PHILIPPINE REPORTS

VOL. 613

AUGUST 19, 2009 TO AUGUST 27, 2009

VOLUME 613

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 19, 2009 TO AUGUST 27, 2009

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

HON. REYNATO S. PUNO, Chief Justice
HON. LEONARDO A. QUISUMBING, Associate Justice
HON. CONSUELO YNARES-SANTIAGO, Associate Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. RENATO C. CORONA, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. MINITA V. CHICO-NAZARIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice

FIRST DIVISION

Chairman

Hon. Reynato S. Puno

Members

Hon. Antonio T. Carpio
Hon. Renato C. Corona
Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairman

Hon. Leonardo A. Quisumbing

Members

Hon. Conchita Carpio Morales
Hon. Arturo D. Brion
Hon. Mariano C. Del Castillo
Hon. Roberto A. Abad

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Consuelo Ynares-Santiago

Members

Hon. Minita V. Chico-Nazario
Hon. Presbitero J. Velasco, Jr.
Hon. Antonio Eduardo B. Nachura
Hon. Diosdado M. Peralta

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 08-6-352-RTC. August 19, 2009]

QUERY OF ATTY. KAREN M. SILVERIO-BUFFE, FORMER CLERK OF COURT — BRANCH 81, ROMBLON, ROMBLON — ON THE PROHIBITION FROM ENGAGING IN THE PRIVATE PRACTICE OF LAW.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (RA NO. 6713); PROHIBITED ACTS AND TRANSACTIONS; ON ENGAGING IN PRIVATE PRACTICE OF PROFESSION SEC. 7(b)(2); QUERY IN CASE AT BAR. — The query in case at bar, as originally framed, related to Section 7(b)(2) of Republic Act (*R.A.*) No. 6713, as amended (or the Code of Conduct and Ethical Standards for Public Officials and Employees). This provision places a limitation on **public officials and employees during their incumbency,** and those already **separated from government employment** for a period of one (1) year after separation, in engaging in the private practice of their profession. Section 7(b)(2) of R.A. No. 6713 provides: **SECTION 7. Prohibited Acts and Transactions**. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and

employee and are hereby declared to be unlawful: x x x (b) Outside employment and other activities related thereto. – Public officials and e mployees during their incumbency shall not: x x x (2) **Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions;** or x x x These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply. In her letter-query, Atty. Buffe posed these questions: "*Why may an incumbent engage in private practice under (b)(2), assuming the same does not conflict or tend to conflict with his official duties, but a non-incumbent like myself cannot, as is apparently prohibited by the last paragraph of Sec. 7? Why is the former allowed, who is still occupying the very public position that he is liable to exploit, but a non-incumbent like myself – who is no longer in a position of possible abuse/exploitation – cannot?*"

2. ID.; ID.; ADMINISTRATIVE DUE PROCESS; AFFORDED IN CASE AT BAR. — The essence of due process is the grant of the opportunity to be heard; what it abhors is the lack of the opportunity to be heard. The records of this case show that Atty. Buffe has been amply heard with respect to her actions. She was notified, and she even responded to our November 11, 2008 directive for the Executive Judge of the RTC of Romblon to report on Atty. Buffe's appearances before Branch 81; she expressly manifested that these appearances were part of the Branch records. Her legal positions on these appearances have also been expressed before this Court; *first*, in her original letter-query, and *subsequently*, in her Manifestation. Thus, no due process consideration needs to deter us from considering the legal consequences of her appearances in her previous Branch within a year from her resignation.

3. ID.; ID.; RA NO. 6713; SEC. 7(b)(2); ELUCIDATED. — Section 7 of R.A. No. 6713 generally provides for the prohibited acts and transactions of public officials and employees. Subsection (b)(2) prohibits them from engaging in the private practice of their profession during their incumbency. As an

exception, a public official or employee can engage in the practice of his or her profession under the following conditions: *first*, the private practice is authorized by the Constitution or by the law; and *second*, the practice will not conflict, or tend to conflict, with his or her official functions. The Section 7 prohibitions continue to apply for a period of one year after the public official or employee's resignation, retirement, or separation from public office, except for the private practice of profession under subsection (b)(2), which can already be undertaken even within the one-year prohibition period. As an exception to this exception, the one-year prohibited period applies with respect to any matter before the office the public officer or employee used to work with. The Section 7 prohibitions are predicated on the principle that public office is a public trust; and serve to remove any impropriety, real or imagined, which may occur in government transactions between a former government official or employee and his or her former colleagues, subordinates or superiors. The prohibitions also promote the observance and the efficient use of every moment of the prescribed office hours to serve the public.

4. ID.; ID.; ID.; ID.; RULE IN COMPARISON TO SEC. 5, CANON 3 OF THE CODE OF CONDUCT FOR COURT PERSONNEL ON THE PRACTICE OF LAW. — In the case of court employees, Section 7(b)(2) of R.A. No. 6713 is not the only prohibition to contend with; Section 5, Canon 3 of the Code of Conduct for Court Personnel also applies. The latter provision provides the definitive rule on the "outside employment" that an incumbent court official or court employee may undertake in addition to his official duties: x x x In both the aspect of R.A. No. 6713 and Canon 3, the practice of law is covered; the practice of law is a practice of profession, while Canon 3 specifically mentions any outside employment requiring the practice of law. In *Cayetano v. Monsod*, we defined the practice of law as any activity, in and out of court, that requires the application of law, legal procedure, knowledge, training and experience. Moreover, we ruled that to engage in the practice of law is to perform those acts which are characteristics of the profession; to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill. Under both provisions, a common objective is to avoid any conflict of interest on the part of the

employee who may wittingly or unwittingly use confidential information acquired from his employment, or use his or her familiarity with court personnel still with the previous office. After separation from the service, Section 5, Canon 3 of the Code of Conduct for Court Personnel ceases to apply as it applies specifically to incumbents, but Section 7 and its subsection (b)(2) of R.A. No. 6713 continue to apply to the extent discussed above. Atty. Buffe's situation falls under Section 7.

5. ID.; ID.; ID.; ID.; ELUCIDATED TO ANSWER TO THE QUERY IN CASE AT BAR. — A distinctive feature of this administrative matter is Atty. Buffe's admission that she immediately engaged in private practice of law within the one-year period of prohibition stated in Section 7(b)(2) of R.A. No. 6713. We find it noteworthy, too, that she is aware of this provision and only objects to its application to her situation; she perceives it to be unfair that she cannot practice before her old office – Branch 81 – for a year immediately after resignation, as she believes that her only limitation is in matters where a conflict of interest exists between her appearance as counsel and her former duties as Clerk of Court. She believes that Section 7 (b)(2) gives preferential treatment to incumbent public officials and employees as against those already separated from government employment. Atty. Buffe apparently misreads the law. As the OCAT aptly stated, she interprets Section 7 (b)(2) as a blanket authority for an incumbent clerk of court to practice law. We reiterate that the general rule under Section 7 (b)(2) is to bar public officials and employees from the practice of their professions; it is unlawful under this general rule for clerks of court to practice their profession. By way of exception, they can practice their profession if the Constitution or the law allows them, but no conflict of interest must exist between their current duties and the practice of their profession. No chance exists for lawyers in the Judiciary to practice their profession, as they are in fact expressly prohibited by Section 5, Canon 3 of the Code of Conduct for Court Personnel from doing so. Under both the general rule and the exceptions, therefore, Atty. Buffe's basic premise is misplaced. A clerk of court can already engage in the practice of law immediately after her separation from the service and without any period limitation that applies to other prohibitions under Section 7 of R.A. No. 6713. The clerk of court's limitation is that she cannot practice her profession

within one year before the office where he or she used to work with. In a comparison between a resigned, retired or separated official or employee, on the one hand, and an incumbent official or employee, on the other, the former has the advantage because the limitation is only with respect to the office he or she used to work with and only for a period of one year. The incumbent cannot practice at all, save only where specifically allowed by the Constitution and the law and only in areas where no conflict of interests exists. This analysis again disproves Atty. Buffe's basic premises.

6. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO OBEY AND RESPECT THE LAW; PROHIBITION AGAINST ENGAGING IN UNLAWFUL CONDUCT; VIOLATED IN CASE AT BAR. — A worrisome aspect of Atty. Buffe's approach to Section 7 (b)(2) is her awareness of the law and her readiness to risk its violation because of the unfairness she perceives in the law. We find it disturbing that she first violated the law before making any inquiry. She also justifies her position by referring to the practice of other government lawyers known to her who, after separation from their judicial employment, immediately engaged in the private practice of law and appeared as private counsels before the RTC branches where they were previously employed. Again we find this a cavalier attitude on Atty. Buffe's part and, to our mind, only emphasizes her own willful or intentional disregard of Section 7 (b)(2) of R.A. No. 6713. By acting in a manner that R.A. No. 6713 brands as *"unlawful,"* Atty. Buffe contravened Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, **OBEY THE LAWS** OF THE LAND AND **PROMOTE RESPECT FOR LAW** AND FOR LEGAL PROCESSES x x x Rule 1.01 – A lawyer **shall not** engage in **unlawful**, dishonest, immoral or deceitful conduct. As indicated by the use of the mandatory word "*shall,*" this provision must be strictly complied with. Atty. Buffe failed to do this, perhaps not with an evil intent, considering the misgivings she had about Section 7 (b)(2)'s unfairness. Unlawful conduct under Rule 1.01 of Canon 1, however, does not necessarily require the element of criminality, although the Rule is broad enough to include it. Likewise, the presence of evil intent on the part of the lawyer is not essential to bring his or her act or omission within the

terms of Rule 1.01, when it specifically prohibits lawyers from engaging in unlawful conduct. Thus, we find Atty. Buffe liable under this quoted Rule.

7. ID.; ID.; DUTY TO UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION; VIOLATED IN CASE AT BAR. — We also find that Atty. Buffe also failed to live up to her lawyer's oath and thereby violated Canon 7 of the Code of Professional Responsibility when she blatantly and unlawfully practised law within the prohibited period by appearing before the RTC Branch she had just left. Canon 7 states: CANON 7. A LAWYER **SHALL** AT ALL TIMES UPHOLD THE INTEGRITY AND THE DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. By her open disregard of R.A. No. 6713, she thereby followed the footsteps of the models she cited and wanted to replicate – the former court officials who immediately waded into practice in the very same court they came from. She, like they, disgraced the dignity of the legal profession by openly disobeying and disrespecting the law. By her irresponsible conduct, she also eroded public confidence in the law and in lawyers. Her offense is not in any way mitigated by her transparent attempt to cover up her transgressions by writing the Court a letter-query, which she followed up with unmeritorious petitions for declaratory relief, all of them dealing with the same Section 7 (b)(2) issue, in the hope perhaps that at some point she would find a ruling favorable to her cause. These are acts whose implications do not promote public confidence in the integrity of the legal profession.

8. ID.; ID.; VIOLATIONS SUFFICIENTLY ESTABLISHED TO ATTACH ADMINISTRATIVE LIABILITY WITHOUT NEED OF FURTHER INQUIRY OR FORMAL INVESTIGATION AS ERRANT LAWYER GIVEN AN OPPORTUNITY TO BE HEARD. — Considering Atty. Buffe's ready admission of violating Section 7(b)(2), the principle of *res ipsa loquitur* finds application, making her administratively liable for violation of Rule 1.01 of Canon 1 and Canon 7 of the Code of Professional Responsibility. In several cases, the Court has disciplined lawyers without further inquiry or resort to any formal investigation where the facts on record sufficiently provided the basis for the determination of their administrative liability. x x x The absence of any formal charge against and/or formal

investigation of an errant lawyer do not preclude the Court from immediately exercising its disciplining authority, as long as the errant lawyer or judge has been given the opportunity to be heard. As we stated earlier, Atty. Buffe has been afforded the opportunity to be heard on the present matter through her letter-query and Manifestation filed before this Court.

9. ID.; ID.; VIOLATION WARRANTS PENALTY DEPENDING ON SURROUNDING FACTS; CASE AT BAR. — A member of the bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility. The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In this case, we cannot discern any mitigating factors we can apply, save OCAT's observation that Atty. Buffe's letter-query may really reflect a misapprehension of the parameters of the prohibition on the practice of the law profession under Section 7 (b) (2) of R.A. No. 6713. Ignorance of the law, however, is no excuse, particularly on a matter as sensitive as practice of the legal profession soon after one's separation from the service. If Atty. Buffe is correct in the examples she cited, it is time to ring the bell and to blow the whistle signaling that we cannot allow this practice to continue. As we observed earlier, Atty. Buffe had no qualms about the simultaneous use of various fora in expressing her misgivings about the perceived unfairness of Section 7 of R.A. 6713. She formally lodged a query with the Office of the Court Administrator, and soon after filed her successive petitions for declaratory relief. Effectively, she exposed these fora to the possibility of embarrassment and confusion through their possibly differing views on the issue she posed. Although this is not strictly the forum-shopping that the Rules of Court prohibit, what she has done is something that we cannot help but consider with disfavor because of the potential damage and embarrassment to the Judiciary that it could have spawned. This is a point against Atty. Buffe that cancels out the leniency we might have exercised because of the OCAT's observation about her ignorance of and misgivings on the extent of the prohibition after separation from the service. Under the circumstances, we find that her actions merit a penalty of fine of ₱10,000.00,

together with a stern warning to deter her from repeating her transgression and committing other acts of professional misconduct. **This penalty reflects as well the Court's sentiments on how seriously the retired, resigned or separated officers and employees of the Judiciary should regard and observe the prohibition against the practice of law with the office that they used to work with.**

D E C I S I O N

BRION, *J.*:

This administrative matter started as a letter-query dated March 4, 2008 of Atty. Karen M. Silverio-Buffe (*Atty. Buffe*) addressed to the Office of the Court Administrator, which query the latter referred to the Court for consideration. In the course of its action on the matter, the Court discovered that the query was beyond pure policy interpretation and referred to the actual situation of Atty. Buffe, and, hence, was a matter that required concrete action on the factual situation presented.

The query, as originally framed, related to Section 7(b)(2) of Republic Act (*R.A.*) No. 6713, as amended (or the Code of Conduct and Ethical Standards for Public Officials and Employees). This provision places a limitation on **public officials and employees during their incumbency**, and those already **separated from government employment** for a period of one (1) year after separation, in engaging in the private practice of their profession. Section 7(b)(2) of R.A. No. 6713 provides:

SECTION 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx xxx xxx

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

x x x x x x x x x

(2) **Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions;** or

x x x x x x x x x

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

In her letter-query, Atty. Buffe posed these questions: "*Why may an incumbent engage in private practice under (b)(2), assuming the same does not conflict or tend to conflict with his official duties, but a non-incumbent like myself cannot, as is apparently prohibited by the last paragraph of Sec. 7? Why is the former allowed, who is still occupying the very public position that he is liable to exploit, but a non-incumbent like myself – who is no longer in a position of possible abuse/exploitation – cannot?*"[1]

The query arose because Atty. Buffe previously worked as Clerk of Court VI of the Regional Trial Court (*RTC*), Branch 81 of Romblon; she resigned from her position effective February 1, 2008. Thereafter (and within the one-year period of prohibition mentioned in the above-quoted provision), she engaged in the private practice of law by appearing as private counsel in several cases before RTC-Branch 81 of Romblon.

Atty. Buffe alleged that Section 7(b)(2) of R.A. No. 6713 gives preferential treatment to an incumbent public employee, who may engage in the private practice of his profession so long as this practice does not conflict or tend to conflict with his official functions. In contrast, a public official or employee who has retired, resigned, or has been separated from government service like her, is prohibited from engaging in private

[1] *Rollo*, p. 2.

practice on any matter before the office where she used to work, for a period of one (1) year from the date of her separation from government employment.

Atty. Buffe further alleged that the intention of the above prohibition is to remove the exercise of clout, influence or privity to insider information, which the incumbent public employee may use in the private practice of his profession. However, this situation did not obtain in her case, since she had already resigned as Clerk of Court of RTC-Branch 81 of Romblon. She advanced the view that she could engage in the private practice of law before RTC-Branch 81 of Romblon, so long as her appearance as legal counsel shall not conflict or tend to conflict with her former duties as former Clerk of Court of that Branch.

Then Deputy Court Administrator (now Court Administrator) Jose P. Perez made the following observations when the matter was referred to him:

> The general intent of the law, as defined in its title is "to uphold the time-honored principle of public office being a public trust." Section 4 thereof provides for the norms of conduct of public officials and employees, among others: (a) commitment to public interest; (b) professionalism; and (c) justness and sincerity. Of particular significance is the statement under professionalism that "[t]hey [public officials and employees] shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.
>
> Thus, it may be well to say that the prohibition was intended to avoid any impropriety or the appearance of impropriety which may occur in any transaction between the retired government employee and his former colleagues, subordinates or superiors brought about by familiarity, moral ascendancy or undue influence, as the case may be.[2]

Subsequently, in a *Minute* Resolution dated July 15, 2008, we resolved to refer this case to the Office of the Chief Attorney

---

[2] *Id.*, p. 3.

(*OCAT*) for evaluation, report and recommendation.[3] The OCAT took the view that:

> The premise of the query is erroneous. She interprets Section 7 (b) (2) as a blanket authority for an incumbent clerk of court to practice law. Clearly, there is a misreading of that provision of law.[4]

and further observed:

> The confusion apparently lies in the use of the term "such practice" after the phrase "provided that." It may indeed be misinterpreted as modifying the phrase "engage in the private practice of their profession" should be prefatory sentence that public officials "during their incumbency shall not" be disregarded. However, read in its entirety, "such practice" may only refer to practice "authorized by the Constitution or law" or the exception to the prohibition against the practice of profession. The term "law" was intended by the legislature to include "a memorandum or a circular or an administrative order issued pursuant to the authority of law."
>
> xxx xxx xxx
>
> The interpretation that Section 7 (b) (2) *generally* prohibits incumbent public officials and employees from engaging in the practice of law, which is declared therein a prohibited and unlawful act, accords with the constitutional policy on accountability of public officers stated in Article XI of the Constitution …
>
> xxx xxx xxx
>
> The policy thus requires public officials and employees to devote full time public service so that in case of conflict between personal and public interest, the latter should take precedence over the former.[5][Footnotes omitted]

With respect to lawyers in the judiciary, the OCAT pointed to Section 5, Canon 3 of the Code of Conduct for Court Personnel – the rule that deals with outside employment by an incumbent

---

[3] *Id.,* p. 8.

[4] *Id.,* p. 12.

[5] *Id.,* pp. 12-13.

judicial employee and which limits such outside employment to one that "does not require the practice of law."[6] The prohibition to practice law with respect to any matter where they have intervened while in the government service is reiterated in Rule 6.03, Canon 6 of the Code of Professional Responsibility, which governs the conduct of lawyers in the government service.[7]

In view of the OCAT findings and recommendations, we issued an *En Banc* Resolution dated November 11, 2008 directing the Court Administrator to draft and submit to the Court a circular on the practice of profession during employment and within one year from resignation, retirement from or cessation of employment in the Judiciary. We likewise required the Executive Judge of the RTC of Romblon to (i) verify if Atty. Buffe had appeared as counsel during her incumbency as clerk of court and after her resignation in February 2008, and (ii) submit to the Court a report on his verification.[8]

In compliance with this our Resolution, Executive Judge Ramiro R. Geronimo of RTC-Branch 81 of Romblon reported the following appearances made by Atty. Buffe:

(1) Civil Case No. V-1564, entitled *Oscar Madrigal Moreno, Jr. et al. versus Leonardo M. Macalam, et al.* on February 19, 2008, March 4, 2008, April 10, 2008 and July 9, 2008 as counsel for the plaintiffs;

(2) Civil Case No. V-1620, entitled *Melchor M. Manal versus Zosimo Malasa, et al.*, on *(sic)* February, 2008, as counsel for the plaintiff;

(3) Civil Case No. V-1396, entitled *Solomon Y. Mayor versus Jose J. Mayor*, on February 21, 2008, as counsel for the plaintiff; and

---

[6] The last paragraph of Section 5 states: Where a conflict of interest exists, may reasonably appear to exist, or where the outside employment reflects adversely on the integrity of the Judiciary, the court personnel shall not accept the outside employment; see *rollo*, p. 16.

[7] Rule 6.03 – A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service.

[8] *Rollo*, p. 23.

(4) Civil Case No. V-1639, entitled *Philippine National Bank versus Sps. Mariano and Olivia Silverio,* on April 11, 2008 and July 9, 2008, as counsel for the defendants.

Atty. Buffe herself was furnished a copy of our November 11, 2008 *En Banc* Resolution and she filed a Manifestation (received by the Court on February 2, 2009) acknowledging receipt of our November 11, 2008 Resolution. She likewise stated that her appearances are part of Branch 81 records. As well, she informed the Court that she had previously taken the following judicial remedies in regard to the above query:

1. SCA No. 089119028 (Annex C), filed with Branch 54 of the RTC Manila, which had been dismissed without prejudice on July 23, 2008 (Annex D) – a recourse taken **when undersigned was still a private practitioner**;

2. SCA No. 08120423 (Annex A), filed with Branch 17 of the RTC of Manila, which had been also

dismissed (with or without prejudice) on December 4, 2008 (Annex B) – **a recourse taken when undersigned was already a public prosecutor appearing before the same Branch 81**, after she took her oath of office as such on August 15, 2008.[Emphasis supplied]

She also made known her intent to elevate the dismissal of the above cases "*so that eventually, the Honorable Supreme Court may put to rest the legal issue/s presented in the above petitions which is, why is it that R.A. No. 6713, Sec. 7 (b)(2) and last par. thereof, apparently contains an express prohibition (valid or invalid) on the private practice of undersigned's law profession, before Branch 81, while on the other hand not containing a similar, express prohibition in regard to undersigned's practice of profession, before the same court, as a public prosecutor – within the supposedly restricted 1-year period?*"

OUR ACTION AND RULING

Preliminary Considerations

As we stated at the outset, this administrative matter confronts us, not merely with the task of determining how the Court will

respond to the query, both with respect to the substance and form (as the Court does not give interpretative opinions[9] but can issue circulars and regulations relating to pleading, practice and procedure in all courts[10] and in the exercise of its administrative supervision over all courts and personnel thereof[11]), but also with the task of responding to admitted violations of Section 7 (b)(2) of R.A. No. 6713 and to multiple recourses on the same subject.

After our directive to the Office of the Court Administrator to issue a circular on the subject of the query for the guidance of all personnel in the Judiciary, we consider this aspect of the present administrative matter a finished task, subject only to confirmatory closure when the OCA reports the completion of the undertaking to us.

Atty. Buffe's admitted appearance, before the very same branch she served and immediately after her resignation, is a violation that we cannot close our eyes to and that she cannot run away from under the cover of the letter-query she filed and her petition for declaratory relief, whose dismissal she manifested she would pursue up to our level. We note that at the time she filed her letter-query (on March 4, 2008), Atty. Buffe had already appeared before Branch 81 in at least three (3) cases. The terms of Section 7 (b)(2) of R.A. No. 6713 did not deter her in any way and her misgivings about the fairness of the law cannot excuse any resulting violation she committed. In other words, she took the risk of appearing before her own Branch and should suffer the consequences of the risk she took.

Nor can she hide behind the two declaratory relief petitions she filed, both of which were dismissed, and her intent to elevate

---

[9] *Province of North Cotabato, etc. v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008.

[10] CONSTITUTION, Article VIII, Section 5(b).

[11] *Id.*, Section 6.

the dismissal to this Court for resolution. The *first*, filed before the RTC, Branch 54, Manila, was dismissed on July 23, 2008 because the "court declined to exercise the power to declare rights as prayed for in the petition, as any decision that may be rendered will be inutile and will not generally terminate the uncertainty or controversy."[12] The *second*, filed with the RTC, Branch 17, Manila, was dismissed for being an inappropriate remedy after the dismissal ordered by the RTC, Branch 54, Manila, on December 4, 2008.[13] Under these circumstances, we see nothing to deter us from ruling on Atty. Buffe's actions, as no actual court case other than the present administrative case, is now actually pending on the issue she raised. On the contrary, we see from Atty. Buffe's recourse to this Court and the filing of the two declaratory petitions the intent to shop for a favorable answer to her query. We shall duly consider this circumstance in our action on the case.

A last matter to consider before we proceed to the merits of Atty. Buffe's actions relates to possible objections on procedural due process grounds, as we have not made any *formal directive* to Atty. Buffe to explain why she should not be penalized for her appearance before Branch 81 soon after her resignation from that Branch. The essence of due process is the grant of the opportunity to be heard; what it abhors is the lack of the opportunity to be heard.[14] The records of this case show that Atty. Buffe has been amply heard with respect to her actions. She was notified, and she even responded to our November 11, 2008 directive for the Executive Judge of the RTC of Romblon to report on Atty. Buffe's appearances

---

[12] *Rollo*, pp. 57-58; attachment "D" to Atty. Buffe's Manifestation of February 2, 2009.

[13] *Id.*, p. 59; attachment "B" to Atty. Buffe's Manifestation of February 2, 2009.

[14] *Prudential Bank v. Castro*, A.C. No. 2756, November 12, 1987, 155 SCRA 604; *Richards v. Asoy*, A. C. No. 2655, July 9, 1987, 152 SCRA 45; *In re: Wenceslao Laureta*, G.R. No. 68635, May 14, 1987, 149 SCRA 570; *Zaldivar v. Gonzales*, G.R. No. 80578 , October 7, 1988, 166 SCRA 316.

before Branch 81; she expressly manifested that these appearances were part of the Branch records. Her legal positions on these appearances have also been expressed before this Court; *first*, in her original letter-query, and *subsequently*, in her Manifestation. Thus, no due process consideration needs to deter us from considering the legal consequences of her appearances in her previous Branch within a year from her resignation.

The Governing Law: Section 7 of R.A. No. 6713

Section 7 of R.A. No. 6713 generally provides for the prohibited acts and transactions of public officials and employees. Subsection (b)(2) prohibits them from engaging in the private practice of their profession during their incumbency. As an exception, a public official or employee can engage in the practice of his or her profession under the following conditions: *first*, the private practice is authorized by the Constitution or by the law; and *second*, the practice will not conflict, or tend to conflict, with his or her official functions.

The Section 7 prohibitions continue to apply for a period of one year after the public official or employee's resignation, retirement, or separation from public office, except for the private practice of profession under subsection (b)(2), which can already be undertaken even within the one-year prohibition period. As an exception to this exception, the one-year prohibited period applies with respect to any matter before the office the public officer or employee used to work with.

The Section 7 prohibitions are predicated on the principle that public office is a public trust; and serve to remove any impropriety, real or imagined, which may occur in government transactions between a former government official or employee and his or her former colleagues, subordinates or superiors. The prohibitions also promote the observance and the efficient use of every moment of the prescribed office hours to serve the public.[15]

---

[15] *Aquino-Simbulan v. Zabat*, A.M. No. P-05-1993, April 26, 2005, 457 SCRA 23.

