties; rather, the said clause requires prior referral of the dispute to the DAB. Nonetheless, we still hold that this condition precedent, or more appropriately, non-compliance therewith, should not deprive CIAC of its jurisdiction over the dispute between the parties.

It bears to emphasize that the mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, without any qualification or condition precedent. To affirm a condition precedent in the construction contract, which would **effectively suspend** the jurisdiction of the CIAC until compliance therewith, would be **in conflict** with the recognized intention of the law and rules to **automatically vest** CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.

Moreover, the CIAC was created in recognition of the contribution of the construction industry to national development goals. Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, Executive Order No. 1008 expressly mandates the CIAC

to **expeditiously** settle construction industry disputes and, for this purpose, vests in the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by the parties involved in construction in the Philippines.[30]

The dispute between petitioner and respondent has been lingering for almost five years now. Despite numerous meetings and negotiations between the parties, which took place prior to petitioner's filing with the CIAC of its Request for Arbitration, no amicable settlement was reached. A ruling requiring the parties to still appoint a DAB, to which they should first refer their dispute before the same could be submitted to the CIAC, would merely be circuitous and dilatory at this point. It would entail unnecessary delays and expenses on both parties, which Executive Order No. 1008 precisely seeks to prevent. It would, indeed, defeat the purpose for which the CIAC was created.

WHEREFORE, the Petition is hereby *GRANTED*. The Decision, dated 23 May 2007, and Resolution, dated 16 November 2007, of the Court of Appeals in CA-G.R. SP No. 92504 are hereby *REVERSED* and *SET ASIDE*. The instant case is hereby *REMANDED* for further proceedings to the CIAC which is *DIRECTED* to resolve the same with dispatch.

SO ORDERED.

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

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[30] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G.R. No. 144792, 31 January 2006, 481 SCRA 209, 212; *Hi-Precision Steel Center, Inc v. Lim Kim Steel Builders, Inc.*, G.R. No. 110434, 13 December 1993, 228 SCRA 397.

EN BANC

[G.R. No. 181377. April 24, 2009]

RODANTE MARCOLETA, SERGIO MANZANA, RENATO CABLING, and MIGUELITO BAJAS, *petitioners, vs.* **COMMISSION ON ELECTIONS and DIOGENES OSABEL,** *respondents.*

[G.R. No. 181726. April 24, 2009]

ALAGAD PARTY-LIST, represented by DIOGENES S. OSABEL, President, *petitioner, vs.* **COMMISSION ON ELECTIONS, ALBERTO M. MALVAR, RODANTE D. MARCOLETA, SERGIO C. MANZANA, RENATO S. CABLING, and MIGUELITO C. BAJAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; *CERTIORARI*; PETITION THEREFOR CANNOT BE INVOKED WHEN THERE IS A PLAIN, ADEQUATE AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW; CASE AT BAR.— G.R. No. 181377 was filed on February 7, 2008 by the Marcoleta group before it filed on February 12, 2008 before the Comelec the *ex parte* motion to rectify. In light of the filing of said motion as well as the positive action of the Comelec in its Order of February 26, 2008 for a rehearing of the controversy, the petition had been rendered **moot and academic**. More importantly, the extraordinary writ of *certiorari*, cannot be invoked when there is a plain, adequate and speedy remedy in the ordinary course of law, as shown by petitioner's recourse.

2. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; COMELEC RULES OF PROCEDURE; PROCEDURE IF *EN BANC* IS EQUALLY DIVIDED OR NECESSARY MAJORITY CANNOT BE HAD; MEANING OF MAJORITY.— To break this legal stalemate, Section 6, Rule 18 of the *Comelec Rules of Procedure* provides that: Sec. 6. Procedure if Opinion is Equally Divided.—**When the**

Commission *en banc* is equally divided in opinion, *or the necessary majority cannot be had*, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied. Majority, in this case, means a vote of four members of the Comelec. The Court in *Estrella v. Comelec* pronounced that Section 5 (a) of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a **majority vote of all the members** of the Comelec, and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling.

3. ID.; ID.; ID.; ID.; COMELEC AUTHORIZED TO AMEND AND CONTROL ITS PROCESSES AND ORDERS SO AS TO MAKE THEM CONFORMABLE TO LAW AND JUSTICE.— The Comelec has the authority to order a re-hearing, it having the inherent power to amend or control its processes and orders before these become final and executory. It can even proceed to issue an order *motu proprio* to reconsider, recall or set aside an earlier resolution which is still under its control. The Comelec's own Rules of Procedure authorize the body to "amend and control its processes and orders so as to make them conformable to law and justice," and even to suspend said Rules or any portion thereof "in the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission."

APPEARANCES OF COUNSEL

Jose P. Villamor Jr. for Diogenes S. Osabel.

The Solicitor General for public respondent.

Soriano Velez and Partners Law Offices and *Fernando D. David* for Rodante Marcoleta, *et al.*

D E C I S I O N

CARPIO MORALES, *J.*:

When the party-list group *Alagad* first won a seat in the House of Representatives in 1998, Diogenes S. Osabel (Osabel) sat as the party's representative in Congress. In 2004, when the party again won one seat, Rodante D. Marcoleta (Marcoleta) sat as *Alagad*'s representative.

Due to infighting within *Alagad*'s ranks, however, Osabel and Marcoleta parted ways, each one claiming to represent the party's constituency. For the 2007 National and Local Elections, the warring factions of Osabel and Marcoleta each filed a separate list of nominees for *Alagad* at the Commission on Elections (Comelec).

With *Alagad* again winning a part-list seat in the House of Representatives, the Marcoleta and Osabel blocs contested the right to represent the party in the 14th Congress.[1] Osabel, purportedly the *bona fide* president of *Alagad,* sought the cancellation of the certificates of nomination of the Marcoleta group.[2]

By Omnibus Resolution[3] of July 18, 2007, the Comelec's *First* Division, then composed of Commissioners Resurreccion Borra and Romeo Brawner, resolved the dispute in favor of Osabel, disposing as follows:

> WHEREFORE, in view of the foregoing, the Commission (First Division) **GRANTS** the Petition in **SPA No. 07-020** finding it imbued with merit. The **Certificate of Nomination** filed by ALAGAD represented by **ALBERTO M. MALVAR** on January 15, 2007 and subject of **SPA No. 07-020** is hereby **SET ASIDE**. **The Manifestation of Intent to Participate in the Party-List System of Representation** submitted by ALAGAD represented by its legitimate president

[1] Both factions filed separate Manifestations of Intent to Participate in the Party-list System of Representation (SPP No. 07-003 and SPP No. 07-023).

[2] In SPA No. 07-020.

[3] *Rollo* (G.R. No. 181377) at pp. 31-50.

DIOGENES S. OSABEL on January 25, 2007, and subject of **SPP No. 07-023** is hereby **ADMITTED**. The **Manifestation of Intent to Participate in the Party-List System of Representation** submitted by ALAGAD represented by **ALBERTO M. MALVAR** on January 15, 2007 and subject of **SPP No. 07-003** is **DENIED DUE COURSE.** (Emphasis in the original)

The controversy was then elevated by the Marcoleta group to the Comelec *En Banc* which, by Resolution[4] of November 6, 2007, reversed the *First* Division's Omnibus Resolution and reinstated the certificates of nomination of the Marcoleta group. In the voting, however, there were only two (2) commissioners who concurred in the Resolution while three (3) commissioners dissented.[5]

For thus failing to muster the required majority voting, the Comelec *En Banc* ordered a rehearing of the controversy on November 20, 2007.[6]

From the records,[7] it appears that what was taken up during the scheduled November 20, 2007 hearing was the issue of "whether the [Comelec] could hear these cases on the rehearing aspect."[8]

The *First* Division's Omnibus Resolution in favor of Osabel was eventually *affirmed* by the Comelec *En Banc* by Resolution of February 5, 2008, *viz*:[9]

During said rehearing, both parties agreed to file their simultaneous memoranda and thereafter to submit these cases for resolution.

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[4] *Rollo* (G.R. No. 181726) at pp. 52-66.

[5] Commissioners Resurreccion Borra (Borra), Romeo Brawner (Brawner) and Rene Sarmiento (Sarmiento) dissented while Commissioners Florentino A. Tuason Jr. (Tuason) and Nicodemo T. Ferrer (Ferrer) concurred. Then Comelec chairman, Benjamin S. Abalos Sr., had resigned at the time.

[6] *Rollo* (G.R. No. 181377), pp. 85-86.

[7] *Id*. at 125-158.

[8] *Id*. at 126.

[9] *Id*. at 258-261.

The Commission received their respective memoranda on December 3, 2007. (Emphasis and underscoring supplied)

x x x x x x x x x

It appearing that the votes of the members of the Commission are still the same, or the necessary majority cannot be had, pursuant to Sec. 6, Rule 18, Comelec Rules of Procedure which reads:

x x x x x x x x x

the Resolution of the First Division is hereby **AFFIRMED**.[10] (Emphasis in the original; underscoring supplied)

On February 12, 2008, Marcoleta filed an *ex parte* motion to rectify[11] the Comelec *En Banc* February 5, 2008 Resolution, contending that it inadvertently therein mentioned that there was a rehearing undertaken on November 20, 2007 when in fact there was none as the matter taken up on said date actually delved on the propriety of a rehearing; and that no memorandum from either of the parties was submitted on December 3, 2007.

By Order of February 12, 2008,[12] Commissioner Romeo Brawner, acting in his capacity as acting chairman of the Comelec, suspended until further orders the implementation of the Comelec *First* Division February 5, 2008 Omnibus Resolution.

Subsequently, by Order of February 26, 2008,[13] the Comelec *En Banc* acknowledged that no rehearing had yet been undertaken and reiterated the earlier order of suspension of the February 5, 2009 *First* Division Omnibus Resolution. The Comelec *En Banc*, also therein resolving the prejudicial question raised by Osabel on whether there was a necessity of a rehearing, held in the affirmative, reasoning that:

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[10] The voting in this resolution had Commissioners Brawner and Sarmiento maintaining their dissent while Commissioner Ferrer retained his concurrence. Commissioners Borra and Tuason had retired by then. The new commissioner at the time, Moslemen Macarambon, took no part.

[11] *Rollo* (G.R. No. 181377), pp. 262-263.

[12] *Rollo* (G.R. No. 181726), pp. 22-23.

[13] *Id*. at 48-51.

x x x. The voting in the resolution disposing of the motion for reconsideration on the July 18, 2007 resolution of the First Division which yielded the 2-3 voting resulted in the failure to obtain the required number of votes for the pronouncement of a decision. Hence, a rehearing should be conducted x x x.

A rehearing of the controversy between the parties was thereupon calendared for March 4, 2008. From the records, it appears that the scheduled rehearing did not push through in view of the filing in the *interim* of the present petitions by the contending parties.

In the above-captioned **G.R. No. 181377** (the petition filed by the Marcoleta group on February 7, 2008), petitioners fault the Comelec *En Banc* as follows:

a. The COMELEC *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the February 5, 2008 Order without the benefit of a rehearing, in violation of Section 6, Rule 18 of the COMELEC Rules of Procedure;

b. The COMELEC *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the ruling of its First Division that Private Respondent Osabel did not resign his post as President of Alagad;

c. The COMELEC *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it gave credence to the Minutes submitted by the Private Respondent, even though it was not approved by the Secretary-General of the Party;

d. The COMELEC *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not consider the provision in the Party's Constitution and By-Laws that limits the tenure of officers and members of the Executive Committee to three (3) years.[14]

Meanwhile, **G.R. No. 181726** filed on March 4, 2008 by *Alagad*, represented by Osabel, assails the suspension of the effects of the Comelec *First* Division February 5, 2008 Resolution as well as the February 26, 2008 Order that called for a rehearing.[15]

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[14] *Rollo* (G.R. No. 181377), p. 196.

[15] *Rollo* (G.R. No. 181726), p. 10.

Alagad asserts that the Comelec should not have suspended the effects of the February 5, 2008 Resolution when, on its face, the *ex parte* motion to rectify filed by Marcoleta suffered from lack of proof of service on the adverse party and the requisite notice of hearing; instead, an order to comment on the motion should have been the proper recourse of the Comelec.[16]

In further arguing against the rehearing order of the Comelec, petitioner *Alagad* invites the Court's attention to the earlier mentioned *En Banc* Resolution of November 6, 2007 (reinstating the certificates of nomination of the Marcoleta group) where it appears that the Osabel group "secured a majority vote of the quorum: three (3) against two (2) in a quorum of five commissioners, in spite the fact that Osabel is not the movant, and hence, not the party required to secure a majority to reverse the *First* Division Omnibus Resolution."[17]

By Resolution of March 11, 2008, the Court consolidated both petitions.[18]

G.R. No. 181377 was filed on February 7, 2008 by the Marcoleta group before it filed on February 12, 2008 before the Comelec the *ex parte* motion to rectify. In light of the filing of said motion as well as the positive action of the Comelec in its Order of February 26, 2008 for a rehearing of the controversy, the petition had been rendered **moot and academic**. More importantly, the extraordinary writ of *certiorari*, cannot be invoked when there is a plain, adequate and speedy remedy in the ordinary course of law,[19] as shown by petitioner's recourse.

The Court now proceeds to resolve G.R. No. 181726 filed by *Alagad*. The twin issues to be determined are whether the Comelec *En Banc* committed grave abuse of discretion in ordering a rehearing of the controversy; and in suspending the implementation of the Order of February 5, 2008 for lack of rehearing.

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[16] *Id*. at. 10-12.

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

[18] *Id*. at. 90.

[19] Section 1 of Rule 65 of the 1997 RULES OF CIVIL PROCEDURE.

The petition fails.

While at first impression, the November 6, 2007 Resolution of the Comelec *En Banc* seems to have affirmed the *First* Division's ruling, the said Resolution merely reflected the manner of voting of the Comelec members.

From the 2-3 voting, it is readily discerned that the Comelec *En Banc* cannot overturn the *First* Division on mere two assenting votes. On the other hand, the same situation obtains in the case of the dissenters, there being a shortage of one vote to sustain the *First* Division's findings.

To break this legal stalemate, Section 6, Rule 18 of the *Comelec Rules of Procedure* provides that:

> Sec. 6. Procedure if Opinion is Equally Divided.—**When the Commission *en banc* is equally divided in opinion, *or the necessary majority cannot be had*, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed;** and in all incidental matters, the petition or motion shall be denied. (Emphasis, italics and underscoring supplied)

Majority, in this case, means a vote of four members of the Comelec. The Court in *Estrella v. Comelec*[20] pronounced that Section 5 (a)[21] of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX-A[22] of the Constitution require that a **majority vote of all the members** of the Comelec, and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling.

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[20] G.R. No. 160465, May 27, 2004, 429 SCRA 789.

[21] Sec. 5. Quorum, Votes Required.—(a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling. (Underscoring supplied)

[22] SECTION 7. Each Commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. x x x. (Underscoring supplied)

Alagad's reasoning that a rehearing is unnecessary since it garnered "a majority vote of the quorum" does not thus impress.

The Comelec, despite the obvious inclination of three commissioners to affirm the Resolution of the *First* Division, cannot do away with a rehearing since its Rules clearly provide for such a proceeding for the body to have a solicitous review of the controversy before it. A rehearing clearly presupposes the participation of the opposing parties for the purpose of presenting additional evidence, if any, and further clarifying and amplifying their arguments.[23]

To reiterate, neither the assenters nor dissenters can claim a majority in the *En Banc* Resolution of November 6, 2007. The Resolution served no more than a record of votes, lacking in legal effect despite its pronouncement of reversal of the *First* Division Resolution. Accordingly, the Comelec did not commit any grave abuse of discretion in ordering a rehearing.

The propriety of a rehearing now resolved, the issue of whether the Comelec committed grave abuse of discretion in suspending the effects of its *En Banc* Order of February 5, 2008 for lack of a rehearing comes to the fore.

From the records as well as the admission of inadvertence on the part of the Comelec, there is likewise nothing gravely abusive of the Comelec's assailed action.

A certification[24] from the Office of the Clerk of the Commission itself bolsters the assertion that the Comelec committed an evident oversight, thus:

> x x x [T]here is no calendar of hearing with respect to these particular cases between November 21, 2007 and February 5, 2008.

For the most part, the Comelec was well within its authority to order a re-hearing, it having the inherent power to amend or control its processes and orders before these become final and

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[23] *Juliano v. Comelec*, G.R. No. 167033, April 12, 2006, 487 SCRA 263, 271.

[24] *Rollo* (G.R. No. 181377), pp. 211-212.

executory.[25] It can even proceed to issue an order *motu proprio* to reconsider, recall or set aside an earlier resolution which is still under its control.[26]

The Comelec's own Rules of Procedure authorize the body to "amend and control its processes and orders so as to make them conformable to law and justice,"[27] and even to suspend said Rules or any portion thereof "in the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission."[28]

Thus, the supposed lack of proof of service on the adverse party and lack of notice of hearing of Marcoleta's *ex parte* motion to rectify deserve little consideration in invalidating the Order of February 12, 2008. Moreover, that *Alagad* even moved to execute the Comelec's February 5, 2008 Order on the same day the *ex parte* motion to rectify was filed (February 12, 2008)[29] all the more justified the Comelec's action.

The Comelec, confronted with a glaring procedural lapse, lost no time in rectifying its action by suspending the effects of an earlier resolution and scheduling a mandatory rehearing. To be sure, this negates any indication of grave abuse of discretion on its part in order to correct a lapse.

WHEREFORE, G.R. No. 181377 is *DISMISSED* for being moot. G.R. No. 181726 is likewise *DISMISSED* for lack of merit.

Let the case be *REMANDED* to the Comelec *En Banc* for it to proceed with utmost dispatch with its intended rehearing and render the appropriate decision on the case at the earliest opportunity.

No costs.

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[25] *Sahali v. Comelec*, G.R. No. 134169, February 2, 2000, 324 SCRA 510, 519.

[26] *Vide*: *Jaafar v. Comelec*, G.R. No. 134188, March 15, 1999, 304 SCRA 672.

[27] Section 3 (g), Rule 2 of the COMELEC RULES OF PROCEDURE.

[28] Section 4, Rule 1 of the COMELEC RULES OF PROCEDURE.

[29] *Rollo* (G.R. No. 181726), pp. 76-78.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182790. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CESAR CANTALEJO *y* MANLANGIT,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT; EXCEPTIONS; CASE AT BAR.— The rule is that the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, but it does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. In the case at bar, there are circumstances which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

2. ID.; EVIDENCE; BURDEN OF PROOF; LIES ON PROSECUTION TO OVERCOME PRESUMPTION OF INNOCENCE.— The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required

amount of evidence, the defense may logically not even present evidence on its own behalf. In which case the presumption prevails and the accused should necessarily be acquitted.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); ILLEGAL SALE; ELEMENTS.— In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. The dangerous drug is the very *corpus delicti* of the offense.

4. REMEDIAL LAW; EVIDENCE; WHEN CIRCUMSTANCES ARE CAPABLE OF TWO INFERENCES, ONE CONSISTENT WITH INNOCENCE AND THE OTHER WITH GUILT, PRESUMPTION OF INNOCENCE MUST PREVAIL.— Moreover, when the circumstances are capable of two or more inferences, as in this case, such that one of which is consistent with the presumption of innocence and the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit.

5. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); PROCEDURE IN CUSTODY OF SEIZED DRUGS; FAILURE TO OBSERVE PROCEDURE RAISES DOUBTS AS TO ORIGIN OF DRUGS; CASE AT BAR.— Their testimonies do not definitively state and nothing on record shows that the procedural requirements of Section 21, Paragraph 1 of Article 11 of R.A. No. 9165 with respect to custody and disposition of confiscated drugs were complied with. There was no physical inventory and photograph of the items allegedly confiscated from appellant. Neither did the police officers offer any explanation for their failure to observe the rule. In *People v. Orteza,* the Court citing *People v. Laxa, People v. Kimura* and *Zarraga v. People*, reiterated the ruling that the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.