Parenthetically, in the case of court employees, Section 7(b)(2) of R.A. No. 6713 is not the only prohibition to contend with; Section 5, Canon 3 of the Code of Conduct for Court Personnel also applies. The latter provision provides the definitive rule on the "outside employment" that an incumbent court official or court employee may undertake in addition to his official duties:

> Outside employment may be allowed by the head of office provided it complies with all of the following requirements:
>
> (a) The outside employment is not with a person or entity that practices law before the courts or conducts business with the Judiciary;
>
> (b) The outside employment can be performed outside of normal working hours and is not incompatible with the performance of the court personnel's duties and responsibilities;
>
> **(c) That outside employment does not require the practice of law**; *Provided, however,* that court personnel may render services as professor, lecturer, or resource person in law schools, review or continuing education centers or similar institutions;
>
> (d) The outside employment does not require or induce the court personnel to disclose confidential information acquired while performing officials duties;
>
> (e) The outside employment shall not be with the legislative or executive branch of government, unless specifically authorized by the Supreme Court.
>
> Where a conflict of interest exists, may reasonably appear to exist, or where the outside employment reflects adversely on the integrity of the Judiciary, the court personnel shall not accept outside employment. [Emphasis supplied]

In both the above discussed aspect of R.A. No. 6713 and the quoted Canon 3, the practice of law is covered; the practice of law is a practice of profession, while Canon 3 specifically mentions any outside employment requiring the practice of law. In *Cayetano v. Monsod*,[16] we defined the practice of law as

[16] G.R. No. 100113, September 3, 1991, 201 SCRA 210.

any activity, in and out of court, that requires the application of law, legal procedure, knowledge, training and experience. Moreover, we ruled that to engage in the practice of law is to perform those acts which are characteristics of the profession; to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill.[17] Under both provisions, a common objective is to avoid any conflict of interest on the part of the employee who may wittingly or unwittingly use confidential information acquired from his employment, or use his or her familiarity with court personnel still with the previous office.

After separation from the service, Section 5, Canon 3 of the Code of Conduct for Court Personnel ceases to apply as it applies specifically to incumbents, but Section 7 and its subsection (b)(2) of R.A. No. 6713 continue to apply to the extent discussed above. Atty. Buffe's situation falls under Section 7.

Atty. Buffe's Situation

A distinctive feature of this administrative matter is Atty. Buffe's admission that she immediately engaged in private practice of law within the one-year period of prohibition stated in Section 7(b)(2) of R.A. No. 6713. We find it noteworthy, too, that she is aware of this provision and only objects to its application to her situation; she perceives it to be unfair that she cannot practice before her old office – Branch 81 – for a year immediately after resignation, as she believes that her only limitation is in matters where a conflict of interest exists between her appearance as counsel and her former duties as Clerk of Court. She believes that Section 7 (b)(2) gives preferential treatment to incumbent public officials and employees as against those already separated from government employment.

Atty. Buffe apparently misreads the law. As the OCAT aptly stated, she interprets Section 7 (b)(2) as a blanket authority for an incumbent clerk of court to practice law. We reiterate what we have explained above, that the general rule under

[17] *Ibid.*

Section 7 (b)(2) is to bar public officials and employees from the practice of their professions; it is unlawful under this general rule for clerks of court to practice their profession. By way of exception, they can practice their profession if the Constitution or the law allows them, but no conflict of interest must exist between their current duties and the practice of their profession. As we also mentioned above, no chance exists for lawyers in the Judiciary to practice their profession, as they are in fact expressly prohibited by Section 5, Canon 3 of the Code of Conduct for Court Personnel from doing so. Under both the general rule and the exceptions, therefore, Atty. Buffe's basic premise is misplaced.

As we discussed above, a clerk of court can already engage in the practice of law immediately after her separation from the service and without any period limitation that applies to other prohibitions under Section 7 of R.A. No. 6713. The clerk of court's limitation is that she cannot practice her profession within one year before the office where he or she used to work with. In a comparison between a resigned, retired or separated official or employee, on the one hand, and an incumbent official or employee, on the other, the former has the advantage because the limitation is only with respect to the office he or she used to work with and only for a period of one year. The incumbent cannot practice at all, save only where specifically allowed by the Constitution and the law and only in areas where no conflict of interests exists. This analysis again disproves Atty. Buffe's basic premises.

A worrisome aspect of Atty. Buffe's approach to Section 7 (b)(2) is her awareness of the law and her readiness to risk its violation because of the unfairness she perceives in the law. We find it disturbing that she first violated the law before making any inquiry. She also justifies her position by referring to the practice of other government lawyers known to her who, after separation from their judicial employment, immediately engaged in the private practice of law and appeared as private counsels before the RTC branches where they were previously employed. Again we find this a cavalier attitude on Atty. Buffe's part

and, to our mind, only emphasizes her own willful or intentional disregard of Section 7 (b)(2) of R.A. No. 6713.

By acting in a manner that R.A. No. 6713 brands as "*unlawful,*" Atty. Buffe contravened Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides:

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

x x x x x x x x x

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

As indicated by the use of the mandatory word "*shall,*" this provision must be strictly complied with. Atty. Buffe failed to do this, perhaps not with an evil intent, considering the misgivings she had about Section 7 (b)(2)'s unfairness. Unlawful conduct under Rule 1.01 of Canon 1, however, does not necessarily require the element of criminality, although the Rule is broad enough to include it.[18] Likewise, the presence of evil intent on the part of the lawyer is not essential to bring his or her act or omission within the terms of Rule 1.01, when it specifically prohibits lawyers from engaging in unlawful conduct.[19] Thus, we find Atty. Buffe liable under this quoted Rule.

We also find that Atty. Buffe also failed to live up to her lawyer's oath and thereby violated Canon 7 of the Code of Professional Responsibility when she blatantly and unlawfully practised law within the prohibited period by appearing before the RTC Branch she had just left. Canon 7 states:

CANON 7. A LAWYER **SHALL** AT ALL TIMES UPHOLD THE INTEGRITY AND THE DIGNITY OF THE LEGAL PROFESSION AND

---

[18] *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar*, A.M. No. P-06-2177, April 19, 2007, 521 SCRA 22.

[19] *Id.*, p. 29.

SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. [Emphasis supplied]

By her open disregard of R.A. No. 6713, she thereby followed the footsteps of the models she cited and wanted to replicate – the former court officials who immediately waded into practice in the very same court they came from. She, like they, disgraced the dignity of the legal profession by openly disobeying and disrespecting the law.[20] By her irresponsible conduct, she also eroded public confidence in the law and in lawyers.[21] Her offense is not in any way mitigated by her transparent attempt to cover up her transgressions by writing the Court a letter-query, which she followed up with unmeritorious petitions for declaratory relief, all of them dealing with the same Section 7 (b)(2) issue, in the hope perhaps that at some point she would find a ruling favorable to her cause. These are acts whose implications do not promote public confidence in the integrity of the legal profession.[22]

Considering Atty. Buffe's ready admission of violating Section 7(b)(2), the principle of *res ipsa loquitur* finds application, making her administratively liable for violation of Rule 1.01 of Canon 1 and Canon 7 of the Code of Professional Responsibility.[23] In several cases, the Court has disciplined lawyers without further inquiry or resort to any formal investigation where the facts on record sufficiently provided the basis for the determination of their administrative liability.

In *Prudential Bank v. Castro*,[24] the Court disbarred a lawyer without need of any further investigation after considering his

---

[20] *Catu v. Rellosa*, A .C. No. 5738, February 19, 2008, 546 SCRA 209.

[21] *Id.*, pp. 202-221.

[22] *Id.*, p. 221.

[23] Agpalo, *Comments on the Code of Professional Responsibility and Code of Judicial Conduct* (2004 edition), pp. 457-458; and Pineda, *Legal and Judicial Ethics* (1999 edition), pp. 338-339.

[24] *Supra* note 14.

actions based on records showing his unethical misconduct; the misconduct not only cast dishonor on the image of both the Bench and the Bar, but was also inimical to public interest and welfare. In this regard, the Court took judicial notice of several cases handled by the errant lawyer and his cohorts that revealed their *modus operandi* in circumventing the payment of the proper judicial fees for the astronomical sums they claimed in their cases.[25] The Court held that those cases sufficiently provided the basis for the determination of respondents' administrative liability, without need for further inquiry into the matter under the principle of *res ipsa loquitur*.[26]

Also on the basis of this principle, we ruled in *Richards v. Asoy*,[27] that no evidentiary hearing is required before the respondent may be disciplined for professional misconduct already established by the facts on record.

We applied the principle of *res ipsa loquitur* once more in *In re: Wenceslao Laureta*[28] where we punished a lawyer for grave professional misconduct solely based on his answer to a show-cause order for contempt and without going into a trial-type hearing. We ruled then that due process is satisfied as long as the opportunity to be heard is given to the person to be disciplined.[29]

Likewise in *Zaldivar v. Gonzales*,[30] the respondent was disciplined and punished for contempt for his slurs regarding the Court's alleged partiality, incompetence and lack of integrity on the basis of his answer in a show-cause order for contempt. The Court took note that the respondent did not deny making the negative imputations against the Court through the media

---

[25] *Id.*, p. 622.

[26] *Id.*, p. 623.

[27] *Supra* note 14.

[28] *Supra* note 14.

[29] *Ibid.*

[30] *Supra* note 14.

and even acknowledged the correctness of his degrading statements. Through a *per curiam* decision, we justified imposing upon him the penalty of suspension in the following tenor:

> The power to punish for contempt of court does not exhaust the scope of disciplinary authority of the Court over lawyers. The disciplinary authority of the Court over members of the Bar is but corollary to the Court's exclusive power of admission to the Bar. A lawyer is not merely a professional but also an officer of the court and as such, he is called upon to share in the task and responsibility of dispensing justice and resolving disputes in society. Any act on his part which visibly tends to obstruct, pervert, or impede and degrade the administration of justice constitutes both professional misconduct calling for the exercise of disciplinary action against him, and contumacious conduct warranting application of the contempt power.[31]

These cases clearly show that the absence of any formal charge against and/or formal investigation of an errant lawyer do not preclude the Court from immediately exercising its disciplining authority, as long as the errant lawyer or judge has been given the opportunity to be heard. As we stated earlier, Atty. Buffe has been afforded the opportunity to be heard on the present matter through her letter-query and Manifestation filed before this Court.

A member of the bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.[32] The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[33]

---

[31] *Id.*, pp. 331-332.

[32] *Catu v. Rellosa, supra* note 20, p. 221.

[33] *Lim-Santiago v. Saguico*, A.C. No. 6705, March 31, 2006, 486 SCRA 10.

In this case, we cannot discern any mitigating factors we can apply, save OCAT's observation that Atty. Buffe's letter-query may really reflect a misapprehension of the parameters of the prohibition on the practice of the law profession under Section 7 (b) (2) of R.A. No. 6713. Ignorance of the law, however, is no excuse, particularly on a matter as sensitive as practice of the legal profession soon after one's separation from the service. If Atty. Buffe is correct in the examples she cited, it is time to ring the bell and to blow the whistle signaling that we cannot allow this practice to continue.

As we observed earlier,[34] Atty. Buffe had no qualms about the simultaneous use of various fora in expressing her misgivings about the perceived unfairness of Section 7 of R.A. 6713. She formally lodged a query with the Office of the Court Administrator, and soon after filed her successive petitions for declaratory relief. Effectively, she exposed these fora to the possibility of embarrassment and confusion through their possibly differing views on the issue she posed. Although this is not strictly the forum-shopping that the Rules of Court prohibit, what she has done is something that we cannot help but consider with disfavor because of the potential damage and embarrassment to the Judiciary that it could have spawned. This is a point against Atty. Buffe that cancels out the leniency we might have exercised because of the OCAT's observation about her ignorance of and misgivings on the extent of the prohibition after separation from the service.

Under the circumstances, we find that her actions merit a penalty of fine of ₱10,000.00, together with a stern warning to deter her from repeating her transgression and committing other acts of professional misconduct.[35] **This penalty reflects as**

---

[34] See 2nd paragraph of page 8 of this Decision.

[35] Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct, supra* note 23, p. 408; Section 12 (c), Rule 139 of the Rules of Court in connection with Section 15 of the same Rule; and *Visbal v. Buban*, G.R. No. MTJ-02-1432, September 3, 2004, 437 SCRA 520.

well the Court's sentiments on how seriously the retired, resigned or separated officers and employees of the Judiciary should regard and observe the prohibition against the practice of law with the office that they used to work with.

WHEREFORE, premises considered, we find Atty. Karen M. Silverio-Buffe *GUILTY* of professional misconduct for violating Rule 1.01 of Canon 1 and Canon 7 of the Code of Professional Responsibility. She is hereby *FINED* in the amount of Ten Thousand Pesos (₱10,000.00), and *STERNLY WARNED* that a repetition of this violation and the commission of other acts of professional misconduct shall be dealt with more severely.

Let this Decision be noted in Atty. Buffe's record as a member of the Bar.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Quisumbing and *Ynares-Santiago, JJ.*,on official leave.

EN BANC

[A.M. No. 09-6-9-SC. August 19, 2009]

RE: QUERY OF MR. ROGER C. PRIORESCHI RE EXEMPTION FROM LEGAL AND FILING FEES OF THE GOOD SHEPHERD FOUNDATION, INC.

SYLLABUS

POLITICAL LAW; CONSTITUTION; BILL OF RIGHTS; RIGHT OF FREE ACCESS TO COURTS AND QUASI JUDICIAL BODIES AND TO ADEQUATE LEGAL ASSISTANCE; EXEMPTION FROM PAYMENT OF LEGAL FEES GRANTED TO INDIGENT LITIGANTS CANNOT BE EXTENDED TO FOUNDATIONS WORKING FOR INDIGENTS. — The Courts cannot grant to foundations like the Good Shepherd Foundation, Inc. the same exemption from payment of legal fees granted to indigent litigants even if the foundations are working for indigent and underprivileged people. The basis for the exemption from legal and filing fees is the *free access clause*, embodied in Sec. 11, Art. III of the 1987 Constitution, thus: Sec. 11. Free access to the courts and quasi judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. The importance of the right to free access to the courts and quasi judicial bodies and to adequate legal assistance cannot be denied. A move to remove the provision on free access from the Constitution on the ground that it was already covered by the equal protection clause was defeated by the desire to give constitutional stature to such specific protection of the poor. In implementation of the right of free access under the Constitution, the Supreme Court promulgated rules, specifically, Sec. 21, Rule 3, *Rules of Court*, and Sec. 19, Rule 141, *Rules of Court*, the clear intent and precise language thereof indicate that only a *natural party litigant* may be regarded as an indigent litigant. The Good Shepherd Foundation, Inc., being a corporation invested by the State with a juridical personality separate and distinct from that of its members, is a juridical person. Among others, it has the power to acquire and possess property of all kinds as well as incur obligations and bring civil or criminal actions, in conformity

with the laws and regulations of their organization. As a juridical person, therefore, it cannot be accorded the exemption from legal and filing fees granted to indigent litigants. That the Good Shepherd Foundation, Inc. is working for indigent and underprivileged people is of no moment. Clearly, the Constitution has explicitly premised the *free access clause* on a person's *poverty*, a condition that only a natural person can suffer. There are other reasons that warrant the rejection of the request for exemption in favor of a juridical person. For one, extending the exemption to a juridical person on the ground that it works for indigent and underprivileged people may be prone to abuse (even with the imposition of rigid documentation requirements), particularly by corporations and entities bent on circumventing the rule on payment of the fees. Also, the scrutiny of compliance with the documentation requirements may prove too time-consuming and wasteful for the courts.

R E S O L U T I O N

BERSAMIN, *J.*:

In his letter dated May 22, 2009 addressed to the Chief Justice, Mr. Roger C. Prioreschi, administrator of the Good Shepherd Foundation, Inc., wrote:

The Good Shepherd Foundation, Inc. is very grateful for your 1rst. (sic) Indorsement to pay a nominal fee of Php 5,000.00 and the balance upon the collection action of 10 million pesos, thus giving us access to the *Justice System* previously denied by an up-front excessive court fee.

The Hon. Court Administrator Jose Perez pointed out to the need of complying with OCA Circular No. 42-2005 and Rule 141 that reserves this "privilege" to indigent persons. While judges are appointed to interpret the law, this type of law seems to be extremely detailed with requirements that do not leave much room for interpretations.

In addition, this law deals mainly with "individual indigent" and it does not include Foundations or Associations that work with and for the most Indigent persons. As seen in our Article of Incorporation, since 1985 the Good Shepherd Foundation, Inc. reached-out to the poorest among the poor, to the newly born and abandoned babies,

to children who never saw the smile of their mother, to old people who cannot afford a few pesos to pay for "common prescriptions", to broken families who returned to a normal life. In other words, we have been working hard for the very Filipino people, that the Government and the society cannot reach to, or have rejected or abandoned them.

Can the Courts grant to our Foundation who works for indigent and underprivileged people, the same option granted to indigent people?

The two Executive Judges, that we have approached, fear accusations of favoritism or other kind of attack if they approve something which is not clearly and specifically stated in the law or approved by your HONOR.

Can your Honor help us once more?

Grateful for your understanding, God bless you and your undertakings.

We shall be privileged if you find time to visit our orphanage – the Home of Love – and the Spiritual Retreat Center in Antipolo City.

To answer the query of Mr. Prioreschi, the Courts cannot grant to foundations like the Good Shepherd Foundation, Inc. the same exemption from payment of legal fees granted to indigent litigants even if the foundations are working for indigent and underprivileged people.

The basis for the exemption from legal and filing fees is the *free access clause*, embodied in Sec. 11, Art. III of the 1987 Constitution, thus:

Sec. 11. Free access to the courts and quasi judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

The importance of the right to free access to the courts and quasi judicial bodies and to adequate legal assistance cannot be denied. A move to remove the provision on free access from the Constitution on the ground that it was already covered by the equal protection clause was defeated by the desire to

give constitutional stature to such specific protection of the poor.[1]

In implementation of the right of free access under the Constitution, the Supreme Court promulgated rules, specifically, Sec. 21, Rule 3, *Rules of Court*,[2] and Sec. 19, Rule 141, *Rules of Court*,[3] which respectively state thus:

Sec. 21. *Indigent party*. — A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.

Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue for the payment thereof, without prejudice to such other sanctions as the court may impose. (22a)

Sec. 19. *Indigent litigants exempt from payment of legal fees.*– Indigent litigants (a) whose gross income and that of their immediate family do not exceed an amount double the monthly minimum wage of an employee and (b) who do not own real property with a fair market value as stated in the current tax declaration of more than

---

[1] Bernas, 1987 *Philippine Constitution of the Republic of the Philippines: A Commentary*, 1996 Ed., p. 4064, citing the Journal of the 1935 Constitutional Convention 1275-1277.

[2] 1997 *Rules of Civil Procedure.*

[3] As revised, effective August 16, 2004.

three hundred thousand (₱300,000.00) pesos shall be exempt from payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent litigant unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned, and they do not own any real property with the fair value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit. The current tax declaration, if any, shall be attached to the litigant's affidavit.

Any falsity in the affidavit of litigant or disinterested person shall be sufficient cause to dismiss the complaint or action or to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

The clear intent and precise language of the aforequoted provisions of the *Rules of Court* indicate that only a *natural party litigant* may be regarded as an indigent litigant. The Good Shepherd Foundation, Inc., being a corporation invested by the State with a juridical personality separate and distinct from that of its members,[4] is a juridical person. Among others, it has the power to acquire and possess property of all kinds as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization.[5]

---

[4] The *Civil Code* provides:

Art. 44 The following are juridical persons:

1) The State and its political subdivisions;

2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

[5] Art. 46, *Civil Code.*

As a juridical person, therefore, it cannot be accorded the exemption from legal and filing fees granted to indigent litigants.

That the Good Shepherd Foundation, Inc. is working for indigent and underprivileged people is of no moment. Clearly, the Constitution has explicitly premised the *free access clause* on a person's *poverty*, a condition that only a natural person can suffer.

There are other reasons that warrant the rejection of the request for exemption in favor of a juridical person. For one, extending the exemption to a juridical person on the ground that it works for indigent and underprivileged people may be prone to abuse (even with the imposition of rigid documentation requirements), particularly by corporations and entities bent on circumventing the rule on payment of the fees. Also, the scrutiny of compliance with the documentation requirements may prove too time-consuming and wasteful for the courts.

IN VIEW OF THE FOREGOING, the Good Shepherd Foundation, Inc. cannot be extended the exemption from legal and filing fees despite its working for indigent and underprivileged people.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Del Castillo and *Abad, JJ.,* no part.

Quisumbing and *Ynares-Santiago, JJ.,* on official leave.

FIRST DIVISION

[A.M. No. P-07-2390. August 19, 2009]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LYNDON L. ISIP, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, City of San Fernando, Pampanga,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; OCA CIRCULAR NO. 7-2003; THAT COURT PERSONNEL SHOULD INDICATE IN THEIR BUNDY CARDS THE ACCURATE TIMES OF ARRIVAL TO AND DEPARTURE FROM THEIR "OFFICIAL WORK STATION"; VIOLATED IN CASE AT BAR. — It was established that the OCC logbook indicated the time as reflected in respondent's DTR but his actual time of arrival at the RTC-San Fernando was actually later than the time as reflected in the DTR. The discrepancy was explained by the fact that, as respondent himself admitted, he punched in at the RTC-Guagua which is not his official work station. OCA Circular No. 7-2003 is clear and states that court personnel should indicate in their bundy cards the "truthful and accurate times" of their arrival at, and departure from, the office. That office is the official work station of the court personnel. In the present case, respondent's official work station is RTC-San Fernando and not RTC-Guagua. Respondent's punching in at RTC-Guagua was a clear violation of OCA Circular No. 7-2003. As we have ruled in *Garcia v. Bada* and *Servino v. Adolfo*, court employees must follow the clear mandate of OCA Circular No. 7-2003.

2. ID.; ID.; FALSIFICATION OF TIME RECORD IS DISHONESTY PUNISHABLE BY DISMISSAL FROM SERVICE; MITIGATED IN CASE AT BAR. — Section 4, Rule XVII (on Government Office Hours) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws provides that falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable. Falsification of time records constitutes dishonesty, which

is a grave offense punishable by dismissal from the service. However, there have been several administrative cases involving dishonesty in which the Court meted out a penalty lower than dismissal from the service and in these cases, mitigating circumstances merited the leniency of the Court. Factors such as length of service, acknowledgment of respondent's infractions and feeling of remorse, and family circumstances, among other things, have had varying significance in the Court's determination of the imposable penalty. In the present case, circumstances exist that mitigate respondent's liability. The Investigating Judge pointed out that respondent appeared to still be coming in before 8:00 in the morning, judging from the entries in the OCC logbook, which would tend to show that had respondent properly timed in at the RTC-San Fernando, he would still not have been late for work. In punching in not at his official work station, respondent readily admitted his wrongdoing and vowed to mend his ways. Respondent never repeated such irregularity. Respondent has been in the service in the judiciary for more than 12 years and this is his first offense. Respondent certainly deserves a second chance. Consequently, a fine of ₱10,000 will suffice.

3. ID.; ID.; COURT EMPLOYEES; DUTY TO EXERCISE AT ALL TIMES A HIGH DEGREE OF PROFESSIONALISM AND RESPONSIBILITY, EMPHASIZED. — It must be stressed that all court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission. The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above

suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.

R E S O L U T I O N

CARPIO, *J.*:

The Facts

Three anonymous letters purportedly coming from disgruntled employees of the Regional Trial Court, City of San Fernando, Pampanga (RTC-San Fernando), alleged that Lyndon L. Isip (respondent) of the same court had been falsifying his daily time record (DTR) by timing in at the Regional Trial Court of Guagua (RTC-Guagua) where his wife works to avoid being late. Respondent allegedly brings the DTR home after office hours and punches it in the bundy clock located at the RTC-Guagua the following morning before going to his official work station at the RTC-San Fernando.

The matter was referred to Executive Judge Adelaida Ala-Medina (Investigating Judge) of the RTC-San Fernando for investigation, report and recommendation.

Report of the Investigating Judge

During the formal investigation, security guard Amir Karon (Karon) testified that he saw respondent arrive on 22 November 2004 and proceeded directly to the Office of the Clerk of Court (OCC), San Fernando, Pampanga without punching in his DTR in the bundy clock. Karon purportedly confronted respondent and the latter readily admitted punching in at the RTC-Guagua. Because of what transpired, Karon reported the matter to head guard Raoul Pelinio (Pelinio).

Pelinio testified that he would enter in the OCC logbook the names of the employees whose DTRs were missing at the DTR rack and one of those was respondent's DTR. Pelinio noticed that respondent's DTR did not correspond to his actual time of arrival in the office.

Florenda Ordoñez, Administrative Officer of the OCC, San Fernando, Pampanga, explained that some employees might not have logged-in the time they actually arrived as there were three bundy clocks which were set at intervals reflecting different times while others just simply forgot or did not record their time-in in the OCC logbook. The employees might have gone to some other place before logging in at the OCC which explains the non-consecutive entries in the logbook.

During the investigation, respondent readily admitted his misdeed. The Investigating Judge examined the logbook of the OCC, RTC-San Fernando, to check the hours respondent reported for work during the period he was timing in at RTC-Guagua. It appeared that respondent began timing in at RTC-Guagua on 11 October 2004. Respondent would write in the OCC logbook the time as reflected in his DTR although his actual time of arrival at the RTC-San Fernando was actually later than the time reflected in the DTR. The Investigating Judge was of the opinion that since employees sign in the logbook as soon as they arrive in the office, it did not make sense that respondent's time of arrival as recorded in the logbook was earlier than the person who came before him. The Investigating Judge concluded that these "discrepancies" in the hours of arrival recorded in the logbook and the hours of arrival as reflected in the DTR support the allegation that respondent was timing in at another place before going to the RTC-San Fernando, his official work station.

In his Investigation Report and Recommendation dated 30 January 2007, the Investigating Judge pointed out that while dishonesty is a grave offense punishable by dismissal from the service even if on a first offense, an examination of the entries in the logbook would reveal that respondent was still coming in before 8:00 in the morning. Respondent had been in the service for many years and this case is his first offense. These and respondent's admission are circumstances which would seem to mitigate his liability. The Investigating Judge was convinced that respondent was sincerely remorseful and deserved a second

chance. The Investigating Judge recommended the imposition of the penalty of suspension for one year without pay.

The OCA Report and Recommendation

The OCA opines that respondent's conduct fell short of the exacting standards of public office. Respondent admitted punching in his DTR at RTC-Guagua, which is not his official work station. The OCA adopted the recommendation of the Investigating Judge and recommended that respondent be suspended for one year without pay for falsification of the DTR amounting to dishonesty. The OCA, however, refrained from imposing the penalty of dismissal from the service considering that this is respondent's first offense. The OCA further considered respondent's admission of punching in at another place other than his official work station, his more than 12 years of service in the judiciary, and his promise to reform as mitigating circumstances.