6. ID.; ID.; ID.; FAILURE TO OBSERVE PROCEDURE NEGATES THE OPERATION OF PRESUMPTION OF REGULARITY ACCORDED TO POLICE OFFICERS.— As stated by the Court in *People v. Santos, Jr.*, failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers. As a

general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; DISPUTABLE BY CONTRARY PROOF.— While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is merely just that—a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

An Information[1] for violation of Section 5 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive

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[1] *Rollo*, p. 3.

The accusatory portion of the Information in Criminal Case No. Q-04-124009 reads:

That on or about the 20th day of January, 2004 in Quezon City, Philippines, the said accused not being authorized by to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, **zero point zero eight** (0.08) gram of methylamphetamine hydrochloride, a dangerous drug. (Emphasis supplied)

CONTRARY TO LAW.

Dangerous Drugs Act of 2002, was filed against appellant Cesar Cantalejo *y* Manlangit. At the arraignment, appellant pleaded not guilty to offense charged. Thereafter, trial on the merits ensued.

The prosecution presented as witnesses PO2 Paul Acosta and PO1 Romualdo Cruda. On the other hand, the defense presented appellant, his wife Virginia Cantalejo and Nomeriano Belen, Jr. as witnesses.

Culled from the records, the prosecution established that:

On 20 January 2004, past midnight, two male police assets went to the office of the DPIU, Camp Karingal, Sikatuna Village, Quezon City to report on the illegal drug activities of a certain "Cesar" at Esteve Street, Manggahan, Commonwealth Avenue, Quezon City.

Based on the report, a police entrapment team was organized. During the briefing of the team, SPO4 Celso Jeresano was designated as team leader while PO2 Paul Acosta was assigned as the *poseur-buyer*. PO2 Acosta was given one (1) ₱500.00 bill as buy-bust money on which he placed his initials. The other members of the team were Antonio Disuanco, Genaro Martinez, Timoteo Evasco, Elmer Monsalve, Ramon Mateo, and Romualdo Cruda.

At about 1:00 a.m., the team, together with the police assets, proceeded to the scene of the crime on board a marked vehicle. Near the place, PO2 Acosta and one of the assets alighted from the vehicle and took a tricyle to the destination while the marked vehicle followed behind.

Thereat, PO2 Acosta and the asset walked towards Cesar's house and saw him standing in front of his house. The asset greeted Cesar and introduced PO2 Acosta to him as his *kumpare*. Cesar then remarked, *"napasyal kayo."* PO2 Acosta told Cesar, *"kukuha sana kami ng panggamit."* Cesar asked how much and PO2 Acosta replied "₱500.00 worth." Cesar said *"sandali lang."* Cesar got the ₱500 from PO2 Acosta who said to him "*Baka magtagal ka." "Sandali lang,"* Cesar responded and then walked to the side of the house.

When Cesar returned, he handed a plastic sachet to PO2 Acosta who examined it. Certain that the sachet had *shabu* in it, PO2 Acosta scratched his head as the pre-arranged signal. His companions then rushed to the trio and arrested Cesar.

PO1 Cruda searched Cesar and recovered the marked ₱500.00 bill which he marked with his own initials. Cesar was arrested and brought to Camp Karingal. PO2 Acosta brought the sachet to the camp, marked it with his own initials and turned it over to the desk officer. The sachet was subsequently brought to Camp Crame for analysis and found positive for *shabu*.[2]

The defense, however, contended that between 1:00 and 2:00 in the early morning of 20 January 2004, appellant and his wife had been sleeping inside their house, with their five (5) children, when they were woken by a soft knocking on the door. Appellant stood up to ask who was knocking but none answered. After a while, a loud banging was again heard on the door. Appellant had stood up another time to answer the door and several armed male persons entered shouting *"Dapa! Dapa!."* Appellant obeyed the order and was told *"Kailangan namin ng shabu."* Appellant replied *"wala pong shabu dito."* Even so, the men searched the house, poked a gun at appellant's spouse and the children and asked them to stay in a corner. One of the men asked appellant's spouse if his husband is Cesar Cantalejo. After replying in the affirmative, she asked what they needed from them. The man declared that there was no *shabu* in their house. Appellant's spouse warned them that they would not find any *shabu* as they were members of the Iglesia ni Kristo. After the armed men's search of the house for about an hour and frisking on their bodies proved futile, nevertheless, appellant was brought to Camp Karingal.

Nomeriano Belen, Jr. testified in corroboration that he had heard loud sounds coming from Cesar's house and turning his sight towards that direction, he had seen about ten (10) armed men thereat.[3]

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[2] TSN, 3 August 2004, pp. 3-13; TSN, 31 January 2005, pp. 6-26.

[3] *Rollo*, pp. 5-7; TSN, 11 May 2005, pp. 3- 17; TSN, dated 25 August 2005, pp. 5-20; TSN, 26 October 2005, pp. 3-12.

In a Decision dated 28 April 2006, the Regional Trial Court (RTC) of Quezon City, Branch 103 found appellant guilty of the offense charged. The dispositive portion of the decision reads, as follows:

> ACCORDINGLY, judgment is hereby rendered finding the accused, **CESAR CANTALEJO *y* MANLANGIT, GUILTY** beyond reasonable doubt of the offense of Violation of Section 5, R.A. 9165 (drug pushing) as charged and he (sic) sentenced to **LIFE IMPRISONMENT** and ordered to pay a fine of **₱500,000.00**.
>
> The plastic sachet of *shabu* involved in this case is ordered transmitted to the PDEA thru the DDB for proper disposition per R.A. 9165.
>
> SO ORDERED.[4]

Before the Court of Appeals, appellant maintained that the trial court erred in convicting him as the constitutional presumption of innocence in his favor had not been overthrown; and that it disregarded his constitutional right against unreasonable searches and seizures.

On 21 November 2007, the Court of Appeals rendered the assailed decision[5] affirming the judgment of the trial court.

Appellant's contentions are now before us. Appellant manifested that he is adopting his appellant's brief before the Court of Appeals as his supplemental brief.[6] The OSG likewise manifested that it is no longer filing a supplemental brief.[7]

The appeal is meritorious.

The rule is that the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, but it does not apply where facts of weight and substance have been

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[4] CA *rollo*, p. 46

[5] *Rollo*, pp. 2-14. In C.A.-G.R. CR-H.C. No. 02180. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[6] *Id.* at 29.

[7] *Id.* at 34.

overlooked, misapprehended or misapplied in a case under appeal.[8] In the case at bar, there are circumstances which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case the presumption prevails and the accused should necessarily be acquitted.[9]

In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[10] The dangerous drug is the very *corpus delicti* of the offense.[11]

In the case at bar, the testimonies for the prosecution and for the defense are diametrically opposed to each other. The prosecution's version of events consisted of the two police officers' testimonies regarding the buy-bust operation whereas appellant and his wife denied that there had been a sale at all and cried frame-up. An examination of the decisions of the trial court and the Court of Appeals revealed a heavy reliance on the testimonies of the police officers and a blind dependence on the presumption of regularity in the conduct of police duty. In light of the defense's theory of frame-up and an unconstitutional search and seizure, it is imperative that the prosecution present

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[8] *People v. Pedronan*, G.R. No. 148668, 17 June 2003, 404 SCRA 183, 188; *People v. Casimiro*, G.R. No. 146227, 20 June 2002, 383 SCRA 390, 398; *People v. Laxa*, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 627.

[9] *People v. Dela Cruz*, G.R. No. 177222, 29 October 2008.

[10] *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[11] *People v. Simbahon*, 449 Phil. 74, 81 (2003).

more evidence to support the police officers' allegations. The prosecution could have presented the other police officers who were members of the back-up team and should have offered rebuttal evidence to refute the defense of frame-up. This omission does not hold well for the cause of the prosecution. It creates doubts on whether there has actually been any buy-bust operation at all.

Appellant and his wife testified that the police officers had entered and searched their house without a warrant and on a hunt for *shabu*. Significantly, appellant's wife also testified that the police officers, belying their assertions, did not even know who Cesar was and whether he owned the house they had entered, to wit:

ATTY. CONCEPCION to VIRGINIA CANTALEJO:

Q- When these police officers poked a gun at you, what happened?
A- After the police poked a gun at me and our children one policeman said "*misis wag kayong aalis diyan*."

Q- After the conversation, what happened next?
A- The man asked me if that is my husband.

Q- After that?
A- One police officer asked me is it Cesar Cantalejo.

Q- What is your answer?
A- Yes, *ano ho ba ang kailangan ninyo sa amin*.

Q- And what was his answer?
A- The police said *may shabu daw sa bahay namin*.

Q- After that?
A- They searched the entire house.[12]

While it may be contended that Virginia Cantalejo's testimony is a biased one, it remains the prosecution's task to refute her story such that their version of events is proven to have actually transpired with moral certainty. Moreover, when the circumstances are capable of two or more inferences, as in this case, such that

[12] TSN, 25 August 2005, pp. 13-14.

one of which is consistent with the presumption of innocence and the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit.[13] It is worthy of note again that the prosecution did not present rebuttal evidence.[14]

In addition, the Court finds that the identity of the *corpus delicti* has not been sufficiently established. PO2 Acosta testified as follows:

FIS. ARAULA:

At the police station, what happened there?

WITNESS:

We turned over to the Desk Officer the plastic sachet and the buy bust money, sir.

FIS. ARAULA:

Do you know what the Desk Officer did to that transparent plastic sachet?

WITNESS:

Our investigator was there sir, to make the request to the Crime Laboratory, sir.

FIS. ARAULA:

Who was the person who brought the transparent plastic sachet to the Crime Laboratory?

WITNESS:

I am not sure but "*parang ako*," sir.[15]

PO1 Romualdo Cruda likewise testified as follows:

FISCAL ARAULA:

Q: Were you able to see that *shabu* that Acosta bought from the accused?

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[13] *People v. Santos, Jr.*, G.R. No. 175593, 17 October 2007, 536 SCRA 489.

[14] Records, p. 85.

[15] TSN, 3 August 2004, p. 11.

WITNESS:

A: I first saw it when it was turned over to the desk officer.[16]

x x x x x x x x x

ATTY. CONCEPCION:

You also said a while ago you responded to go nearer to the poseur buyer and to this Cantalejo when there is already a "*kaguluhan*"?

WITNESS:

Yes, ma'am.

ATTY. CONCEPCION:

You did not see to whom this Cantalejo give the plastic sachet?

WITNESS:

I did not see.

ATTY. CONCEPCION:

You do not know what happened to the actual deal?

WITNESS:

I did not.[17]

Their testimonies do not definitively state and nothing on record shows that the procedural requirements of Section 21,[18]

[16] TSN, 31 January 2005, p. 16.

[17] *Id.* at 26-27.

[18] Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.—The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and

Paragraph 1 of Article II of R.A. No. 9165 with respect to custody and disposition of confiscated drugs were complied with. There was no physical inventory and photograph of the items allegedly confiscated from appellant. Neither did the police officers offer any explanation for their failure to observe the rule.

In *People v. Orteza*,[19] the Court citing *People v. Laxa*,[20] *People v. Kimura*[21] and *Zarraga v. People*,[22] reiterated the ruling that the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.[23]

As stated by the Court in *People v. Santos, Jr.*,[24] failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers.[25] As a general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly.[26] However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.

While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond

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;

[19] G.R. No. 173051, 31 July 2007, 528 SCRA 750.

[20] 414 Phil. 156 (2001).

[21] G.R. No. 130805, 27 April 2004, 428 SCRA 51.

[22] G.R. No. 162064, 14 March 2006, 484 SCRA 639.

[23] *Supra* note 19 at 758.

[24] G.R. No. 175593, 17 October 2007, 536 SCRA 489.

[25] *Id.* at 505.

[26] *People v. De Guzman*, G.R. No. 151205, 9 June 2004, 431 SCRA 516, 522.

reasonable doubt.[27] The presumption of regularity is merely just that—a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.[28]

All told, the totality of evidence presented in the instant case does not support appellant's conviction for violation of Section 5, Article II, R.A. No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense. Following the constitutional mandate, when the guilt of the appellant has not been proven with moral certainty, as in this case, the presumption of innocence prevails and his exoneration should be granted as a matter of right.

WHEREFORE, the assailed Decision dated 21 November 2007 of the Court of Appeals in CA-G.R. CR HC No. 02180 which affirmed the judgment of conviction of the Regional Trial Court of Quezon City, Branch 103 is *REVERSED* and *SET ASIDE*. Appellant CESAR CANTALEJO *Y* MANLANGIT is *ACQUITTED* on reasonable doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

The Director of the Bureau of Corrections is *ORDERED* to implement this decision forthwith and to *INFORM* this Court, within five (5) days from receipt thereof, of the date appellant was actually released from confinement.

Let a copy of this decision be forwarded to the PNP Director and the Director General of the Philippine Drug Enforcement Agency for proper guidance and implementation. No costs.

SO ORDERED.

Carpio Morales[*] *(Acting Chairperson), Velasco, Jr., Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[27] *People v. Cañete*, 433 Phil. 781, 794 (2002).

[28] *Mallilin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619.

[*] Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

EN BANC

[G.R. No. 183278. April 24, 2009]

IMELDA O. COJUANGCO, PRIME HOLDINGS, INC., and THE ESTATE OF RAMON U. COJUANGCO, *petitioners, vs.* **SANDIGANBAYAN, REPUBLIC OF THE PHILIPPINES, and THE SHERIFF OF SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; DIVIDEND; PAYMENT TO STOCKHOLDERS OF A CORPORATION AS A RETURN UPON THEIR INVESTMENT.—The term "dividend" in its technical sense and ordinary acceptation is that part or portion of the profits of the enterprise which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock. It is a payment to the stockholders of a corporation as a return upon their investment, and the right thereto is an incident of ownership of stock.

2. ID.; ID.; ID.; ID.; WHEN PAYABLE.— Dividends are payable to the stockholders of record as of the date of the declaration of dividends or holders of record on a certain future date, as the case may be, unless the parties have agreed otherwise. And a transfer of shares which is not recorded in the books of the corporation is valid only as between the parties, hence, the transferor has the right to dividends as against the corporation without notice of transfer but it serves as trustee of the real owner of the dividends, subject to the contract between the transferor and transferee as to who is entitled to receive the dividends.

3. CIVIL LAW; PROPERTY; OWNERSHIP; ATTRIBUTES.— Ownership is a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another. Its traditional elements or attributes include *jus utendi* or the right to receive from the thing what it produces.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; GENERAL RULE THAT SUBJECT OF EXECUTION IS THAT ORDAINED IN THE DISPOSITIVE PORTION; EXCEPTIONS.— The general rule is that the portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part thereof, there are recognized exceptions to this rule, *viz:* (a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment, because the dispositive part of a decision must find support from the decision's *ratio decidendi*; and (b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision.

APPEARANCES OF COUNSEL

Herrera Teehankee & Cabrera for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The present petition is one for *Certiorari*.

Petitioners Imelda O. Cojuangco, Prime Holdings, Inc., and the Estate of Ramon Cojuangco assail *via certiorari* the Resolutions dated November 7, 2007[1] and June 13, 2008[2] of the Sandiganbayan in Civil Case No. 0002, *Republic of the Philippines v. Ferdinand Marcos, et al.*

A brief recital of the antecedent facts is in order.

On July 16, 1987, respondent Republic of the Philippines (Republic) filed before the Sandiganbayan a "Complaint for Reconveyance, Reversion, Accounting, Restitution and

[1] Annex "A" of the Petition, *rollo*, pp. 51-58. Penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada.

[2] Annex "B" of the Petition, *id.* at 59-68. Penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada.

Damages," docketed as Civil Case 0002, praying for the recovery of alleged ill-gotten wealth from the late President Marcos and former First Lady Imelda Marcos and their cronies, including some 2.4 million shares of stock in the Philippine Long Distance Telephone Company (PLDT).

The complaint, which was later amended to implead herein petitioners Ramon and Imelda Cojuangco (the Cojuangcos), alleged that the Marcoses' ill-gotten wealth included shares in the PLDT covered by shares of stock in the Philippine Telecommunications Investment Corporation (PTIC), registered in the name of Prime Holdings, Inc. (Prime Holdings).

The Sandiganbayan dismissed the complaint with respect to the recovery of the PLDT shares, hence, the Republic appealed to this Court, docketed as **G.R. No. 153459**, which appeal was later consolidated with pending cases of similar import – G.R. Nos. 149802, 150320, and 150367.

By Decision[3] dated January 20, 2006, this Court, in **G.R. No. 153459**, ruled in favor of the Republic, declaring it to be the owner of 111,415 PTIC shares registered in the name of Prime Holdings. The dispositive portion of the Decision reads:

> WHEREFORE, the petition of the Republic of the Philippines in G.R. No. 153459 is **GRANTED** to the extent that it prays for the reconveyance to the Republic of 111,415 PTIC shares registered in the name of PHI. The petitions in G.R. Nos. 149802, 150320, 150367, and 153207 are **DENIED** for lack of merit.
>
> SO ORDERED.

The Decision became final and executory on October 26, 2006, hence, the Republic filed on November 20, 2006 with the Sandiganbayan a Motion for the Issuance of a Writ of Execution, praying for the cancellation of the 111,415 shares/certificates of stock registered in the name of Prime Holdings and the annotation of the change of ownership on PTIC's Stock and Transfer Book. The Republic further prayed for the issuance

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[3] *Yuchengco v. Sandiganbayan*, G.R. Nos. 149802, 150320, 150367, 153207, and 153459, January 20, 2006, 479 SCRA 1.

of an order for PTIC to account for all cash and stock dividends declared and/or issued by PLDT in favor of PTIC from 1986 up to the present including compounded interests appurtenant thereto.

By Resolution dated December 14, 2006, the Sandiganbayan granted the Motion for the Issuance of a Writ of Execution with respect to the reconveyance of the shares, but denied the prayer for accounting of dividends.

On Motion for Reconsideration of the Republic, the Sandiganbayan, by the first assailed **Resolution dated November 7, 2007**, directed PTIC to deliver the cash and stock dividends pertaining to the 111,415 shares, including compounded interests, ratiocinating that the same were covered by this Court's Decision in **G.R. No. 153459**, since the Republic was therein adjudged the owner of the shares and, therefore, entitled to the fruits thereof.

The Cojuangcos (hereafter petitioners) moved to reconsider the November 7, 2007 Sandiganbayan Resolution, alleging that this Court's Decision in **G.R. No. 153459** did not include a disposition of the dividends and interests accruing to the shares adjudicated in favor of the Republic.

By the other challenged **Resolution dated June 13, 2008**, the Sandiganbayan partly granted petitioners' Motion for Reconsideration by including legal interests, but not compounding the same, from the accounting and remittance to the Republic. The Sandiganbayan thereupon issued a Writ of Execution,[4] hence, spawned the present petition for *certiorari*.

From the myriad assignments of error proffered by petitioners, the pivotal issues for the Court's resolution are: (1) whether the Sandiganbayan gravely abused its discretion in ordering the accounting, delivery, and remittance to the Republic of the stock, cash, and property dividends pertaining to the 111,415 PTIC shares of Prime Holdings, this Court's Decision in **G.R. No. 153459** not having even discussed the same; and (2) whether the Republic,

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[4] Annex "K" of Petition, *rollo*, pp. 449-450.

having transferred the shares to a third party, is entitled to the dividends, interests, and earnings thereof.

Petitioners insist on a literal reading of the dispositive portion of this Court's Decision in **G.R. No. 153459** as excluding the dividends, interests, and earnings accruing to the shares of stock from being accounted for and remitted.

The term "dividend" in its technical sense and ordinary acceptation is that part or portion of the profits of the enterprise which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock.[5] It is a payment to the stockholders of a corporation as a return upon their investment,[6] and the right thereto is an incident of ownership of stock.[7]

This Court, in directing the reconveyance to the Republic of the 111,415 shares of PLDT stock owned by PTIC in the name of Prime Holdings, declared the Republic as the owner of said shares and, necessarily, the dividends and interests accruing thereto.