The Court's Ruling

It was established that the OCC logbook indicated the time as reflected in respondent's DTR but his actual time of arrival at the RTC-San Fernando was actually later than the time as reflected in the DTR. The discrepancy was explained by the fact that, as respondent himself admitted, he punched in at the RTC-Guagua which is not his official work station.

OCA Circular No. 7-2003 is clear and states that court personnel should indicate in their bundy cards the "truthful and accurate times" of their arrival at, and departure from, the office. That office is the official work station of the court personnel. In the present case, respondent's official work station is RTC-San Fernando and not RTC-Guagua. Respondent's punching in at RTC-Guagua was a clear violation of OCA Circular No. 7-2003. As we have ruled in *Garcia v. Bada*[1] and *Servino v. Adolfo*,[2] court employees must follow the clear mandate of OCA Circular No. 7-2003.

---

[1] A.M. No. P-07-2311, 23 August 2007, 530 SCRA 779, 783.

[2] A.M. No. P-06-2204, 30 November 2006, 509 SCRA 42, 52.

Section 4, Rule XVII (on Government Office Hours) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws also provides that falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable.[3] Falsification of time records constitutes dishonesty, which is a grave offense punishable by dismissal from the service.[4]

However, there have been several administrative cases involving dishonesty in which the Court meted out a penalty lower than dismissal from the service and in these cases, mitigating circumstances merited the leniency of the Court. Factors such as length of service, acknowledgment of respondent's infractions and feeling of remorse, and family circumstances, among other things, have had varying significance in the Court's determination of the imposable penalty.[5]

In *Office of the Court Administrator v. Sirios*,[6] suspension of three months without pay was imposed for falsification of the DTR to cover up for absenteeism or tardiness.

In *Office of the Court Administrator v. Saa*,[7] respondent there was fined ₱5,000 for falsifying his DTR to make it appear that he had reported for work on those days when he attended hearings of his case.

---

[3] See also *Duque v. Aspiras*, A.M. No. P-05-2036, 15 July 2005, 463 SCRA 447, 454.

[4] *Servino v. Adolfo, supra* note 2 at 53; *Anonymous v. Grande*, A.M. No. P-06-2114, 5 December 2006, 509 SCRA 495, 501.

[5] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 62-64; *In Re: Employees Incurring Habitual Tardiness in the First Semester of 2005*, A.M. No. 2005-25-SC, 6 July 2006, 494 SCRA 422.

[6] 457 Phil. 42, 49 (2003).

[7] 457 Phil. 25, 28, 30 (2003).

In *Reyes-Domingo v. Morales*,[8] where the branch clerk of court was found guilty of dishonesty in not reflecting the correct time in his DTR, a fine of ₱5,000 was imposed.

In *Servino v. Adolfo*,[9] respondent there readily acknowledged that some entries in her time card were falsified. The Court noted that this was her first administrative case in her three years in government service. A fine of ₱2,000 was imposed.

In the present case, circumstances exist that mitigate respondent's liability. The Investigating Judge pointed out that respondent appeared to still be coming in before 8:00 in the morning, judging from the entries in the OCC logbook, which would tend to show that had respondent properly timed in at the RTC-San Fernando, he would still not have been late for work.[10] In punching in not at his official work station, respondent readily admitted his wrongdoing and vowed to mend his ways. Respondent never repeated such irregularity.[11] Respondent has been in the service in the judiciary for more than 12 years and this is his first offense. Respondent certainly deserves a second chance. Consequently, a fine of ₱10,000 will suffice.

It must be stressed that all court employees must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty but also a mission.[12] The Court has repeatedly emphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be

---

[8] 396 Phil. 150, 165-166 (2000).

[9] *Supra* note 2 at 57.

[10] Report and Recommendation dated 2 August 2005, p. 8. *Rollo*; OCA Memorandum dated 4 October 2007, p. 3.

[11] OCA Memorandum dated 4 October 2007, p. 7; Investigation Report and Recommendation dated 30 January 2007, p. 4.

[12] *Re: Findings of Irregularity on the Bundy Cards of Personnel of the Regional Trial Court, Branch 26 and Municipal Trial Court, Medina, Misamis Oriental*, A.M. No. 04-11-671-RTC, 14 October 2005, 473 SCRA 1, 12-13.

beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standards of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness, and honesty.[13]

WHEREFORE, we find respondent Lyndon L. Isip, Sheriff IV of the Regional Trial Court of the City of San Fernando, Pampanga, *GUILTY* of *DISHONESTY* and we *FINE* him ₱10,000. He is warned that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

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

---

[13] *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat, Sheriff IV, RTC-Br. 80, Malolos City*, A.M. No. P-08-2494, 27 November 2008, 572 SCRA 19.

THIRD DIVISION

[G.R. No. 130223. August 19, 2009]

RURAL BANK OF STA. BARBARA [PANGASINAN], INC., *petitioner, vs.* **THE MANILA MISSION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; PROCEEDINGS WHERE PROPERTY CLAIMED BY THIRD PERSONS; FILING OF MOTION TO RELEASE PROPERTY FROM ATTACHMENT DEEMED A CONTINUATION OF THIRD PARTY CLAIM IN THE FORM OF ITS AFFIDAVIT OF TITLE AND OWNERSHIP SERVED UPON THE SHERIFF. — The remedy of a third person claiming to be the owner of an attached property are limited to the following: (1) filing with the Sheriff a third-party claim, in the form of an affidavit, per the first paragraph of Section 14 [of Rule 57 Rules of Court]; (2) intervening in the main action, with prior leave of court, per the second paragraph of Section 14, which allows a third person to vindicate his/her claim to the attached property in the "same x x x action"; and (3) filing a separate and independent action, per the second paragraph of Section 14, which allows a third person to vindicate his/her claim to the attached property in a "separate action." Respondent explains that it tried to pursue the first remedy, *i.e.*, filing a third-party claim with the Sheriff. Respondent did file an Affidavit of Title and Ownership with the Sheriff, but said officer advised respondent to file a motion directly with the RTC in the main case. Respondent heeded the Sheriff's advice by filing with the RTC, in Civil Case No. D-10583, a Motion to Release Property from Attachment. The Court of Appeals recognized and allowed said Motion, construing the same as an invocation by respondent of the power of control and supervision of the RTC over its officers, which includes the Sheriff. We agree with the Court of Appeals on this score. The filing by respondent of the Motion to Release Property from Attachment was made on the advice of the Sheriff upon whom respondent served its Affidavit of Title and Ownership. Respondent should not be faulted for merely heeding the

Sheriff's advice. Apparently, the Sheriff, instead of acting upon the third-party claim of respondent on his own, would rather have some direction from the RTC. Indeed, the Sheriff is an officer of the RTC and may be directed by the said court to allow the third-party claim of respondent. Therefore, the filing of the Motion in question can be deemed as a mere continuation of the third-party claim of respondent, in the form of its Affidavit of Title and Ownership, served upon the Sheriff, in accord with the first paragraph of Section 14, Rule 57 of the Rules of Court.

2. ID.; ID.; ID.; ID.; MOTION TO RELEASE PROPERTY FROM ATTACHMENT, CONSIDERED AS MOTION FOR INTERVENTION. — Alternatively, we may also consider the Motion to Release Property from Attachment, filed by respondent before the RTC, as a Motion for Intervention in Civil Case No. D-10583, pursuant to the second paragraph of Section 14, Rule 56, in relation to Rule 19 of the Rules of Court. Respondent, to vindicate its claim to the subject property, may intervene in the same case, *i.e.,* Civil Case No. D-10583, instituted by petitioner against the spouses Soliven, in which the said property was attached. Respondent has the personality to intervene, as it "is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof." The RTC, in acting upon and granting the Motion to Release Property from Attachment in its Order dated 9 October 1995, is deemed to have allowed respondent to intervene in Civil Case No. D-10583.

3. ID.; ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE ALLOWED IN THE INTEREST OF JUSTICE. — It may do petitioner well to remember that rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the rules, or except a particular case from its operation. Hence, even if the Motion to Release Property from Attachment does not strictly comply with Section 14, Rule 56 of the Rules of Court, the RTC

may still allow and act upon said Motion to render substantive justice.

4. ID.; ID.; ID.; THAT A DULY REGISTERED LEVY ON ATTACHMENT TAKES PREFERENCE OVER A PRIOR UNREGISTERED SALE. — In the case of *Valdevieso v. Damalerio,* on appeal, we adjudged: The sole issue in this case is whether or not a registered writ of attachment on the land is a superior lien over that of an earlier unregistered deed of sale. x x x The settled rule is that levy on attachment, duly registered, takes preference over a prior unregistered sale. This result is a necessary consequence of the fact that the property involved was duly covered by the Torrens system which works under the fundamental principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land. The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale. This is so because an attachment is a proceeding *in rem.* It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. Thus, in the registry, the attachment in favor of respondents appeared in the nature of a real lien when petitioner had his purchase recorded. The effect of the notation of said lien was to subject and subordinate the right of petitioner, as purchaser, to the lien. Petitioner acquired ownership of the land only from the date of the recording of his title in the register, and the right of ownership which he inscribed was not absolute but a limited right, subject to a prior registered lien of respondents, a right which is preferred and superior to that of petitioner.

5. ID.; ID.; ID.; ID.; KNOWLEDGE OF UNREGISTERED SALE BY THE ATTACHING CREDITOR DEEMED EQUIVALENT TO REGISTRATION; NOT PRESENT IN CASE AT BAR. — In *Ruiz Sr. vs. Court of Appeals*, the very case cited by petitioner, we made a qualification of the general rule that a duly annotated attachment is superior to an unregistered prior sale. In fact, we resolved *Ruiz* in favor of the vendee in the unregistered

prior sale, because knowledge of the unregistered sale by the attaching creditor is deemed equivalent to registration. x x x In the case at bar, there was no evidence of knowledge on the part of petitioner Rural Bank of any third-party interest in the subject property at the time of the attachment. We are, therefore, constrained to grant the instant Petition for Review and nullify the Orders of the RTC discharging the subject property from attachment.

6. ID.; ID.; ID.; REMEDY FOR ATTACHED PROPERTY IN CASE AT BAR. — Respondent Manila Mission would not be left without remedy. It could file a counter-bond pursuant to Section 12, Rule 57 of the Rules of Court in order to discharge the attachment. If respondent Manila Mission fails to do the same and the property ends up being subjected to execution, respondent can redeem the property and seek reimbursement from the spouses Soliven.

APPEARANCES OF COUNSEL

Office of the General Counsel for petitioner.
Roque & Roque Law Firm for respondent.

D E C I S I O N

CHICO-NAZARIO,* *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] dated 29 July 1997 of the Court of Appeals in CA-G.R. SP No. 41042 affirming the Orders dated 9 October 1995 and 27 February 1996 of the Regional Trial Court (RTC), Branch 43, of Dagupan City, in Civil Case No. D-10583.

Spouses Tomas and Maria Soliven (spouses Soliven) were the registered owners, under Transfer Certificate of Title (TCT)

* Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Ricardo P. Galvez with Associate Justices Gloria C. Paras and B.A. Adefuin-de la Cruz, concurring; *rollo*, pp. 40-46.

No. T-125213, of a parcel of land located in Barangay Maninding, Sta. Barbara, Pangasinan (subject property). On 18 May 1992, the spouses Soliven sold the subject property to respondent Manila Mission of the Church of Jesus Christ of Latter Day Saints, Inc. (Manila Mission). However, it was only on 28 April 1994 when TCT No. T-125213 in the name of the spouses Soliven was cancelled, and TCT No. 195616 was issued in the name of respondent.

In the meantime, on 15 April 1993, petitioner Rural Bank of Sta. Barbara (Pangasinan), Inc. filed with the RTC a Complaint against the spouses Soliven for a sum of money, docketed as Civil Case No. D-10583. The Complaint of petitioner included a prayer for the issuance of a Writ of Preliminary Attachment.

In an Order dated 7 May 1993, the RTC ordered the issuance of the Writ of Attachment petitioner prayed for, to wit:

> WHEREFORE, let a Writ of Attachment be issued against all the properties of [Spouses Soliven] not exempt from execution or so much thereof as may be sufficient to satisfy the [herein petitioner's] principal claim of ₱338,000.00 upon filing of [petitioner's] bond in the amount of ₱100,000.00.[2]

Upon the filing by petitioner of the required bond, the RTC issued the Writ of Attachment on 21 May 1993. Acting on the authority of said Writ, Sheriff Reynaldo C. Daray attached the subject property, which was then still covered by TCT No. T-125213 in the name of the spouses Soliven. The Writ of Attachment was annotated on TCT No. T-125213 on 24 May 1993. Thus, when TCT No. T-125213 of the spouses Soliven was cancelled and TCT No. 195616 of petitioner was issued on 28 April 1994, the annotation on the Writ of Attachment was carried from the former to the latter.

While Civil Case No. D-10583 was still pending before the RTC, respondent executed an Affidavit claiming title and ownership over the subject property, and requested the *Ex-Officio* Provincial and City Sheriff to release the said property from attachment.

---

[2] *Rollo,* p. 47.

The Sheriff, however, advised respondent to file a motion directly with the RTC.

On 16 March 1995, respondent filed with the RTC, in Civil Case No. D-10583, a Motion to Release Property from Attachment, to which petitioner, in turn, filed an Opposition. After hearing, the RTC issued an Order on 9 October 1995 discharging the subject property from attachment. The RTC decreed in said Order:

> WHEREFORE, the Court hereby directs the *Ex-Officio* Provincial Sheriff of Pangasinan and City Sheriff of Dagupan to discharge and release the subject land from attachment and orders the notice of attachment on T.C.T. No. 195616 of the Register of Deeds of Pangasinan be cancelled.[3]

Petitioner filed a Motion for Reconsideration of the 9 October 1995 Order of the RTC, arguing that it had a better right over the subject property and that the filing by respondent with the RTC, in Civil Case No. D-10583, of a Motion to Release Property from Attachment, was the improper remedy. In an Order dated 27 February 1996, the RTC denied the Motion for Reconsideration of petitioner for lack of merit.

On 12 April 1997, petitioner filed a Petition for *Certiorari* with this Court, alleging that the RTC committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in canceling the Writ of Attachment and ordering the release of the subject property. The Petition was docketed as G.R. No. 124343. In a Resolution dated 27 May 1997, this Court referred the case to the Court of Appeals for appropriate action.

The Court of Appeals docketed the Petition for *Certiorari* as CA-G.R. SP No. 41042. On 29 July 1997, the Court of Appeals issued the assailed Decision dismissing the Petition.

Hence, petitioner again comes before this Court *via* the present Petition for Review, contending that the Court of Appeals erred in not finding grave abuse of discretion on the part of the RTC when the latter directed the release of the subject property from attachment. Petitioner insists that it has a better right to

---

[3] *Id*. at 59.

the subject property considering that: (1) the attachment of the subject property in favor of petitioner was made prior to the registration of the sale of the same property to respondent; and (2) respondent availed itself of the wrong remedy in filing with the RTC, in Civil Case No. D-10583, a Motion to Release Property from Attachment. We shall discuss ahead the second ground for the instant Petition, a matter of procedure, since its outcome will determine whether we still need to address the first ground, on the substantive rights of the parties to the subject property.

Propriety of the Motion to Release Property from Attachment

According to petitioner, the Motion to Release Property from Attachment filed by respondent before the RTC, in Civil Case No. D-10583, is not the proper remedy under Section 14, Rule 57 of the Rules of Court,[4] which provides:

> SEC. 14. *Proceedings where property claimed by third person.*—If the property attached is claimed by any person other than the party against whom attachment had been issued 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 such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. 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 sheriff shall not be liable for damages for the taking or keeping of such property, to any such third-party claimant, if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third-party

[4] *Id*. at 269.

claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

When the writ of attachment 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 is sued for damages as a result of the attachment, 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 the funds to be appropriated for the purpose.

Petitioner argues that, pursuant to the aforequoted section, the remedy of a third person claiming to be the owner of an attached property are limited to the following: (1) filing with the Sheriff a third-party claim, in the form of an affidavit, per the first paragraph of Section 14; (2) intervening in the main action, with prior leave of court, per the second paragraph of Section 14, which allows a third person to vindicate his/her claim to the attached property in the "same x x x action"; and (3) filing a separate and independent action, per the second paragraph of Section 14, which allows a third person to vindicate his/her claim to the attached property in a "separate action."

Respondent explains that it tried to pursue the first remedy, *i.e.*, filing a third-party claim with the Sheriff. Respondent did file an Affidavit of Title and Ownership with the Sheriff, but said officer advised respondent to file a motion directly with the RTC in the main case. Respondent heeded the Sheriff's advice by filing with the RTC, in Civil Case No. D-10583, a Motion to Release Property from Attachment. The Court of Appeals recognized and allowed said Motion, construing the same as an invocation by respondent of the power of control and supervision of the RTC over its officers, which includes the Sheriff.

We agree with the Court of Appeals on this score. The filing by respondent of the Motion to Release Property from Attachment was made on the advice of the Sheriff upon whom respondent served its Affidavit of Title and Ownership. Respondent should not be faulted for merely heeding the Sheriff's advice. Apparently, the Sheriff, instead of acting upon the third-party claim of respondent on his own, would rather have some

direction from the RTC. Indeed, the Sheriff is an officer of the RTC and may be directed by the said court to allow the third-party claim of respondent. Therefore, the filing of the Motion in question can be deemed as a mere continuation of the third-party claim of respondent, in the form of its Affidavit of Title and Ownership, served upon the Sheriff, in accord with the first paragraph of Section 14, Rule 57 of the Rules of Court.

Alternatively, we may also consider the Motion to Release Property from Attachment, filed by respondent before the RTC, as a Motion for Intervention in Civil Case No. D-10583, pursuant to the second paragraph of Section 14, Rule 56, in relation to Rule 19 of the Rules of Court. Respondent, to vindicate its claim to the subject property, may intervene in the same case, *i.e.*, Civil Case No. D-10583, instituted by petitioner against the spouses Soliven, in which the said property was attached. Respondent has the personality to intervene, as it "is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."[5] The RTC, in acting upon and granting the Motion to Release Property from Attachment in its Order dated 9 October 1995, is deemed to have allowed respondent to intervene in Civil Case No. D-10583.

Moreover, it may do petitioner well to remember that rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to

---

[5] Rule 19, Section 1 of the Rules of Court provides:

SECTION 1. *Who may intervene.*—A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, ***or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof*** may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the rules, or except a particular case from its operation.[6] Hence, even if the Motion to Release Property from Attachment does not strictly comply with Section 14, Rule 56 of the Rules of Court, the RTC may still allow and act upon said Motion to render substantive justice.

This leads us to the substantive issue in this case, on which between the two transactions should be given priority: the previous yet unregistered sale of the subject property by the spouses Soliven to respondent, or the subsequent but duly annotated attachment of the same property by petitioner.

Previous yet unregistered sale versus subsequent but duly annotated attachment

Petitioner does not dispute the allegation of respondent that the subject property was sold by the spouses Soliven to respondent on **18 May 1992**, before petitioner instituted Civil Case No. D-10583 against the spouses Soliven on **15 April 1993**; the RTC ordered the issuance of the Writ of Attachment on **7 May 1993**; and the attachment of the subject property pursuant to the Writ on **27 May 1993**.

Neither did petitioner offer evidence to counter the following documents presented by respondent establishing the fact of the sale of the subject property to the latter by the spouses Soliven: (1) the notarized Deed of Sale dated 18 May 1992; (2) BPI Manager's Check No. 010685 dated 8 May 1992 in the sum of ₱42,500.00 to represent the tender of payment of capital gains tax; (3) BIR Official Receipt No. 0431320 dated 18 May 1992 of BPI Check No. 010625 for the payment of the sum of ₱8,5000.00; and (4) a letter dated 11 August 1992 of Manila Mission's former counsel, Lim Duran & Associates, to the Revenue District Officer, District 7, Bureau of Internal Revenue,

[6] *Coronel v. Desierto*, 448 Phil. 894, 902-903 (2003).

relative to its request for the "reconsideration/condonation" of the assessment of the capital gains tax on its purchase of the subject property.

Petitioner, however, invokes jurisprudence wherein this Court in a number of instances allegedly upheld a subsequent but duly annotated attachment, as opposed to a previous yet unregistered sale of the same property. Petitioner particularly calls our attention to the following paragraph in *Ruiz, Sr. v. Court of Appeals*[7]:

> [I]n case of a conflict between a vendee and an attaching creditor, an attaching creditor who registers the order of attachment and the sale of the property to him as the highest bidder acquires a valid title to the property, as against a vendee who had previously bought the same property from the registered owner but who failed to register his deed of sale. This is because registration is the operative act that binds or affects the land insofar as third persons are concerned. It is upon registration that there is notice to the whole world.

In the more recent case *Valdevieso v. Damalerio*,[8] we have expounded on our foregoing pronouncement in *Ruiz*.

On 5 December 1995, therein petitioner Bernardo Valdevieso (Valdevieso) bought a parcel of land from spouses Lorenzo and Elenita Uy (spouses Uy), the registered owners thereof. On 19 April 1996, therein respondents, spouses Candelario and Aurea Damalerio (spouses Damalerio), filed a Complaint against the spouses Uy for a sum of money before the RTC of General Santos City. On 23 April 1996, the RTC issued a Writ of Preliminary Attachment by virtue of which the subject parcel of land was levied. The levy was duly recorded in the Register of Deeds, and annotated on the TCT of the spouses Uy over the subject parcel of land. It was only on 6 June 1996 that the TCT in the name of the spouses Uy was cancelled, and a new one issued in the name of Valdevieso. As in the case at bar, the annotation on the attachment was carried over to Valdevieso's TCT. Valdevieso filed a third-party claim before the RTC seeking

---

[7] 414 Phil. 311, 323 (2001).

[8] 492 Phil. 51 (2005).

to annul the attachment. In a resolution, the RTC ruled in Valdevieso's favor, but the Court of Appeals reversed said RTC resolution. On appeal, we adjudged:

> The sole issue in this case is whether or not a registered writ of attachment on the land is a superior lien over that of an earlier unregistered deed of sale.
>
> xxx xxx xxx
>
> The settled rule is that levy on attachment, duly registered, takes preference over a prior unregistered sale. This result is a necessary consequence of the fact that the property involved was duly covered by the Torrens system which works under the fundamental principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land.
>
> The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale. This is so because an attachment is a proceeding *in rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law.
>
> Thus, in the registry, the attachment in favor of respondents appeared in the nature of a real lien when petitioner had his purchase recorded. The effect of the notation of said lien was to subject and subordinate the right of petitioner, as purchaser, to the lien. Petitioner acquired ownership of the land only from the date of the recording of his title in the register, and the right of ownership which he inscribed was not absolute but a limited right, subject to a prior registered lien of respondents, a right which is preferred and superior to that of petitioner.[9]

It is settled, therefore, that a duly registered levy on attachment takes preference over a prior unregistered sale.

---

[9] *Id*. at 55-58.

Nonetheless, respondent argues that there is a special circumstance in the case at bar, which should be deemed a constructive registration of the sale of the subject property in its favor, preceding the attachment of the same property by petitioner.

Knowledge of previous yet unregistered sale

In *Ruiz*, the very case cited by petitioner, we made a qualification of the general rule that a duly annotated attachment is superior to an unregistered prior sale. In fact, we resolved *Ruiz* in favor of the vendee in the unregistered prior sale, because knowledge of the unregistered sale by the attaching creditor is deemed equivalent to registration. We explained in *Ruiz*:

> But where a party has knowledge of a prior existing interest which is unregistered at that time he acquired a right to the same land, **his knowledge of that prior unregistered interest has the effect of registration as to him**. Knowledge of an unregistered sale is equivalent to registration. As held in *Fernandez v. Court of Appeals* [189 SCRA 780 (1990)],
>
> > Section 50 of Act No. 496 (now Sec. 51 of P.D. 1529), provides that the registration of the deed is the operative act to bind or affect the land insofar as third persons are concerned. But where the party has knowledge of a prior existing interest which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. The torrens system cannot be used as a shield for the commission of fraud (*Gustillo v. Maravilla*, 48 Phil. 442). As far as private respondent Zenaida Angeles and her husband Justiniano are concerned, the non-registration of the affidavit admitting their sale of a portion of 110 square meters of the subject land to petitioners cannot be invoked as a defense because (K)nowledge of an unregistered sale is equivalent to registration (*Winkleman v. Veluz*, 43 Phil. 604).

This knowledge of the conveyance to Honorato Hong can not be denied. The records disclose that after the sale, private respondent was able to introduce improvements on the land such as a concrete two-door commercial building, a concrete fence around the property, concrete floor of the whole area and G.I. roofing. Acts of ownership and possession were exercised by the private respondent over the land. By these overt acts, it can not therefore be gainsaid that petitioner was

not aware that private respondent had a prior existing interest over the land.[10]

In the case at bar, respondent averred in its Motion to Release Property from Attachment that the construction of a church edifice on the subject property was about to be finished at the time the Writ of Preliminary Attachment was implemented on 24 May 1993, and that the construction of the church was actually completed by mid-1993. Respondent asserts that since petitioner did not deny these allegations, much less adduce evidence to the contrary, then the latter tacitly recognized the construction of the church.

Petitioner contends, on the other hand, that respondent failed to present evidence to prove the fact that a church had already been constructed on the subject property by the time the said property was attached, thus, constituting notice to petitioner of the claim or right of respondent to the same.

Was there, at the time of the attachment, knowledge on the part of petitioner Rural Bank of the interest of respondent Manila Mission on the subject property?

If the allegation of respondent Manila Mission anent the building of the chapel even before the issuance of the writ of attachment is true, this case would be similar to *Ruiz* where the vendee of the subject property was able to introduce improvements. However, respondent Manila Mission presented no evidence of the building of the chapel other than its bare allegation thereof. More importantly, even assuming for the sake of argument that the chapel was indeed being built at the time of the attachment of the property, we cannot simply apply *Ruiz* and conclude that this confirms knowledge of a previous conveyance of the property at that time. In *Ruiz*, the attaching party was the wife of the vendor of the subject property, whom she sued for support. It was thus very probable that she knew of the sale of the property to the vendee therein, considering that the vendee had already introduced improvements thereon. In the case at bar, there is no special relationship between petitioner Rural Bank and the spouses Soliven sufficient to charge the former with an implied knowledge of the state of the latter's properties.

[10] *Ruiz, Sr. v. Court of Appeals, supra* note 7 at 323-324.

Unlike in the sale of real property, an attaching creditor is not expected to inspect the property being attached, as it is the sheriff who does the actual act of attaching the property.

Neither did respondent Manila Mission present any evidence of knowledge on the part of petitioner Rural Bank of the prior existing interest of the former at the time of the attachment. Respondent Manila Mission merely argues that there was a tacit recognition on the part of petitioner Rural Bank of the construction of the chapel when the latter did not deny this allegation in its Opposition to the Motion to Discharge Property from Attachment.

The Motion, however, merely mentions the construction of the chapel and does not charge petitioner Rural Bank with knowledge of the construction. There was, therefore, nothing to deny on the part of petitioner Rural Bank, as the mere existence of such construction at that time would not affect the right of petitioner Rural Bank to its lien over the subject property. Also, the mention in the Motion of the construction of the chapel would have the effect of being a notice of an adverse third-party claim only at the time of such Motion. Since such notice, which was deemed in *Ruiz* as constructive registration of the sale, was effected only **after** the attachment of the subject property, it could not affect the validity of the attachment lien.

In sum, our decisions in *Ruiz v. Court of Appeals* and *Valdevieso v. Damalerio* oblige us to rule that the duly registered levy on attachment by petitioner Rural Bank takes preference over the prior but then unregistered sale of respondent Manila Mission. There was likewise no evidence of knowledge on the part of petitioner Rural Bank of any third-party interest in the subject property at the time of the attachment. We are, therefore, constrained to grant the instant Petition for Review and nullify the Orders of the RTC discharging the subject property from attachment.

Nevertheless, respondent Manila Mission would not be left without remedy. It could file a counter-bond pursuant to Section 12, Rule 57[11] of the Rules of Court in order to discharge the attachment.

[11] SEC. 12. *Discharge of attachment upon giving counter-bond.*—After a writ of attachment has been enforced, the party whose property has been

If respondent Manila Mission fails to do the same and the property ends up being subjected to execution, respondent can redeem the property and seek reimbursement from the spouses Soliven.

WHEREFORE, the instant Petition for Review on *Certiorari* is hereby *GRANTED*. The Decision dated 29 July 1997 of the Court of Appeals in CA-G.R. SP No. 41042 affirming the Orders of the Regional Trial Court of Dagupan City dated 9 October 1995 and 27 February 1996 issued in Civil Case No. D-10583 is hereby *REVERSED* and *SET ASIDE*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

---

attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

[**] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 151932. August 19, 2009]

HENRY CHING TIU, CHRISTOPHER HALIN GO, and GEORGE CO, *petitioners, vs.* **PHILIPPINE BANK OF COMMUNICATIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ALLEGATIONS IN PLEADINGS; ACTION OR DEFENSE BASED ON DOCUMENT. — The pertinent rule on actionable documents is found in Section 7, Rule 8 of the Rules of Court, which provides that when the cause of action is anchored on a document, its substance must be set forth, and the original or a copy thereof "shall" be attached to the pleading as an exhibit and deemed a part thereof, to wit: Section 7. *Action or defense based on document*. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

2. ID.; ID.; AMENDED AND SUPPLEMENTAL PLEADINGS; AMENDMENTS BY LEAVE OF COURT; LIBERAL APPLICATION OF THE LAW IN THE INTEREST OF JUSTICE; DISCUSSED. — With respect to PBCOM's right to amend its complaint, including the documents annexed thereto, after petitioners have filed their answer, Section 3, Rule 10 of the Rules of Court specifically allows amendment by leave of court. The said Section states: SECTION 3. *Amendments by leave of court*. Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard. This Court has emphasized the import of Section 3, Rule 10 of the 1997 Rules of Civil Procedure

in *Valenzuela v. Court of Appeals*, thus: Interestingly, Section 3, Rule 10 of the 1997 Rules of Civil Procedure amended the former rule in such manner that the phrase "or that the cause of action or defense is substantially altered" was stricken-off and not retained in the new rules. The clear import of such amendment in Section 3, Rule 10 is that under the new rules, "the amendment may (now) substantially alter the cause of action or defense." This should only be true, however, when despite a substantial change or alteration in the cause of action or defense, the amendments sought to be made shall serve the higher interests of substantial justice, and prevent delay and equally promote the laudable objective of the rules which is to secure a "just, speedy and inexpensive disposition of every action and proceeding." The granting of leave to file amended pleading is a matter particularly addressed to the sound discretion of the trial court; and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case, or that it was not made to delay the action. Nevertheless, as enunciated in *Valenzuela*, even if the amendment substantially alters the cause of action or defense, such amendment could still be allowed when it is sought to serve the higher interest of substantial justice; prevent delay; and secure a just, speedy and inexpensive disposition of actions and proceedings. The courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial. Furthermore, amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case, may so far as possible, be determined on its real facts and in order to speed up the trial of the case or prevent the circuity of action and unnecessary expense. That is, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which might justify a refusal of permission to amend.

3. ID.; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; WRITTEN DOCUMENT IS THE BEST EVIDENCE

OF ITS OWN CONTENTS; SUBSTITUTION OF THE ALTERED SURETY AGREEMENT WITH A COPY OF THE ORIGINAL IN CASE AT BAR. — Verily, it is a cardinal rule of evidence, not just one of technicality but of substance, that the written document is the best evidence of its own contents. It is also a matter of both principle and policy that when the written contract is established as the repository of the parties' stipulations, any other evidence is excluded, and the same cannot be used to substitute for such contract, or even to alter or contradict the latter. The original surety agreement is the best evidence that could establish the parties' respective rights and obligations. In effect, the RTC merely allowed the amendment of the complaint, which consequently included the substitution of the altered surety agreement with a copy of the original. It is well to remember at this point that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application that would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. Applied to the instant case, this not only assures that it would be resolved based on real facts, but would also aid in the speedy disposition of the case by utilizing the best evidence possible todetermine the rights and obligations of the party-litigants. Moreover, contrary to petitioners' contention, they could not be prejudiced by the substitution since they can still present the substituted documents, Annexes "A" to A-2", as part of the evidence of their affirmative defenses. The substitution did not prejudice petitioners or delay the action. On the contrary, it tended to expedite the determination of the controversy. Besides, the petitioners are not precluded from filing the appropriate criminal action against PBCOM for attaching the altered copy of the surety agreement to the complaint. The substitution of the documents would not, in any way, erase the existence of falsification, if any. The case before the RTC is civil in nature, while the alleged falsification is criminal, which is separate and distinct from another. Thus, the RTC committed no reversible error when it allowed the substitution of the altered surety agreement with that of the original.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PURPOSE. — A Petition for *Certiorari* under Rule 65 of the Rules of Court is intended for the correction of errors of jurisdiction only or

grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.

5. ID.; ID.; ID.; REQUISITES. — For a petition for *certiorari* to prosper, the essential requisites that have to concur are: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

6. ID.; ID.; ID.; ID.; WITHOUT JURISDICTION, EXCESS OF JURISDICTION, AND GRAVE ABUSE OF DISCRETION, DISTINGUISHED FROM EACH OTHER. — The phrase *without jurisdiction* means that the court acted with absolute lack of authority or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. *Excess of jurisdiction* occurs when the court transcends its power or acts without any statutory authority; or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and is invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

APPEARANCES OF COUNSEL

Adrian L. Barba and *Joy G. Elumba* for petitioners.
Teogenes X. Velez for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision[1] dated September 28, 2001, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 57732, dismissing the petition and affirming the assailed Orders of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 21 in Civil Case No. 99-352, dated December 14, 1999 and January 11, 2000.

The factual and procedural antecedents are as follows:

In June 1993, Asian Water Resources, Inc. (AWRI), represented by herein petitioners, applied for a real estate loan with the Philippine Bank of Communications (PBCOM) to fund its purified water distribution business. In support of the loan application, petitioners submitted a Board Resolution[2] dated June 7, 1993. The loan was guaranteed by collateral over the property covered by Transfer Certificate of Title No. T-13020.[3] The loan was eventually approved.[4]

In August 1996, AWRI applied for a bigger loan from PBCOM for additional capitalization using the same Board Resolution, but without any additional real estate collateral. Considering that the proposed additional loan was unsecured, PBCOM required all the members of the Board of Directors of AWRI to become sureties. Thus, on August 16, 1996, a Surety Agreement[5] was executed by its Directors and acknowledged by a notary public on the same date. All copies of the Surety

---

[1] Penned by Associate Justice B. A. Adefuin-De la Cruz, with Associate Justices Andres B. Reyes, Jr. and Amelita G. Tolentino, concurring, *rollo*, pp. 25-30.

[2] CA *rollo*, p. 113.

[3] *Id.* at 114.

[4] *Rollo*, p. 26.

[5] CA *rollo*, pp. 116-118.

Agreement, except two, were kept by PBCOM. Of the two copies kept by the notary public, one copy was retained for his notarial file and the other was sent to the Records Management and Archives Office, through the Office of the RTC Clerk of Court.[6]

Thereafter, on December 16, 1998, AWRI informed the bank of its desire to surrender and/or assign in its favor, all the present properties of the former to apply as *dacion en pago* for AWRI's existing loan obligation to the bank.[7] On January 11, 1999, PBCOM sent a reply denying the request. On May 12, 1999, PBCOM sent a letter to petitioners demanding full payment of its obligation to the bank.[8]

Its demands having remained unheeded, PBCOM instructed its counsel to file a complaint for collection against petitioners. The case was docketed as Civil Case No. 99-352.

On July 3, 1999, petitioners filed their Answer. It alleged, among other things, that they were not personally liable on the promissory notes, because they signed the Surety Agreement in their capacities as officers of AWRI. They claimed that the Surety Agreement attached to the complaint as Annexes "A" to "A-2"[9] were falsified, considering that when they signed the same, the words "In his personal capacity" did not yet appear in the document and were merely intercalated thereon without their knowledge and consent.[10]

In support of their allegations, petitioners attached to their Answer a certified photocopy of the Surety Agreement issued on March 25, 1999 by the Records Management and Archives Office in Davao City,[11] showing that the words "In his personal

---

[6] *Rollo*, p. 26.

[7] CA *rollo*, p. 122.

[8] *Id.* at 37.

[9] *Id.* at 55-58.

[10] *Rollo*, p. 26.

[11] CA *rollo*, pp. 38-40.

capacity" were not found at the foot of page two of the document where their signatures appeared.[12]

Because of this development, PBCOM's counsel searched for and retrieved the file copy of the Surety Agreement. The notarial copy showed that the words "In his personal capacity" did not appear on page two of the Surety Agreement.[13]

Petitioners' counsel then asked PBCOM to explain the alteration appearing on the agreement. PBCOM subsequently discovered that the insertion was ordered by the bank auditor. It alleged that when the Surety Agreement was inspected by the bank auditor, he called the attention of the loans clerk, Kenneth Cabahug, as to why the words "In his personal capacity" were not indicated under the signature of each surety, in accordance with bank standard operating procedures. The auditor then ordered Mr. Cabahug to type the words "In his personal capacity" below the second signatures of petitioners. However, the notary public was never informed of the insertion.[14] Mr. Cabahug subsequently executed an affidavit[15] attesting to the circumstances why the insertion was made.

PBCOM then filed a Reply and Answer to Counterclaim with Motion for Leave of Court to Substitute Annex "A" of the Complaint,[16] wherein it attached the duplicate original copy retrieved from the file of the notary public. PBCOM also admitted its mistake in making the insertion and explained that it was made without the knowledge and consent of the notary public. PBCOM maintained that the insertion was not a falsification, but was made only to speak the truth of the parties' intentions. PBCOM also contended that petitioners were already primarily liable on the Surety Agreement whether or not the insertion was made, having admitted in their pleadings that they voluntarily

---

[12] *Id.*

[13] *Rollo,* p. 27.

[14] *Id.* at 26.

[15] CA *rollo,* p. 115.

[16] *Id.* at 50-57.

executed and signed the Surety Agreement in the original form. PBCOM, invoking a liberal application of the Rules, emphasized that the motion incorporated in the pleading can be treated as a motion for leave of court to amend and admit the amended complaint pursuant to Section 3, Rule 10 of the Rules of Court.

On December 14, 1999, the RTC issued an Order[17] allowing the substitution of the altered document with the original Surety Agreement, the pertinent portion of which reads:

> August 16, 1996 attached as Annexes "A" to "A-2" of the reply and answer Resolving the Motion to Substitute Annexes "A" to "A-2" of the complaint and the opposition thereto by the defendant, this Court, in the interest of justice, hereby allows the substitution of said Annexes "A" to "A-2" of the complaint with the duplicate original of notarial copy of the Agreement dated to counter-claim.
>
> SO ORDERED.

Petitioners filed a motion for reconsideration,[18] but it was denied in the Order[19] dated January 11, 2000, to wit:

> Resolving the motion for reconsideration and the opposition thereto, the Court finds the motion substantially a reiteration of the opposition to plaintiff's motion.
>
> Additionally, the instant motion for reconsideration treats on evidentiary matter which can be properly ventilated in the trial proper, hence, there is no cogent reason to disturb the Court's order of December 14, 1999.
>
> SO ORDERED.

Aggrieved, petitioners sought recourse before the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 57732.

Petitioners claimed that the RTC acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to

---

[17] *Id.* at 68.

[18] *Id.* at 69-72.

[19] *Id.* at 81.

lack or excess of jurisdiction in denying their motion for reconsideration and in allowing PBCOM to substitute the altered copy of the Surety Agreement with the duplicate original notarial copy thereof considering that the latter's cause of action was solely and principally founded on the falsified document marked as Annexes "A" to "A-2."[20]

On September 28, 2001, the CA rendered a Decision dismissing the petition for lack of merit, the decretal portion of which reads:

> WHEREFORE, foregoing considered, the instant petition is hereby **DENIED DUE COURSE** and, accordingly, **DISMISSED** for lack of merit. The assailed Orders dated December 14, 1999 and January 11, 2000 of the Regional Trial Court of Cagayan de Oro City, Branch 21, are hereby **AFFIRMED *in toto***.
>
> SO ORDERED.[21]

Hence, the petition assigning the following errors:

I

THE COURT COMMITTED A REVERSIBLE ERROR IN AFFIRMING *IN TOTO* THE ORDER OF THE LOWER COURT ALLOWING THE SUBSTITUTION OF THE FALSIFIED DOCUMENT BY RELYING ON THE PROVISION OF SECTION 3, RULE 10 OF THE RULES OF COURT.

II

ACTING AS THE COURT ON THE PETITION FOR *CERTIORARI*, THE COURT COMMITTED A REVERSIBLE ERROR HAVING NO JURISDICTION TO RULE ON THE OBLIGATION OF THE PETITIONERS BASED ON THE FALSIFIED DOCUMENT

III

THE COURT ERRED IN GIVING CREDENCE TO THE ALLEGATION OF RESPONDENT BANK THAT FROM AUGUST 15 TO DECEMBER 9, 1997 ASIAN WATER RESOURCES INC. OBTAINED SEVERAL

---

[20] *Rollo*, p. 28.

[21] *Id*. at 30.

AVAILMENTS OF *NEW BIGGER AND ADDITIONAL LOANS TOTALLING* ₱*2,030,000.00* EVIDENCED BY 4 PROMISSORY NOTES MARKED AS ANNEXES "B", "B-1", "B-2" AND "B-3".

IV

THE COURT FAILED TO CONSIDER THE MISAPPLICATION OF THE PRINCIPLE OF EQUITY COMMITTED BY THE LOWER COURT IN ORDERING THE SUBSTITUTION OF THE FALSIFIED DOCUMENT.[22]

Petitioners argue that the CA committed a reversible error in affirming the Order of the RTC allowing the substitution of the document by relying on Section 3, Rule 10 of the Rules of Court. Petitioners assert that the Rules do not allow the withdrawal and substitution of a "falsified document" once discovered by the opposing party.

Petitioners maintain that PBCOM's cause of action was solely and principally founded on the alleged "falsified document" originally marked as Annexes "A" to "A-2". Thus, the "withdrawal" of the document results in the automatic withdrawal of the whole complaint on the ground that there is no more cause of action to be maintained or enforced by plaintiff against petitioners. Also, petitioners argue that if the substitution will be allowed, their defenses that were anchored on Annexes "A" to "A-2" would be gravely affected. Moreover, considering that the said document was already removed, withdrawn, and disregarded by the RTC, the withdrawal and substitution of the document would prevent petitioners from introducing the falsified documents during the trial as part of their evidence.[23]

Petitioners submit that the RTC misapplied the principle of equity when it allowed PBCOM to substitute the document with the original agreement. Petitioners also claim that the remedy of appeal after the termination of the case in the RTC would become ineffective and inadequate if the Order of the RTC allowing the "withdrawal" and "substitution" of the document

---

[22] *Id.* at 60-61.

[23] *Id.* at 61-64.

would not be nullified, because the falsified document would no longer be found in the records of the case during the appeal.[24]

Petitioners contend that the CA went beyond the issue raised before it when it interpreted the provisions of the Surety Agreement, particularly paragraph 4 thereof, and then ruled on the obligations of the parties based on the document. Petitioners posit that the CA prematurely ruled on petitioners' obligations, considering that their obligations should be determined during trial on the merits, after the parties have been given the opportunity to present their evidence in support of their respective claims. Petitioners stress that the CA went into the merit of the case when it gave credence to the statement of fact of PBCOM that "*From August 15 to December 9, 1997, Asian Water Resources, Inc. obtained several availments on its additional loans totalling ₱2,030,000.00 as evidenced by 4 promissory notes marked as Annexes B, B-1, B-2, and B-3.* Thus, the conclusion of the CA in declaring the petitioners liable as sureties violated their right to due process.[25]

For its part, PBCOM argues that since the complaint is based on an actionable document, *i.e.*, the surety agreement, the original or a copy thereof should be attached to the pleading as an exhibit, which shall be deemed part of the pleading. Considering that the surety agreement is annexed to the complaint, it is an integral part thereof and its substitution with another copy is in the nature of a substantial amendment, which is allowed by the Rules, but with prior leave of court.

Moreover, PBCOM alleges that since the Rules provides that substantial amendments may be made upon leave of court, the authority of the RTC to allow the amendment is discretionary. Thus, the CA correctly held that the act of granting the said substitution was within the clear and proper discretion of the RTC.

The petition is without merit.

---

[24] *Id.* at 71-73.

[25] *Id.* at 64-71.

As to the substitution of the earlier surety agreement that was annexed to the complaint with the original thereof, this Court finds that the RTC did not err in allowing the substitution.

The pertinent rule on actionable documents is found in Section 7, Rule 8 of the Rules of Court, which provides that when the cause of action is anchored on a document, its substance must be set forth, and the original or a copy thereof "shall" be attached to the pleading as an exhibit and deemed a part thereof, to wit:

> Section 7. *Action or defense based on document*. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

With respect to PBCOM's right to amend its complaint, including the documents annexed thereto, after petitioners have filed their answer, Section 3, Rule 10 of the Rules of Court specifically allows amendment by leave of court. The said Section states:

> SECTION 3. *Amendments by leave of court*. Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

This Court has emphasized the import of Section 3, Rule 10 of the 1997 Rules of Civil Procedure in *Valenzuela v. Court of Appeals*,[26] thus:

> Interestingly, Section 3, Rule 10 of the 1997 Rules of Civil Procedure amended the former rule in such manner that the phrase "or that the cause of action or defense is substantially altered" was stricken-off and not retained in the new rules. The clear import of such amendment in Section 3, Rule 10 is that under the new rules, "the amendment

[26] 416 Phil. 289 (2001).

may (now) substantially alter the cause of action or defense." This should only be true, however, when despite a substantial change or alteration in the cause of action or defense, the amendments sought to be made shall serve the higher interests of substantial justice, and prevent delay and equally promote the laudable objective of the rules which is to secure a "just, speedy and inexpensive disposition of every action and proceeding."[27]

The granting of leave to file amended pleading is a matter particularly addressed to the sound discretion of the trial court; and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case, or that it was not made to delay the action.[28] Nevertheless, as enunciated in *Valenzuela*, even if the amendment substantially alters the cause of action or defense, such amendment could still be allowed when it is sought to serve the higher interest of substantial justice; prevent delay; and secure a just, speedy and inexpensive disposition of actions and proceedings.

The courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial.[29]

Furthermore, amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case, may so far as possible, be determined on its real facts and in order to speed up the trial of the case or prevent the circuity of action and unnecessary expense. That is, unless there are circumstances such as inexcusable delay or the taking of the

---

[27] *Id.* at 297.

[28] *Refugia v. Alejo*, 389 Phil. 568, 576 (2000).

[29] *Id.* at 576-577.

adverse party by surprise or the like, which might justify a refusal of permission to amend.[30]

In the present case, there was no fraudulent intent on the part of PBCOM in submitting the altered surety agreement. In fact, the bank admitted that it was a mistake on their part to have submitted it in the first place instead of the original agreement. It also admitted that, through inadvertence, the copy that was attached to the complaint was the copy wherein the words "IN HIS PERSONAL CAPACITY" were inserted to conform to the bank's standard practice. This alteration was made without the knowledge of the notary public. PBCOM's counsel had no idea that what it submitted was the altered document, thereby necessitating the substitution of the surety agreement with the original thereof, in order that the case would be judiciously resolved.

Verily, it is a cardinal rule of evidence, not just one of technicality but of substance, that the written document is the best evidence of its own contents. It is also a matter of both principle and policy that when the written contract is established as the repository of the parties' stipulations, any other evidence is excluded, and the same cannot be used to substitute for such contract, or even to alter or contradict the latter.[31] The original surety agreement is the best evidence that could establish the parties' respective rights and obligations. In effect, the RTC merely allowed the amendment of the complaint, which consequently included the substitution of the altered surety agreement with a copy of the original.

It is well to remember at this point that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application that would result in technicalities that tend to frustrate rather than promote substantial justice

---

[30] *Philippine National Bank v. Court of Appeals*, G.R. No. L-45770, March 30, 1988, 159 SCRA 433, 444.

[31] *ACI Philippines, Inc. v. Coquia*, G.R. No. 174466, July 14, 2008, 558 SCRA 300, 309-310.

must always be avoided.[32] Applied to the instant case, this not only assures that it would be resolved based on real facts, but would also aid in the speedy disposition of the case by utilizing the best evidence possible to determine the rights and obligations of the party-litigants.

Moreover, contrary to petitioners' contention, they could not be prejudiced by the substitution since they can still present the substituted documents, Annexes "A" to A-2", as part of the evidence of their affirmative defenses. The substitution did not prejudice petitioners or delay the action. On the contrary, it tended to expedite the determination of the controversy. Besides, the petitioners are not precluded from filing the appropriate criminal action against PBCOM for attaching the altered copy of the surety agreement to the complaint. The substitution of the documents would not, in any way, erase the existence of falsification, if any. The case before the RTC is civil in nature, while the alleged falsification is criminal, which is separate and distinct from another. Thus, the RTC committed no reversible error when it allowed the substitution of the altered surety agreement with that of the original.

A Petition for *Certiorari* under Rule 65 of the Rules of Court is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[33]

For a petition for *certiorari* to prosper, the essential requisites that have to concur are: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any

---

[32] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 307.

[33] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 10 (2004).

plain, speedy and adequate remedy in the ordinary course of law.[34]

The phrase *without jurisdiction* means that the court acted with absolute lack of authority or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. *Excess of jurisdiction* occurs when the court transcends its power or acts without any statutory authority; or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and is invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[35]

The present case failed to comply with the above-stated requisites. In the instant case, the soundness of the RTC's Order allowing the substitution of the document involves a matter of judgment and discretion, which cannot be the proper subject of a petition for *certiorari* under Rule 65. This rule is only intended to correct defects of jurisdiction and not to correct errors of procedure or matters in the trial court's findings or conclusions.

However, this Court agrees with the petitioners' contention that the CA should not have made determinations as regards the parties' respective rights based on the surety agreement. The CA went beyond the issues brought before it and effectively

---

[34] Rules of Court, Rule 65, Sec. 1.

[35] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 437.

preempted the RTC in making its own determinations. It is to be noted that the present case is still pending determination by the RTC. The CA should have been more cautious and not have gone beyond the issues submitted before it in the petition for *certiorari*; instead, it should have squarely addressed whether or not there was grave abuse of discretion on the part of the RTC in issuing the Orders dated December 14, 1999 and January 11, 2000.

WHEREFORE, premises considered, the petition is *DENIED*. Subject to the above disquisitions, the Decision of the Court of Appeals in CA-G.R. SP No. 57732, dated September 28, 2001, and the Orders of the Regional Trial Court of Cagayan de Oro City, Branch 21, in Civil Case No. 99-352, dated December 14, 1999 and January 11, 2000, are *AFFIRMED*.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Chairperson),*[**] *Velasco, Jr.,* and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 162518. August 19, 2009]

RODRIGO SUMIRAN, *petitioner, vs.* **SPOUSES GENEROSO DAMASO and EVA DAMASO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; CASE OF *NEYPES V. CA* ON WHEN THE 15-DAY APPEAL PERIOD

---

[*] Designated as an additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] Per Special Order No. 678 dated August 3, 2009.

SHOULD BE COUNTED. — As early as 2005, the Court categorically declared in *Neypes v. Court of Appeals* that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration. This would standardize the appeal periods provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the Court stated: To recapitulate, **a party-litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration.** Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.

2. ID.; ID.; ID.; ID.; RETROACTIVITY OF THE RULE ON NEYPES CASE. —The retroactivity of the *Neypes* rule in cases where the period for appeal had lapsed prior to the date of promulgation of *Neypes* on September 14, 2005, was clearly explained by the Court in *Fil-Estate Properties, Inc. v. Homena-Valencia*, stating thus: The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of the general rule that **procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.** *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect, to wit: Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues — they may

be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure. **The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.** Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in *Neypes* which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not.

APPEARANCES OF COUNSEL

Vincent Pepito F. Yambao, Jr. and *Romulo B. Lopez* for petitioner.

Mutia Trinidad Venadas & Versoza for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 80267, dated December 22, 2003, and the Resolution[2] dated February 20, 2004, denying petitioner's motion for reconsideration, be reversed and set aside.

---

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr., concurring; *rollo*, pp. 70-74.

[2] *Id*. at 83.

The antecedent facts are as follows:

Petitioner filed a complaint for sum of money and damages with prayer for preliminary attachment (Civil Case No. 93-2588) against respondents before the Regional Trial Court (RTC) of Antipolo City, Branch 73. Petitioner is also the private complainant in Criminal Case Nos. 92-8157 and 92-8158 for violation of *Batas Pambansa Blg*. 22 with respondent Generoso Damaso as accused. Upon motion of respondents, said civil and criminal cases were consolidated and jointly tried.