Ownership is a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another. Its traditional elements or attributes include *jus utendi* or the right to receive from the thing what it produces.[8]

Contrary to petitioners' contention, while the general rule is that the portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part thereof, there are recognized exceptions to this rule, *viz*: (a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment, because the dispositive part of a decision must find support from the decision's *ratio*

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[5] *Vide Nielson & Co. v. Lepanto Consolidated Mining Co.*, No. L-21601, December 28, 1968, 26 SCRA 540, 569.

[6] *Vide* DE LEON, *THE CORPORATION CODE OF THE PHILIPPINES* Annotated, p. 384, 2002 Ed.., citing 19 Am Jur 2d 370.

[7] *Id*. at 410; citing 18 Am. Jur 2d 281-283.

[8] *Vide Distilleria Washington, Inc. v. La Tondeña Distillers, Inc.*, G.R. No. 120961, October 2, 1997, 280 SCRA 116, 125.

decidendi; and (b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision.[9]

In **G.R. No. 153459**, although the inclusion of the dividends, interests, and earnings of the 111,415 PTIC shares as belonging to the Republic was not mentioned in the dispositive portion of the Court's Decision, it is clear from its body that what was being adjudicated in favor of the Republic was the whole block of shares and the fruits thereof, said shares having been found to be part of the Marcoses' ill-gotten wealth, and therefore, public money.

It would be absurd to award the shares to the Republic as their owner and not include the dividends and interests accruing thereto. An owner who cannot exercise the "*juses*" or attributes of ownership — the right to possess, to use and enjoy, to abuse or consume, to accessories, to dispose or alienate, to recover or vindicate, and to the fruits — is a **crippled owner**.[10]

Respecting petitioners' argument that the Republic has yielded its right to the fruits of the shares when it sold them to Metro Pacific Assets Holdings, Inc., (Metro Pacific), the same does not lie.

Dividends are payable to the stockholders of record as of the date of the declaration of dividends or holders of record on a certain future date, as the case may be, unless the parties have agreed otherwise.[11] And a transfer of shares which is not recorded in the books of the corporation is valid only as between the parties, hence, the transferor has the right to dividends as against the corporation without notice of transfer but it serves as trustee of the real owner of the dividends, subject to the contract between the transferor and transferee as to who is entitled to receive the dividends.[12]

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[9] *Insular Life v. Toyota Bel-Air*, G.R. No. 137884, March 28, 2008.

[10] *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 674.

[11] De Leon, p. 410, citing SEC Opinion, November 12, 1986.

[12] Sec. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates

It is thus clear that the Republic is entitled to the dividends accruing from the subject 111,415 shares since 1986 when they were sequestered up to the time they were transferred to Metro Pacific via the Sale and Purchase Agreement of February 28, 2007;[13] and that the Republic has since the latter date been serving as trustee of those dividends for the Metro Pacific up to the present, subject to the terms and conditions of the said agreement they entered into.

WHEREFORE, the petition is *DENIED*. The challenged Resolutions dated November 7, 2007 and June 13, 2008 of the Sandiganbayan in Civil Case No. 0002 are, in light of the foregoing, *AFFIRMED*.

SO ORDERED.

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

Carpio and *Tinga, JJ.,* no part due to inhibition in main case.

Peralta, J., no part.

Quisumbing, J., on official leave.

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signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. **Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.**

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (Emphasis supplied)

[13] See Comment/Opposition to the Petition, Annex "H" of the Petition, *rollo*, pp. 370-399.

THIRD DIVISION

[G.R. No. 185132. April 24, 2009]

GOVERNOR ENRIQUE T. GARCIA, JR., AURELIO C. ANGELES, JR., EMERLINDA S. TALENTO, and RODOLFO H. DE MESA, *petitioners, vs.* **COURT OF APPEALS 12th DIVISION, HON. MERCEDITAS NAVARRO-GUTIERREZ, in her capacity as Ombudsman, HON. ORLANDO S. CASIMIRO, in his capacity as Overall Deputy Ombudsman, HON. RONALDO D. PUNO, in his capacity as Secretary of the Department of the Interior and Local Government, JOSECHITO B. GONZAGA, RUEL A. MASINO, and ALFREDO B. SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; BASIC PURPOSE.— An injunctive relief is not intended to determine a controverted right, but is calculated to prevent a further perpetration of wrong or the doing of any act whereby the right in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party. x x x Verily, the basic purpose of the restraining order is to preserve the *status quo* until the hearing of the application for preliminary injunction. It is a preservative remedy for the protection of substantive rights and interests.

2. ID.; ID.; ID.; ID.; ISSUANCE OF INJUNCTIVE RELIEF, PROPER IN CASE AT BAR.— The central question we need to address in this case is the correctness of the appellate court's holding in abeyance or deferment of action on petitioners' urgent prayer for the issuance of an injunctive relief. It is well to remember that the petition filed with the CA, in which the ancillary remedy is sought, questions the very validity of the issuance of the Order for preventive suspension. The grounds raised by petitioners are of a serious nature, *viz*: the administrative charges involved acts committed in their previous term of office, the complaint-affidavit was not supported by

evidence and was only based on the trial court's ruling which is still being reviewed by this Court, the trial court had no jurisdiction to issue the said ruling, and the issuance of the order was politically motivated. Let it be emphasized at this point that if it were established in the CA that the acts subject of the administrative complaint were indeed committed during petitioner Garcia's prior term, then, following settled jurisprudence, he can no longer be administratively charged. Further, if this Court, in G.R. No. 181311, reverses the trial court's ruling or nullifies it for want of jurisdiction then the complaint-affidavit of the private respondents will no longer have a leg to stand on. It was imperative, therefore, on the part of the appellate court, as soon as it was apprised of the said considerable grounds, to issue an injunctive relief so as not to render moot, nugatory and ineffectual the resolution of the issues in the *certiorari* petition.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFERRING ACTION ON PETITION FOR INJUNCTIVE RELIEF FOR AN ALLEGED ILLEGAL PREVENTIVE SUSPENSION OF AN ELECTIVE OFFICIAL, CORRECTIBLE BY A *CERTIORARI* WRIT; CASE AT BAR.— Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. xxx In this case, for the CA to defer action on petitioners' application for an injunctive relief pending the filing of respondents' comment is to foreclose altogether the very remedy sought by petitioners when they questioned the alleged illegal preventive suspension. This is so, because the Ombudsman's Order is immediately effective and executory, and the filing of the comment by all of the respondents will entail considerable time. While we do not entirely blame the CA for being too cautious in not granting any injunctive relief without first considering the counter-arguments of the opposing parties, it would have been more prudent for it to have, at the very least, on account of the extreme urgency of the matter and the seriousness of the issues raised in the *certiorari* petition,

issued a TRO while it awaits the respective comments of the respondents and while it judiciously contemplates on whether or not to issue a writ of preliminary injunction. x x x We must emphasize that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office. Thus, as the appellate court failed dutifully and prudently to exercise its discretion, in violation of fundamental principles of law and the Rules of Court, its action is correctible by a *certiorari* writ from this Court.

4. ID.; ID.; ID.; MOTION FOR RECONSIDERATION; INDISPENSABLE CONDITION BEFORE FILING A PETITION FOR *CERTIORARI;* EXCEPTIONS.— While the general rule is that a motion for reconsideration is an indispensable condition before the filing of a petition for *certiorari*, the same admits of exceptions, namely: (1) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question and any further delay will prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where, under the circumstances, a motion for reconsideration will be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) 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; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or public interest is involved.

5. ID.; ID.; ID.; ID.; ID.; DIRECT FILING OF A *CERTIORARI* PETITION WITH THE SUPREME COURT WITHOUT FIRST FILING A MOTION FOR RECONSIDERATION WITH THE COURT OF APPEALS, JUSTIFIED; CASE AT BAR.— We therefore accept as correct petitioners' direct elevation to this Court via the petition for *certiorari* the CA's

November 14, 2008 Resolution even if no motion for reconsideration was filed to afford the appellate court an opportunity to rectify its error. Under the circumstances obtaining in this case, the *certiorari* petition, and not a motion for reconsideration with the appellate court, is the plain, speedy and adequate remedy. Indeed, had they not filed the petition, they would have been left with no avenue to protect their rights. x x x We hasten to add at this juncture that the petitioners in bringing the matter before this Court as soon as the CA issued the assailed resolution have not violated the proscription on forum shopping. While the parties are the same in this petition and in that in the appellate court, the issues raised and the reliefs prayed for in the two fora are substantially different. To repeat, here, the petitioners question in the main the CA's deferment of action on the application for an injunctive relief. In their petition before the CA, however, they assail the very issuance of the order for their preventive suspension. Further, as well discussed above, this petition is their only remedy. Petitioners' prayer for relief in this petition is, just like in *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, a necessary consequence of the CA's inaction on their pleas.

AUSTRIA-MARTINEZ*, J., dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; DIRECT FILING OF PETITION FOR *CERTIORARI* WITH THE SUPREME COURT WITHOUT FIRST FILING A MOTION FOR RECONSIDERATION OF THE ASSAILED RESOLUTION OF THE COURT OF APPEALS CONSTITUTES FORUM SHOPPING; CASE AT BAR.— [Where] the Petition for *Certiorari,* Prohibition and *Mandamus* with Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) [assails] the Resolution dated November 14, 2008 of the Court of Appeals requiring respondents to comment and holding in abeyance action on the injunctive relief prayed for pending receipt of the pleadings ordered filed or until the period to file the same shall have elapsed x x x, [the Court held that] the reasons proffered for not filing a motion for reconsideration for the Resolution dated November 14, 2008 of the Court of Appeals, *i.e.*, the obviously extreme urgency since the preventive suspension order is

immediately executory, and there are special circumstances like public unrest and great risk of violence erupting, are not meritorious. Filing an MR with the CA is the more adequate remedy in the ordinary course of law; **and, in effect, herein petition constitutes forum shopping.**

2. ID.; PROVISIONAL REMEDIES; INJUNCTION; PRELIMINARY INJUNCTION GENERALLY NOT ISSUED WITHOUT HEARING EXCEPTION; CASE AT BAR.— The CA's deferment of action on the prayer for TRO and/or preliminary injunction is not grave abuse of discretion because the Rules of Court provide as a general rule that preliminary injunction shall not issue without hearing. The issuance of a TRO is an exception to the general rule and may issue only if it appears that great or irreparable injury would be suffered by the applicant before the matter can be heard on notice (Sections 4 and 5, Rule 58). Apparently, the CA did not see any great or irreparable injury that petitioners would suffer, considering that preventive suspension is not a penalty.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; CA'S DEFERMENT OF ACTION ON THE PRAYER FOR TRO/AND OR PRELIMINARY INJUNCTION IS NOT GRAVE ABUSE OF DISCRETION; CASE AT BAR.— The CA cannot be faulted for deferring action on the prayer for issuance of a TRO. There are many factual issues involved in this case which are vital to the determination of whether there are sufficient grounds for the issuance of a TRO; and whether *Garcia v. Mojica* (G.R. No. 139043, September 10, 1999, 314 SCRA 207), relied upon by public respondents, is applicable. Thus, in the spirit of fair play, the CA did not commit grave abuse of discretion when it resolved to defer acting on the prayer for the issuance of a TRO.

PERALTA, *J.*, *dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; FORUM SHOPPING; MULTIPLE ACTIONS FILED BASED ON SAME ESSENTIAL FACTS WITH IDENTICAL ISSUES OR CAUSES OF ACTION; CASE AT BAR.— While indeed a superficial consideration of this case would reveal that petitioners are seeking to avail different remedies before

this Court and the Court of Appeals (CA), a deeper treatment of both petitions discloses that the instant petition is substantially a reiteration of the principal relief sought before the CA. In the petition filed before the CA, petitioners, principally challenging the validity of the preventive suspension order issued by the Ombudsman, had applied for the issuance of a TRO which sought to avert the implementation of the Ombudsman's Order directing petitioners' preventive suspension from office; and, in the petition before us, petitioners, while also applying for the issuance of an injunctive relief against the same Order of the Ombudsman and additionally imputing grave abuse of discretion to the CA in deferring action on the TRO application, nevertheless resonate the same challenge against the validity of the same preventive suspension order of the Ombudsman. It is then not difficult to see that by successively seeking reliefs against the same Order issued by the Ombudsman first before the CA and, later on, before the Court, petitioners had blatantly exhibited a conscious act of forum shopping. Indeed, this pernicious practice exists where a party institutes multiple actions based on the same essential facts and circumstances which raise identical issues or causes of action and subject matters. It is deemed to be an unethical practice which is why invariably, it warrants as a penalty the summary dismissal of the actions.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MOTION FOR RECONSIDERATION; ACTION PREMATURE FOR NON-FILING OF MOTION FOR RECONSIDERATION; CASE AT BAR.— No other principle of procedure is more settled than that a Rule 65 petition must be availed of after a motion for reconsideration has been filed in order to enable the tribunal, board, or office concerned to pass upon and correct its mistake independent of the higher court's intervention. In this regard, it bears stressing that if truly petitioners are convinced, as they perhaps are, that the deferment of the action on their TRO application is erroneous, then, under the circumstances, a motion for reconsideration would prove to be the most adequate remedy if only to allow the CA an opportunity to correct the supposed error it has committed. It is thus inescapable to conclude that the petition sought by petitioners to be acted upon by this Court is premature as no prior motion for reconsideration has been filed with the CA and there appears

to be no sufficient allegation to bring the case within the recognized exceptions.

3. ID.; PROVISIONAL REMEDIES; INJUNCTION; TEMPORARY RESTRAINING ORDER; CALCULATED TO PREVENT FURTHER COMMISSION OF A WRONG; MOOTNESS NOT A GROUND THEREFOR.— Moreover, Section 5, Rule 58 of the Rules of Court suggests that a TRO does not issue unless it appears from the narration in the affidavit or the verified application that the applicant would be greatly and irreparably prejudiced before the matter could be heard on notice. The Resolution of the majority justifying that it was imperative for the CA to issue the TRO, posed the situation that the resolution of the issues in the main action would be rendered moot, academic and ineffectual without the sought-for injunctive relief. But the possibility of that situation from happening is more hypothetical than it is real. Mootness is not a ground for the grant of the ancilliary remedies of temporary restraining order and preliminary injunctive relief. And if we admit that ground, alone or in tandem with other existing grounds, to support a favorable order on the TRO application in this case, then it would tend to add to, and at the same time, limit the CA's discretion inasmuch as the Rules of Court require merely that there be an initial finding of great and irreparable injury accruing to the applicant should the relief not be granted. Be that as it may, considering that an injunctive relief is not meant to determine controverted rights but is merely calculated to prevent the further commission of a wrong, then there seems to be no reason why the deferment of action on the application for injunctive relief will bring about the mootness of the issues in the main action.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT PRESENT IN CASE AT BAR.— To be sure, whether or not there is a threat of great and irreparable injury that would accrue to a party is a question that lies entirely in the discretion of the tribunal before which the application is made. That tribunal, in this case, is the CA. The factual predicate, in other words, upon which an injunctive relief rests is properly determinable by the CA. It becomes useful to note that the CA had not taken an affirmative action on the TRO application as it had merely deferred action on

the same. Stated otherwise, it had not yet arrived at a definite conclusion as to the merits of the application simply because it could not yet rule on the same, which is why instead it required respondents to submit a comment on the main petition. Thus, no grave abuse of discretion could plainly be attributed to the CA.

5. ID.; PROVISIONAL REMEDIES; INJUNCTION; OMBUDSMAN; INJUNCTIVE WRITS WHICH HAVE EFFECT OF DELAYING INVESTIGATION BY THE OMBUDSMAN DO NOT LIE; CASE AT BAR.— We must be reminded, furthermore, that the controversy before us has emanated from a criminal complaint filed against petitioners before the Office of the Ombudsman. The Ombudsman is, by law, mandated to act on all complaints against public officers and employees under the jurisdiction of the Sandiganbayan. As the investigatory and prosecutory arm of the government in this respect, the mechanisms provided by preventive suspension orders become useful as they do guarantee and facilitate an orderly conduct of investigations. It is perhaps on account of this consideration why injunctive writs which have the effect of delaying the investigations conducted by the Ombudsman do not lie, except only where there is a *prima facie* evidence that the subject matter of investigation is beyond the jurisdiction of the said body. No suggestion to that effect, however, can be derived from this case.

APPEARANCES OF COUNSEL

Aurelio C. Angeles, Jr. for petitioners.
Roque & Butuyan Law Offices for private respondents.

R E S O L U T I O N

NACHURA, *J.*:

Petitioners assail in this Rule 65 petition the November 14, 2008 Resolution[1] of the Court of Appeals (CA) holding in abeyance

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo and Romeo F. Barza, concurring; *rollo*, pp. 44-45.

the resolution of their prayer for the issuance of a restraining order on the implementation of the Office of the Ombudsman's October 28, 2008 Order[2] for their preventive suspension.

Stripped of non-essentials, the controlling facts follow.

Sometime in 2004, the provincial government of Bataan caused the tax delinquency sale of the properties of Sunrise Paper Products Industries, Inc. (Sunrise). Without any other bidder at the public auction, the province acquired the immovables consisting of a paper plant with its machineries and equipment and the parcels of land where it is erected.[3] To annul the auction sale and to prevent the province from consolidating in its name the titles over the properties, Sunrise, on April 21, 2005, filed a petition for injunction docketed as Civil Case No. 8164 in the Regional Trial Court (RTC) of Bataan. Consequently, the other creditors of Sunrise intervened in the proceedings.[4]

During the pendency of the case, the province represented by the governor entered into a compromise agreement with Sunrise on June 14, 2005. On the same date, the *Sangguniang Panlalawigan*, through a unanimous resolution, approved the same.[5] Subsequently, the parties moved for the dismissal of the civil case, not on account of the settlement, but on the ground that the court did not acquire jurisdiction for failure of any of the parties to comply with Section 267[6] of Republic Act

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[2] *Id.* at 440-454.

[3] *Id.* at 20.

[4] *Id.* at 313.

[5] *Id.* at 321-322.

[6] Section 267 of the LGC reads in full:

"Section 267. *Action Assailing Validity of Tax Sale*.—No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

(R.A.) No. 7160, or the Local Government Code (LGC) of 1991.[7] Upon the same ground, the parties no longer sought judicial approval of the compromise agreement.[8]

However, the trial court refused to dismiss the case and, on June 15, 2007, rendered its Decision declaring, among others, that the auction sale was invalid, that the transfer certificates of titles in the name of the province were falsified, and that the compromise agreement executed by the parties was illegal.[9] In G.R. No. 181311, currently pending with this Court, the province questioned, among others, the said decision of the trial court. A *status quo* order restraining the implementation of the trial court's decision was issued by this Court in that case.[10]

Meanwhile, private respondents Josechito B. Gonzaga, Ruel A. Magsino and Alfredo B. Santos, utilizing the June 15, 2007 Decision of the trial court as basis, filed with the Office of the Ombudsman the January 22, 2008 Complaint-Affidavit[11] administratively and criminally charging, among others,[12] the petitioners with violation of Sections 3(e) and (g)[13] of R.A.

"Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired."

[7] Approved on October 10, 1991 and became effective on January 1, 1992.

[8] *Rollo*, p. 21.

[9] *Id.* at 443.

[10] *Id.* at 21.

[11] *Id.* at 300-346.

[12] Impleaded as respondents in the complaint-affidavit are Governor Enrique T. Garcia, Jr., Provincial Legal Officer Aurelio C. Angeles, Jr., Provincial Administrator Rodolfo H. De Mesa, Provincial Treasurer Emerlinda S. Talento, Vice Governor Benjamin M. Alonzo, *Sangguniang Panlalawigan* Members Rodolfo SD. Izon, Manuel N. Beltran, Edward C. Roman, Edgardo P. Calimbas, Rodolfo S. Salandanan, Dante R. Manalaysay, Orlando S. Miranda, Fernando C. Austria and Eduardo G. Florendo; Philippine National Police Regional Director Ismael R. Rafanan, Chief of Police Asterio B. Cumigad, Evelyn L. Miranda, Col. Fernando Vinculado (Ret.), Jose M. Carandang, and Eduardo T. Garcia.