On February 21, 2003, the RTC promulgated its Decision[3] dated January 16, 2003, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, accused **GENEROSO DAMASO** is hereby **ACQUITTED** in Criminal Case Nos. 92-8157 and 92-8158 on grounds of insufficiency of evidence.
>
> As for Civil Case No. 93-2588, in the interest justice and equity, judgment is hereby rendered against the plaintiff Rodrigo Sumiran and in favor of the defendants Damaso. The plaintiff is further ordered to pay to the defendants the following:
>
> a. ₱50,000.00 as moral damages
> b. ₱20,000.00 as exemplary damages, and
> c. the cost of suit.
>
> SO ORDERED.[4]

On March 6, 2003, petitioner filed a motion for reconsideration dated Match 4, 2003, stating that he received a duplicate original copy of the decision on February 21, 2003. Respondents opposed said motion. On May 9, 2003, the RTC issued an Order denying petitioner's motion for reconsideration. Thereafter, on May 29, 2003, petitioner filed a Notice of Appeal dated May 28, 2003, stating instead that he received a copy of the decision dated January 16, 2003 only on March 8, 2003 and of the Order dated May 9, 2003 denying his motion for reconsideration on May 19, 2003.

---

[3] *Rollo*, pp. 21-28.

[4] *Id.* at 28.

On June 2, 2003, the RTC issued an Order denying due course to the notice of appeal for having been filed out of time, emphasizing that the decision was promulgated on February 21, 2003 in the presence of both parties and their counsels. Considering counsel for petitioner to have received a copy of the decision on said date of promulgation, the RTC ruled that since petitioner had filed a motion for reconsideration on the 13th day (March 6, 2003), he had belatedly filed the notice of appeal when he filed it ten (10) days after allegedly receiving the Order of May 9, 2003 on May 19, 2003. A motion for reconsideration was filed by petitioner on June 20, 2003, but the same was denied by the RTC on October 1, 2003.

Petitioner then filed a petition for *certiorari* with the CA. However, the CA found the petition unmeritorious and dismissed the same in its Decision dated December 22, 2003. Ruling that petitioner was bound by his judicial admission that he received the Decision of the RTC when it was promulgated on February 21, 2003, the CA held that petitioner's period within which to file an appeal had lapsed by the time the Notice of Appeal was filed on May 29, 2003. Petitioner's motion for reconsideration of the CA Decision was denied per Resolution dated February 20, 2004.

Hence, this petition where it is alleged that the CA erred in ruling that petitioner's period to appeal had lapsed, as such ruling was premised on misapprehension of facts and contradicted by evidence on record. The CA also allegedly failed to state in its decision and resolution the particular evidence upon which the same was based; and there were supposedly some facts that, if properly noticed and considered, would justify a different conclusion.

The petition deserves some consideration.

As early as 2005, the Court categorically declared in *Neypes v. Court of Appeals*[5] that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion

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

for reconsideration. This would standardize the appeal periods provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the Court stated:

> To recapitulate, **a party-litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration**. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.[6]

The foregoing ruling of the Court was reiterated in *Makati Insurance Co., Inc. v. Reyes*,[7] to wit:

> Propitious to petitioner is *Neypes v. Court of Appeals*, promulgated on 14 September 2005 while the present Petition was already pending before us. x x x
>
> xxx xxx xxx
>
> With the advent of the "fresh period rule," parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.
>
> The "fresh period rule" is not inconsistent with Rule 41, Section 3 of the Revised Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment **or** final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the "final order," x x x.
>
> xxx xxx xxx
>
> The "fresh period rule" finally eradicates the confusion as to when the 15-day appeal period should be counted – from receipt of notice of judgment or from receipt of notice of "final order" appealed from.

---

[6] *Id*. at 646. (Emphasis supplied.)

[7] G.R. No. 167403, August 6, 2008.

Taking our bearings from *Neypes*, in *Sumaway v. Urban Bank, Inc*., we set aside the denial of a notice of appeal which was purportedly filed five days late. With the fresh period rule, the 15-day period within which to file the notice of appeal was counted from notice of the denial of the therein petitioner's motion for reconsideration.

We followed suit in *Elbiña v. Ceniza*, wherein we applied the principle granting a fresh period of 15 days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.

Thereafter, in *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*, we held that a party-litigant may now file his notice of appeal either within fifteen days from receipt of the original decision or within fifteen days from the receipt of the order denying the motion for reconsideration.

In *De los Santos v. Vda. de Mangubat*, we applied the same principle of "fresh period rule," expostulating that procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes**. The "fresh period rule" is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity, such as the present case, without danger of violating anyone else's rights**. (Emphasis supplied)

The retroactivity of the *Neypes* rule in cases where the period for appeal had lapsed prior to the date of promulgation of *Neypes* on September 14, 2005, was clearly explained by the Court in *Fil-Estate Properties, Inc. v. Homena-Valencia*,[8] stating thus:

The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of the general rule that **procedural laws may be given retroactive**

[8] G.R. No. 173942, June 25, 2008, 555 SCRA 345.

effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.

Sps. De los Santos reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect, to wit:

> Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues – they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.
>
> **The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.**
>
> Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in *Neypes* which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not.[9]

Since this case was already pending in this Court at the time of promulgation of *Neypes*, then, ineluctably, the Court must also apply the foregoing rulings to the present case. Petitioner is entitled to a "fresh period" of 15 days – counted from May 19, 2003, the date of petitioner's receipt of the Order denying

---

[9] *Id*. at 349-350. (Emphasis supplied.)

his motion for reconsideration of the RTC Decision – within which to file his notice of appeal. Therefore, when he filed said notice on May 29, 2003, or only ten (10) days after receipt of the Order denying his motion for reconsideration, his period to appeal had not yet lapsed.

IN VIEW OF THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 80267, dated December 22, 2003, and the Resolution dated February 20, 2004, are hereby *REVERSED* and *SET ASIDE*. The Order of the Regional Trial Court of Antipolo City, Branch 73, dated June 2, 2003 in Civil Case No. 93-2588, and its Order dated October 1, 2003, reiterating the June 2, 2003 Order, are hereby declared *NULL* and *VOID*. The Regional Trial Court of Antipolo City, Branch 73, is *DIRECTED* to give due course to petitioner's Notice of Appeal dated May 28, 2003. No costs.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Nachura, JJ.,* concur.

---

[*] Designated as an additional member in lieu of Associate Justice Consuelo Ynares-Santiago, per Special Order No. 679 dated August 3, 2009.

[**] Per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 175345. August 19, 2009]

BALTAZAR L. PAYNO, *petitioner, vs.* **ORIZON TRADING CORP./ORATA TRADING and FLORDELIZA LEGASPI,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; VALIDITY OF DISMISSAL TO BE ESTABLISHED BY EMPLOYER; ALLEGED RESIGNATION IN CASE AT BAR. — In termination cases, it is incumbent upon the employer to prove either the non-existence or the validity of dismissal. Inasmuch as respondents alleged petitioner's resignation as the cause of his separation from work, respondents had the burden to prove the same. The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense. Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one who has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, in fact, he intended to sever his employment.

2. ID.; ID.; ID.; ID.; NEGATED IN CASE AT BAR. — In this case, we find no overt act on the part of petitioner that he was ready to sever his employment ties. The alleged resignation was actually premised by respondents only on the filing of the complaint for separation pay, but this alone is not sufficient proof that petitioner intended to resign from the company. What strongly negates the claim of resignation is the fact that

petitioner filed the amended complaint for illegal dismissal immediately after he was not allowed to report for work on June 3, 2000. Resignation is inconsistent with the filing of the complaint for illegal dismissal. It would have been illogical for petitioner to resign and then file a complaint for illegal dismissal later on. If petitioner was determined to resign, as respondents posited, he would not have commenced the action for illegal dismissal. Undeniably, petitioner was unceremoniously dismissed in this case. Furthermore, it must be noted that respondents admit the closure of the business of Orata Trading and the immediate takeover by Orizon Trading Corporation. Under Article 283 of the Labor Code, the closing or cessation of the operations of Orata Trading renders it liable for the payment of separation pay to the employees. Since petitioner was informed by Orata's personnel manager that no separation pay was forthcoming, the former was constrained to file a claim therefor. Petitioner was afraid to lose all benefits to which he was entitled for the seven years he had worked with Orata Trading. This fear was not unfounded, since he was required to sign a new employment contract and considered as a new employee of Orizon Trading Corporation, and the years of service behind him would amount to nothing.

APPEARANCES OF COUNSEL

Sylvia A. Ibarra for petitioner.
Rodrigo D. Sta. Ana for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the decision[1] of the Court of Appeals (CA) dated July 18, 2006 and the

[1] Penned by Associate Justice Lucenito N. Tagle, with Associate Justices Marina L. Buzon and Regalado E. Maambong, concurring; *rollo*, pp. 34-49.

resolution[2] dated November 6, 2006 denying the motion for reconsideration thereof in CA-G.R. SP No. 91418.

The antecedent facts are as follows:

On October 21, 1993, petitioner Baltazar L. Payno was employed as electrician by Orata Trading, a single proprietorship engaged in signboard and billboard advertising. He was later promoted to senior installer.

On April 11, 2000, petitioner was informed by the personnel manager that Orata Trading would cease its business operations and that Orizon Trading Corporation was taking over. Petitioner asked about the status of his employment, and further inquired if he would be receiving separation pay due to the closure of Orata Trading. He was told that no separation pay was forthcoming, since Orizon Trading Corporation was merely absorbing Orata Trading – maintaining its premises, and retaining all its officers and employees without any diminution in salary and rank. He was, however, informed that he would have to sign a new employment contract with Orizon Trading Corporation.

Perturbed with the new set-up, petitioner, on May 4, 2000, filed a complaint against Orizon Trading for payment of separation pay due to the closure of Orata Trading. Petitioner, nonetheless, continued to work with Orizon Trading Corporation.

On June 3, 2000, petitioner was called to the office, and was told not to report for work anymore if he did not sign the employment contract. The general manager, respondent Flordeliza Legaspi, offered him the amount of ₱7,000.00 as separation pay. Petitioner refused since it was insufficient and not commensurate to the more than seven (7) years he had worked with Orata Trading. He demanded that he should be paid separation pay in accordance with the Labor Code, since there was no proof of financial losses suffered by Orata Trading.

On June 5, 2000, petitioner filed an Amended Complaint[3] to include "illegal dismissal" as another cause of action against

---

[2] *Id.* at 32-34.

[3] *Rollo*, p. 50.

respondents, maintaining the relief for payment of separation pay, damages and attorney's fees.

For their part, respondents admitted that petitioner worked with Orata Trading since 1993 and with Orizon Trading Corporation when the latter took over the business. Respondents, however, alleged that petitioner already thought of resigning from his job when he learned that separation pay could not be expected as a result of the takeover of Orata Trading by Orizon Trading Corporation. This intention was eventually effected when petitioner refused to continue to work on June 3, 2000. Since he voluntarily resigned, he was not entitled to separation pay; nonetheless, the amount of ₱7,000.00 was offered to him by way of financial assistance.

On July 6, 2001, the Labor Arbiter rendered judgment[4] in favor of petitioner. The Labor Arbiter was not convinced that petitioner resigned. Petitioner's tenure of more than seven (7) years with Orata Trading and the immediate filing of the case ran counter to the claim that he resigned. Respondents failed to show, much less prove, the reason for the closure of Orata Trading. The status of the employees absorbed by Orizon Trading Corporation was also not clear. In this case, respondents were found guilty of having constructively dismissed petitioner when the latter was prevented from entering the workplace on June 3, 2000. Thus, petitioner should be paid separation pay of one month for every year of service and full backwages, as provided by Article 279 of the Labor Code. The dispositive portion reads as follows:

WHEREFORE, premises considered, Respondents are hereby declared to have constructively or illegally dismissed Complainant, and are hereby ORDERED to solidarily pay Complainant the following, to be computed up to the finality of this decision, but which as of Nov. 25, 2000, are as follows:

[4] *Id.* at 94-99.

1.	separation pay: ₱6,500.00 x 7 (May 30, 1993 to as of Nov. 25, 2000)		-	₱ 45,500.00
2.	backwages (June 3 to as of Nov. 25, 2000 more or less 6 months).		-	39,000.00
3.	moral damages		-	20,000.00
		Sub-total	-	₱104,500.00
4.	10% attorney's fees		-	10,450.00
		Total	-	**₱114,950.00**[5]

Both parties appealed. On December 15, 2004, the National Labor Relations Commission (NLRC) affirmed with modification the decision of the Labor Arbiter. The dispositive portion reads as follows:

> WHEREFORE, the appeal filed by complainant is hereby GRANTED. The appeal filed by respondents is DENIED for lack of merit except with respect to the award of damages and of attorney's fees.
>
> [Corollarily], the Decision of the Labor Arbiter dated 06 July 2001 as to the finding of illegal dismissal, award of separation pay computed from 30 May 1993 to the finality of this Decision is AFFIRMED. The award of backwages is hereby modified to include ECOLA, 13th month pay, service incentive leave and such other benefits which complainant should have received had he not been illegally dismissed, to be computed from 03 June 2000 up to the finality of this Decision. The award of attorney's fees is hereby reduced to ₱5,000.00 while the award of damages is deleted.
>
> SO ORDERED.[6]

Imputing grave abuse of discretion to the NLRC, respondents filed a petition for *certiorari* with the CA.

---

[5] *Id.* at 98-99.

[6] *Id.* at 132.

On July 18, 2006, the CA rendered the assailed decision finding merit in the petition. The CA ruled that the complaint for illegal/constructive dismissal had no basis. There was no act of discrimination committed against petitioner that would render his employment unbearable. The fact that petitioner continued to work thereat and even received salary for more than a month from Orizon Trading Corporation belies the claim that he was required to sign a new contract. The CA found to be more credible and consistent with human behavior respondents' version that petitioner resigned and left his employment when his demand for a bigger separation pay was not heeded.[7] With no dismissal to speak of, whether legally or illegally, no payment of separation pay was proper, thus:

> WHEREFORE, in view of the foregoing, the instant petition for *certiorari* is hereby **GRANTED**. The assailed Decision dated December 15, 2004 of the National Labor Relations Commission is hereby **ANNULED and SET ASIDE**. A new one is entered **DISMISSING** private respondent's complaint against petitioners.
>
> SO ORDERED.[8]

Aggrieved, petitioner filed the instant petition assailing the aforesaid decision of the CA.

The central issue in this case is whether or not petitioner was illegally dismissed.

Due to the variant findings of the CA and the labor tribunals, we are constrained to take a second look at the factual findings which, ordinarily, this Court is not duty-bound to do in petitions for review under Rule 45. After a careful review, we find that petitioner was illegally dismissed.

In termination cases, it is incumbent upon the employer to prove either the non-existence or the validity of dismissal. Inasmuch as respondents alleged petitioner's resignation as

---

[7] *Id.* at 44.

[8] *Id.* at 48.

the cause of his separation from work, respondents had the burden to prove the same. The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense.[9]

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one who has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, in fact, he intended to sever his employment.[10]

In this case, we find no overt act on the part of petitioner that he was ready to sever his employment ties. The alleged resignation was actually premised by respondents only on the filing of the complaint for separation pay, but this alone is not sufficient proof that petitioner intended to resign from the company. What strongly negates the claim of resignation is the fact that petitioner filed the amended complaint for illegal dismissal immediately after he was not allowed to report for work on June 3, 2000. Resignation is inconsistent with the filing of the complaint for illegal dismissal.[11] It would have been illogical for petitioner to resign and then file a complaint for

---

[9] *Cabalen Management Co., Inc. v. Quiambao,* G.R. No. 169494, July 24, 2007, 528 SCRA 153.

[10] *BMG Records (Phils.), Inc. v. Aparecio,* G.R. No. 153290, September 5, 2007, 532 SCRA 300, 302.

[11] *Blue Angel Manpower and Security Services, Inc. v. Court of Appeals,* G.R. No. 161196, July 28, 2008, 560 SCRA 157; *Talidano v. Falcon Maritime & Allied Services, Inc.,* G.R. No. 172031, July 14, 2008, 558 SCRA 279, 280.

illegal dismissal later on.[12] If petitioner was determined to resign, as respondents posited, he would not have commenced the action for illegal dismissal. Undeniably, petitioner was unceremoniously dismissed in this case.

Furthermore, it must be noted that respondents admit the closure of the business of Orata Trading and the immediate takeover by Orizon Trading Corporation. Under Article 283[13] of the Labor Code, the closing or cessation of the operations of Orata Trading renders it liable for the payment of separation pay to the employees.[14] Since petitioner was informed by Orata's personnel manager that no separation pay was forthcoming, the former was constrained to file a claim therefor. Petitioner was afraid to lose all benefits to which he was entitled for the seven years he had worked with Orata Trading. This fear was not unfounded, since he was required to sign a new employment contract and considered as a new employee of Orizon Trading Corporation, and the years of service behind

---

[12] *Fungo v. Lourdes School of Mandaluyong*, G.R. No. 152531, July 27, 2007, 528 SCRA 248.

[13] ART. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL*

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department of Labor and Employment] at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[14] *Elcee Farms, Inc. v. National Labor Relations Commission*, G.R. No. 126428, January 25, 2007, 512 SCRA 602, 604.

him would amount to nothing.[15] We quote with approval the findings of the NLRC, to wit:

As to the finding of illegal dismissal on the part of respondents and propriety of the award of separation pay, we affirm the same. We recall complainant's allegations in his position paper: (1) he was told to sign a new employment contract with Orizon Trading Corporation without payment of any separation pay for the services he rendered for Orata Trading from 1993 to 2000; (2) he refused to sign a new employment contract but was nevertheless employed by Orizon Trading Corporation when it took over Orata Trading's business operation; (3) he was not paid any separation pay. None of these was ever denied by respondents.

Respondents admitted the closure of Orata Trading. This was a valid exercise of management prerogative. However, while the employer may terminate the employment of any employee due to the closing or cessation of its operation, it is required by law to pay all affected workers separation pay equivalent to at least one (1) month salary for every year of service when the closure is not due to serious losses. Complainant claimed he was not paid any separation pay by Orata Trading. Neither of the respondents claimed otherwise.

Orata Trading Personnel Manager Nini Rigor justified the non-payment of separation pay to complainant by telling him that nothing would differ with his work set-up with Orizon Trading Corporation. Respondents admitted the take over of Orata Trading's business by Orizon Trading Corporation, including its premises and its employees. We agree that under this set-up, no separation pay need be paid to Orata Trading's employees because there was no separation pay to speak of. There was continued employment from Orata Trading to Orizon Trading Corporation. However, records show that this was not the set-up intended by respondents. Complainant was required to sign a new employment contract with the new employer Orizon Trading Corporation and the new employer considered complainant's employment as to have commenced only on the day of its takeover. There was, therefore, a break in complainant's period of employment, rendering to naught complainant's seven (7) years of service with Orata Trading. Complainant

[15] *Id*.

was undoubtedly deprived of his separation pay under Article 283 of the Labor Code from Orata Trading.

xxx xxx xxx

As already pointed out, the present complaint was filed on 04 May 2000 for recovery of separation pay pursuant to Article 283 of the Labor Code, due to closure of Orata Trading. At this time, complainant had not been dismissed and was allowed to continue working for Orizon Trading Corporation upon its take over. Complainant's dismissal was effected on 03 June 2000, after respondents received the summons in this case. The latter offered complainant ₱7,000.00 separation pay which he refused to accept for being insufficient. Complainant was then disallowed to continue working. The claim of illegal dismissal was, as argued by respondent "easily" incorporated by complainant in his position paper filed on 13 July 2000 and he, thereby, prayed for separation pay in lieu of reinstatement.[16]

WHEREFORE, the petition is *GRANTED***.** The decision of the Court of Appeals dated July 18, 2006 is *SET ASIDE*. The decision of the National Labor Relations Commission dated December 15, 2004 is *REINSTATED*.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[16] *Rollo,* pp.128-130.

[*] Additional member in lieu of Assiciate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated Agust 3, 2009,

THIRD DIVISION

[G.R. No. 178984. August 19, 2009]

ERLINDA MAPAGAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; DECISIONS THAT HAVE BECOME FINAL AND EXECUTORY CANNOT BE ANNULLED BY THE APPELLATE COURT; RATIONALE. — Under the Revised Rules of Criminal Procedure, a motion for reconsideration of the judgment of conviction may be filed within 15 days from the promulgation of the judgment or from notice of the final order appealed from. Failure to file a motion for reconsideration within the reglementary period renders the subject decision final and executory. Once a judgment attains finality, it becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by this Court. Decisions that have long become final and executory cannot be annulled by courts, and the appellate court is deprived of jurisdiction to alter the trial court's final judgment. This doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some point in time.

2. ID.; ID.; NOTICE TO COUNSEL OF RECORD IS BINDING ON THE CLIENT; EXPLAINED. — The rule is that when a party is represented by counsel, notices of all kinds, including motions, pleadings and orders, must be served on the counsel. Notice to counsel of record is binding on the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face. It is indeed settled that the omission or negligence of counsel binds the client. This is more true if the client did not make a periodic check on the progress of her case. Otherwise, there would be no end to a suit, so long as a new counsel could be employed

who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.

3. ID.; RULES OF PROCEDURE; RULES MAY BE RELAXED ONLY IN EXCEPTIONALLY MERITORIOUS CASES; SUSTAINED. — We have invariably pronounced that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Rules of Procedure are tools designed to promote efficiency and orderliness, as well as to facilitate the attainment of justice, such that strict adherence thereto is required. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Rules of Procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of justice. We have held that the rules may be relaxed only in "exceptionally meritorious cases."

APPEARANCES OF COUNSEL

Epifanio C. Buen for petitioner.
The Solicitor General 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 Rules of Court, petitioner Erlinda Mapagay seeks the reversal

* Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] *Rollo*, pp. 10-16 and 57.

of the Decision,[2] dated 15 February 2007, and Resolution,[3] dated 12 July 2007, of the Court of Appeals in CA-G.R. CR No. 28978, which affirmed *in toto* the Decision[4] of the Regional Trial Court (RTC), Branch 196, Parañaque City, in Criminal Case No. 04-0494, dated 14 September 2004, and the Decision[5] of the Metropolitan Trial Court (MeTC), Branch 78, Parañaque City, in Criminal Case No. 93520, dated 26 April 2004, finding her guilty of violating Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law.

The records of the case bear the following facts:

On 29 September 1997, an Information was filed before the MeTC charging petitioner with violating Batas Pambansa Blg. 22.[6] The accusatory portion of the information reads:

> That on or about the 20th day of October 1996, in the Municipality of Paranaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously issue to apply on account or for value the check described below:
>
> | | | |
> |---|---|---|
> | Check No. | : | 0011997 |
> | Drawn Against | : | PhilBank |
> | In the Amount of | : | ₱40,000.00 |
> | Dated/Postdated | : | November 20, 1996 |
> | Payable to | : | Cash |
>
> Said accused well knowing at the time of issue did not have sufficient funds in or credit with the bank for payment in full of the amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereto, was

---

[2] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Rosalinda Asuncion-Vicente, concurring; CA *rollo*, pp. 159-172.

[3] CA *rollo*, pp. 205-206.

[4] Records, pp. 168-173.

[5] *Id.* at 139-143.

[6] *Id.* at 1.

subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving said notice.

When arraigned on 9 November 1998, petitioner, assisted by her counsel *de oficio*, pleaded "Not Guilty" to the charge.[7] On 30 June 1999, the MeTC provisionally dismissed the instant case on the basis of an amicable settlement between petitioner and private complainant Relindia dela Cruz.[8] On 9 August 1999, private complainant moved for the revival of the present case claiming that petitioner failed to comply with the terms of their agreement.[9] Said motion was granted by the MeTC in its Order dated 18 February 2000.[10]

On 7 June 2000, the MeTC issued an Order terminating the pre-trial conference on the instant case.[11] Trial on the merits thereafter ensued.

The prosecution presented private complainant as its sole witness.

Private complainant testified that petitioner borrowed money from her in November 1996. Petitioner gave her a signed check for the loan and promised to replace the check with cash. Upon failure of petitioner to give her cash despite repeated demands, she presented the check to the drawee bank. The check was dishonored by the drawee bank for the reason "Account Closed." Thereafter, private complainant consulted a lawyer. Her lawyer sent a demand letter to petitioner, but the latter refused to receive it. Private complainant told petitioner to pay the loan or the former would sue her in court. Petitioner promised to pay, but

---

[7] *Id.* at 33.

[8] *Id.* at 41.

[9] *Id.* at 42.

[10] *Id.* at 54.

[11] *Id.* at 61.

failed to do so. Thus, she filed a case for violation of Batas Pambansa Blg. 22 against petitioner.[12]

On cross-examination, private complainant stated that there was a previous agreement between her and petitioner not to deposit the check; that she deposited the check despite the said agreement; that before depositing the check, she told petitioner that she would deposit the check if petitioner would not pay the loan; that petitioner refused to receive the demand letter; and that private complainant's lawyer sent the demand letter by registered mail.[13]

The prosecution adduced documentary and object evidence to buttress the aforesaid allegation, to wit: (a) three pictures of petitioner attached to her bail bond (Exhibit "A");[14] (b) PhilBank Check No. P 260 0011997, dated 20 November 1996, for the amount of ₱40,000.00 and the notation "Account Closed" (Exhibit "B");[15] (c) notice of dishonor dated 3 January 1997 (Exhibit "B-3");[16] (d) demand letter, dated 7 May 1997, addressed to petitioner (Exhibit "C");[17] (e) registry return receipt (Exhibit "C-1");[18] (f) return card (Exhibit "C-2");[19] and (g) envelope with the notation "RTS" or Refused to Receive (Exhibit "C-3").[20]

After the prosecution had formally offered its evidence and rested its case, the defense moved to reset its initial presentation of evidence to 2 October 2000, which was granted by the

---

[12] *Id.* at 65-78.

[13] *Id.* at 78-84.

[14] *Id.* at 16.

[15] *Id.* at 3.

[16] *Id.* at 63.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

MeTC.[21] Such initial presentation of evidence was further reset to later dates, but petitioner failed to appear and present initial evidence on those dates despite being notified and subpoenaed. Thus, upon motion of the prosecution, the MeTC issued an Order on 19 June 2002 declaring the instant case submitted for decision.[22]

On 26 April 2004, the MeTC rendered a Decision finding petitioner guilty of violating Batas Pambansa Blg. 22. Petitioner was sentenced to one-year imprisonment and was ordered to pay private complainant ₱40,000.00. The dispositive portion of the MeTC Decision reads:

> WHEREFORE, premises considered, this Court finds the accused, ERLINDA MAPAGAY, GUILTY beyond reasonable doubt of the Violation of Batas Pambansa Bilang 22 and hereby sentences her with one (1) year imprisonment and to pay private complainant the total amount of FORTY THOUSAND PESOS (₱40,000.00).[23]

Petitioner filed a Notice of Appeal on 10 June 2004.[24] Pursuant thereto, the MeTC forwarded the records of the instant case to the RTC for disposition.[25]

Petitioner submitted her "Appellant's Brief" with the RTC on 2 August 2004.[26] On 14 September 2004, the RTC promulgated its Decision affirming *in toto* the MeTC Decision. Petitioner filed a Motion for Reconsideration[27] but this was denied by the RTC for being filed beyond the reglementary period.[28] Aggrieved, petitioner appealed to the Court of Appeals.[29]

---

[21] *Id.* at 64.

[22] *Id.* at 136.

[23] *Id.* at 143.

[24] *Id.* at 148.

[25] *Id.* at 150.

[26] *Id.* at 152-158.

[27] *Id.* at 174-179.

[28] *Id.* at 193.

[29] CA *rollo*, pp. 2-16.

On 15 February 2007, the Court of Appeals rendered its Decision dismissing petitioner's appeal. It sustained the RTC's ruling that petitioner's motion for reconsideration with the RTC was filed out of time. Hence, it held that the RTC Decision had become final and unalterable. Petitioner filed a Motion for Reconsideration[30] of the Court of Appeals' Decision, but this was denied.[31]

Hence, petitioner filed the instant petition maintaining that the Court of Appeals erred in denying due course to her appeal.

Under the Revised Rules of Criminal Procedure, a motion for reconsideration of the judgment of conviction may be filed within 15 days from the promulgation of the judgment or from notice of the final order appealed from.[32] Failure to file a motion for reconsideration within the reglementary period renders the subject decision final and executory.[33]

Once a judgment attains finality, it becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by this Court.[34] Decisions that have long become final and executory cannot be annulled by courts, and the appellate court is deprived of jurisdiction to alter the trial court's final judgment.[35]

---

[30] CA *rollo*, pp. 173-182.

[31] *Id*.

[32] **Rule 121, Section 1**: At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with consent of the accused, grant a new trial or reconsideration; **Rule 122, Section 6**: An appeal must be taken within 15 days from promulgation of judgment or from notice of the final order appealed from.

[33] *Universal Robina Corporation v. Catapang*, G.R. No. 164736, 14 October 2005, 473 SCRA 189, 201-202.

[34] *Sacdalan v. Court of Appeals*, G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599.

[35] *Cayana v. Court of Appeals*, G.R. No. 125607, 18 March 2004, 426 SCRA 10, 22.

This doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some point in time.[36]

Evidence on record shows that petitioner's counsel of record, Atty. Antonio J. Ballena (Atty. Ballena), received on 21 September 2004 a copy of the RTC Decision dated 14 September 2004, which affirms petitioner's conviction for violation of Batas Pambansa Blg. 22.[37] Hence, petitioner may file a motion for reconsideration within 15 days from such date of receipt, which must be on or before 6 October 2004. However, petitioner filed her motion for reconsideration only on 3 November 2004, or on the 43rd day, which was obviously way beyond the 15-day reglementary period.[38] Consequently, the RTC Decision dated 14 September 2004 has become final and executory.

Petitioner alleges that she learned of the RTC Decision only on 20 October 2004 when she asked a friend to check on the status of the case and that Atty. Ballena did not inform her of the RTC Decision.

The rule is that when a party is represented by counsel, notices of all kinds, including motions, pleadings and orders, must be served on the counsel. Notice to counsel of record is binding on the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face.[39]

It is indeed settled that the omission or negligence of counsel binds the client. This is more true if the client did not make a periodic check on the progress of her case. Otherwise, there would be no end to a suit, so long as a new counsel could be

---

[36] *Cervantes v. Court of Appeals*, G.R. No. 166755, 18 November 2005, 475 SCRA 562, 571.

[37] Records, p. 173.

[38] *Id.* at 186.

[39] *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, 11 November 2005, 474 SCRA 555, 565.

employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.[40]

In the case at bar, there is no showing that petitioner had constantly followed up her case with Atty. Ballena. Petitioner did not even bother to call or personally go to the RTC to verify the progress of her case. Clearly, petitioner did not exercise diligence in pursuing her case.

Petitioner argues that the technical rules of procedure should be relaxed in the interest of substantial justice, so as to afford her opportunity to present her case.

We have invariably pronounced that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Rules of Procedure are tools designed to promote efficiency and orderliness, as well as to facilitate the attainment of justice, such that strict adherence thereto is required. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Rules of Procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of justice. We have held that the rules may be relaxed only in "exceptionally meritorious cases."[41]

---

[40] *Air Philippines Corporation v. International Business Aviation Services Phils., Inc*., G.R. No. 151963, 9 September 2004, 438 SCRA 51, 69.

[41] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417-418 (2000); *Lustaña v. Jimena-Lazo*, G.R. No. 143558, 19 August 2005, 467 SCRA 429, 432; *Far Corporation v. Magdaluyo*, G.R. No. 148739, 19 November 2004, 443 SCRA 218, 229-230; *Villamor v. Heirs of Sebastian Tolang*, G.R. No. 144689, 9 June 2005, 460 SCRA 26, 35; *Bacarra v. National Labor Relations Commission*, G.R. No. 162445, 20 October 2005, 473 SCRA 581, 586.

In the instant case, we find no persuasive or exceptionally meritorious reasons to justify the relaxation of the rules. The circumstances obtaining in the instant case show that petitioner was accorded opportunity to settle her liability to private complainant and to present her case during the proceedings. As earlier recounted, the MTC, upon motion of petitioner, provisionally dismissed the case on the basis of an amicable settlement between her and private complainant. However, the case was revived, because petitioner failed to comply with the settlement. Petitioner was given several opportunities during the trial to present evidence in her defense. Nonetheless, despite being duly notified and subpoenaed, she did not appear during the trial proper and promulgation of judgment.

It should be noted that private complainant has not been fully or partially paid the amount stated in the check. The time-honored principle is "Justice is for all. Litigants have equal footing in a court of law. Rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding."[42]

Given the foregoing, we find no error in the Decision and Resolution of the Court of Appeals denying petitioner's appeal.

WHEREFORE, the instant Petition is hereby *DENIED*. The Decision, dated 15 February 2007 and Resolution dated 12 July 2007, of the Court of Appeals in CA-G.R. CR No. 28978, are hereby *AFFIRMED in toto*.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

---

[42] *Far Corporation v. Magdaluyo, supra* note 41 at 230.

[**] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 179905. August 19, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NEPTUNA G. JAVIER,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUE INVOLVED THEREIN IS A QUESTION OF LAW; QUESTION OF LAW, DEFINED AND CONSTRUED. — The settled rule is that the jurisdiction of this Court over petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact. A question of law exists when the doubt or difference arises as to what the law is on a certain set of facts as distinguished from a question of fact which occurs when the doubt or difference arises as to the truth or falsehood of the alleged facts. Where the petition makes no mention of any law that was wrongly interpreted or applied by the lower court despite the requirement under Rule 45 that questions of law raised must be "distinctly set forth," there is no basis for the petition. The Petition at bar is essentially grounded on the argument that there is insufficient evidence to support Javier's possession of the subject property in the manner and for the period required by law, as to entitle her to the registration of her title to the said property. It is basic that where it is the sufficiency of evidence that is being questioned, it is a question of fact. It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.

2. CIVIL LAW; PROPERTY REGISTRATION DECREE; REQUISITES FOR REGISTRATION OF TITLE; PRESENT IN CASE AT BAR. — The Section 14 (1) of the Property Registration Decree lays down the following requisites for registration of title thereunder: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation;

and (3) that such possession is under a *bona fide* claim of ownership since 12 June 1945 or earlier. Javier was able to comply with all these requirements. To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; an administrative action; **investigation reports of Bureau of Lands investigators;** and a legislative act or statute. In this case, the CENRO Report, issued by Special Land Investigator Romeo C. Cadano, confirms that the subject property falls **within the alienable and disposable zone** as established under Land Classification Project No. 5-A, per L.C. Map No. 639, which was **certified and released on 11 March 1987;** and that the same was neither covered by any public land application nor embraced by any administrative title. Said CENRO Report enjoys the presumption of regularity, having been executed in the performance of an official duty. The Republic has not been able to refute the said Report. In addition, Javier's Approved Plan contains the statement that the subject property is within the alienable and disposable area of the public domain as Project No. 5-A, L.C. Map No. 639, certified on 11 March 1987; and that the same property is outside any civil or military reservation, per Certification of Rogelio Andrada of the Bureau of Forestry Division dated 10 February 1998.

3. REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE APPELLATE COURT; BINDING AND CONCLUSIVE ON THE SUPREME COURT; APPLICATION IN CASE AT BAR. — To reiterate, findings of fact of the trial court, especially when affirmed by the Court of Appeals, are binding and conclusive on the Supreme Court. The totality of evidence on record, duly considered by both the MTC and the Court of Appeals, bears out Javier's claim of open, continuous, exclusive, and notorious possession and occupation of alienable and disposable land of the public domain under a *bona fide* claim of ownership since 12 June 1945, or earlier. This entitles Javier to the registration of her title to the subject property under Section 14(1) of the Property Registration Decree. The basic essence of justice is to give what one deserves without compromising the affluent mandates of the law. Where one who seeks remedy was able to validate her averments in the context of the applicable decree, this Court is left with no option but to grant what is being sought.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Arlene Carbon for respondent.

D E C I S I O N

CHICO-NAZARIO,* *J.*:

For Review on *Certiorari* under Rule 45 of the Revised Rules of Court is the Decision[1] dated 27 September 2007 of the Court of Appeals in CA-G.R. CV No. 69190, affirming *in toto* the Decision[2] dated 16 October 2000 of the Municipal Trial Court (MTC) of Taytay, Rizal in Land Registration Case (LRC) Case No. 99-0012, which confirmed respondent Neptuna Javier's (Javier) title over a parcel of land, with an area of 12,903.50 square meters, situated in Sitio Tabing Ilog, Sta. Ana, Taytay, Rizal, Philippines, and denominated as Lot 30162-B of Subdivision Plan Csd-04-014340-D (subject property).

The facts culled from the records are as follows:

On 25 March 1999, Javier, then 75 years old, filed before the MTC[3] a verified Application for Original Registration of Title to

---

* Per Special Order No. 681, dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Sesinando E. Villon with Associate Justices Martin S. Villarama, Jr. and Jose C. Reyes, Jr., concurring. *Rollo*, pp. 27-33.

[2] Penned by Judge Rustico C. Medina; records, pp. 180-188.

[3] Section 34 of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, as amended, allows the inferior courts (*i.e.*, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts), duly assigned by the Supreme Court, to hear and determine cadastral and land registration cases covering lots where there is no controversy or opposition, or contested lots with values not exceeding ₱100,000.00. Decisions of the inferior courts in such cases shall be appealable in the same manner as decisions of the Regional Trial Courts. Accordingly,

the subject property, pursuant to Section 14 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree. Her application was docketed as LRC Case No. 99-0012.

The MTC originally set the initial hearing of LRC Case No. 99-0012 at 8:30 in the morning on 23 July 1999. However, upon Javier's Urgent *Ex Parte* Motion,[4] the MTC reset the initial hearing of the case to 8:30 in the morning of 19 November 1999, so that the National Printing Office (NPO) could accommodate Javier in publishing a Notice of said hearing in the Official Gazette.

On 18 November 1999, a day before the scheduled initial hearing, petitioner Republic of the Philippines (Republic), represented by the Director of Lands, through the Office of the Solicitor General (OSG), filed its Notice of Appearance and Opposition[5] to Javier's Application for Registration, claiming among other things that neither Javier nor her predecessors-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the land since 12 June 1945; and that the muniment/s of title alleged in the Application did not constitute competent and sufficient evidence of a *bona fide* acquisition of the subject land. The Republic further insisted that the subject property was a portion of the public domain; hence, it was not subject to private appropriation.

On even date, the Laguna Lake Development Authority (LLDA), represented by its General Manager Atty. Joaqin G. Mendoza (Atty. Mendoza), also filed its Opposition[6] to Javier's Application, claiming that the subject property was public land, forming part of the bed of the Laguna de Bay. The LLDA contended:

---

the Supreme Court issued Administrative Circular No. 6-93-A, dated 15 November 1995, authorizing the inferior courts to hear and decide the cadastral or land registration cases as provided for by the Judiciary Reorganization Act of 1980, as amended.

[4] Records, p. 93.

[5] *Id.* at 23.

[6] *Id.* at 118.

[T]hat projection of the subject lot in our topographic map based on the technical descriptions appearing in the Notice of the Initial Hearing indicated that the lot subject of this application for registration particularly described on plan Csd-04-014340-D lot 30162 containing an area of 12, 903.50 square meters is located **below the reglementary lake elevation** of 12.50 meters referred to datum 10.00 meters below mean lower low water. Site is therefore part of the bed of Laguna Lake considered as public land and is within the jurisdiction of Laguna Lake Development Authority pursuant to its mandate under RA 4850, as amended.[7] (Emphasis ours.)

Javier then submitted the following documents to establish compliance with the jurisdictional requirements: (1) her verified Application for Registration;[8] (2) registry return receipts from the Forest Management Bureau (FMB), OSG, Land Registration Authority (LRA), Community Environment and Natural Resource Office (CENRO), and Land Management Bureau (LMB);[9] (3) MTC Order setting the case for initial hearing on 23 July 1999;[10] (4) Notice of Initial Hearing;[11] (5) LRA Letter dated 26 August 1999 directing the publication of the Notice of Initial Hearing in a newspaper of general circulation;[12] (6) Certificate of Posting;[13] (7) Affidavit of Publication dated 26 October 1999 issued by *People's Balita*;[14] (8) issue of *People's Balita* dated 23 October 1999, with the Notice of Initial Hearing appearing on page 10 thereof;[15] (9) Certificate of Publication in the Official Gazette dated 22 October 1999 issued by the National Printing Office;[16] (10) Certificate of Notification dated 27 October 1999

---

7 *Id*.

8 *Id*. at 1-5.

9 *Id*. at 7-11.

10 *Id*. at 12.

11 *Id*. at 13-14.

12 *Id*. at 15.

13 *Id*. at 16.

14 *Id*. at 17.

15 *Id*. at 18.

16 *Id*. at 19.

issued by the LRA;[17] (11) issue of the Official Gazette dated 18 October 1999, with the Notice of Initial Hearing appearing on pages 7541 and 7542 thereof;[18] and (12) Notice of Appearance of the OSG filed on 18 November 1999.[19]

During the hearing on 21 January 2000, no private oppositor appeared except for the LLDA, hence, the court *a quo*, on Javier's Motion, issued an Order of General Default.[20]

Javier testified on her own behalf to establish her claim of actual, continuous, open, notorious, and exclusive possession of the subject property.

According to Javier, she acquired the subject property through a Deed of Donation executed by her paternal aunt, Catalina Javier (Catalina), a childless widow, on 27 November 1956, purportedly in consideration of Javier's caring for Catalina from the time the latter became sick until she died. Javier's cousins, as Catalina's other heirs, questioned the execution of said Deed of Donation in Civil Case No. 6046 before the Court of First Instance (CFI) of Pasig, Rizal. The CFI, in a Decision dated 24 November 1967, declared the Deed of Donation dated 27 November 1956 void, since, being unnotarized, it was not a public document, thus, failing to comply with the legal requisites for a valid donation. Nevertheless, in a Deed of Partition dated 31 December 1974, Catalina's heirs allocated the subject property to Javier.

Javier also stated under oath that Catalina and her husband, Alejandro Ramos (Ramos), had been in possession of the subject property since 1907, but Javier did not know how Catalina and Ramos acquired said possession. Javier gained personal knowledge of Catalina's ownership of the subject property when Catalina came to live with Javier and the latter's family in 1940. The subject property was being tilled by a *kasama*, Arturo

[17] *Id.* at 21.

[18] *Id.* at 22.

[19] *Id.* at 23-25.

[20] *Rollo*, p. 101.

Sarmiento, when Javier acquired the said property, but at the time she filed her Application for Registration, there were no more tenants on the subject property.

Javier additionally averred that she had been in open, continuous, public, peaceful, and notorious possession and occupation of the subject property, together with her predecessor-in-interest, Catalina, for more than 30 years. Catalina declared the subject property in her name for taxation purposes even before 1945, as shown by Tax Declaration No. 5060 issued by the Local Assessor's Office on 30 June 1950.[21] Javier subsequently declared the subject property in her name under Tax Declaration No. 7953 in 1966.[22] Javier had been paying real property tax on the subject property as evidenced by the Certification[23] dated 7 April 2000 of the Office of the Municipal Treasurer.

Pablo Javier Quinto (Quinto) also offered his testimony in support of Javier's claims to the subject property. Javier is Quinto's maternal aunt. Quinto is familiar with the subject property because he and his siblings, Evelyn and Adelino, co-owned a lot adjacent to the same, which was also originally owned by Javier. The subject property and the adjacent lot were part of Javier's inheritance from Catalina. Javier later transferred the adjacent lot to Quinto's mother, from whom Quinto and his siblings inherited the same. Quinto's brother, Adelino, now working in Saudi Arabia, is the current owner of the adjacent lot.

Quinto further testified that the subject property is owned by his aunt, Javier, who has also been in possession of the same since 1975 up to the present. And since 1979, no one else has claimed ownership or possession of the subject property and there is no tenant cultivating the said property at present. He does not know, however, for how long Catalina had occupied the subject property before it was acquired by Javier.[24]

---

[21] Records, p. 43.

[22] *Id.* at 44.

[23] *Id.* at 47.

[24] *Id.* at 154-165.

Neither the Republic nor the LLDA presented evidence to substantiate their Oppositions to Javier's Application for Registration.

The MTC rendered a Decision[25] on 16 October 2000, favoring Javier and granting her Application for Registration of the subject property. The dispositive portion the MTC Decision reads:

> WHEREFORE, premises considered the court hereby rendered (sic) judgment confirming title of the applicant over the real property denominated as Lot of the original survey plan, Lot 30162-B of the subdivision plan, CSd-04-014340-D, being a portion of Lot 30162, Cad-688-D, Cainta-Taytay Cadastre.
>
> Upon finality of this decision the corresponding decree of registration be issued in the name of Neptuna G. Javier, of legal age, and residing at Rizal Avenue cor. B. Pag-asa St., Bgy. San Juan, Taytay, Rizal.
>
> Send copies of this decision of the office of the Land Registration Authority, Office of the Solicitor General and to the applicants (sic) through her counsel.[26]

The Republic, through the OSG, filed a Notice of Appeal[27] with the Court of Appeals dated 6 November 2000 on the Decision of the MTC, docketed as CA-G.R. CV No. 69190. The Republic made the following assignment of errors in its Petition:

> I. THE TRIAL COURT ERRED IN FINDING THAT THE APPELLEE HAS ESTABLISHED OWNERSHIP OVER THE SUBJECT PROPERTY FOR THE PERIOD REQUIRED BY LAW.
>
> II. THE TRIAL COURT ERRED IN NOT FINDING THAT THE APPELLEE FAILED TO OVERTHROW THE PRESUMPTION THAT SUBJECT PROPERTY FORMS PART OF THE PUBLIC DOMAIN.[28]

The Republic argued that the testimonies of Javier and Quinto hardly established that Javier and her predecessor-in-interest,

---

[25] *Id.* at 180-188.

[26] *Id.* at 188.

[27] *Id.* at 189.

[28] CA *rollo*, p. 32.

Catalina, have occupied the subject property openly, continuously, exclusively, and under a claim of title since 12 June 1945 or earlier. Likewise, the tax declarations submitted as evidence by Javier were not conclusive proof of ownership. Since Javier failed to prove her possession of the subject property in the concept of an owner for the required length of time, the subject property remained to be that of the State under the Regalian Doctrine.

On 27 September 2007, the Court of Appeals promulgated its Decision,[29] again ruling in Javier's favor, and finding that:

> In fine, [Javier's] evidence conclusively establish the following: a) that she acquired the parcel of land being applied for original registration by inheritance from her aunt Catalina Javier; b) that her possession thereof, tacked with that of her predecessors-in-interest, is open, continuous, adverse against the whole world, in the concept of owner and under a *bona fide* claim of ownership for no less than fifty (50) years; c) that the subject property is not part of any forest nor of any aerial, military or naval reservations of the government, d) that said property is not encumbered or otherwise mortgaged in favor of any person and/or entity, and e) that the subject property belongs to [Javier] and she possesses a perfect title thereto which may be confirmed and registered to her name under the provisions of Presidential Decree (PD) 1529, otherwise known as the Property Registration Decree.[30]

Hence, the appellate court decreed:

> WHEREFORE, in view of the foregoing, the assailed decision of the MTC of Taytay, Rizal dated October 16, 2000 in Land Registration Case No. 99-0012 is hereby AFFIRMED *IN TOTO*.[31]

The Republic presently comes before this Court *via* the instant Petition, raising the sole issue of whether the Court of Appeals, in its Decision dated 27 September 2007, erred in affirming the

---

[29] *Rollo*, pp. 27-33.

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

[31] *Id.* at 33.

MTC Decision dated 16 October 2000, granting Javier's Application for Registration of the subject property.

In its Petition,[32] the Republic insists that Javier and Quinto failed to testify on specific acts that would support Javier's allegation of exclusive, open, continuous, and adverse possession of the subject property in the concept of an owner since 12 June 1945 or earlier. The assertion of Javier and Quinto that Javier and her predecessor-in-interest, Catalina, own the subject property is a conclusion of law rather than evidence of the fact of ownership. Possession of the subject property by Catalina, then Javier, can only be characterized as casual cultivation of the same. The CFI Decision dated 24 November 1967 in Civil Case No. 6046 and the Deed of Partition dated 31 December 1974 executed by Catalina's heirs do not, by themselves, prove ownership of the subject property. Moreover, Javier has not been able to positively establish that the subject property is alienable and disposable.

In her Comment,[33] Javier questions the propriety of the instant Petition for Review, since it raises a question of fact.[34] Under Rule 45 of the Revised Rules of Court, this Court is not a trier of facts. Javier also maintains that she has presented sufficient evidence to warrant the registration of her title to the subject property under Section 14 of the Property Registration Decree, and the Court of Appeals did not commit any reversible error in its assailed Decision dated 27 September 2007.

The settled rule is that the jurisdiction of this Court over petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law, not of fact.[35] A question of law exists when the doubt or difference arises as to what the law is on a certain set of facts as distinguished

---

[32] *Id.* at 9-26.

[33] *Id* at 48-62.

[34] ***Factual Issue Bar Rule***–The petition filed before the Supreme Court under Rule 45 of the Rules of Court shall raise only questions of law which must be distinctly set forth.

[35] *Rodrin v. Government Service Insurance System*, G.R. No. 162837, 28 July 2008, 560 SCRA 166, 175.

from a question of fact which occurs when the doubt or difference arises as to the truth or falsehood of the alleged facts.[36] Where the petition makes no mention of any law that was wrongly interpreted or applied by the lower court despite the requirement under Rule 45 that questions of law raised must be "distinctly set forth," there is no basis for the petition.[37]

The Petition at bar is essentially grounded on the argument that there is insufficient evidence to support Javier's possession of the subject property in the manner and for the period required by law, as to entitle her to the registration of her title to the said property. It is basic that where it is the sufficiency of evidence that is being questioned, it is a question of fact.[38] It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[39]

A careful study of the records shows no cogent reason to fault the finding of the MTC, as sustained by the Court of Appeals, that Javier was able to sufficiently establish her title to the subject property, which she is entitled to register under Section 14(1) of the Property Registration Decree.

Section 14 (1) of the Property Registration Decree provides:

SEC. 14. *Who may apply.* — The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:

---

[36] *Cebu Women's Club v. De la Victoria*, 384 Phil. 264, 269 (2000).

[37] *Changco v. Court of Appeals*, 429 Phil. 336, 342 (2002).

[38] *Land Bank of the Philippines v. Court of Appeals*, 416 Phil. 774, 781 (2001).

[39] *FGU Insurance Corporation v. Court of Appeals*, G.R. No. 137775, 31 March 2005, 454 SCRA 337, 349.

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

The afore-quoted provision lays down the following requisites for registration of title thereunder: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and (3) that such possession is under a *bona fide* claim of ownership since 12 June 1945 or earlier.[40] Javier was able to comply with all these requirements.

The assertion of the Republic that the subject property is not alienable and disposable is belied by the evidence on record.

To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; an administrative action; **investigation reports of Bureau of Lands investigators**; and a legislative act or statute.[41] In this case, the CENRO Report,[42] issued by Special Land Investigator Romeo C. Cadano, confirms that the subject property falls **within the alienable and disposable zone** as established under Land Classification Project No. 5-A, per L.C. Map No. 639, which was **certified and released on 11 March 1987**; and that the same was neither covered by any public land application nor embraced by any administrative title. Said CENRO Report enjoys the presumption of regularity,[43]

---

[40] *Republic of the Philippines v. Court of Appeals*, G.R. No. 144057, 17 January 2005, 448 SCRA 442, 448.

[41] *Republic of the Philippines v. Court of Appeals*, 440 Phil. 697, 710-711 (2002).

[42] Records, p. 98.

[43] Rules of Court, Rule 131, Section 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

having been executed in the performance of an official duty. The Republic has not been able to refute the said Report.

In addition, Javier's Approved Plan[44] contains the statement that the subject property is within the alienable and disposable area of the public domain as Project No. 5-A, L.C. Map No. 639, certified on 11 March 1987; and that the same property is outside any civil or military reservation, per Certification of Rogelio Andrada of the Bureau of Forestry Division dated 10 February 1998.

Furthermore, the LLDA, through its General Manager, Atty. Mendoza, subsequently issued a Certification[45] dated 8 September 2000, contradicting its earlier position that the subject property is alienable because the said property, being below the reglementary lake elevation, formed part of the bed of Laguna Lake. The 8 September 2000 Certification of the LLDA reads:

> This is to certify that Lot Number 30162-B, Cad 688-D, located in Barangay Sitio, Tabing Ilog, Sta. Ana, Taytay, Rizal, containing an area of Twelve Thousand Nine Hundred Three (12,903) square meters in the name of DRA. NEPTUNA G. JAVIER **is above the reglementary 12.50 meter elevation** as referred to LLDA datum of 10.0 m below the Mean Lower Low Water (MLLW) elevation at Manila Bay. The contour elevation of the subject lot ranges from 14.10 meters to 14.15 meters referred to the said datum per results of the verification survey conducted on 25 August 2000 by our Engineering and Construction Division.
>
> This certification is issued per request of DRA. NEPTUNA G. JAVIER for land titling purposes.[46] (Emphasis ours.)

The evidence on record likewise supports the fact that Javier, together with her predecessor-in-interest, Catalina, occupied

---

x x x x x x x x x

(m) That official duty has been regularly performed.

[44] Records, p. 27.

[45] *Id.* at 52.

[46] *Id.*

the subject property in the concept of an owner since 12 June 1945 or earlier.

Javier herself and her nephew, Quinto, testified as to the uninterrupted possession of the subject property by Catalina since 1907, followed by Javier in 1974. When Catalina came to live with Javier and the latter's family in 1940, Javier came to know that Catalina already owned the subject property. By Quinto's personal knowledge, Javier possessed and owned the subject property after inheriting the same from Catalina. The institution of Civil Case No. 6046 and execution of the Deed of Partition dated 31 December 1974 demonstrated that other persons, *i.e.*, Catalina's other heirs, recognized ownership of the subject property by Catalina, and later on, by Javier.