[13] Section 3(e) and (g) of R.A. No. 3019 pertinently reads:

No. 3019 or the Anti-Graft and Corrupt Practices Act,[14] falsification of public documents, serious illegal detention, malversation of public properties and funds, and plunder.[15]

On October 28, 2008, the Ombudsman, in the administrative case docketed as OMB-L-A-08-0039-A, issued the Order[16] preventively suspending petitioners for six months. The decretal portion of the Order reads:

UNDER THE FOREGOING PREMISES, the prayer seeking for the preventive suspension of respondent public officials is **PARTIALLY GRANTED**. Pursuant to Section 24, Republic Act No. 6770, and Section 9, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, Series of 2003, **GOVERNOR ENRIQUE T. GARCIA JR.**, **ATTY. AURELIO C. ANGELES JR.**, **EMERLINDA S. TALENTO**, and **RODOLFO H. DE MESA** are hereby placed under **PREVENTIVE SUSPENSION** until the administrative adjudication on this case is terminated, but not to exceed six (6) months, **WITHOUT PAY**, except when the delay in the disposition of the case is due to the fault, negligence or petition

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

"x x x x x x x x x

"(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees 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

"(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."

"x x x x x x x x x"

[14] Approved on August 17, 1960.

[15] *Rollo*, pp. 340-343.

[16] *Supra* note 2.

of the respondents, in which case the period of such delay shall not be counted in computing the period of suspension.

Accordingly, The Secretary, Department of the Interior and Local Government, or his duly authorized representative is directed to implement this Order against **GOVERNOR ENRIQUE T. GARCIA JR.**, **ATTY. AURELIO C. ANGELES JR.**, **EMERLINDA S. TALENTO**, and **RODOLFO H. DE MESA**, and to thereafter notify this Office within five (5) days from receipt hereof of their compliance herewith.

All herein respondents are directed to file within the period of ten (10) days from receipt hereof, their counter-affidavits and the affidavit of their witness/es, if any, duly subscribed and sworn to before a notary public or any authorized officer, and such other controverting evidence, copy furnished the complainant.

This Order is **immediately executory** pursuant to Ombudsman Memorandum Circular No. 01, Series of 2006, in relation to paragraph 1, Section 27 of R.A. 6770, and Section 7, Rule III, Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, *as amended*, and in accordance with the ruling in ***Ombudsman v. Court of Appeals*.**

Let it be known that refusal by any officer without just cause to comply with this Order shall be a ground for disciplinary action against said officer as provided in paragraph 3, Section 15 of R.A. 6770.

SO ORDERED.[17]

Questioning the preventive suspension and wary of the threatening and coercive nature of the Ombudsman's Order, petitioners, on November 10, 2008, filed with the CA the petition, docketed as CA-G.R. SP No. 106026, for *certiorari*, prohibition and *mandamus* with an urgent prayer for the issuance of an injunctive relief.[18]

On November 14, 2008, the appellate court issued the assailed Resolution,[19] which pertinently reads:

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[17] *Rollo*, pp. 453-454.

[18] *Id.* at 24.

[19] *Supra* note 1.

Without necessarily giving due course to the petition for *certiorari*, private respondents are hereby **DIRECTED** to file their **COMMENT** thereon, and not a motion to dismiss, within ten (10) days from notice hereof. Petitioners are given five (5) days from receipt of said comment within which to file reply.

Action on the injunctive relief prayed for is **held in abeyance** pending receipt of the pleadings ordered filed or until the period to file the same shall have lapsed.

SO ORDERED.[20]

Alarmed over the impending implementation of the Ombudsman's order and distraught with the apparent inaction of the appellate court, petitioners instituted the instant petition for *certiorari*, prohibition and *mandamus* with urgent prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction. On November 19, 2008, the Court issued a TRO[21] enjoining and prohibiting public respondents and any person representing them or acting under their authority from implementing the October 28, 2008 Order of the Ombudsman until further orders from the Court.

The central question we need to address in this case is the correctness of the appellate court's holding in abeyance or deferment of action on petitioners' urgent prayer for the issuance of an injunctive relief.

It is well to remember that the petition filed with the CA, in which the ancillary remedy is sought, questions the very validity of the issuance of the Order for preventive suspension. The grounds raised by petitioners are of a serious nature, *viz*: the administrative charges involved acts committed in their previous term of office, the complaint-affidavit was not supported by evidence and was only based on the trial court's ruling which is still being reviewed by this Court, the trial court had no jurisdiction to issue the said ruling, and the issuance of the order was politically motivated. Let it be emphasized at this point that if it were established in the CA that the acts subject

[20] *Id*.

[21] *Id.* at 219-221.

of the administrative complaint were indeed committed during petitioner Garcia's prior term, then, following settled jurisprudence, he can no longer be administratively charged. Further, if this Court, in G.R. No. 181311, reverses the trial court's ruling or nullifies it for want of jurisdiction then the complaint-affidavit of the private respondents will no longer have a leg to stand on. It was imperative, therefore, on the part of the appellate court, as soon as it was apprised of the said considerable grounds, to issue an injunctive relief so as not to render moot, nugatory and ineffectual the resolution of the issues in the *certiorari* petition. An injunctive relief is not intended to determine a controverted right, but is calculated to prevent a further perpetration of wrong or the doing of any act whereby the right in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party.[22]

In this case, for the CA to defer action on petitioners' application for an injunctive relief pending the filing of respondents' comment is to foreclose altogether the very remedy sought by petitioners when they questioned the alleged illegal preventive suspension. This is so, because the Ombudsman's Order is immediately effective and executory,[23] and the filing of the comment by all of the respondents will entail considerable time.

While we do not entirely blame the CA for being too cautious in not granting any injunctive relief without first considering the counter-arguments of the opposing parties, it would have been more prudent for it to have, at the very least, on account of the extreme urgency of the matter and the seriousness of the issues raised in the *certiorari* petition, issued a TRO while it awaits the respective comments of the respondents and while it judiciously contemplates on whether or not to issue a writ of

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[22] Laureta, *Commentaries and Jurisprudence on Injunction*, 1989 ed., p. 3, citing *Kinlock Tel. Co. v. Local Union No. 21 B.E.W*, 275 Fed. 241 and *Triumph Electric Co. v. Thullen*, 209 Fed. 938.

[23] See *Gobenciong v. Court of Appeals*, G.R. No. 159883, 168059, 173212, March 31, 2008, 550 SCRA 502, 522.

preliminary injunction.[24] Verily, the basic purpose of the restraining order is to preserve the *status quo* until the hearing of the application for preliminary injunction.[25] It is a preservative remedy for the protection of substantive rights and interests.[26]

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[24] Rule 58, Section 5 of the Rules of Court provides:

"Sec. 5. *Preliminary injunction not granted without notice; exception.*—No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

"However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided herein.

"In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

"However, if issued by the Court of Appeals, or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders."

[25] *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 448 (2000).

[26] *Yusen Air and Sea Service Philippines, Inc. v. Villamor*, G.R. No. 154060, August 16, 2005, 467 SCRA 167, 171.

At this point we must emphasize that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.[27]

Thus, as the appellate court failed dutifully and prudently to exercise its discretion, in violation of fundamental principles of law and the Rules of Court, its action is correctible by a *certiorari* writ from this Court. Grave abuse of discretion is defined as such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[28]

We therefore accept as correct petitioners' direct elevation to this Court via the petition for *certiorari* the CA's November 14, 2008 Resolution even if no motion for reconsideration was filed to afford the appellate court an opportunity to rectify its error. Under the circumstances obtaining in this case, the *certiorari* petition, and not a motion for reconsideration with the appellate court, is the plain, speedy and adequate remedy. Indeed, had they not filed the petition, they would have been left with no avenue to protect their rights.[29]

While the general rule is that a motion for reconsideration is an indispensable condition before the filing of a petition for *certiorari*, the same admits of exceptions, namely: (1) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower

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[27] *Joson III v. Court of Appeals*, G.R. No. 160652, February 13, 2006, 482 SCRA 360, 374.

[28] *Defensor-Santiago v. Guingona*, 359 Phil. 276, 304 (1998).

[29] *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, March 30, 2006, 485 SCRA 632, 647.

court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question and any further delay will prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where, under the circumstances, a motion for reconsideration will be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) 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; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or public interest is involved.[30]

Without further belaboring the point, we find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioners are justified in straightforwardly seeking the intervention of this Court. Again, as we repeatedly held in prior cases, the provisions of the Rules should be applied with reason and liberality to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.[31]

We hasten to add at this juncture that the petitioners in bringing the matter before this Court as soon as the CA issued the assailed resolution have not violated the proscription on forum shopping. While the parties are the same in this petition and in that in the appellate court, the issues raised and the reliefs prayed for in the two fora are substantially different. To repeat, here, the petitioners question in the main the CA's deferment of action

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[30] *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*, G.R. No. 171820, December 13, 2007, 540 SCRA 194, 210; *Star Paper Corporation v. Espiritu*, G.R. No. 154006, November 2, 2006, 506 SCRA 556, 564-565; *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 373; *Romy's Freight Service v. Castro*, G.R. No. 141637, June 8, 2006, 490 SCRA 160, 164.

[31] *Office of the Ombudsman v. Laja*, G.R. No. 169241, May 2, 2006, 488 SCRA 574, 581.

on the application for an injunctive relief. In their petition before the CA, however, they assail the very issuance of the order for their preventive suspension. Further, as well discussed above, this petition is their only remedy. Petitioners' prayer for relief in this petition is, just like in *PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*,[32] a necessary consequence of the CA's inaction on their pleas.

We are cognizant that, apart from the propriety of the CA's deferment of action on the application for injunctive relief, there remains the question of the validity of the Ombudsman's order of preventive suspension which is yet to be resolved by the appellate court. The latter clearly involves factual issues. Since we are not a trier of facts, following our disposition in *Benguet Management Corporation v. Court of Appeals*,[33] we should remand this case to the CA for a speedy resolution on the merits.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED*. The November 14, 2008 Resolution of the Court of Appeals insofar as it deferred action on the petitioners' application for injunctive relief should be *REVERSED* and *SET ASIDE*. The *TEMPORARY RESTRAINING ORDER* issued by the Court on November 19, 2008 enjoining and prohibiting public respondents and any person representing them or acting under their authority from implementing the October 28, 2008 Order of the Ombudsman *STANDS* until further orders from the Court. The instant case is *REMANDED* to the Court of Appeals for determination on the merits.

SO ORDERED.

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

Austria-Martinez and *Peralta, JJ.*, see dissenting opinions.

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[32] *Supra* note 29.

[33] 458 Phil. 204 (2003).

DISSENTING OPINION

AUSTRIA-MARTINEZ, *J.*:

This refers to the Petition for *Certiorari,* Prohibition and *Mandamus* with Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) assailing the Resolution dated November 14, 2008 of the Court of Appeals requiring respondents to comment and holding in abeyance action on the injunctive relief prayed for pending receipt of the pleadings ordered filed or until the period to file the same shall have elapsed.

In the Resolution dated November 19, 2008, the Court required respondents to file their comment and issued a TRO enjoining and prohibiting public respondents from implementing the questioned Order dated October 28, 2008 of the Office of the Ombudsman (OMB).

The OMB filed its Comment with Urgent Motion to Recall Temporary Restraining Order and Opposition to Petitioners' Application for the Issuance of Preliminary Injunction.

Private respondents likewise filed an Urgent Motion to Lift the Temporary Restraining Order and Comment *Ex-Abundante Cautelam* which are treated as their comment on the petition. Petitioner filed a Consolidated Opposition to respondents' Motions and Reply to the Comment.

The undersigned dissents from the majority opinion and votes to dismiss the Petition and grant respondents' Motions, on the following grounds:

1. Petitioners' failure to file a motion for reconsideration (MR) with the Court of Appeals (CA). The reasons proffered for not filing said MR, *i.e.*, the obviously extreme urgency since the preventive suspension order is immediately executory, and there are special circumstances like public unrest and great risk of violence erupting, are not meritorious. Filing an MR with the CA is the more adequate remedy in the ordinary course of law; **and, in effect, herein petition constitutes forum shopping.**

2. The CA's deferment of action on the prayer for TRO and/or preliminary injunction is not grave abuse of discretion because the Rules of Court provide as a general rule that preliminary injunction shall not issue without hearing. The issuance of a TRO is an exception to the general rule and may issue only if it appears that great or irreparable injury would be suffered by the applicant before the matter can be heard on notice (Sections 4 and 5, Rule 58). Apparently, the CA did not see any great or irreparable injury that petitioners would suffer, considering that preventive suspension is not a penalty;

3. Moreover, without preempting the **CA resolution on the issuance of a TRO or WPI as well as its** decision on petitioners' allegation of "patent illegality" of the Ombudsman's Order for preventive suspension, the arguments of petitioners are not convincing enough.

Petitioners cite *Gov. Manuel M. Lapid v. Court of Appeals* (G.R. No. 142261, June 29, 2000, 334 SCRA 738), where the Court ordered the immediate reinstatement of Gov. Lapid when the order for his one-year suspension was immediately executed, and ordered the CA to resolve Lapid's case on the merits with dispatch. Petitioners aver that the facts of said case are analogous to the present one, hence, as in *Lapid*, the Court should also give due course to the present petition.

However, the issue involved in *Lapid* is totally different from this case. In *Lapid*, what was being enjoined was the execution of the administrative **penalty** of one-year suspension. The reason for the Court's order therein to stop the execution of the Ombudsman's Order of suspension was that there is no law stating that the penalty imposed by the Ombudsman was among those listed as final and unappealable. **In this case, the suspension is merely preventive and not meant as a penalty, and Section 27 of the Ombudsman Act provides that such provisionary order is immediately effective and executory.**

4. It also appears that facts indicating petitioners' intent to commit fraud, for which they are being charged, only became established when the RTC issued in June 2007 (**after petitioner**

Garcia had been re-elected during the May 2007 elections) the decision in the civil case from which the administrative charges arose; and

5. The CA cannot be faulted for deferring action on the prayer for issuance of a TRO. There are many factual issues involved in this case which are vital to the determination of whether there are sufficient grounds for the issuance of a TRO; and whether *Garcia v. Mojica* (G.R. No. 139043, September 10, 1999, 314 SCRA 207), relied upon by public respondents, is applicable. Thus, in the spirit of fair play, the CA did not commit grave abuse of discretion when it resolved to defer acting on the prayer for the issuance of a TRO.

DISSENTING OPINION

PERALTA, *J.*:

I beg to differ from the Resolution of the majority.

The issue presented before us is not a novelty that would otherwise require a groundbreaking yet unfamiliar approach. Whether the Court of Appeals' deferment of action on petitioners' prayer for a temporary restraining order (TRO) demonstrates an error so grave as to constitute a capricious and arbitrary abuse of discretion, may be addressed by applying the most plain and simple principles of procedure.

I begin with my observation that the instant petition is infirm as it exemplifies a deliberate act of forum shopping. While indeed a superficial consideration of this case would reveal that petitioners are seeking to avail different remedies before this Court and the Court of Appeals (CA), a deeper treatment of both petitions discloses that the instant petition is substantially a reiteration of the principal relief sought before the CA. In the petition filed before the CA, petitioners, principally challenging the validity of the preventive suspension order issued by the Ombudsman, had applied for the issuance of a TRO which sought to avert the implementation of the Ombudsman's Order directing petitioners' preventive suspension from office; and, in the petition

before us, petitioners, while also applying for the issuance of an injunctive relief against the same Order of the Ombudsman and additionally imputing grave abuse of discretion to the CA in deferring action on the TRO application, nevertheless resonate the same challenge against the validity of the same preventive suspension order of the Ombudsman.

It is then not difficult to see that by successively seeking reliefs against the same Order issued by the Ombudsman first before the CA and, later on, before the Court, petitioners had blatantly exhibited a conscious act of forum shopping. Indeed, this pernicious practice exists where a party institutes multiple actions based on the same essential facts and circumstances which raise identical issues or causes of action and subject matters.[1] It is deemed to be an unethical practice which is why invariably, it warrants as a penalty the summary dismissal of the actions.[2]

But indeed, aside from the fact that they had endeavored to seek a favorable ruling simultaneously from the CA and the Court, petitioners had committed yet another procedural slip by splitting a single proceeding between the CA and this Court. The effect of this practice cannot be taken lightly because it brings about, as it did, a duplicitous procedure and multiplicity of suits and, ultimately, results in unnecessary delay in the disposition of the merits of the case.

No other principle of procedure is more settled than that a Rule 65 petition must be availed of after a motion for reconsideration has been filed in order to enable the tribunal, board, or office concerned to pass upon and correct its mistake independent of the higher court's intervention.[3] In this regard,

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[1] *Zenaida Polanco, et al. v. Carmen Cruz, represented by her Attorney-in-Fact, Virgilio Cruz,* G.R. No. 182426, February 13, 2009.

[2] *New Sampaguita Builders Constructions, Inc. v. The Estate of Canoso,* G.R. No. 151447, February 14, 2003, 397 SCRA 456.

[3] See *Philippine National Construction Corporation (PNCC) v. National Labor Relations Commission,* G.R. No. 112629, July 7, 1995, 245 SCRA 668, 674-675.

it bears stressing that if truly petitioners are convinced, as they perhaps are, that the deferment of the action on their TRO application is erroneous, then, under the circumstances, a motion for reconsideration would prove to be the most adequate remedy if only to allow the CA an opportunity to correct the supposed error it has committed. It is thus inescapable to conclude that the petition sought by petitioners to be acted upon by this Court is premature as no prior motion for reconsideration has been filed with the CA and there appears to be no sufficient allegation to bring the case within the recognized exceptions.

The posture of the Resolution in maintaining the present petition with this Court and at the same time, remanding the case to the CA, in effect, runs counter to or may not be in accord with the hierarchy of courts. It thus somehow validates the procedural misstep undertaken by petitioners. Petitioners should have accorded respect to the processes of the CA and awaited a definitive resolution of the matter before availing of another *certiorari* petition under Rule 65, this time, with this Court.

Moreover, Section 5, Rule 58 of the Rules of Court suggests that a TRO does not issue unless it appears from the narration in the affidavit or the verified application that the applicant would be greatly and irreparably prejudiced before the matter could be heard on notice. The Resolution of the majority justifying that it was imperative for the CA to issue the TRO, posed the situation that the resolution of the issues in the main action would be rendered moot, academic and ineffectual without the sought-for injunctive relief. But the possibility of that situation from happening is more hypothetical than it is real. Mootness is not a ground for the grant of the ancilliary remedies of temporary restraining order and preliminary injunctive relief. And if we admit that ground, alone or in tandem with other existing grounds, to support a favorable order on the TRO application in this case, then it would tend to add to, and at the same time, limit the CA's discretion inasmuch as the Rules of Court require merely that there be an initial finding of great and irreparable injury accruing to the applicant should the relief not be granted. Be that as it may, considering that an injunctive relief is not meant to determine controverted rights but is merely calculated

to prevent the further commission of a wrong, then there seems to be no reason why the deferment of action on the application for injunctive relief will bring about the mootness of the issues in the main action.

To be sure, whether or not there is a threat of great and irreparable injury that would accrue to a party is a question that lies entirely in the discretion of the tribunal before which the application is made. That tribunal, in this case, is the CA. The factual predicate, in other words, upon which an injunctive relief rests is properly determinable by the CA. It becomes useful to note that the CA had not taken an affirmative action on the TRO application as it had merely deferred action on the same. Stated otherwise, it had not yet arrived at a definite conclusion as to the merits of the application simply because it could not yet rule on the same, which is why instead it required respondents to submit a comment on the main petition. Thus, no grave abuse of discretion could plainly be attributed to the CA.

What is more to the point is that the deferment of the action is not indefinite as it is conditioned on the filing of the said comment or upon the expiration of the period to file the same. Without unnecessarily questioning the wisdom behind the assailed resolution, it can only be surmised that the CA had simply exercised its prerogative to have a well-informed action on petitioners' application which could not be afforded by the recitals alone in the application itself. Thus, in assailing before this Court the resolution of the CA and in insisting that under the premises the injunctive relief sought must have been issued in the first place, petitioners, in effect, had taken on the duty of determining the merits of their own application—a duty which appropriately belongs to the CA.

We must be reminded, furthermore, that the controversy before us has emanated from a criminal complaint filed against petitioners before the Office of the Ombudsman. The Ombudsman is, by law, mandated to act on all complaints against public officers and employees under the jurisdiction of the Sandiganbayan.[4]

[4] Republic Act No. 6670 (otherwise known as "The Ombudsman Act"), Sec.13.

As the investigatory and prosecutory arm of the government in this respect,[5] the mechanisms provided by preventive suspension orders become useful as they do guarantee and facilitate an orderly conduct of investigations. It is perhaps on account of this consideration why injunctive writs which have the effect of delaying the investigations conducted by the Ombudsman do not lie, except only where there is a *prima facie* evidence that the subject matter of investigation is beyond the jurisdiction of the said body.[6] No suggestion to that effect, however, can be derived from this case.

One important point. I respectfully differ from the majority opinion that the petition must be remanded to the CA for determination on the merits. Since the petitions both before us and the CA, as I have already expounded, principally present the same objection relative to the legality of the order issued by the Ombudsman, there seems to be no useful purpose that will be served if the present petition is remanded to the CA for disposition on the merits, instead of dismissing the same. On the contrary, the measure would even complicate an otherwise uncomplicated and simple matter submitted to us for resolution.

I shall explain why.

If I must reiterate, albeit not needlessly, we are faced with two substantially identical petitions. Both of them were brought under Rule 65 of the Rules of Court and, as such, both of them are in the nature of original actions currently pending before two different tribunals and none of them has yet been finally disposed of for obvious reasons. Thus, under these circumstances, remanding the present petition for further proceedings would open a concrete situation where the two petitions are pending before the CA. This is unprecedented; dangerous even. The question may be asked: What then would happen to the petition pending before the Court of Appeals?

I do acknowledge the need to make the necessary factual findings in this case so as to put an end to the controversy. However, inasmuch as the Court is not a trier of facts, and although it is both

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[5] *Id.*, Sec. 15.

[6] *Id.*, Sec. 14.

inviting and compelling to follow the ordinary course of remanding cases to the CA for factual evaluation, still, a remand will not prove to be the wisest course to take because the end sought to be achieved thereby—that is, the determination of the merits of the case—may likewise be achieved by dismissing the present petition and allowing the CA to proceed with the disposition of the petition filed with it.

Lastly, with due respect, I cannot agree with the disposition of my esteemed colleagues that the case be remanded to the CA and yet still maintain the TRO previously issued by this Court when the purpose of the remand, as stated by the majority, is to hear the case on the merits and determine whether or not an injunctive writ lies to restrain the implementation of the preventive suspension order imposed by the Ombudsman.

I close with the thought that it is our rule that we strive to settle controversies in their entirety in a single proceeding and leave no root or branch to bear the seeds of future litigation.[7] No good will be served if the case or the determination of the issues in the case is remanded to the CA only to have its decision brought from there and, again later on, to this Court.

For these fundamental and consequential reasons, I vote to **DISMISS** the petition.

THIRD DIVISION

[G.R. No. 185162. April 24, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY GIDOC @ BAYENG,** *accused-appellant.*

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[7] *Golangco v. Court of Appeals*, G.R. No. 124724, December 22, 1997, 283 SCRA 493, 501, citing *Heirs of Gabriel-Almoradie v. Court of Appeals*, 229 SCRA 15 (1994).

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A SINGLE WITNESS MAY SUFFICE FOR CONVICTION IF FOUND TRUSTWORTHY AND RELIABLE; CASE AT BAR.— There is nothing vague about the testimony of Paladin. His statements are clear and certain about the fact that accused-appellant was the one who stabbed Arnel and Cesar. Even if Paladin's testimony is not corroborated, we find the same sufficient to warrant conviction. In *People v. Badajos*, this Court held that it is axiomatic that the testimonies of witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if found trustworthy and reliable. There is no law that requires that the testimony of a single witness needs corroboration except where the law expressly mandates such corroboration.

2. ID.; ID.; MEDICO-LEGAL REPORT; INJURIES SUFFERED BY THE VICTIMS AS TESTIFIED TO BY PROSECUTION EYE - WITNESS PALADIN CONSISTENT WITH MEDICO-LEGAL REPORT; CASE AT BAR.— The medical findings further support the case of the prosecution. The fact of the commission of the offenses charged was established through the testimony of Dr. Filemon Porciuncula who interpreted the findings of Medico-Legal Officer Michael Maunahan. Dr. Porciuncula testified that the victims died of hemorrhagic shock secondary to stab wounds on the trunk per the autopsy report made on their cadavers. The injuries suffered by the victims as testified to by Paladin were consistent with the medico-legal report.

3. ID.; ID.; CREDIBILITY OF WITNESSES; DENIALS; SELF-SERVING EVIDENCE THAT CANNOT OBTAIN EVIDENTIARY WEIGHT GREATER THAN THAT OF THE DECLARATIONS OF CREDIBLE WITNESSES WHO TESTIFIED ON AFFIRMATIVE MATTERS; CASE AT BAR.— In denying the accusation against him, accused-appellant pointed to an alleged cousin named Rolly Gidoc as the perpetrator of the crimes. He said his real name is Rolando Gidoc not Rolly Gidoc. Such claim, unsupported by other credible and competent evidence will not prevail over the

positive identification of him by the witness. In *People v. Alvarado*, we held that greater weight is given to the positive identification of the accused by the prosecution witness than the accused's denial and explanation concerning the commission of the crime. This is so, inasmuch as mere denials are self-serving evidence that cannot obtain evidentiary weight greater than that of the declarations of credible witnesses who testified on affirmative matters.

4. ID.; APPEALS; FINDINGS OF FACT OF TRIAL COURT; ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT.— In *People v. Dumadag*, this Court held that well entrenched is the rule that findings of fact of the trial court, its calibration of the testimonial evidence of the parties, as well as its conclusion on its findings, are accorded high respect if not conclusive effect. This is because of the unique advantage of the trial court, which has the opportunity to observe, at close range, the conduct, demeanor and deportment of the witnesses as they testify. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE.— There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offender might make. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the latter's part.

6. ID.; MURDER; PENALTIES; CASE AT BAR.— We now go to the penalties to be imposed on accused-appellant. He is guilty of two counts of murder qualified by treachery. Under Article 248 of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua* for each count, pursuant to Article 63, paragraph 2 of the Revised Penal Code.

7. ID.; ID.; DAMAGES AWARDED WHEN DEATH OCCURS DUE TO A CRIME.— When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex*

delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

8. ID.; ID.; CIVIL INDEMNITY; MANDATORY AND GRANTED TO HEIRS OF VICTIM WITHOUT NEED OF PROOF OTHER THAN COMMISSION OF THE CRIME.— Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under the prevailing jurisprudence, the award of ₱50,000.00 as civil indemnity for each count of murder, to be paid to the heirs of the victims, is proper.

9. ID.; ID.; TEMPERATE DAMAGES; AWARD THEREOF PROPER IN CASE AT BAR; REASON.— The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss, although the exact amount was not proved. Thus, this Court awards ₱25,000.00 as temperate damages for each count of murder.

10. ID.; ID.; MORAL DAMAGES; AWARD THEREOF IS MANDATORY.— Anent moral damages, the same are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award by the Court of Appeals of ₱50,000.00, as moral damages for each count of murder, is proper.

11. ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— The Court of Appeals awarded exemplary damages in the amount of ₱75,000.00 for each count of murder. Such award, following current jurisprudence, must be reduced to ₱30,000.00 since the qualifying circumstance of treachery was firmly established.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals dated 27 May 2008 in CA-G.R. CR-HC No. 02414. The appellate court affirmed with modification the Joint Decision[2] dated 23 May 2006 of the Regional Trial Court (RTC) of Malabon City, Branch 170, finding accused-appellant Rolly Gidoc *alias* Bayeng guilty of two counts of Murder in Criminal Cases No. 24988-MN and No. 24989-MN.

The factual antecedents are as follows:

On 29 June 2001, accused-appellant Rolly Gidoc *alias* Bayeng, Ronnie Ocenar *alias* Erap (Ocenar) and one John Doe were charged in the RTC with two counts of Murder under Article 248 of the Revised Penal Code for the deaths of brothers Cesar Perez *y* Espinosa (Cesar) and Arnel Perez *y* Espinosa (Arnel) in two Informations which read:

Criminal Case No. 24988-MN

That on or about the 8th day of April 2001, in Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, conspiring, confederating and mutually helping with one another, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one CESAR PEREZ *Y* ESPINOSA, hitting the victim on his body, thereby inflicting upon the victim serious wound which caused his immediate death.[3]

Criminal Case No. 24989-MN

That on or about the 8th day of April 2001, in Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable

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[1] Penned by Justice Arcangelita M. Romilla-Lontok with Associate Justice Mariano C. del Castillo and Associate Justice Ricardo R. Rosario, concurring. *Rollo,* pp. 2-10.

[2] Penned by Judge Benjamin T. Antonio. CA *rollo*, pp. 11-15.

[3] Records, p. 1.

Court, the above-named accused, armed with a bladed weapon, conspiring, confederating and mutually helping with one another, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one ARNEL PEREZ *Y* ESPINOSA, hitting the victim on his body, thereby inflicting upon the victim serious wound which caused his immediate death.[4]

When arraigned on 23 October 2003, accused-appellant entered pleas of not guilty to the crimes charged. His co-accused Ocenar remained at large.

Upon joint motion of the prosecution and the defense, the cases were consolidated and trial ensued thereafter.

The prosecution presented witness Bernard Paladin (Paladin) who positively identified accused-appellant as the person who stabbed the brothers Arnel and Cesar. He said that Ocenar acted as a look-out. He testified that at around ten o'clock in the evening of 8 April 2001, his group which included the victims Cesar and Arnel, as well as accused-appellant and Ocenar, were drinking and singing in a videoke joint at the Bicol Area in Tanza, Navotas. He disclosed that accused-appellant and Ocenar got involved in a fight with another group nearby, while he and the victims did not join in the fray. After the fight, accused-appellant and Ocenar left but returned after about five minutes armed with bladed weapons. Accused-appellant, armed with a long knife, approached the group and suddenly stabbed victim Arnel on the right breast. About five seconds thereafter, accused-appellant also stabbed victim Cesar. The victims were sitting side by side and singing when the incident happened. While the stabbing was taking place, Ocenar stood guard with a bladed weapon in hand and was watching if somebody would help. After the incident, accused-appellant and Ocenar ran away while the victims managed to run home. As a result of the stabbing, the victims died while undergoing treatment in the hospital.

Dr. Filemon Porciuncula was called to interpret the findings of Medico-Legal Officer Michael Maunahan who conducted the autopsy on the cadavers identified as victims Arnel Perez[5]

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[4] *Id.* at 7.

[5] Exhibit "C-2".

and Cesar Perez.[6] Based on the Medico Legal Report No. M-212-01,[7] victim Arnel sustained one incised and one stab wound fatal enough to cause his death, it piercing the underlying soft tissue including the right dome of the diaphragm, right lobe of the liver, lower lobe of the right lung and fracturing the 7th thoracic rib. As contained in the Medico Legal Report No. M-211-01,[8] victim Cesar sustained one abrasion and one stab wound thru and thru, piercing the right dome of the diaphragm, right lobe of the liver, right adrenal, right renal vein and right kidney. Both victims died of hemorrhagic shock secondary to stab wound on the trunk. The respective death certificates of victims Arnel and Cesar were marked, presented and offered in evidence.[9]

Accused-appellant denied the accusations against him claiming that it was not him but his cousin named Rolly Gidoc who killed the victims, because his real name is Rolando Gidoc *alias* Bayeng. He insisted that at the time of the incident, he was on his way to Bicol Area, Tanza, Navotas, after coming from his work in Imus, Cavite. When he passed by the group of Cesar which was having a drinking spree, the latter's brother, whose name he did not know, called him. He approached the group but Cesar's brother suddenly punched him. The other members of the group joined in mauling him. They only stopped when Paladin arrived and pacified them. He said that when he was being mauled, his cousin Rolly Gidoc was with him. He further claimed that he does not know why Paladin pointed to him as the one who stabbed the victims. He was later informed by somebody that the victims were already dead and that it was his cousin Rolly Gidoc who killed them.

On 23 May 2006, the RTC, in a Joint Decision, found accused-appellant guilty of Murder for both charges. The trial court disposed of the case as follows:

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[6] Exhibit "C-3".

[7] Exhibit "C-4".

[8] Exhibit "C-5".

[9] Exhibits "C-6" and C-7".

WHEREFORE, in the light of the foregoing, judgment is hereby rendered as follows:

In Criminal Case No. 24988-MN for Murder, the Court finds accused ROLLY GIDOC *alias* BAYENG GULITY beyond reasonable doubt of the crime charged and is hereby sentences to suffer the penalty of *reclusion perpetua*, and to pay the heirs of victim Cesar Perez the amount of ₱50, 000.00 by way of civil indemnity, together with costs of suit.

In Criminal Case No. 24989-MN for Murder, the Court finds accused ROLLY GIDOC *alias* BAYENG GULITY beyond reasonable doubt of the crime charged and is hereby sentence[d] to suffer the penalty of *reclusion perpetua*, and to pay the heirs of victim Arnel Perez the amount of ₱50, 000.00 by way of civil indemnity, together with costs of suit.

It appearing that accused Ronnie Ocenar is still at large, the case against him is archived subject to revival upon his arrest.[10]

Accused-appellant appealed to the Court of Appeals arguing that:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE SAME BEYOND REASONABLE DOUBT

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[11]

In its Decision, the Court of Appeals said that the prosecution was able to establish the fact of the commission of the crimes charged through the findings of the medico legal officer, and that the prosecution was able to prove the fact that accused-appellant was the perpetrator of the crimes through the testimony of eyewitness Paladin. It held that Paladin's testimony, was

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[10] CA *rollo*, p. 51.

[11] *Rollo*, p. 4.

clear and his positive identification of accused-appellant has greater evidentiary weight than the bare denial of the latter.

The Court of Appeals also appreciated treachery as a qualifying circumstance due to the suddenness and mode of attack adopted by the accused-appellant, which placed the victims and the people around them in a situation in which there was no way for them to resist the attack or defend themselves. It, however, modified the award of damages. In addition to the award of civil liability given by the trial court, the Court of Appeals awarded the amounts of ₱50,000.00 and ₱75,000.00 as moral and exemplary damages, respectively, in each of the two cases. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, in view of the foregoing, the appeal is DENIED. The Joint Decision in Criminal Case Nos. 24988-MN and 24989-MN is AFFIRMED with MODIFICATION that in addition to the award of civil liability of ₱ 50, 000.00 *ex delicto*; accused-appellant is likewise ordered to indemnify the heirs of both victims moral damages of ₱50,000.00 and exemplary damages of ₱75,000.00 in each of the two (2) cases.[12]

Accused appellant is now before us praying for his exoneration. In our Resolution dated 15 December 2008, we directed the parties to file their supplemental briefs, if they so desire.[13] The parties manifested they would no longer file their supplemental briefs, because they had already exhaustively discussed the assigned errors in their appellant's and appellee's briefs.[14]

After reviewing the evidence on hand, we uphold accused-appellant's conviction for the crimes charged.

The prosecution was able to prove the crime beyond reasonable doubt. It was able to establish two things: first, the fact of the commission of the crime charged or the presence of all the elements of the offense; and second, the fact that the accused was the perpetrator of the crime.[15]

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[12] *Id.* at 10.

[13] *Id.* at 17.

[14] *Id.* at 18-19; 21-22.

[15] *People v. Latayada*, 467 Phil. 682, 690 (2004).

The fact that the accused-appellant was the perpetrator of the crimes was proven by the testimony and the positive identification by eyewitness Paladin. We find his testimony to be bereft of inconsistency and is worthy of credence. His testimony, insofar as pertinent, reads:

Q: Before the stabbing incident of the victims Arnel and Cesar Perez, was there any incident that happened?

A: Yes Sir, there was.

Q: What was that incident?

A: Ronnie Ocenar was first involved in a brawl with another group singing in that videoke joint.

Q: Do you want to impress to this Honorable Court that Rolly Gidoc was also with your group drinking and singing in that videoke joint?

A: Yes Sir.

Q: And what happened when Ronnie Ocenar was involved in a brawl with another group?

A: He approached Rolly Gidoc and asked for help.

Q: What kind of brawl was that?

A: There was a fist fight between the group of Ronnie Ocenar and another group Sir.

x x x x x x x x x

Q: When Ocenar sought the help of Rolly Gidoc, what happened next?

A: Another fist fight ensued Sir.

x x x x x x x x x

Q: And what about your group, what did you do when there was a fist fight between the group of Ocenar and the unidentified group?

A: None Sir, we did not mind them and we continue drinking and singing Sir.

x x x x x x x x x

Q: So these victims Cesar and Arnel did not bother to help or join in the fist fight?

A: Yes Sir.

Q: Do you know if there was an altercation between these two victims and Rolly Gidoc before the stabbing?

A: There was none Sir.

Q: After the stabbing by Gidoc of Arnel and Cesar Perez, what happened next?

A: Rolly Gidoc ran away and the two victims also ran towards their house Sir.

x x x x x x x x x

Q: Who among the victims was first stabbed?

A: Arnel Perez Sir.

Q: And then followed by?

A: Cesar Perez Sir

Q: How many stab wounds was sustained by Arnel Perez?

A: Only one Sir.

Q: How about the other victim?

A: Also one Sir.

x x x x x x x x x

Q: Will you please stand up and look around and see if Rolly Gidoc is present in this courtroom?

A: He is Rolly Gidoc Sir. (At this juncture, the witness stood up and pointed to a man who when asked answered by the name of Rolando Gidoc.)[16]

Based from the foregoing, there is nothing vague about the testimony of Paladin. His statements are clear and certain about the fact that accused-appellant was the one who stabbed Arnel and Cesar.

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[16] TSN, 12 February 2002, pp. 4-7.

Even if Paladin's testimony is not corroborated, we find the same sufficient to warrant conviction. In *People v. Badajos*,[17] this Court held that it is axiomatic that the testimonies of witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if found trustworthy and reliable. There is no law that requires that the testimony of a single witness needs corroboration except where the law expressly mandates such corroboration.

The medical findings further support the case of the prosecution. The fact of the commission of the offenses charged was established through the testimony of Dr. Filemon Porciuncula who interpreted the findings of Medico-Legal Officer Michael Maunahan. Dr. Porciuncula testified that the victims died of hemorrhagic shock secondary to stab wounds on the trunk per the autopsy report made on their cadavers. The injuries suffered by the victims as testified to by Paladin were consistent with the medico-legal report.

In denying the accusation against him, accused-appellant pointed to an alleged cousin named Rolly Gidoc as the perpetrator of the crimes. He said his real name is Rolando Gidoc not Rolly Gidoc. Such claim, unsupported by other credible and competent evidence will not prevail over the positive identification of him by the witness. In *People v. Alvarado*,[18] we held that greater weight is given to the positive identification of the accused by the prosecution witness than the accused's denial and explanation concerning the commission of the crime. This is so, inasmuch as mere denials are self-serving evidence that cannot obtain evidentiary weight greater than that of the declarations of credible witnesses who testified on affirmative matters.

Furthermore, accused-appellant questioned the findings of fact made by the trial court. In *People v. Dumadag*,[19] this Court held that well entrenched is the rule that findings of fact of the trial court, its calibration of the testimonial evidence of the parties, as well as its conclusion on its findings, are accorded high respect if not conclusive effect. This is because of the unique advantage of

[17] 464 Phil. 762, 770 (2004).

[18] 341 Phil. 725, 734 (1997).