Catalina declared the subject property in her name for real property tax purposes even **before 1945 –** clearly, prior to 12 June 1945. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.[47]

Finally, per the CENRO Report[48] dated 9 June 2000, the subject property is not covered by any public land application or embraced by any administrative title. The Report[49] dated

---

[47] *Republic of the Philippines v. Court of Appeals*, 328 Phil. 238, 248 (1996).

[48] Records, p. 125.

[49] *Id.* at 104.

8 November 1999 of the Office of the Provincial Engineer of Rizal, through Zoning Inspector II Helen L. Espinas, likewise affirmed that there were no provincial projects that would be affected by the registration of the subject property in Javier's name.

To reiterate, findings of fact of the trial court, especially when affirmed by the Court of Appeals, are binding and conclusive on the Supreme Court.[50] The totality of evidence on record, duly considered by both the MTC and the Court of Appeals, bears out Javier's claim of open, continuous, exclusive, and notorious possession and occupation of alienable and disposable land of the public domain under a *bona fide* claim of ownership since 12 June 1945, or earlier. This entitles Javier to the registration of her title to the subject property under Section 14(1) of the Property Registration Decree. The basic essence of justice is to give what one deserves without compromising the affluent mandates of the law. Where one who seeks remedy was able to validate her averments in the context of the applicable decree, this Court is left with no option but to grant what is being sought.

WHEREFORE, premises considered, the instant Petition is hereby *DENIED*. The Decision of the Court of Appeals dated 27 September 2007 is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

---

[50] *Pua v. Court of Appeals*, 398 Phil. 1064, 1077 (2000).

[**] Per Special Order No. 679, dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 180594. August 19, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ISMAEL MOKAMMAD, CAIRODEN MOKAMMAD, HADJI AMER MOKAMMAD and TARATINGAN MOKAMMAD,** *accused,*

ISMAEL MOKAMMAD and CAIRODEN MOKAMMAD, *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT; DESERVE A HIGH DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL. — Appellants were positively identified by three (3) of the surviving victims as among the perpetrators of the ambush against them. Both the trial court and the appellate court found their testimonies credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, which could reverse a judgment of conviction. In fact, in some instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, thus providing him unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not. This Court is not the proper forum from which to secure a re-evaluation of factual issues, except only where the factual findings of the trial court do not find support in the evidence on record or where the judgment appealed from was based on a misapprehension of facts. None of the exceptions obtains in this case; thus, we find no compelling reason to depart from this rule.

2. ID.; ID.; ID.; ALIBI IS WORTHLESS IN THE FACE OF POSITIVE IDENTIFICATION BY THE VICTIMS. — The alibi offered by appellants does not deserve credence. To be believed, an alibi must be supported by the most convincing evidence, as it is an inherently weak, though paradoxically volatile, if allowed to go unchecked, human argument that can be easily fabricated to suit the ends of those who seek its recourse. We agree with the courts below that the alibi resorted to by appellants is worthless in the face of the positive identification by the victims. The surviving victims were found not to have any reason to falsely testify against appellants. Admittedly, the surviving victims had no grudge against appellants. It is unnatural for victims interested in vindicating a crime to accuse somebody other than the real culprits. Human nature tells us that the aggrieved parties would want the real culprits punished, and not accept a mere scapegoat to take the rap for the real malefactors. Likewise, for alibi to prosper, an accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.

3. ID.; ID.; ID.; AFFIRMATIVE TESTIMONY IS FAR STRONGER THAN A NEGATIVE ONE ESPECIALLY WHEN IT COMES FROM THE MOUTH OF CREDIBLE WITNESSES. — Jurisprudence teems with pronouncements that between the categorical statements of the prosecution witnesses, on one hand, and the bare denial of appellants, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of credible witnesses. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted.

4. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH ON GROUND OF DUPLICITY; WHEN DEEMED WAIVED. — This Court notes that the information filed with the RTC was for the complex crime of murder with frustrated murder. Evidence on record, however, established that the injuries sustained by the victims were the consequences of volleys of gunshots.

Thus, the murder and each act of frustrated murder should have been charged in separate informations because they were not covered by Article 48 of the Revised Penal Code (RPC). Nevertheless, appellants did not, within the prescribed period, file a motion to quash the information on the ground of duplicity. They are, therefore, deemed to have waived the defect in the information. It is axiomatic that when an accused fails, before arraignment, to move for the quashal of such information, and goes to trial thereunder, he thereby waives the objection, and may be found guilty of as many offenses as those charged in the information and proved during the trial. Thus, appellants' conviction for murder and three (3) counts of frustrated murder cannot be considered a reversible error.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS. — This Court also agrees with the trial court in appreciating treachery as a qualifying circumstance. As we have consistently ruled, 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 ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.

6. ID.; MURDER; PENALTY. — Under Article 248 of the RPC, 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 appellants is *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the RPC. The prison term imposed by the trial court and affirmed by the CA for the death of Olommodin Abbas is, therefore, correct.

7. ID.; ID.; ID.; INDETERMINATE SENTENCE LAW; APPLICATION. — Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal*, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than

reclusion temporal. Since there is no modifying circumstance in the commission of the frustrated murder, an indeterminate prison term of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, is appropriate for the frustrated murder under the facts of this case. Thus, we sustain the penalty for frustrated murder as modified by the CA.

8. ID.; ID.; CIVIL LIABILITY; WHEN PROPER. — When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of an accused's responsibility therefor. Thus, the heirs of Olomoddin Abbas should be awarded civil indemnity of ₱50,000.00. This Court sustains the award of ₱50,000.00 as moral damages to the heirs of Olomoddin Abbas. Moral damages are awarded in view of the violent death of the victim. These do not require allegation and proof of the emotional sufferings of the heirs. Likewise, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying, as in this case. Accordingly, we sustain the RTC for awarding exemplary damages to the heirs, but we increase the award to ₱30,000.00. However, the award of ₱20,000.00 as actual damages should be deleted as the prosecution failed to present any receipt to substantiate its claim. In lieu of actual damages for funeral and burial expenses, we award the amount of ₱25,000.00 as temperate damages since it cannot be denied that the heirs suffered some pecuniary loss as a result of the death of Olomoddin Abbas.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

On appeal is the August 17, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00357 which affirmed with modification the decision[2] rendered by Branch 12 of the Regional Trial Court (RTC) of Lanao del Sur, finding appellants Ismael Mokammad and Cairoden Mokammad (appellants) guilty beyond reasonable doubt of murder and three (3) counts of frustrated murder.

On September 25, 1996, an information[3] for the complex crime of murder with frustrated murder was filed against appellants and other accused Hadji Amer Mokammad (Amer) and Taratingan Mokammad (Taratingan). The accusatory portion of the information reads:

> That on or about August 3, 1996 at around 8:00 o'clock in the morning at Barangay Tangkal, Municipality of Tubaran, Province of Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other with intent to kill, armed with assorted high powered firearms and by means of treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack, assault, ambush and shot upon (sic) Hadji Nasser Kasim [Amerol], Olomoddin Abbas, Calauto [Radiamoda] Kamid, Lito Mabandos and Mizangkad Atal [Hadji Yusoph], and hitting them on the different part[s] of their body, thereby inflicting upon said Olommodin Abbas serious and fatal wounds which caused his instantaneous death, and perform all the acts of execution which should have produce[d] the crime of murder as a consequence with respect to victims Hadji Nasser Kasim [Amerol], Calauto [Radiamoda] Kamid, Lito Mabandus and Mizangkad Atal [Hadji Yusoph], but

---

[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Elihu A. Ybañez, concurring; *rollo*, pp. 4-15.

[2] Records, pp. 148-162.

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

nevertheless did not produce it by r[e]ason of causes independent of the will of the perpetrators, that is, by the timely and able medical attendance rendered to said victims which prevented their death.

CONTRARY TO and in violation of Article 248 in relation to Article[s] 48 and 6 of the Revised Penal Code with the qualifying aggravating circumstance of treachery and a generic aggravating circumstance of evident premeditation.[4]

When arraigned on June 3, 1997, appellants, with the assistance of counsel *de oficio*, entered their respective pleas of not guilty. Accused Amer and Taratingan remained at large. Trial on the merits then ensued.

The Office of the Solicitor General (OSG) summed up the prosecution's version as follows:

On August 3, 1996, about 7 o'clock in the morning, the incumbent vice-mayor of Tubaran, Lanao del Sur, Hadji Nasser Kasim [Amerol] was on his way to the Tangkal Market. He was in the company of Calauto Radiamoda [Kamid], Mizangkad [Atal Hadji] Yusoph, Bangcola Rasad and [Olomoddin] Hadji Abbas. Upon reaching the Poblacion of Tangkal, a few meters from the market, the group was ambushed by four (4) persons. The attackers, who were in a prostrate position, fired their armalite and carbine rifles at Hadji Nasser and his companions. Hadji [Nasser] did not move from his position and, instead, invoked the help of Allah. Hadji Nasser saw Olomoddin wounded by the gunfire (TSN, June 3, 1997, pp. 3-4, 6).

After finishing one magazine of bullets, the ambushers stood up to reload. The ambushers stepped backwards and again opened fire while backing away. Hadji Nasser was able to recognize the ambushers to be some of his relatives namely: the brothers, appellant Ismael, Hadji Taratingan and Hadji Amer Mokammad and their nephew Cairoden (TSN, June 3, 1997, p. 5). During the second barrage of gunfire, Hadji Nasser was hit in his left thigh and right ankle. Hadji [Nasser's] other companions were likewise hit. [Calauto Radiamoda Kamid] was hit in his thigh and left leg, Mizangkad [Atal Hadji] Yusoph in his right arm and Bangcola Rasad in his thigh (TSN, June 3, 1997, pp. 6-7, 9). The ambushers stopped firing when they were about ten (10) fathoms away from their victims. After the dust had

[4] *Id.* at 2.

settled, the relatives of the victims came to their rescue and brought them to the hospital. [Olomoddin] was found dead. Hadji Nasser was brought to the Iligan City Medical Center where he was confined for ten (10) days (TSN, June 3, 1997, pp. 6-12, 6, 33-34; July 8, 1997, p. 21).

Mizangkad [Atal] Hadji Yusoph was treated at the Cagayan de Oro General Hospital for five (5) days. Bangcola Madid Rasad was brought to the Iligan City Medical Center where he was confined for seven (7) days. [Calauto Radiamoda Kamid] was brought to the Mercy Clinic and was confined therein for six (6) days; afterwards, he was transferred to a public hospital where he was confined for twenty-six (26) days. [Calauto Radiamoda Kamid] was not able to completely recover as he can no longer walk. He also needs assistance to stand or sit. Olommodim was buried after Muslim rites were held (TSN, June 3, 1996, p. 8; July 8, 1997, pp. 21-22, 25-27).[5]

Appellants' defense consists of denial and alibi. Ismael Mokammad (Ismael) averred that on August 3, 1996, from 5:00 a.m. until 8:00 a.m., he was at his farm pasturing his cows. He returned home at around 8:45 in the morning and stayed there the whole day.[6] According to Ismael, it would take 2½ hours before he could reach Tangkal, Tubaran.[7] Thus, he denied participation in the ambush staged against Vice Mayor Hadji Nasser Kasim Amerol and the latter's companions. Ismael added that on August 4, 1996, fifty (50) persons, headed by a certain Linog, went to his house looking for the perpetrators of the ambush against the Vice Mayor. The group destroyed his house; and thereafter brought him and Cairoden Mokammad (Cairoden) to the residence of Mayor Lomiloda of Binidayan, Lanao del Sur. Subsequently, they were brought to Lancaf, Marawi City, where they were detained for twenty-eight (28) days.[8]

Cairoden, for his part, also denied participation in the ambush. He claimed that he was in his house in Cabasaran doing carpentry work.[9] He also confirmed Ismael's testimony on the incident

---

[5] CA *rollo*, pp. 128-130.

[6] TSN, July 30, 1998, pp. 29-30.

[7] *Id.* at 7-9.

[8] *Id.* at 19.

[9] TSN, July 31, 1998, pp. 9, 22.

that transpired on August 4, 1996 that caused the destruction of the latter's house.

Noraisa Ongca, Ismael's wife,[10] and Omairah Macarangat,[11] appellants' neighbor, also took the witness stand to corroborate appellants' testimonies.

The trial court, however, disbelieved appellants' defense and rendered a judgment of conviction. It ruled that their defense of alibi could not prevail over the positive identification by the victims. It found that there was no physical impossibility for appellants to be present at the scene of the crime. It added that appellants admitted that the victims had no grudge against them; thus, the latter's testimonies were entitled to full faith and credit. The RTC, however, found that appellants could not be held liable for the injuries sustained by Bangcola Rasad, because his name was not reflected in the information as one of the victims who sustained injuries during the ambush; that there was no showing that Lito Mabandos, as reflected in the information, and Bangcola Rasad refer to one and the same person. Thus, the RTC absolved appellants from any liability arising from the injuries sustained by Bangcola Rasad. The RTC further held that appellants' guilt, as established, did not warrant their conviction for the complex crime of murder with frustrated murder, but for separate crimes of murder and three (3) counts of frustrated murder.

The RTC disposed thus:

WHEREFORE, finding accused Ismael Mokammad and Cairoden Mokammad guilty of the crimes lodged against them beyond reasonable doubt, they are hereby sentenced to suffer the following:

1. For the crime of Murder (killing of Olomoddin Abbas), the penalty of *Reclusion Perpetua*;

2. As to the [offense] of Frustrated Murder:

a) The mortal wounds inflicted on Hadji Nasser Kasim Amerol, imprisonment of 8 years, 1 day to 10 years;

---

[10] TSN, August 20, 1998.

[11] TSN, September 30, 1998.

b) The mortal wounds inflicted on Radiamoda Calauto (Calauto [Radiamoda] Kamid), imprisonment of 8 years, 1 day to 10 years; and

c) The wounds of Mizangkad [Atal] Hadji Yusoph, same imprisonment of 8 years, 1 day to 10 years.

3. Both accused are further ordered to pay the heirs of Olomoddin Hadji Abbas the sum of ₱20,000.00 as actual damages; moral damages of ₱50,000.00 and exemplary damages of ₱20,000.00.

SO ORDERED.[12]

Initially, this case was brought to this Court for review, docketed as G.R. No. 146104.

In their brief, appellants assigned the following errors allegedly committed by the trial court:

[I]

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS ISMAEL MOKAMMAD AND CAIRODEN MOKAMMAD GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF MURDER AND FRUSTRATED MURDER.

II

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANTS.[13]

The OSG, on behalf of the People, also filed its brief[14] with a recommendation for the modification of the penalty. It asserted

---

[12] CA *rollo*, pp. 161-162.

[13] *Id.* at 75.

[14] *Id.* at 119-149.

that the trial court correctly gave credence to the testimony of the prosecution witnesses and rejected appellants' defense of alibi. The OSG insisted that appellants' guilt for murder and three (3) counts of frustrated murder was proven beyond reasonable doubt. It added that the maximum penalty of ten (10) years imposed by the trial court was erroneous. The maximum penalty, it argued, should be *anywhere between fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four months of Reclusion Temporal*. Thus, it moved for the modification of the penalty.

On December 15, 2005, this Court transferred this case to the CA for intermediate review, consistent with its ruling in *People v. Mateo*.[15]

On August 17, 2007, the CA rendered the assailed Decision affirming appellants' conviction and modifying the maximum penalty imposed upon them. The dispositive portion of the Decision of the CA, reads:

> WHEREFORE, premises considered, the appeal is dismissed and the Decision dated 20 September 2000 of the Regional Trial Court, Branch 12, Malabang, Lanao del Sur is **AFFIRMED WITH MODIFICATION** in that the appellants shall each suffer the penalty of imprisonment of eight (8) years and one (1) day of *[Prision] Mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *Reclusion Temporal* Medium, as maximum[,] on three (3) counts, together with the accessory penalties imposed by law.
>
> SO ORDERED.[16]

Appellants are now before the Court reiterating their contentions. Both the OSG and the Public Attorney's Office, counsel for appellants, replicated the arguments in their respective briefs filed during the pendency of this case for review and prior to its transfer to the CA. Essentially, appellants dispute the surviving victims' identification of them as among the

---

[15] *Id.* at 161.

[16] *Id.* at 188.

perpetrators of the ambush. They argue that, in a surprise attack, positive identification is highly impossible. The normal tendency of the persons attacked is to seek cover, and not to look at the perpetrators. They further contend that the testimonies of the victims were incredible and were pure concoctions; and, thus, insufficient to establish appellants' guilt beyond reasonable doubt.

After a thorough evaluation and scrutiny of the evidence on record, we arrive at the conclusion that the guilt of appellants was established beyond reasonable doubt.

Appellants were positively identified by three (3) of the surviving victims as among the perpetrators of the ambush against them. Both the trial court and the appellate court found their testimonies credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, which could reverse a judgment of conviction. In fact, in some instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, thus providing him unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.[17]

This Court is not the proper forum from which to secure a re-evaluation of factual issues, except only where the factual findings of the trial court do not find support in the evidence on record or where the judgment appealed from was based on a misapprehension of facts.[18] None of the exceptions obtains in this case; thus, we find no compelling reason to depart from this rule.

---

[17] *Lascano v. People*, G.R. No. 166241, September 7, 2007, 532 SCRA 515, 523-524.

[18] *Id.* at 524.

The alibi offered by appellants does not deserve credence. To be believed, an alibi must be supported by the most convincing evidence, as it is an inherently weak, though paradoxically volatile, if allowed to go unchecked, human argument that can be easily fabricated to suit the ends of those who seek its recourse.[19]

We agree with the courts below that the alibi resorted to by appellants is worthless in the face of the positive identification by the victims. The surviving victims were found not to have any reason to falsely testify against appellants. Admittedly, the surviving victims had no grudge against appellants. It is unnatural for victims interested in vindicating a crime to accuse somebody other than the real culprits. Human nature tells us that the aggrieved parties would want the real culprits punished, and not accept a mere scapegoat to take the rap for the real malefactors.[20]

As aptly said by the RTC:

> [T]he parties have all admitted in open court that they have no grudge against each other. Hence, there is no reason why private complainants should point to the accused as the culprits if the latter were not the perpetrators of the crime. In a very recent ruling of the Highest Tribunal, it held that time and again, proof of motive is not indispensable to conviction especially if the accused has been positively identified by an [eyewitness] and his participation therein has been definitely established.
>
> The victims would have no credible reason to point to the accused as the culprits if it is not the truth. The Court assiduously scrutinized the records to find out if the complainants were actuated by improper motives. There is none. Where there is nothing to indicate that a principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[21]

---

[19] *People v. Cantere*, 363 Phil. 468, 479 (1999).

[20] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 571.

[21] Records, p. 158. (Citation omitted.)

Likewise, for alibi to prosper, an accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[22] Apart from testifying that they were in their respective houses in the morning of August 3, 1996, appellants were unable to show that it was physically impossible for them to be at the scene of the crime. Their respective houses were only an hour's drive away from the scene of the crime. We, therefore, sustain the RTC and the CA in ruling that no physical impossibility existed for appellants to have been at the scene of the crime at the time of its commission.

Appellants' alibi was further demolished by the fact that it was corroborated by their relatives and friends who may not have been impartial witnesses. Thus, in the light of the positive identification of appellants as among the perpetrators of the crime, their defense of alibi and denial cannot be sustained.

Jurisprudence teems with pronouncements that between the categorical statements of the prosecution witnesses, on one hand, and the bare denial of appellants, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of credible witnesses. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted.[23] Accordingly, we affirm the RTC and the CA in giving full faith and credence to the testimonies of the surviving victims.

---

[22] *People v. Delim*, G.R. No. 175492, September 13, 2007, 533 SCRA 366.

[23] *People v. Togahan*, *supra* note 20, at 573-574; *People v. Baniega*, 427 Phil. 405, 418 (2002); see *People v. Ramos*, G.R. No. 125898, April 14, 2004, 427 SCRA 207.

This Court also agrees with the trial court in appreciating treachery as a qualifying circumstance. As we have consistently ruled, 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 ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[24]

In the case at bar, the attack on the victim was deliberate, sudden and unexpected. Appellants, surreptitiously and without warning, fired at the victims who were at that time unarmed and completely unaware of any impending danger to their lives. They had no opportunity to offer any defense at all against the surprise attack by appellants and their co-accused with armalite and carbine rifles. All these indicate that appellants employed means and methods that tended directly and specially to ensure the execution of the offense without risk to themselves arising from the defense that the victims might make. Thus, treachery was correctly appreciated as a circumstance to qualify the crime to murder.

This Court notes that the information filed with the RTC was for the complex crime of murder with frustrated murder. Evidence on record, however, established that the injuries sustained by the victims were the consequences of volleys of gunshots. Thus, the murder and each act of frustrated murder should have been charged in separate informations because they were not covered by Article 48[25] of the Revised Penal Code (RPC).

---

[24] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 474.

[25] ART. 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Nevertheless, appellants did not, within the prescribed period, file a motion to quash the information on the ground of duplicity. They are, therefore, deemed to have waived the defect in the information. It is axiomatic that when an accused fails, before arraignment, to move for the quashal of such information, and goes to trial thereunder, he thereby waives the objection, and may be found guilty of as many offenses as those charged in the information and proved during the trial.[26] Thus, appellants' conviction for murder and three (3) counts of frustrated murder cannot be considered a reversible error.

Under Article 248[27] of the RPC, 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 appellants is *reclusion perpetua*, pursuant to Article 63, paragraph 2,[28] of the RPC. The prison term imposed by the trial court and affirmed by the CA for the death of Olommodin Abbas is, therefore, correct.

We also affirm the CA's modification of the penalty imposed for frustrated murder from 8 years of *prision mayor*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal*, as maximum. Under Article 61, paragraph 2,[29] of the RPC, the

---

[26] *People v. S Sgt. Dalmacio*, 426 Phil. 563, 597 (2002).

[27] 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.

[28] ART. 63. *Rules for the application of indivisible penalties.* – x x x.

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.

[29] ART. 61. *Rules for graduating penalties*. – For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals for any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of 12 years and 1 day to 20 years.

Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal*, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*.[30] Since there is no modifying circumstance in the commission of the frustrated murder, an indeterminate prison term of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, is appropriate for the frustrated murder under the facts of this case. Thus, we sustain the penalty for frustrated murder as modified by the CA.

And now, the award of damages. The RTC awarded, and the CA affirmed, the award of ₱20,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱20,000.00 as exemplary damages to the heirs of Olommodin Abbas.

When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[31]

In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the

---

x x x x x x x x x

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

[30] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 700.

[31] *Id.* at 699.

fact of death as a result of the crime and proof of an accused's responsibility therefor.[32] Thus, the heirs of Olomoddin Abbas should be awarded civil indemnity of ₱50,000.00.

This Court sustains the award of ₱50,000.00 as moral damages to the heirs of Olomoddin Abbas. Moral damages are awarded in view of the violent death of the victim. These do not require allegation and proof of the emotional sufferings of the heirs.[33]

Likewise, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying,[34] as in this case. Accordingly, we sustain the RTC for awarding exemplary damages to the heirs, but we increase the award to ₱30,000.00.

However, the award of ₱20,000.00 as actual damages should be deleted as the prosecution failed to present any receipt to substantiate its claim. In lieu of actual damages for funeral and burial expenses, we award the amount of ₱25,000.00 as temperate damages since it cannot be denied that the heirs suffered some pecuniary loss as a result of the death of Olomoddin Abbas.

Similarly, the surviving victims are entitled to temperate, moral and exemplary damages.

Indisputably, the surviving victims were hospitalized and operated on. They, however, failed to present any receipt for their hospitalization expenses. Nevertheless, it could not be denied that they suffered pecuniary loss; thus, we deem it prudent to award ₱25,000.00 to each of the surviving victims, as temperate damages.

The surviving victims are also entitled to moral damages which this Court hereby awards in the amount of ₱40,000.00 to each of them. Ordinary human experience and common sense dictate that the wounds inflicted upon the surviving victims would naturally

---

[32] *People of the Philippines v. Emilio Manchu, et al.*, G.R. No. 181901, November 28, 2008.

[33] *People of the Philippines v. Esperidion Balais*, G.R. No. 173242, September 17, 2008.

[34] *Id.*

cause physical suffering, fright, serious anxiety, moral shock, and similar injuries. Finally, the award in the amount of ₱20,000.00 each, as exemplary damages, is also in order considering that the crime was attended by the qualifying circumstance of treachery.[35]

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 00357 is *AFFIRMED* with *MODIFICATIONS*. Appellants Ismael Mokammad and Cairoden Mokammad are found *GUILTY* beyond reasonable doubt of *MURDER* and are hereby sentenced to suffer the penalty of *reclusion perpetua*. Appellants are also ordered to jointly and severally pay the heirs of Olomoddin Abbas the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

Ismael Mokammad and Cairoden Mokammad are also found guilty beyond reasonable doubt of three (3) counts of *FRUSTRATED MURDER* and are hereby sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, on each count, with all the accessory penalties imposed by law. Appellants are further ordered to jointly and severally pay each of the surviving victims – Hadji Nasser Kasim Amerol, Calauto Radiamoda Kamid and Mizangkad Atal Hadji Yusoph – ₱25,000.00 as temperate damages, ₱40,000.00 as moral damages, and ₱20,000.00 as exemplary damages.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[35] *People v. Tolentino, supra* note 30, at 701.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 181516. August 19, 2009]

CESARIO L. DEL ROSARIO, *petitioner, vs.* **PHILIPPINE JOURNALISTS, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; JUDGMENT INVOLVING MONETARY AWARDS; APPEAL BY THE EMPLOYER; REQUISITE FILING OF BONDS, EXPLAINED. — Article 223 of the Labor Code mandates that in cases of judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in an amount equivalent to the monetary award in the judgment appealed from. Appurtenant thereto, Section 6, Rule VI of the New Rules of Procedure of the NLRC provides: SECTION 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees. In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by: (a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case. (b) a copy of the indemnity agreement between the employer-appellant and bonding company; and (c) a copy of security deposit or collateral securing the bond. A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity. Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal. No motion to reduce bond shall be entertained except on meritorious grounds and upon

the posting of a bond in a reasonable amount in relation to the monetary award. The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. The filing of a supersedeas bond for the perfection of an appeal is mandatory and jurisdictional. The requirement that employers post a cash or surety bond to perfect their appeal is apparently intended to assure workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the former's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligations to satisfy their employees' just and lawful claims.