[19] G.R. No. 147196, 4 June 2004, 431 SCRA 65, 70.

the trial court, which has the opportunity to observe, at close range, the conduct, demeanor and deportment of the witnesses as they testify. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[20] There being no compelling reason to deviate from the findings of both lower courts, we uphold the same.

As to the presence of the qualifying circumstance of treachery, we find the same to be present in these cases.

There is treachery when the offender commits any of the crimes against persons, employing means methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offender might make.[21] The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the latter's part.[22]

In these cases, the circumstances showing how the victims were stabbed reveal that they had no opportunity to defend themselves. They were unarmed and unsuspecting, as they were just singing and drinking when accused-appellant stabbed them. As properly observed by the trial court, the swift and unexpected attack by the accused rendered them helpless. There was also no provocation on their part to justify the ire of appellant. Treachery thus qualifies the killings to Murder.

We now go to the penalties to be imposed on accused-appellant. He is guilty of two counts of murder qualified by treachery. Under Article 248[23] of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is *reclusion perpetua*

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[20] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[21] Revised Penal Code, Art. 14(16).

[22] *People v. Dimailig*, 388 Phil. 129, 142 (2000).

[23] ART. 248. *Murder*.— Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, x x x.

to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua* for each count, pursuant to Article 63, paragraph 2[24] of the Revised Penal Code.

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[25]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[26] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under the prevailing jurisprudence,[27] the award of ₱50,000.00 as civil indemnity for each count of murder, to be paid to the heirs of the victims, is proper.

As to actual damages, the heirs of the victims of the murders are not entitled thereto, because said damages were not duly proved with a reasonable degree of certainty.[28]

The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[29] Under Article 2224 of

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[24] ART. 63. *Rules for the application of indivisible penalties.* — x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[25] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

[26] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[27] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400; *People v. Cabinan*, G.R. No. 176158, 27 March 2007, 519 SCRA 133, 141.

[28] *People v. Tubongbanua*, *supra* note 26 at 742.

[29] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.

the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss, although the exact amount was not proved.[30] Thus, this Court awards ₱25,000.00 as temperate damages for each count of murder.

Anent moral damages, the same are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[31] The award by the Court of Appeals of ₱50,000.00, as moral damages for each count of murder, is proper.

The Court of Appeals awarded exemplary damages in the amount of ₱75,000.00 for each count of murder. Such award, following current jurisprudence, must be reduced to ₱30,000.00 since the qualifying circumstance of treachery was firmly established.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated 27 May 2008 in CA-G.R. CR-HC No. 02414 – finding appellant Rolly Gidoc guilty beyond reasonable doubt of two counts of murder and sentencing him to suffer the penalty of *reclusion perpetua* for each count – is hereby *AFFIRMED* with *modifications*. Appellant is ordered to pay the heirs of the victims for each count of murder the following: (1) civil indemnity in the amount of ₱50,000.00; (2) moral damages in the amount of ₱50,000.00; (3) temperate damages in the amount of ₱25,000.00; and (4) exemplary damages in the amount of ₱30,000.00. No costs.

SO ORDERED.

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

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[30] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

[31] *People v. Bajar*, 460 Phil. 683, 700 (2003).

EN BANC

[G.R. No. 180363. April 28, 2009]

EDGAR Y. TEVES, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and HERMINIO G. TEVES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); VIOLATION OF SECTION 3(h) THEREOF; TWO MODES.— Section 3(h) of R.A. 3019 of which petitioner was convicted, reads: Sec. 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest. The essential elements of the violation of said provision are as follows: 1) The accused is a public officer; 2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; 3) he either: a) intervenes or takes part in his official capacity in connection with such interest, or b) is prohibited from having such interest by the Constitution or by law. Thus, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract, or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

2. ID.; ID.; ID.; ID.; CONVICTION UNDER THE SECOND MODE DOES NOT AUTOMATICALLY MEAN THE SAME INVOLVED MORAL TURPITUDE.— However, conviction under the second mode does not automatically mean that the same involved moral turpitude. A determination of all

surrounding circumstances of the violation of the statute must be considered. Besides, moral turpitude does not include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited, as in the instant case.

3. POLITICAL LAW; LOCAL GOVERNMENTS; POSSESSION OF BUSINESS AND PECUNIARY INTEREST IN A COCKPIT LICENSED BY LOCAL GOVERNMENT EXPRESSLY PROHIBITED BY PRESENT LOCAL GOVERNMENT CODE; VIOLATION THEREOF DOES NOT NECESSARILY INVOLVE MORAL TURPITUDE.— While possession of business and pecuniary interest in a cockpit licensed by the local government unit is expressly prohibited by the present LGC, however, its illegality does not mean that violation thereof necessarily involves moral turpitude or makes such possession of interest inherently immoral. Under the old LGC, mere possession by a public officer of pecuniary interest in a cockpit was not among the prohibitions.

4. ID.; CONSTITUTIONAL LAW; JUSTICEABLE ISSUE; WISDOM IN LEGALIZING COCKFIGHTING IS NOT A JUSTICEABLE ISSUE.— Suffice it to state that cockfighting, or *sabong* in the local parlance, has a long and storied tradition in our culture and was prevalent even during the Spanish occupation. While it is a form of gambling, the morality thereof or the wisdom in legalizing it is not a justiciable issue. In *Magtajas v. Pryce Properties Corporation, Inc.*, it was held that: The morality of gambling is not a justiciable issue. Gambling is not illegal *per se*. While it is generally considered inimical to the interests of the people, there is nothing in the Constitution categorically proscribing or penalizing gambling or, for that matter, even mentioning it at all. It is left to Congress to deal with the activity as it sees fit. In the exercise of its own discretion, the legislature may prohibit gambling altogether or allow it without limitation or it may prohibit some forms of gambling and allow others for whatever reasons it may consider sufficient. Thus, it has prohibited *jueteng* and *monte* but permits lotteries, cockfighting and horse-racing. In making such choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Well has it been said that courts do no sit to resolve the merits of conflicting theories. That is the prerogative of the political

departments. It is settled that questions regarding the wisdom, morality, or practicability of statutes are not addressed to the judiciary but may be resolved only by the legislative and executive departments, to which the function belongs in our scheme of government. That function is exclusive. Whichever way these branches decide, they are answerable only to their own conscience and the constituents who will ultimately judge their acts, and not to the courts of justice.

BRION*, J., concurring opinion:*

1. REMEDIAL LAW; ACT NO. 190, "MORAL TURPITUDE" FIRST INTRODUCED AS BASIS FOR REMOVAL OR SUSPENSION OF A LAWYER FROM THE BAR.— In the Philippines, the term moral turpitude was first introduced in 1901 in Act No. 190, otherwise known as the Code of Civil Actions and Special Proceedings. The Act provided that a member of the bar may be removed or suspended from his office as lawyer of the Supreme Court upon conviction of a crime involving moral turpitude. Subsequently, the term "moral turpitude" has been employed in statutes governing disqualifications of notaries public, priests and ministers in solemnizing marriages, registration to military service, exclusion and naturalization of aliens, discharge of the accused to be a state witness, admission to the bar, suspension and removal of elective local officials, and disqualification of persons from running for any elective local opposition.

2. ID.; CODE OF CIVIL PROCEDURE; SECTION 21; IN *RE BASA* (41 PHIL. 275); FIRST CASE WHERE MORAL TURPITUDE WAS DEFINED.— In *Re Basa*, a 1920 case, provided the first instance for the Court to define the term moral turpitude in the context of Section 21 of the Code of Civil Procedure on the disbarment of a lawyer for conviction of a crime involving moral turpitude. Carlos S. Basa, a lawyer, was convicted of the crime of abduction with consent. The sole question presented was whether the crime of abduction with consent, as punished by Article 446 of the Penal Code of 1887, involved moral turpitude. The Court, finding no exact definition in the statutes, turned to Bouvier's Law Dictionary for guidance and held: "Moral turpitude," it has been said, "includes everything which is done contrary to justice, honesty, modesty,

or good morals." (Bouvier's Law Dictionary, cited by numerous courts.) Although no decision can be found which has decided the exact question, it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct.

3. CRIMINAL LAW; CRIMES ADJUDGED TO INVOLVE MORAL TURPITUDE.— Since the early 1920 case of *In re Basa,* the Court has maintained its case-by-case categorization of crimes on the basis of moral turpitude and has labeled specific crimes as necessary involving moral turpitude. The following is a list, not necessarily complete, of the crimes adjudged to involve moral turpitude: 1. Abduction with consent 2. Bigamy 3. Concubinage 4. Smuggling 5. Rape 6. Estafa through falsification of a document 7. Attempted Bribery 8. Profiteering 9. Robbery 10. Murder, whether consummated or attempted 11. Estafa 12. Theft 13. Illicit Sexual Relations with a Fellow Worker 14. Violation of BP Bldg. 22 15. Falsification of Document 16. Intriguing against Honor 17. Violation of the Anti-Fencing Law 18. Violation of Dangerous Drugs Act of 1972 (Drug-pushing) 19. Perjury 20. Forgery 21. Direct Bribery 22. Frustrated Homicide. *Zari v. Flores* is one case that has provided jurisprudence its own list of crimes involving moral turpitude, namely: adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.

4. ID.; CRIMES ADJUDGED NOT TO INVOLVE MORAL TURPITUDE.— The Court, on the other hand, has also had the occasion to categorically rule that certain crimes do not involve moral turpitude, namely: 1. Minor transgressions of the law (*i.e.,* conviction for speeding) 2. Illegal recruitment 3. Slight physical injuries and carrying of deadly weapon (Illegal possession of firearms) 4. Indirect Contempt.

5. ID.; MORAL TURPITUDE; DEPRAVITY STANDARD; THREE APPROACHES.— Even a cursory examination of the above-listed cases readily reveals that while the concept of "moral turpitude" does not have one specific definition that lends itself to easy and ready application, the Court has been fairly consistent in its *understanding* and *application* of the term and has not significantly deviated from what it laid down in *In re Basa*. The key element, directly derived from the word "turpitude," is the standard of depravity viewed from a scale of right and wrong. The application of this depravity standard can be made from at least three perspectives or approaches, namely: from the *objective perspective of the act itself*, irrespective of whether or not the act is a crime; from the *perspective of the crime itself*, as defined through is elements; and from the *subjective perspective that takes into account the perpetrator's level of depravity* when he committed the crime.

6. ID.; ID.; ID.; ID.; FIRST APPROACH BEST EXPRESSED IN *ZARI V. FLORES*.— The Court best express the ***first approach*** in *Zari v. Flores* where the Court saw the involvement of moral turpitude where an act is intrinsically immoral, regardless of whether it is punishable by law or not. The Court emphasized that moral turpitude goes beyond being merely *mala prohibita*; the act itself must be inherently immoral. Thus, this approach requires that the committed act itself be examined, divorced from its characterization as a crime.

7. ID.; ID.; ID.; ID.; SECOND APPROACH; TAKES A LOOK AT THE ACT COMMITTED THROUGH ITS ELEMENTS AS A CRIME.—The ***second approach*** is to look at the act committed through its elements as a crime, singling out this element and largely evaluating it under the objective norms of the first approach. In *Paras v. Vailoces*, the Court recognized that as a "general rule, all crimes of which fraud is an element are looked on as involving moral turpitude." This is the same conclusion that the U.S. Supreme Court made in *Jordan, i.e.*, that crimes requiring fraud or intent to defraud always involve moral turpitude.

8. ID.; ID.; ID.; ID.; THIRD APPROACH; TAKES THE OFFENDER AND HIS ACTS INTO ACCOUNT IN LIGHT OF THE ATTENDANT CIRCUMSTANCES OF THE

CRIME.— The ***third approach, the subjective approach,*** essentially takes the offender and his acts into account in light of the attendant circumstances of the crime: was he or she personally motivated by ill will indicating depravity? The Court apparently used this approach in *Ao Lin v. Republic*, a 1964 case, when it held "that the use of a meter stick without the corresponding seal of the Internal Revenue Office by one who has been engaged in business for a long time, involves moral turpitude because it involves a fraudulent use of a meter stick, not necessarily because the Government is cheated of the revenue involved in the sealing of the meter stick, but because ***it manifests an evil intent on the part of the petitioner to defraud customers*** purchasing from him in respect to the measurement of the goods purchased."

9. ID.; ID.; ID.; SUBJECTIVE APPROACH; POSSESSION BY PUBLIC OFFICER OF PECUNIARY INTEREST IN COCKPIT; NO MORAL TURPITUDE CAN BE INVOLVED WHERE PERSONAL INTENT IS CLEARLY ABSENT; CASE AT BAR.— This approach is mainly the mode the *ponencia* used to arrive at its conclusion that no moral turpitude is involved, as it expressly stated that "a determination of all surrounding circumstances of the violation of the statute must be considered." In this determination, the *ponencia* firstly considered that the petitioner did not used his official capacity in connection with the interest in the cockpit; he did not likewise hide this interest by transferring it to his wife, as the transfer took effect before the effectivity of the law prohibiting the possession of interest. The *ponencia* significant noted, too, that the violation was not intentionally committed in a manner contrary to justice, modesty, or good morals, but due simply to Teves' lack of awareness or ignorance of prohibition. This last considaration, in my view, is the clinching argument that no moral turpitude can be involved as no depravity can be gleaned where personal intent is clearly absent.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña and Nolasco for petitioner.
The Solicitor General for public respondent.
Martin Gerard S. Cornelio for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The issue for resolution is whether the crime of which petitioner Edgar Y. Teves was convicted in *Teves v. Sandiganbayan*[1] involved moral turpitude.

The facts of the case are undisputed.

Petitioner was a candidate for the position of Representative of the 3rd legislative district of Negros Oriental during the May 14, 2007 elections. On March 30, 2007, respondent Herminio G. Teves filed a petition to disqualify[2] petitioner on the ground that in *Teves v. Sandiganbayan*,[3] he was convicted of violating Section 3(h), Republic Act (R.A.) No. 3019, or the *Anti-Graft and Corrupt Practices Act,* for possessing pecuniary or financial interest in a cockpit, which is prohibited under Section 89(2) of the Local Government Code (LGC) of 1991, and was sentenced to pay a fine of ₱10,000.00. Respondent alleged that petitioner is disqualified from running for public office because he was convicted of a crime involving moral turpitude which carries the accessory penalty of perpetual disqualification from public office.[4] The case was docketed as SPA No. 07-242 and assigned to the COMELEC's First Division.

On May 11, 2007, the COMELEC First Division disqualified petitioner from running for the position of member of House of Representatives and ordered the cancellation of his Certificate of Candidacy.[5]

Petitioner filed a motion for reconsideration before the COMELEC *en banc* which was denied in its assailed October 9, 2007 Resolution for being moot, thus:

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[1] 488 Phil. 311 (2004).

[2] *Rollo,* pp. 130-134.

[3] *Supra,* note 1.

[4] *Rollo,* pp. 131, 133 & 134.

[5] *Id.* at 45-46.

It appears, however, that [petitioner] lost in the last 14 May 2007 congressional elections for the position of member of the House of Representatives of the Third district of Negros Oriental thereby rendering the instant Motion for Reconsideration moot and academic.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration dated 28 May 2007 filed by respondent Edgar Y. Teves challenging the Resolution of this Commission (First Division) promulgated on 11 May 2007 is hereby DENIED for having been rendered moot and academic.

SO ORDERED.[6]

Hence, the instant petition based on the following grounds:

I.

THERE WAS ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN THE COMELEC *EN BANC* DEMURRED IN RESOLVING THE MAIN ISSUE RAISED IN PETITIONER'S MOTION FOR RECONSIDERATION, WHETHER PETITIONER IS DISQUALIFIED TO RUN FOR PUBLIC OFFICE TAKING INTO CONSIDERATION THE DECISION OF THE SUPREME COURT IN G.R. NO. 154182.

II.

THE MAIN ISSUE IS NOT RENDERED MOOT AND ACADEMIC AS THE RESOLUTION THEREOF WILL DETERMINE PETITIONER'S QUALIFICATION TO RUN FOR OTHER PUBLIC POSITIONS IN FUTURE ELECTIONS.

III.

THERE WAS ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN THE COMELEC *EN BANC* IN EFFECT AFFIRMED THE FINDINGS OF THE FIRST DIVISION WHICH RULED THAT PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 3(H) OF R.A. 3019 AND THE IMPOSITION OF FINE IS A CONVICTION FOR A CRIME INVOLVING MORAL TURPITUDE.

A.

THE ISSUE OF WHETHER PETITIONER WAS CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE SHOULD

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[6] *Id.* at 49.

BE RESOLVED TAKING INTO CONSIDERATION THE FINDINGS OF THE SUPREME COURT IN G.R. NO. 154182.

B.

THERE IS NOTHING IN THE DECISION OF THE SUPREME COURT THAT SUPPORTS THE FINDINGS OF THE FIRST DIVISION OF THE COMELEC, THAT BASED ON THE "TOTALITY OF FACTS" DOCTRINE, PETITIONER WAS CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE.[7]

The petition is impressed with merit.

The fact that petitioner lost in the congressional race in the May 14, 2007 elections did not effectively moot the issue of whether he was disqualified from running for public office on the ground that the crime he was convicted of involved moral turpitude. It is still a justiciable issue which the COMELEC should have resolved instead of merely declaring that the disqualification case has become moot in view of petitioner's defeat.

Further, there is no basis in the COMELEC's findings that petitioner is eligible to run again in the 2010 elections because his disqualification shall be deemed removed after the expiration of a period of five years from service of the sentence. Assuming that the elections would be held on May 14, 2010, the records show that it was only on May 24, 2005 when petitioner paid the fine of ₱10,000.00 he was sentenced to pay in *Teves v. Sandignbayan*.[8] Such being the reckoning point, thus, the five-year disqualification period will end only on May 25, 2010. Therefore he would still be ineligible to run for public office during the May 14, 2010 elections.

Hence, it behooves the Court to resolve the issue of whether or not petitioner's violation of Section 3(h), R.A. No. 3019 involves moral turpitude.

Section 12 of the Omnibus Election Code reads:

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

[8] *Rollo*, p. 145.

Sec. 12. *Disqualifications*. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months, **or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office**, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. (Emphasis supplied)

Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.[9]

Section 3(h) of R.A. 3019 of which petitioner was convicted, reads:

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

x x x x x x x x x

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The essential elements of the violation of said provision are as follows: 1) The accused is a public officer; 2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; 3) he either: a) intervenes or takes part in his official capacity in connection with such interest, or b) is prohibited from having such interest by the Constitution or by law.[10]

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[9] *Soriano v. Dizon*, A.C. No. 6792, January 25, 2006, 480 SCRA 1, 9.

[10] *Domingo v. Sandiganbayan*, G.R. No. 149175, October 25, 2005, 474 SCRA 203, 215.

Thus, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract, or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.[11]

In *Teves v. Sandiganbayan*,[12] petitioner was convicted under the second mode for having pecuniary or financial interest in a cockpit which is prohibited under Sec. 89(2) of the Local Government Code of 1991. The Court held therein:

> However, the evidence for the prosecution has established that petitioner Edgar Teves, then mayor of Valencia, Negros Oriental, owned the cockpit in question. In his sworn application for registration of cockpit filed on 26 September 1983 with the Philippine Gamefowl Commission, Cubao, Quezon City, as well as in his renewal application dated 6 January 1989 he stated that he is the owner and manager of the said cockpit. Absent any evidence that he divested himself of his ownership over the cockpit, his ownership thereof is rightly to be presumed because a thing once proved to exist continues as long as is usual with things of that nature. His affidavit dated 27 September 1990 declaring that effective January 1990 he "turned over the management of the cockpit to Mrs. Teresita Z. Teves for the reason that [he] could no longer devote a full time as manager of the said entity due to other work pressure" is not sufficient proof that he divested himself of his ownership over the cockpit. Only the management of the cockpit was transferred to Teresita Teves effective January 1990. Being the owner of the cockpit, his interest over it was direct.
>
> Even if the ownership of petitioner Edgar Teves over the cockpit were transferred to his wife, still he would have a direct interest thereon because, as correctly held by respondent Sandiganbayan, they remained married to each other from 1983 up to 1992, and as such their property relation can be presumed to be that of conjugal partnership of gains in the absence of evidence to the contrary. Article 160 of the

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[11] *Id.*

[12] *Supra* note 4.

Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife. And Section 143 of the Civil Code declares all the property of the conjugal partnership of gains to be owned in common by the husband and wife. Hence, his interest in the Valencia Cockpit is direct and is, therefore, prohibited under Section 89(2) of the LGC of 1991, which reads:

> Section 89. *Prohibited Business and Pecuniary Interest.* – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:
>
> x x x x x x x x x
>
> (2) Hold such interests in any cockpit or other games licensed by a local government unit…. [Emphasis supplied].

The offense proved, therefore, is the second mode of violation of Section 3(h) of the Anti-Graft Law, which is possession of a prohibited interest.[13]

However, conviction under the second mode does not automatically mean that the same involved moral turpitude. A determination of all surrounding circumstances of the violation of the statute must be considered. Besides, moral turpitude does not include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited, as in the instant case.

Thus, in *Dela Torre v. Commission on Elections*,[14] the Court clarified that:

> **Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine**." In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in "*Zari v. Flores*," to wit:
>
> "It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It

[13] *Id.* at 329-330.

[14] 327 Phil. 1144, 1150-1151 (1996).

> must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. **Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited**."

This guideline nonetheless proved short of providing a clear-cut solution, for in "*International Rice Research Institute v. NLRC*, the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as *malum in se* or as *malum prohibitum*. There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only**. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.** (Emphasis supplied)

Applying the foregoing guidelines, we examined all the circumstances surrounding petitioner's conviction and found that the same does not involve moral turpitude.

First, there is neither merit nor factual basis in COMELEC's finding that petitioner used his official capacity in connection with his interest in the cockpit and that he hid the same by transferring the management to his wife, in violation of the trust reposed on him by the people.

The COMELEC, in justifying its conclusion that petitioner's conviction involved moral turpitude, misunderstood or misapplied our ruling in *Teves v. Sandiganbayan*. According to the COMELEC:

> In the present case, while the crime for which [petitioner] was convicted may *per se* not involve moral turpitude, still the totality of facts evinces [his] moral turpitude. The prohibition was intended to avoid any conflict of interest or any instance wherein the public official would favor his own interest at the expense of the public interest. The [petitioner] knew of the prohibition but he attempted to circumvent the same by holding out that the Valencia Cockpit and Recreation Center is to be owned by a certain Daniel Teves. Later on, he would aver that he already divested himself of any interest

of the cockpit in favor of his wife. But the Supreme Court saw through the ruse and declared that what he divested was only the management of the cockpit but not the ownership. And even if the ownership is transferred to his wife, the respondent would nevertheless have an interest thereon because it would still belong to the conjugal partnership of gains, of which the [petitioner] is the other half.

[Petitioner] therefore maintained ownership of the cockpit by deceit. He has the duty to divest himself but he did not and instead employed means to hide his interests. He knew that it was prohibited he nevertheless concealed his interest thereon. The facts that he hid his interest denotes his malicious intent to favor self-interest at the expense of the public. Only a man with a malevolent, decadent, corrupt and selfish motive would cling on and conceal his interest, the acquisition of which is prohibited. This plainly shows his moral depravity and proclivity to put primacy on his self interest over that of his fellowmen. Being a public official, his act is also a betrayal of the trust reposed on him by the people. Clearly, the totality of his acts is contrary to the accepted rules of right and duty, honesty and good morals. The crime, as committed by the [petitioner], plainly involves moral turpitude.[15]

On the contrary, the Court's ruling states:

The Sandiganbayan found that the charge against Mayor Teves for causing the issuance of the business permit or license to operate the Valencia Cockpit and Recreation Center is "not well-founded." This it based, and rightly so, on the additional finding that only the Sangguniang Bayan could have issued a permit to operate the Valencia Cockpit in the year 1992. Indeed, under Section 447(3) of the LGC of 1991, which took effect on 1 January 1992, it is the Sangguniang Bayan that has the authority to issue a license for the establishment, operation, and maintenance of cockpits. Unlike in the old LGC, Batas Pambansa Blg. 337, wherein the municipal mayor was the presiding officer of the Sangguniang Bayan, under the LGC of 1991, the mayor is not so anymore and is not even a member of the Sangguniang Bayan. Hence, Mayor Teves could not have intervened or taken part in his official capacity in the issuance of a cockpit license during the material time, as alleged in the information, because he was not a member of the Sangguniang Bayan.[16]

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[15] *Rollo*, pp. 44-45.

[16] *Teves v. Sandiganbayan, supra* note 1 at 327-328.

Thus, petitioner, as then Mayor of Valencia, did not use his influence, authority or power to gain such pecuniary or financial interest in the cockpit. Neither did he intentionally hide his interest in the subject cockpit by transferring the management thereof to his wife considering that the said transfer occurred before the effectivity of the present LGC prohibiting possession of such interest.

As aptly observed in *Teves v. Sandiganbayan*:

> As early as 1983, Edgar Teves was already the owner of the Valencia Cockpit. **Since then until 31 December 1991, possession by a local official of pecuniary interest in a cockpit was not yet prohibited. It was before the effectivity of the LGC of 1991, or on January 1990, that he transferred the management of the cockpit to his wife Teresita**. In accordance therewith it was Teresita who thereafter applied for the renewal of the cockpit registration. Thus, in her sworn applications for renewal of the registration of the cockpit in question dated 28 January 1990 and 18 February 1991, she stated that she is the Owner/Licensee and Operator/Manager of the said cockpit. In her renewal application dated 6 January 1992, she referred to herself as the Owner/Licensee of the cockpit. Likewise in the separate Lists of Duly Licensed Personnel for Calendar Years 1991 and 1992, which she submitted on 22 February 1991 and 17 February 1992, respectively, in compliance with the requirement of the Philippine Gamefowl Commission for the renewal of the cockpit registration, she signed her name as Operator/Licensee.[17] (Emphasis supplied)

Second, while possession of business and pecuniary interest in a cockpit licensed by the local government unit is expressly prohibited by the present LGC, however, its illegality does not mean that violation thereof necessarily involves moral turpitude or makes such possession of interest inherently immoral. Under the old LGC, mere possession by a public officer of pecuniary interest in a cockpit was not among the prohibitions. Thus, in *Teves v. Sandiganbayan*, the Court took judicial notice of the fact that:

> x x x under the old LGC, *mere possession of pecuniary interest in a cockpit was not among the prohibitions enumerated in Section 41*

[17] *Id.* at 335.

thereof. Such possession became unlawful or prohibited only upon the advent of the LGC of 1991, which took effect on 1 January 1992. Petitioner Edgar Teves stands charged with an offense in connection with his prohibited interest committed on or about 4 February 1992, shortly after the maiden appearance of the prohibition. Presumably, he was not yet very much aware of the prohibition. Although ignorance thereof would not excuse him from criminal liability, such would justify the imposition of the lighter penalty of a fine of ₱10,000 under Section 514 of the LGC of 1991.[18] (Italics supplied)

The downgrading of the indeterminate penalty of imprisonment of nine years and twenty-one days as minimum to twelve years as maximum to a lighter penalty of a fine of ₱10,000.00 is a recognition that petitioner's violation was not intentionally done *contrary to justice, modesty, or good morals* but due to his lack of awareness or ignorance of the prohibition.

Lastly, it may be argued that having an interest in a cockpit is detrimental to public morality as it tends to bring forth idlers and gamblers, hence, violation of Section 89(2) of the LGC involves moral turpitude.

Suffice it to state that cockfighting, or *sabong* in the local parlance, has a long and storied tradition in our culture and was prevalent even during the Spanish occupation.[19] While it is a form of gambling, the morality thereof or the wisdom in legalizing it is not a justiciable issue. In *Magtajas v. Pryce Properties Corporation, Inc.*, it was held that:

> The morality of gambling is not a justiciable issue. Gambling is not illegal *per se*. While it is generally considered inimical to the interests of the people, there is nothing in the Constitution categorically proscribing or penalizing gambling or, for that matter, even mentioning it at all. It is left to Congress to deal with the activity as it sees fit. In the exercise of its own discretion, the legislature may prohibit gambling altogether or allow it without limitation or it may prohibit some forms of gambling and allow others for whatever

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[18] *Supra* note 4 at 333-334.

[19] *Tan v. Pereña*, G.R. No. 149743, February 18, 2005, 452 SCRA 53, 69.

reasons it may consider sufficient. Thus, it has prohibited *jueteng* and *monte* but permits lotteries, cockfighting and horse-racing. In making such choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Well has it been said that courts do no sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding the wisdom, morality, or practicability of statutes are not addressed to the judiciary but may be resolved only by the legislative and executive departments, to which the function belongs in our scheme of government. That function is exclusive. Whichever way these branches decide, they are answerable only to their own conscience and the constituents who will ultimately judge their acts, and not to the courts of justice.

WHEREFORE, the petition is *GRANTED*. The assailed Resolutions of the Commission on Elections dated May 11, 2007 and October 9, 2007 disqualifying petitioner Edgar Y. Teves from running for the position of Representative of the 3rd District of Negros Oriental, are *REVERSED* and *SET ASIDE* and a new one is entered declaring that the crime committed by petitioner (violation of Section 3(h) of R.A. 3019) did not involve moral turpitude.

SO ORDERED.

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

Brion, J., concurs with separate opinion.

Quisumbing, J., on official leave.

CONCURRING OPINION

BRION, *J.*:

I fully concur with the *ponencia* of my esteemed colleague, Justice Consuelo Ynares-Santiago. I add these views to further explore the term "moral turpitude" – a term that, while carrying

far-reaching effects, embodies a concept that to date has not been given much jurisprudential focus.

I. Historical Roots

The term "moral turpitude" first took root under the United States (*U.S.*) immigration laws.[1] Its history can be traced back as far as the 17th century when the States of Virginia and Pennsylvania enacted the earliest immigration resolutions excluding criminals from America, in response to the British government's policy of sending convicts to the colonies. State legislators at that time strongly suspected that Europe was deliberately exporting its human liabilities.[2] In the U.S., the term "moral turpitude" first appeared in the Immigration Act of March 3, 1891, which directed the exclusion of persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude; this marked the first time the U.S. Congress used the term "moral turpitude" in immigration laws.[3] Since then, the presence of moral turpitude has been used as a test in a variety of situations, including legislation governing the disbarment of attorneys and the revocation of medical licenses. Moral turpitude also has been judicially used as a criterion in disqualifying and impeaching witnesses, in determining the measure of contribution between joint tortfeasors, and in deciding whether a certain language is slanderous.[4]

In 1951, the U.S. Supreme Court ruled on the constitutionality of the term "moral turpitude" in *Jordan v. De George*.[5] The case presented only one question: whether conspiracy to defraud the U.S. of taxes on distilled spirits is a crime involving moral turpitude within the meaning of Section 19 (a) of the Immigration Act of 1919 (*Immigration Act*). Sam De George, an Italian immigrant was convicted twice of conspiracy to defraud the

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[1] *Jordan v. De George*, 341 U.S. 223, 227 (1951).

[2] Brian C. Harms, *Redefining "Crimes of Moral Turpitude": A Proposal to Congress*, 15 GEO. IMMIGR. L.J. 259, 261 (2001).

[3] *Id.*

[4] *Supra* note 1, p. 227.

[5] *Id.*

U.S. government of taxes on distilled spirits. Subsequently, the Board of Immigration Appeals ordered De George's deportation on the basis of the Immigration Act provision that allows the deportation of aliens who commit multiple crimes involving moral turpitude. De George argued that he should not be deported because his tax evasion crimes did not involve moral turpitude. The U.S. Supreme Court, through Chief Justice Vinzon, disagreed, finding that "under an unbroken course of judicial decisions, the crime of conspiring to defraud the U.S. is a crime involving moral turpitude."[6] Notably, the Court determined that fraudulent conduct involved moral turpitude without exception:

> Whatever the phrase "involving moral turpitude" may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude.xxx Fraud is the touchstone by which this case should be judged.xxx We therefore decide that Congress sufficiently forewarned respondent that the statutory consequence of twice conspiring to defraud the United States is deportation.[7]

Significantly, the U.S. Congress has never exactly defined what amounts to a "crime involving moral turpitude." The legislative history of statutes containing the moral turpitude standard indicates that Congress left the interpretation of the term to U.S. courts and administrative agencies.[8] In the absence of legislative history as interpretative aid, American courts have resorted to the dictionary definition – "the last resort of the baffled judge."[9] The most common definition of moral turpitude is similar to one found in the early editions of Black's Law Dictionary:

> [An] act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general,

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[6] *Id.,* p. 229.

[7] *Id.,* p. 232.

[8] Derrick Moore, *"Crimes Involving Moral Turpitude": Why the Void-For-Vagueness Argument is Still Available and Meritorious*, 41 CORNELL INT'L L.J. 813, 816 (2008).

[9] *Id.*

contrary to the accepted and customary rule of right and duty between man and man. xxx Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. xxx The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory *mala prohibita*.[10]

In the Philippines, the term moral turpitude was first introduced in 1901 in Act No. 190, otherwise known as the Code of Civil Actions and Special Proceedings.[11] The Act provided that a member of the bar may be removed or suspended from his office as lawyer by the Supreme Court upon conviction of a crime involving moral turpitude.[12] Subsequently, the term "moral turpitude" has been employed in statutes governing disqualifications of notaries public,[13] priests and ministers in solemnizing marriages,[14] registration to military service,[15] exclusion[16] and naturalization of aliens,[17] discharge of the accused to be a state witness,[18] admission to the bar,[19] suspension and removal of elective local officials,[20] and disqualification of persons from running for any elective local position.[21]

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[10] *Id.*

[11] Effective September 1, 1901.

[12] Now RULES OF COURT, Rule 138, Section 27.

[13] ACT NO. 2711, Section 234, March 10, 1917.

[14] ACT NO. 3613, Section 45, December 4, 1929.

[15] COMMONWEALTH ACT No. 1, Section 57, December 21, 1935.

[16] COMMONWEALTH ACT No. 473, Section 4, June 17, 1939.

[17] COMMONWEALTH ACT No. 613, Section 29, August 26, 1940.

[18] REVISED RULES OF CRIMINAL PROCEDURE, Rule 119, Section 17.

[19] RULES OF COURT, Rule 138, Section 2.

[20] *BATAS PAMBANSA BLG.* 337, Section 60, February 10, 1983; REPUBLIC ACT NO. 7160, Section 60, January 1, 1992.

[21] *BATAS PAMBANSA BLG.* 881, Section 12, December 3, 1985; REPUBLIC ACT NO. 7160, Section 40, January 1, 1992.

In Re Basa,[22] a 1920 case, provided the first instance for the Court to define the term moral turpitude in the context of Section 21 of the Code of Civil Procedure on the disbarment of a lawyer for conviction of a crime involving moral turpitude. Carlos S. Basa, a lawyer, was convicted of the crime of abduction with consent. The sole question presented was whether the crime of abduction with consent, as punished by Article 446 of the Penal Code of 1887, involved moral turpitude. The Court, finding no exact definition in the statutes, turned to Bouvier's Law Dictionary for guidance and held:

> "Moral turpitude," it has been said, "includes everything which is done contrary to justice, honesty, modesty, or good morals." (Bouvier's Law Dictionary, cited by numerous courts.) Although no decision can be found which has decided the exact question, it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct.

Thus, early on, the Philippines followed the American lead and adopted a general dictionary definition, opening the way for a case-to-case approach in determining whether a crime involves moral turpitude.

II. Problems with the Definition of Moral Turpitude

Through the years, the Court has never significantly deviated from the Black's Law Dictionary definition of moral turpitude as "an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals."[23] This definition is more specific than that used in *In re Vinzon*[24] where the term moral turpitude

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[22] 41 Phil. 275, 276 (1920).

[23] *Dela Torre v. Commission on Elections*, G.R. No. 121592, July 5, 1996, 258 SCRA 483, 487, citing *Zari v. Flores*, 94 SCRA 317, 323 (1979).

[24] G.R. No. L-561, April 27, 1967, 19 SCRA 815.

was considered as encompassing "everything which is done contrary to justice, honesty, or good morals."[25]

In the U.S., these same definitions have been highly criticized for their vagueness and ambiguity.[26] In *Jordan*, Justice Jackson noted that "except for the Court's [majority opinion], there appears to be a universal recognition that we have here an undefined and undefinable standard."[27] Thus, the phrase "crimes involving moral turpitude" has been described as "vague," "nebulous," "most unfortunate," and even "bewildering."[28]

Criticisms of moral turpitude as an inexactly defined concept are not unwarranted. *First, the current definition of the term is broad.* It can be stretched to include most kinds of wrongs in society — a result that the Legislature could not have intended. This Court itself concluded in *IRRI v. NLRC*[29] that moral turpitude "is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached" – once again confirming, as late as 1993 in *IRRI*, our case-by-case approach in determining the crimes involving moral turpitude.

Second, the definition also assumes the existence of a universally recognized code for socially acceptable behavior — the "private and social duties which man owes to his fellow man, or to society in general"; moral turpitude is an act violating these duties. The problem is that the definition does not state what these duties are, or provide examples of acts which violate them. Instead, it provides terms such as "baseness," "vileness," and "depravity," which better describe moral reactions to an

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[25] Cited in *Rafael Christopher Yap*, Bouncing Doctrine: Re-Examining the Supreme Court's Pronouncements of *Batas Pambansa Blg*. 22 as a Crime of Moral Turpitude (2006), p. 13 (unpublished J.D. thesis, Ateneo de Manila University, on file with the Professional Schools Library, Ateneo de Manila University).

[26] *Supra* note 8, p. 816.

[27] *Supra* note 1, p. 235.

[28] *Supra* note 8, p. 814.

[29] G.R. No. 97239, May 12, 1993, 221 SCRA 760.

act than the act itself. In essence, they are "conclusory but non-descriptive."[30] To be sure, the use of morality as a norm cannot be avoided, as the term "moral turpitude" contains the word "moral" and its direct connotation of right and wrong. "Turpitude," on the other hand, directly means "depravity" which cannot be appreciated without considering an act's degree of being right or wrong. Thus, the law, in adopting the term "moral turpitude," necessarily adopted a concept involving notions of morality – standards that involve a good measure of subjective consideration and, in terms of certainty and fixity, are far from the usual measures used in law.[31]

Third, as a legal standard, moral turpitude fails to inform anyone of what it requires.[32] It has been said that the loose terminology of moral turpitude hampers uniformity since … [i]t is hardly to be expected that a word which baffle judges will be more easily interpreted by laymen.[33] This led Justice Jackson to conclude in *Jordan* that "moral turpitude offered judges no clearer guideline than their own consciences, inviting them to condemn all that we personally disapprove and for no better reason than that we disapprove it."[34] This trait, however,

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[30] Nate Carter, *Shocking The Conscience of Mankind: Using International Law To Define "Crimes Involving Moral Turpitude" In Immigration Law,* 10 LEWIS & CLARK L. REV. 955, 959 (2006).

[31] A similar concept is "obscenity," whose standards have been in continuous development in U.S. Supreme Court rulings. See *Roth v. United States; Albert v. California,* 354 U.S. 476 (1957); *Miller v. California*, 413 U.S. 15 (1973) and *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973). Only a decade after *Roth*, Justice Harlan observed that "[t]he subject of obscenity has produced a variety of views among the members of the Court unmatched in any other course of constitutional adjudication." As evidence, Justice Harlan noted that in the thirteen obscenity cases decided in the decade after *Roth*, there were "a total of 55 separate opinions among the Justices;" Geoffrey R. Stone *et al.*, *Constitutional Law*, 1255, (1996 ed.) citing *Interstate Circuit, Inc. v. Dallas,* 390 U.S. 676, 704-705, 705 n.1 (1968) (Harlan, J., dissenting).

[32] *Supra* note 30, p. 959.

[33] *Supra* note 8, p. 813, citing Note, *Crimes Involving Moral Turpitude,* 43 HARV. L. REV. 117, 121 (1930).

[34] *Supra* note 1, p. 242.

cannot be taken lightly, given that the consequences of committing a crime involving moral turpitude can be severe.

Crimes Categorized as Crimes Involving Moral Turpitude[35]

Since the early 1920 case of *In re Basa*,[36] the Court has maintained its case-by-case categorization of crimes on the basis of moral turpitude and has labeled specific crimes as necessarily involving moral turpitude. The following is a list, not necessarily complete, of the crimes adjudged to involve moral turpitude:

1. Abduction with consent[37]
2. Bigamy[38]
3. Concubinage[39]
4. Smuggling[40]
5. Rape[41]
6. Estafa through falsification of a document[42]
7. Attempted Bribery[43]
8. Profiteering[44]
9. Robbery[45]

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[35] *Supra* note 25, pp. 20-21.

[36] *Supra* note 22.

[37] *Id*.

[38] *In Re Marcelino Lontok*, 43 Phil. 293 (1922).

[39] *In Re Juan C. Isada*, 60 Phil 915 (1934); *Macarrubo v. Macarrubo*, A.C. No. 6148, February 27, 2004, 424 SCRA 42 citing *Laguitan v. Tinio*, A.C. No. 3049, December 4, 1989, 179 SCRA 837.

[40] *In Re Atty. Tranquilino Rovero*, 92 Phil. 128 (1952).

[41] *Mondano v. Silvosa*, 97 Phil. 143 (1955).

[42] *In the Matter of Eduardo A. Abesamis*, 102 Phil.1182 (1958).

[43] *In Re Dalmacio De Los Angeles*, 106 Phil 1 (1959).

[44] *Tak Ng v. Republic of the Philippines*, 106 Phil. 727 (1959).

[45] *Paras v. Vailoces*, Adm. Case No. 439, April 12, 1961, 1 SCRA 954.

10. Murder, whether consummated or attempted[46]

11. Estafa[47]

12. Theft[48]

13. Illicit Sexual Relations with a Fellow Worker[49]

14. Violation of BP Blg. 22[50]

15. Falsification of Document[51]

16. Intriguing against Honor[52]

17. Violation of the Anti-Fencing Law[53]

18. Violation of Dangerous Drugs Act of 1972 (Drug-pushing)[54]

19. Perjury[55]

20. Forgery[56]

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[46] *Can v. Galing*, G.R. No. 54258, November 27, 1987, 155 SCRA 663 citing *In Re Gutierrez*, Adm. Case No. L-363, July 31, 1962, 5 SCRA 661.

[47] *In Re: Atty. Isidro P. Vinzon*, Admin. Case No. 561, April 27, 1967, 19 SCRA 815.

[48] *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, G.R. No. 63652, October 18, 1988, 166 SCRA 422.

[49] *Id.*

[50] *People v. Tuanda*, A.M. No. 3360, January 30, 1990, 181 SCRA 692; *Paolo C. Villaber v. Commission on Elections*, G.R. No.148326, November 15, 2001, 369 SCRA 126; *Selwyn F. Lao v. Atty. Robert W. Medel*, A.C. No. 5916, July 1, 2003, 405 SCRA 227.

[51] *University of the Philippines v. Civil Service Commission*, G.R. No. 89454, April 20, 1992, 208 SCRA 174.

[52] *Betguen v. Masangcay*, A.M. No. P-93-822, December 1, 1994, 238 SCRA 475.

[53] *Supra* note 23 at 483.

[54] *Office of the Court Administrator v. Librado*, A.M. No. P-94-1089, August 22, 1996, 260 SCRA 624.

[55] *People v. Sorrel*, G.R. No. 119332, August 29, 1997, 278 SCRA 368.

[56] *Campilan v. Campilan Jr.*, A.M. No. MTJ-96-1100, April 24, 2002, 381 SCRA 494.

21. Direct Bribery[57]

22. Frustrated Homicide[58]

Zari v. Flores[59] is one case that has provided jurisprudence its own list of crimes involving moral turpitude, namely: adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.[60]

Crimes Categorized as Crimes Not Involving Moral Turpitude[61]

The Court, on the other hand, has also had the occasion to categorically rule that certain crimes do not involve moral turpitude, namely:

1. Minor transgressions of the law (*i.e.*, conviction for speeding)[62]
2. Illegal recruitment[63]
3. Slight physical injuries and carrying of deadly weapon (Illegal possession of firearms)[64]
4. Indirect Contempt[65]

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[57] *Magno v. Commission on Elections*, G.R. No. 147904, October 4, 2002, 390 SCRA 495.

[58] *Soriano v. Dizon*, A.C. No. 6792, January 25, 2006, 480 SCRA 1.

[59] Adm. No. (2170-MC) P-1356, November 21, 1979, 94 SCRA 317, 323.

[60] *Supra* note 25 at 21.

[61] *Id.*

[62] *Ng Teng Lin v. Republic*, 103 Phil. 484 (1959).

[63] *Court Administrator v. San Andres*, A.M. No. P-89-345, May 31, 1991, 197 SCRA 704.

[64] *People v. Yambot*, G.R. No. 120350, October 13, 2000, 343 SCRA 20.

[65] *Garcia v. De Vera*, A.C. No. 6052, December 11, 2003, 418 SCRA 27.

III. Approaches and Standards.

Even a cursory examination of the above lists readily reveals that while the concept of "moral turpitude" does not have one specific definition that lends itself to easy and ready application, the Court has been fairly consistent in its *understanding* and *application* of the term and has not significantly deviated from what it laid down in *In re Basa*. The key element, directly derived from the word "turpitude," is the standard of depravity viewed from a scale of right and wrong.

The application of this depravity standard can be made from at least three perspectives or approaches, namely: from the *objective perspective of the act itsel*f, irrespective of whether or not the act is a crime; from the *perspective of the crime itself,* as defined through its elements; and from the *subjective perspective that takes into account the perpetrator's level of depravity* when he committed the crime.

The Court best expressed the ***first approach*** in *Zari v. Flores*[66] where the Court saw the involvement of moral turpitude where an act is intrinsically immoral, regardless of whether it is punishable by law or not. The Court emphasized that moral turpitude goes beyond being merely *mala prohibita*; the act itself must be inherently immoral. Thus, this approach requires that the committed act itself be examined, divorced from its characterization as a crime.

A ruling that exemplifies this approach is that made in the U.S. case *In The Matter of G*—[67] where, in considering gambling, it was held that:

> Gambling has been in existence since time immemorial. Card playing for small stakes is a common accompaniment of social life; small bets on horse racing and the "policy or numbers games" are diversions of the masses. That such enterprises exist surreptitiously is a matter of common knowledge. Many countries permit it under a license system. In ancient times laws were enacted to discourage people from gambling on the theory that the State had first claim

[66] *Supra* note 59.

[67] 1 I. & N. Dec. 59, 1941 WL 7913 (BIA).

upon their time and energy, and at later dates antigambling laws were aimed especially at the activity as practiced by the working classes. Present-day movements to suppress gambling are also tinged with other considerations. In urban communities in the past few decades the purely religious opposition to gambling has tended to become less violent because certain activities, highly reputable according to prevailing social standards, have come more and more to resemble it. Prohibition against gambling has had something of a police rather than a truly penal character. At all times an important fact in arousing antagonism in gambling has been the association, almost inevitable, with sharp practice. In established societies more or less serious attempts are everywhere made, however, to prohibit or to regulate gambling in its more notorious forms.

It would appear that statutes permitting gambling, such as those under discussion, rest primarily on the theory that they are in the interest of public policy: that is to regulate and restrict any possible abuse, to obviate cheating and other corrupt practices that may result if uncontrolled.

From this discussion, the Court went on to conclude that gambling is a *malum prohibitum* that is not intrinsically evil and, thus, is not a crime involving moral turpitude.

With the same approach, but with a different result, is *Office of the Court Administrator v. Librado*,[68] a case involving drug possession. Librado, a Deputy Sheriff in MTCC Iligan City was convicted of possession of "*shabu*," a prohibited drug. The Office of the Court Administrator commenced an administrative case against him and he was subsequently suspended from office. In his subsequent plea for reinstatement, the Court strongly denounced drug possession as an "especially vicious crime, one of the most pernicious evils that has ever crept into our society… For those who become addicted to it not only slide into the ranks of the living dead, what is worse, they become a grave menace to the safety of law abiding members of society." The Court, apparently drawing on what society deems important, held that the use of drugs amounted to an act so inherently evil that no law was needed to deem it as such; it is an evil without

[68] *Supra* note 54.

need for a law to call it evil[69] — "an immoral act in itself regardless of whether it is punishable or not."[70]

In *People v. Yambot*,[71] the Court categorically ruled that the possession of a deadly weapon does not involve moral turpitude *since the act of carrying a weapon by itself is not inherently wrong* in the absence of a law punishing it. Likewise, the Court acknowledged in *Court Administrator v. San Andres*[72] that illegal recruitment does not involve moral turpitude since it is not in itself an evil act; it considered recruitment an act in the usual course of business and is not illegal in the absence of the a regulatory law. This ruling, of course, did not take into account the fraud that usually accompanies present-day illegal recruitment activities.

The ***second approach*** is to look at the act committed through its elements as a crime, singling out this element and largely evaluating it under the objective norms of the first approach. In *Paras v. Vailoces*,[73] the Court recognized that as a "general rule, all crimes of which fraud is an element are looked on as involving moral turpitude." This is the same conclusion that the U.S. Supreme Court made in *Jordan, i.e.*, that crimes requiring fraud or intent to defraud always involve moral turpitude.[74]

Dela Torre v. Commission on Elections[75] is a case in point that uses the second approach and is one case where the Court even dispensed with the review of facts and circumstances surrounding the commission of the crime since Dela Torre did not assail his conviction. Dela Torre was disqualified by the Comelec from running as Mayor of Cavinti, Laguna on the basis of his conviction for violation of Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law. Dela Torre appealed to this Court to overturn his disqualification on the

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[69] *Supra* note 25, p. 23.

[70] *Supra* note 59, p. 323.

[71] *Supra* note 64.

[72] *Supra* note 63.

[73] *Supra* note 45.

[74] *Supra* note 1, p. 228.

[75] *Supra* note 23.

ground that the crime of fencing is not a crime involving moral turpitude. The Court ruled that moral turpitude is deducible from the third element. Actual knowledge by the fence of the fact that property received is stolen displays the same degree of malicious deprivation of one's rightful property that animates the the crimes of robbery or theft — crimes that by their very nature involve moral turpitude.

To be sure, the elements of the crime can be a critical factor in determining moral turpitude if the second approach is used in most of the listed crimes found to involve moral turpitude. In *Villaber v. Commission on Elections*,[76] the Court, by analyzing the elements alone of the offense under *Batas Pambansa Blg*. 22, held that the "presence of the second element manifest moral turpitude" in that "a drawer who issues an unfunded check deliberately reneges on his private duties he owes his fellow men or society in a manner contrary to accepted and customary rule of right and duty, justice, honesty or good morals." The same conclusion was reached by the Court in *Magno v. Commission on Elections*,[77] when it ruled that direct bribery involves moral turpitude, thus:

> **Moral turpitude can be inferred from the third element**. The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a **malicious intent** on the part of the offender to renege on the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals. In all respects, direct bribery is a crime involving moral turpitude. [Emphasis supplied]

The ***third approach, the subjective approach,*** essentially takes the offender and his acts into account in light of the attendant circumstances of the crime: was he or she personally motivated by ill will indicating depravity? The Court apparently used this approach in *Ao Lin v. Republic*,[78] a 1964 case, when it held "that the use of

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[76] *Supra* note 50, p. 134.

[77] *Supra* note 57.

[78] G.R. No. L-18506, January 30, 1964, 10 SCRA 27.

a meter stick without the corresponding seal of the Internal Revenue Office by one who has been engaged in business for a long time, involves moral turpitude because it involves a fraudulent use of a meter stick, not necessarily because the Government is cheated of the revenue involved in the sealing of the meter stick, but because ***it manifests an evil intent on the part of the petitioner to defraud customers*** purchasing from him in respect to the measurement of the goods purchased."

In *IRRI v. NLRC,*[79] the International Rice Research Institute terminated the employment contract of Nestor Micosa on the ground that he had been convicted of the crime of homicide – a crime involving moral turpitude. The Court refused to characterize the crime of homicide as one of moral turpitude in light of the circumstances of its commission. The Court ruled:

> These facts show that Micosa's intention was not to slay the victim but only to defend his person. The appreciation in his favor of *the mitigating circumstances of self-defense and voluntary surrender, plus the total absence of any aggravating circumstances* demonstrate that Micosa's character and intentions were not inherently vile, immoral or unjust. [*italics supplied*].

The Court stressed, too, not only the subjective element, but the need for the appreciation of facts in considering whether moral turpitude exists – an unavoidable step under the third approach. Thus, the Court explained:

> This is not to say that all convictions of the crime of homicide do not involve moral turpitude. **Homicide may or may not involve moral turpitude depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances.** [Emphasis supplied]

In contrast, while *IRRI* refused to characterize the crime of homicide as one of moral turpitude, the recent case of *Soriano v. Dizon*[80] held that based on the circumstances, the crime of

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[79] *Supra* note 29.

[80] *Supra* note 58.

frustrated homicide committed by the respondent involved moral turpitude. In *Soriano*, complainant Soriano filed a disbarment case against respondent Atty. Manuel Dizon alleging that the crime of frustrated homicide involves moral turpitude under the circumstances surrounding its commission, and was a sufficient ground for his disbarment under Section 27 of Rule 138 of the Rules of Court. The Court after noting the factual antecedents of *IRRI* held that –

The present case is totally different. As the IBP correctly found, the circumstances clearly evince the moral turpitude of respondent and his unworthiness to practice law. Atty. Dizon was definitely the aggressor, as he pursued and shot complainant when the latter least expected it. The act of aggression shown by respondent will not be mitigated by the fact that he was hit once and his arm twisted by complainant. Under the circumstances, those were reasonable actions clearly intended to fend off the lawyer's assault.

We also consider the trial court's finding of treachery as a further indication of the skewed morals of respondent. He shot the victim when the latter was not in a position to defend himself. In fact, under the impression that the assault was already over, the unarmed complainant was merely returning the eyeglasses of Atty. Dizon when the latter unexpectedly shot him. To make matters worse, respondent wrapped the handle of his gun with a handkerchief so as not to leave fingerprints. In so doing, he betrayed his sly intention to escape punishment for his crime.

The totality of the facts unmistakably bears the earmarks of moral turpitude. By his conduct, respondent revealed his extreme arrogance and feeling of self-importance. As it were, he acted like a god on the road, who deserved to be venerated and never to be slighted. Clearly, his inordinate reaction to a simple traffic incident reflected poorly on his fitness to be a member of the legal profession. His overreaction also evinced vindictiveness, which was definitely an undesirable trait in any individual, more so in a lawyer. In the tenacity with which he pursued complainant, we see not the persistence of a person who has been grievously wronged, but the obstinacy of one trying to assert a false sense of superiority and to exact revenge.[81] [Emphasis supplied]

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[81] *Supra* note 58, pp. 10-11.

Laguitan v. Tinio,[82] expressed in terms of the protection of the sanctity of marriage,[83] also necessarily looked at the subjective element because the offender's concubinage involved an assault on the basic social institution of marriage. Another subjective element case, in terms of looking at the damage wrought by the offender's act, is *People v. Jamero*[84] where the Court disregarded the appellants' argument that the trial court erred in ordering the discharge of Inocencio Retirado from the Information in order to make him a state witness, since he has been previously convicted of the crime of malicious mischief – a crime involving moral turpitude. The Court said:

In the absence of any evidence to show the gravity and the nature of the malicious mischief committed, We are not in a position to say whether or not the previous conviction of malicious mischief proves that accused had displayed the baseness, the vileness and the depravity which constitute moral turpitude. And considering that under paragraph 3 of Article 329 of the Revised Penal Code, any deliberate act (not constituting arson or other crimes involving destruction) causing damage in the property of another, may constitute the crime of malicious mischief, **We should not make haste in declaring that such crime involves moral turpitude without determining, at least, the value of the property destroyed and/or the circumstances under which the act of destroying was committed.**[85] [Emphasis supplied]

We conclude from all these consideration that is some crimes, the application of the third approach is critical so that a close factual consideration of the attendant circumstances is necessary to arrive at a conclusion. This conclusion in turn implies that in some cases the use of the first two approaches may not be conclusive, or at least, may lead to results that may still be affected by the results of the third approach.

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[82] *Supra* note 39.

[83] *Supra* note 25, p. 24.

[84] G.R. No. L-19852, July 29, 1968, 24 SCRA 206.

[85] *Id.*, pp. 245-246.

In sum, a survey of jurisprudence from the earliest case of *In Re Basa*[86] to the recent case of *Soriano v. Dizon* [87] shows that the Court has used varying approaches, but used the same standard or measure – *the degree of attendant depravity*. The safest approach to avoid being misled in one's conclusion is to apply all three approaches, if possible, and to evaluate the results from each of the approaches. A useful *caveat* in the evaluation is to resolve any doubt in favor of the perpetrator, as a conclusion of moral turpitude invariably signifies a worse consequence for him or her.

IV. The Approaches Applied to TEVES

The Objective Approach

The crime for which petitioner Teves was convicted (possession of pecuniary or financial interest in a cockpit) is, at its core, related to gambling – an act that by contemporary community standards is not *per se* immoral. Other than the ruling heretofore cited on this point,[88] judicial notice can be taken of state-sponsored gambling activities in the country that, although not without controversy, are generally regarded to be within acceptable moral limits. The *ponencia* correctly noted that prior to the enactment of the Local Government Code of 1991, mere possession by a public officer of pecuniary interest in a cockpit was not expressly prohibited. This bit of history alone is an indicator that, objectively, no essential depravity is involved even from the standards of a holder of a public office. This reasoning led the *ponencia* to conclude that "its illegality does not mean that violation thereof . . . makes such possession of interest inherently immoral."[89]

From the Perspective of the Elements of the Crime

Under this approach, we determine whether a crime involves moral turpitude based solely on our analysis of the elements of the crime alone.

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[86] *Supra* note 22.

[87] *Supra* note 58.

[88] *Supra* note 67.

[89] *Ponencia,* p. 9.

The essential elements of the offense of possession of prohibited interest (Section 3(h) of the Anti-Graft Law) for which the petitioner was convicted are:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
3. He is prohibited from having such interest by the Constitution or any law.

From the perspective of moral turpitude, the third element of the crime is the critical element. An analysis of this element, significantly using the objective norms of the first approach, shows that the holding of interest that the law covers is not a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals; it is illegal solely because of the prohibition that exists in law or in the Constitution. Thus, no depravity immediately leaps up or suggests itself based solely on the elements of the crime committed.

The Subjective Approach

This approach is mainly the mode the *ponencia* used to arrive at its conclusion that no moral turpitude is involved, as it expressly stated that "a determination of all surrounding circumstances of the violation of the statute must be considered."[90]

In this determination, the *ponencia* firstly considered that the petitioner did not use his official capacity in connection with the interest in the cockpit; he did not likewise hide this interest by transferring it to his wife, as the transfer took effect before the effectivity of the law prohibiting the possession of interest. The *ponencia* significantly noted, too, that the violation was not intentionally committed in a manner contrary to justice, modesty, or good morals, but due simply to Teves' lack of awareness or ignorance of the prohibition. This last consideration, in my view, is the clinching argument that no moral turpitude can be involved as no depravity can be gleaned where personal intent is clearly absent.

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[90] *Id.*, p. 7.

Conclusion

To recapitulate, all three approaches point to the conclusion that no moral turpitude was involved in the crime Teves committed, with the predominant reasons being the first (or objective) and the third (or subjective) approaches. Analyzed under my recommended structure of analysis, with one approach reinforcing another, CONCURRENCE with the *ponencia's* reasoning and conclusion is inevitable.

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