2. ID.; ID.; ID.; SUBSEQUENT REVOCATION OF AUTHORITY OF A BONDING COMPANY SHOULD NOT PREJUDICE PARTIES WHO RELIED ON ITS AUTHORITY; APPLICATION IN CASE AT BAR. — At the time of the filing of the surety bond by PJI on January 2, 2003, PPAC was still an accredited bonding company. Thus, it was but proper to honor the appeal bond issued by a bonding company duly accredited by this Court at the time of its issuance. The subsequent revocation of the authority of a bonding company should not prejudice parties who relied on its authority. The revocation of authority of a bonding company is prospective in application. Still, the Court takes due notice of the opportunity given to PJI to post a new bond issued by an accredited bonding company in the NLRC resolution dated February 23, 2004. Yet, PJI insisted on the validity of the bond it had filed despite the fact the PPAC was no longer accredited to act as a surety. This notwithstanding, guided by the principle that technical rules of procedure should not hamper the quest for justice and truth, this Court deems it prudent that the case be reviewed and decided on the merits, in view of the question on the employer-employee relationship of the parties and its resultant legal consequences. But, so as not to prejudice the rights of petitioner in this case, the Court reiterates the CA directive for PJI to post a new bond issued by an accredited bonding company.

APPEARANCES OF COUNSEL

Gerardo D. Rabanes for respondent.

R E S O L U T I O N

NACHURA, *J.*:

The instant petition stemmed from a complaint filed by petitioner, Cesario L. del Rosario, against herein respondent, Philippine Journalists, Inc. (PJI), for illegal dismissal with money claims.

Petitioner claims that he was hired by PJI as a libel scanner in March 1997 and was receiving the benefits and privileges of a regular managerial employee of the newspaper and magazine company. On April 6, 1999, petitioner received a notice of termination of employment from respondent. According to petitioner, the termination of his services was illegal for want of just or authorized cause and for non-compliance with procedural requirements prior to his dismissal.[1]

Respondent, on the other hand, averred that petitioner was hired only as a consultant whose term of employment was deemed renewed on a month-to-month basis, unless either party opted for its termination by a written notice of at least five (5) days before the end of any month, based on the contract of employment issued by the company on April 15, 2007.[2]

On November 5, 2002, the Labor Arbiter rendered a decision[3] in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding respondent [PJI] of (sic) illegally dismissing complainant [del Rosario] from his employment. As above-discussed, respondent Philippine Journalist, Inc., is ordered to pay complainant Cesario del Rosario the following:
>
> *a) Unpaid salaries from Oct. 1998 to May 9, 1999 — ₱300,000.00*
> *b) Unpaid quarterly bonuses & 13th month pay 98-99 — ₱260,000.00*
> *c) Unused vacation and sick leave[s] for two years — ₱40,000.00*

---

[1] *Rollo*, pp. 72-83.

[2] *Id*.

[3] Penned by Labor Arbiter Geobel A. Bartolabac; *id.* at 72-83.

d) Unpaid ₱10,000 monthly allowance from May 1998 up to May 9, 1999 equals 12 months x 10,000 — ₱120,000.00

e) Unpaid 250 liters gasoline per month from May 9, [1998] up to May 9, 1999 equals 3,000 liters for 12 months Computed at the price of gasoline in 1998 & 1999.

f) Salary from 9 May 1999 to 31 October 2002 for non-compliance of Procedural due process. ₱40,000 x 29 mos. = ₱1,160,000.00

g) Moral and Exemplary damages = ₱100,000.00

h) 10% for and (sic) attorney's fees.

SO ORDERED.[4]

Respondent elevated its case to the National Labor Relations Commission (NLRC). On January 6, 2003, it filed its memorandum of appeal together with the appeal bond issued by Philippine Pryce Assurance Corporation (PPAC).[5]

On December 15, 2003, the NLRC issued a resolution[6] dismissing the appeal for failure to perfect the same due to the posting of the appeal bond from a bonding company not duly accredited by the Court. The NLRC stated that PPAC was not authorized by the Supreme Court to transact business with courts anywhere in the Philippines since December 2, 2002, per Certification of the Office of the Court Administrator.[7]

On January 23, 2004, respondent duly filed a motion for reconsideration and a supplemental motion for reconsideration, alleging that it had no knowledge that PPAC was no longer authorized to transact business with the courts.

---

[4] *Id.* at 82-83.

[5] *Rollo,* p. 85.

[6] Penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Ernesto C. Verceles and Tito F. Genilo, concurring; *id.* at 85-86.

[7] *Rollo,* p. 40

Acting on the motion and in a bid of liberality, the NLRC issued a resolution[8] on February 23, 2004, directing respondent to post a new bond, to wit:

> WHEREFORE, premises considered, respondents [PJI] are now directed to post a new bond accompanied by all requisites as provided in Sec. 6, Rule VI of the New Rules of Procedure of the Commission in lieu of bond posted herein within an unextendible period of ten (10) days from receipt hereof. Otherwise the appeal shall be dismissed.
>
> No further motions of this nature shall be entertained.
>
> SO ORDERED.[9]

Respondent failed to comply. Thus, on March 31, 2005, the NLRC issued a resolution[10] dismissing the appeal for lack of merit.

Aggrieved, respondent filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals (CA). On November 29, 2007, the CA rendered the assailed decision,[11] the dispositive portion of which reads:

> WHEREFORE, the petition is **GRANTED** and the assailed Resolutions of the public respondent are ***SET ASIDE***.
>
> Public Respondent NLRC is directed to admit the appeal and decide the same on the merits. Petitioner [PJI] is directed to replace the surety bond it posted with a new one to be obtained from a bonding company duly accredited by the Supreme Court within five (5) days from receipt hereof.
>
> SO ORDERED.[12]

---

[8] *Id.* at 89-90.

[9] *Id.* at 90.

[10] *Id.* at 97-98.

[11] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring; *id.* at 38-45.

[12] *Rollo*, p. 44.

The CA held that the NLRC committed grave abuse of discretion in dismissing PJI's appeal based on an erroneous finding that the surety bond respondent posted was void. The CA ratiocinated that at the time the subject bond was issued, PPAC was still authorized to issue the same. The CA found that the Supreme Court placed PPAC on a blacklist only on October 9, 2003, while the Chairperson of the NLRC cancelled PPAC's accreditation on November 3, 2003. When PJI obtained the surety bond on January 2, 2003, PPAC was still existing and duly accredited by the Court. Thus, there was no legal basis to dismiss PJI's appeal because it had actually posted a valid bond.[13]

Petitioner filed a motion for reconsideration. On January 24, 2008, the CA issued a Resolution[14] denying the same for lack of merit.

Hence, the present petition.

Petitioner presented the following issues for resolution of the Court:

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW AND WENT AGAINST APPLICABLE JURISPRUDENCE:

(A) IN SETTING ASIDE THE NLRC RESOLUTIONS DISMISSING RESPONDENT PJI'S DEFECTIVE APPEAL FOR NON-COMPLIANCE WITH, AMONG OTHERS, THE REGLEMENTARY PERIOD TO APPEAL AND THE REQUISITE OF POSTING AN APPEAL BOND;

(B) IN ORDERING THE NLRC TO ADMIT RESPONDENT PJI'S DEFECTIVE APPEAL AND TO DECIDE THE APPEAL ON THE MERITS;

(C) IN DIRECTING RESPONDENT PJI TO REPLACE WITHIN FIVE (5) DAYS FROM NOTICE THE DEFECTIVE SURETY BOND IT POSTED AS ITS APPEAL BOND WITH A NEW

---

[13] *Id*. at 43.

[14] *Id*. at 46.

BOND TO BE OBTAINED FROM A BONDING COMPANY DULY ACCREDITED BY THE SUPREME COURT; AND

(D) IN REMANDING THE CASE TO THE NLRC FOR FURTHER PROCEEDINGS,

INSTEAD OF AFFIRMING THE NLRC RESOLUTIONS DISMISSING THE APPEAL OF RESPONDENT PJI ON LEGAL AND JURISDICTIONAL GROUNDS.[15]

The issues need not be belabored. We find no reversible error committed by the CA in issuing the assailed decision and resolution. Based on substantial evidence on record, the CA found that at the time the bond was issued by PPAC, it was still authorized to issue bonds.[16]

Article 223 of the Labor Code mandates that in cases of judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in an amount equivalent to the monetary award in the judgment appealed from. Appurtenant thereto, Section 6, Rule VI of the New Rules of Procedure of the NLRC[17] provides:

SECTION 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

---

[15] *Id*. at 24.

[16] Per verification from the Office of the Court Administrator, **Philippine Pryce Assurance Corporation** (formerly Interworld Assurance Corporation) was issued a certificate of accreditation and authority for the period of 19 August 2002 – 11 January 2003, and the same was its first and last authority to transact business as surety company.

[17] This was the applicable NLRC Rules of Procedure at the time of the filing of PJI's appeal of the decision of the Labor Arbiter. At present, the 2005 Revised Rules of Procedure of the National Labor Relations Commission is in effect.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

(a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

(b) a copy of the indemnity agreement between the employer-appellant and bonding company; and

(c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.

The filing of a supersedeas bond for the perfection of an appeal is mandatory and jurisdictional.[18] The requirement that employers post a cash or surety bond to perfect their appeal is apparently intended to assure workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the former's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligations to satisfy their employees' just and lawful claims.[19]

At the time of the filing of the surety bond by PJI on January 2, 2003, PPAC was still an accredited bonding company. Thus,

---

[18] *Quiambao v. NLRC*, 324 Phil. 455 (1996).

[19] *Calabash Garments, Inc. v. NLRC*, 329 Phil. 226 (1996).

it was but proper to honor the appeal bond issued by a bonding company duly accredited by this Court at the time of its issuance. The subsequent revocation of the authority of a bonding company should not prejudice parties who relied on its authority. The revocation of authority of a bonding company is prospective in application.

Still, the Court takes due notice of the opportunity given to PJI to post a new bond issued by an accredited bonding company in the NLRC resolution dated February 23, 2004. Yet, PJI insisted on the validity of the bond it had filed despite the fact the PPAC was no longer accredited to act as a surety. This notwithstanding, guided by the principle that technical rules of procedure should not hamper the quest for justice and truth, this Court deems it prudent that the case be reviewed and decided on the merits, in view of the question on the employer-employee relationship of the parties and its resultant legal consequences. But, so as not to prejudice the rights of petitioner in this case, the Court reiterates the CA directive for PJI to post a new bond issued by an accredited bonding company.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated November 29, 2007 and the Resolution dated January 24, 2008 of the Court of Appeals in CA-G.R. SP No. 89513 are hereby *AFFIRMED.*

The National Labor Relations Commission is *DIRECTED* to *GIVE DUE COURSE* to the appeal and decide the case on the merits with dispatch, upon the filing by respondent, within ten (10) days from finality of this decision, of a bond issued by an accredited bonding company.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 182311. August 19, 2009]

FIDEL O. CHUA and FILIDEN REALTY AND DEVELOPMENT CORPORATION, *petitioners, vs.* **METROPOLITAN BANK & TRUST COMPANY, ATTY. ROMUALDO CELESTRA, ATTY. ANTONIO V. VIRAY, ATTY. RAMON MIRANDA and ATTY. POMPEYO MAYNIGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONSTRUED. — The proscription against forum shopping is found in Section 5, Rule 7 of the 1997 Rules of Court. Forum shopping exists when a party repeatedly avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court. Ultimately, what is truly important in determining whether forum shopping exists or not is the vexation caused the courts and party-litigant by a party who asks different courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.

2. ID.; ID.; ID.; WHEN COMMITTED. — Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

3. ID.; ID.; ID.; SPLITTING OF CAUSE OF ACTION; WHEN PRESENT. — Sections 3 and 4, Rule 2 of the Rules of Court proscribe the splitting of a single cause of action: Section 3. A party may not institute more than one suit for a single cause of action. Section 4. Splitting a single cause of action; effect of.—If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. Forum shopping occurs although the actions seem to be different, when it can be seen that there is a splitting of a cause of action. A cause of action is understood to be the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff. It is true that a single act or omission can violate various rights at the same time, as when the act constitutes juridically a violation of several separate and distinct legal obligations. However, where there is only one delict or wrong, there is but a single cause of action regardless of the number of rights that may have been violated belonging to one person.

APPEARANCES OF COUNSEL

Nathaniel F. Sauz, Aris J. Talens and *Ross Joseph J. Romanillos* for petitioners.

Perez Calima Suratos Maynigo & Roque Law Offices for respondents.

D E C I S I O N

CHICO-NAZARIO,* *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 31 January

* Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Normandie Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring. *Rollo*, pp. 39-52.

2008, later upheld in a Resolution[2] dated 28 March 2008, both rendered by the Court of Appeals in CA-G.R. CV No. 88087. The Court of Appeals, in its assailed Decision, affirmed the Order[3] dated 3 July 2006 of Branch 258 of the Regional Trial Court of Parañaque City (RTC-Branch 258), dismissing the action for damages, docketed as Civil Case No. CV-05-0402, filed by petitioners Fidel O. Chua (Chua) and Filiden Realty and Development Corporation (Filiden), on the ground of forum shopping.

Petitioner Chua is president of co-petitioner Filiden, a domestic corporation, engaged in the realty business.[4] Respondent Metropolitan Bank and Trust Co. (respondent Metrobank) is a domestic corporation and a duly licensed banking institution.[5]

Sometime in 1988, petitioners obtained from respondent Metrobank a loan of ₱4,000,000.00, which was secured by a real estate mortgage (REM) on parcels of land covered by Transfer Certificates of Title (TCTs) No. (108020)1148, No. 93919, and No. 125185, registered in petitioner Chua's name (subject properties).[6] Since the value of the collateral was more than the loan, petitioners were given an open credit line for future loans. On 18 September 1995, 17 January 1996, 31 July 1996, 21 January 1997, and 12 October 1998, petitioners obtained other loans from respondent Metrobank, and the real estate mortgages were repeatedly amended in accordance with the increase in petitioners' liabilities.[7]

Having failed to fully pay their obligations, petitioners entered into a Debt Settlement Agreement[8] with respondent Metrobank

---

[2] *Id.* at 10-11.

[3] Penned by Judge Raul E. de Leon ; CA *rollo,* pp. 35-36.

[4] *Rollo,* p. 429.

[5] *Id.* at 430.

[6] *Id.* at 40.

[7] *Id.* at 55.

[8] *Id.* at 112-116.

on 13 January 2000, whereby the loan obligations of the former were restructured. The debt consisted of a total principal amount of ₱79,650,000.00, plus unpaid interest of ₱7,898,309.02, and penalty charges of ₱552,784.96. Amortization payments were to be made in accordance with the schedule attached to the agreement.

In a letter[9] dated 28 February 2001, the lawyers of respondent Metrobank demanded that petitioners fully pay and settle their liabilities, including interest and penalties, in the total amount of ₱103,450,391 as of 16 January 2001, as well as the stipulated attorney's fees, within three days from receipt of said letter.

When petitioners still failed to pay their loans, respondent Metrobank sought to extra-judicially foreclose the REM constituted on the subject properties. Upon a verified Petition for Foreclosure filed by respondent Metrobank on 25 April 2001, respondent Atty. Romualdo Celestra (Atty. Celestra) issued a Notice of Sale dated 26 April 2001, wherein the mortgage debt was set at ₱88,101,093.98, excluding unpaid interest and penalties (to be computed from 14 September 1999), attorney's fees, legal fees, and other expenses for the foreclosure and sale. The auction sale was scheduled on 31 May 2001.[10] On 4 May 2001, petitioners received a copy of the Notice of Sale.[11]

On 28 May 2001, petitioner Chua, in his personal capacity and acting on behalf of petitioner Filiden, filed before Branch 257 of the Regional Trial Court of Parañaque (RTC-Branch 257), a Complaint for Injunction with Prayer for Issuance of Temporary Restraining Order (TRO), Preliminary Injunction and Damages,[12] against respondents Atty. Celestra, docketed as **Civil Case No. CV-01-0207**. Upon the motion of petitioners, RTC-Branch 257 issued a TRO enjoining respondents Metrobank

---

[9] *Id.* at 333-334.

[10] *Id.* at 70-74 and 117-118.

[11] *Id.* at 55

[12] *Id.* at 429-438.

and Atty. Celestra from conducting the auction sale of the mortgaged properties on 31 May 2001.[13]

After the expiration of the TRO on 18 June 2001, and no injunction having been issued by RTC-Branch 257, respondent Atty. Celestra reset the auction sale on 8 November 2001. On 8 November 2001, the rescheduled date of the auction sale, RTC-Branch 257 issued an Order directing that the said sale be reset anew after 8 November 2001. The Order was served on 8 November 2001, on respondent Atty. Celestra's daughter, Arlene Celestra, at a coffee shop owned by the former's other daughter, Grace Celestra Aguirre. The auction sale, however, proceeded on 8 November 2001, and a Certificate of Sale was accordingly issued to respondent Metrobank as the highest bidder of the foreclosed properties.[14]

On 13 February 2002, petitioners filed with RTC-Branch 257 a Motion to Admit Amended Complaint[15] in Civil Case No. CV-01-0207. The Amended Verified Complaint,[16] attached to the said Motion, impleaded as additional defendant the incumbent Register of Deeds of Parañaque City. Petitioners alleged that the Certificate of Sale was a falsified document since there was no actual sale that took place on 8 November 2001. And, even if an auction sale was conducted, the Certificate of Sale would still be void because the auction sale was done in disobedience to a lawful order of RTC-Branch 257. Relevant portions of the Amended Complaint of petitioners read:

> 12-E. There was actually no auction sale conducted by [herein respondent] Atty. Celestra on November 8, 2001 and the CERTIFICATE OF SALE (Annex "K-2") is therefore a FALSIFIED DOCUMENT and for which the appropriate criminal complaint for falsification of official/public document will be filed against the said [respondent] Celestra and the responsible officers of [herein respondent] Metrobank, in due time;

---

[13] *Id.* at 41.

[14] *Id.* at 162 and 169-172.

[15] *Id.* at 86-87.

[16] *Id.* at 88-102.

12-F. But even granting that an auction sale was actually conducted and that the said Certificate of Sale is not a falsified document, the same document is a NULLITY simply because the auction sale was done in disobedience to a lawful order of this Court and that therefore the auction sale proceeding is NULL AND VOID *AB INITIO*.[17]

Petitioners additionally prayed in their Amended Complaint for the award of damages given the abuse of power of respondent Metrobank in the preparation, execution, and implementation of the Debt Settlement Agreement with petitioners; the bad faith of respondent Metrobank in offering the subject properties at a price much lower than its assessed fair market value; and the gross violation by respondents Metrobank and Atty. Celestra of the injunction.

Petitioners also sought, in their Amended Complaint, the issuance of a TRO or a writ of preliminary injunction to enjoin respondent Atty. Celestra and all other persons from proceeding with the foreclosure sale, on the premise that no auction sale was actually held on 8 November 2001.

In an Order dated 6 March 2002, RTC-Branch 257 denied petitioners' application for injunction on the ground that the sale of the foreclosed properties rendered the same moot and academic. The auction sale, which was conducted by respondents Metrobank and Atty. Celestra, after the expiration of the TRO, and without knowledge of the Order dated 8 November 2001 of RTC-Branch 257, was considered as proper and valid.[18]

Petitioners filed a Motion for Reconsideration of the 6 March 2002 Order of RTC-Branch 257. When RTC-Branch 257 failed to take any action on said Motion, petitioners filed with the Court of Appeals a Petition for *Certiorari*, docketed as CA-G.R. No. 70208. In a Decision dated 26 July 2002, the Court of Appeals reversed the 6 March 2002 Order of RTC-Branch 257 and remanded the case for further proceedings.

---

[17] *Id.* at 94

[18] *Id.* at 133-136.

The Supreme Court dismissed the appeal of respondents with finality. Thus, on 27 September 2005, RTC-Branch 257 set the hearing for the presentation of evidence by respondent Metrobank for the application for preliminary injunction on 9 November 2005.[19]

On 2 November 2005, petitioners sought the inhibition of Acting Executive Judge Rolando How of RTC-Branch 257, who presided over Civil Case No. CV-01-0207. Their motion was granted and the case was re-raffled to RTC-Branch 258.[20]

On 28 October 2005, petitioners filed with Branch 195 of the Regional Trial Court of Parañaque (RTC-Branch 195) a Verified Complaint for Damages against respondents Metrobank, Atty. Celestra, and three Metrobank lawyers, namely, Atty. Antonio Viray, Atty. Ramon Miranda and Atty. Pompeyo Maynigo. The Complaint was docketed as **Civil Case No. CV-05-0402**. Petitioners sought in their Complaint the award of actual, moral, and exemplary damages against the respondents for making it appear that an auction sale of the subject properties took place, as a result of which, the prospective buyers of the said properties lost their interest and petitioner Chua was prevented from realizing a profit of ₱70,000,000.00 from the intended sale.[21]

Petitioners filed with RTC-Branch 195 a Motion to Consolidate[22] dated 27 December 2005, seeking the consolidation of Civil Case No. CV-05-0402, the action for damages pending before said court, with Civil Case No. CV-01-0207, the injunction case that was being heard before RTC-Branch 258, based on the following grounds:

2. The above-captioned case is a complaint for damages as a result of the [herein respondents'] conspiracy to make it appear as if there was an auction sale conducted on November 8, 2001 when

---

[19] *Id.* at 42.

[20] *Id.*

[21] *Id.* at 53-69.

[22] *Id.* at 455-456.

in fact there was none. The properties subject of the said auction sale are the same properties subject of Civil Case No. 01-0207.

3. Since the subject matter of both cases are the same properties and the parties of both cases are almost the same, and both cases have the same central issue of whether there was an auction sale, then necessarily, both cases should be consolidated.

On 3 January 2006, respondents filed with RTC-Branch 195 an Opposition to Motion to Consolidate with Prayer for Sanctions, praying for the dismissal of the Complaint for Damages in Civil Case No. CV-05-0402, on the ground of forum shopping.[23]

In an Order dated 23 January 2006, RTC-Branch 195 granted the Motion to Consolidate, and ordered that Civil Case No. CV-05-0402 be transferred to RTC-Branch 258, which was hearing Civil Case No. 01-0207.[24]

After the two cases were consolidated, respondents filed two motions before RTC-Branch 258: (1) Motion for Reconsideration of the Order dated 23 January 2006 of RTC-Branch 195, which granted the Motion to Consolidate of petitioners; and (2) Manifestation and Motion raising the ground of forum shopping, among the affirmative defenses of respondents.[25] RTC-Branch 258 issued an Order on 3 July 2006, granting the first Motion of respondents, thus, dismissing Civil Case No. CV-05-0402 on the ground of forum shopping,[26] and consequently, rendering the second Motion of respondents moot. RTC-Branch 258 declared that the facts or claims submitted by petitioners, the rights asserted, and the principal parties in the two cases were the same. RTC-Branch 258 held in its 3 July 2006 Order[27] that:

---

[23] Records, pp. 508-512.

[24] *Rollo*, p. 339.

[25] Records, pp. 779-781 and 807-811.

[26] *Rollo*, pp. 340-341.

[27] *Id.* at 341.

It is, therefore, the honest belief of the Court that since there is identity of parties and the rights asserted, the allegations of the defendant are found meritorious and with legal basis, hence, the motion is GRANTED and this case is DISMISSED due to forum shopping.

As regards the second motion, the same has already been mooted by the dismissal of this case.

WHEREFORE, premises considered, the Motion for Reconsideration filed by the defendants whereby this case is DISMISSED due to forum shopping and the Manifestation and Motion likewise filed by the defendants has already been MOOTED by the said dismissal.

From the foregoing Order of RTC-Branch 258, petitioners filed a Petition for Review on *Certiorari* with the Court of Appeals, docketed as CA-G.R. CV No. 88087.

In a Decision dated 31 January 2008, the Court of Appeals affirmed the 3 July 2006 Order of RTC-Branch 258. The appellate court observed that although the defendants in the two cases were not identical, they represented a community of interest. It also declared that the cause of action of the two cases, upon which the recovery of damages was based, was the same, *i.e.*, the feigned auction sale, such that the nullification of the foreclosure of the subject properties, which petitioners sought in Civil Case No. CV-01-0207, would render proper the award for damages, claimed by petitioners in Civil Case No. CV-05-0402. Thus, judgment in either case would result in *res judicata*. The Court of Appeals additionally noted that petitioners admitted in their Motion for Consolidation that Civil Case No. CV-01-0207 and Civil Case No. CV-05-0402 involved the same parties, central issue, and subject properties.[28] In its Decision,[29] the appellate court decreed:

All told, the dismissal by the RTC-Br. 258 of the "second" case, Civil Case No. CV-05-0402, on the ground of forum shopping should be upheld as it is supported by law and jurisprudence.

---

[28] *Id.* at 45-51.

[29] *Id.* at 51.

WHEREFORE**,** the assailed order is **AFFIRMED.** Costs against the [herein petitioners].

Petitioners filed a Motion for Reconsideration of the aforementioned Decision, which the Court of Appeals denied in a Resolution dated 28 March 2008.[30]

Hence, the present Petition, in which the following issues are raised:[31]

I

WHETHER OR NOT THE "FIRST" AND THE "SECOND" CASES HAVE THE SAME ULTIMATE OBJECTIVE, *I.E.*, TO HAVE THE AUCTION SALE BE DECLARED AS NULL AND VOID.

II

WHETHER OR NOT THE OUTCOME OF THE "FIRST" CASE WOULD AFFECT THE "SECOND" CASE.

The only issue that needs to be determined in this case is whether or not successively filing Civil Case No. CV-01-0207 and Civil Case No. CV-05-0402 amounts to forum shopping.

The Court answers in the affirmative.

The proscription against forum shopping is found in Section 5, Rule 7 of the 1997 Rules of Court, which provides that:

SEC. 5. *Certification against forum shopping.*—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is

---

[30] *Id.* at 10-11.

[31] *Id.* at 382.

pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitutes willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Forum shopping exists when a party repeatedly avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.[32]

Ultimately, what is truly important in determining whether forum shopping exists or not is the vexation caused the courts and party-litigant by a party who asks different courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.[33]

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet

---

[32] *Feliciano v. Villasin,* G.R. No. 174929, 27 June 2008, 556 SCRA 348, 370; *Cruz v. Caraos*, G.R. No. 138208, 23 April 2007, 521 SCRA 510, 521; *SK Realty, Inc. v. Uy*, G.R. No. 144282, 8 June 2004, 431 SCRA 239, 246.

[33] *Feliciano v. Villasin, id.* at 372; *Llamzon v. Logroni*o, G.R. No. 167745, 26 June 2007, 525 SCRA 691, 706.

(where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[34]

In the present case, there is no dispute that petitioners failed to state in the Certificate of Non-Forum Shopping, attached to their Verified Complaint in Civil Case No. CV-05-0402 before RTC-Branch 195, the existence of Civil Case No. CV-01-0207 pending before RTC-Branch 258. Nevertheless, petitioners insist that they are not guilty of forum shopping, since (1) the two cases do not have the same ultimate objective – Civil Case No. CV-01-0207 seeks the annulment of the 8 November 2001 public auction and certificate of sale issued therein, while Civil Case No. CV-05-0402 prays for the award of actual and compensatory damages for respondents' tortuous act of making it appear that an auction sale actually took place on 8 November 2001; and (2) the judgment in Civil Case No. CV-01-0207, on the annulment of the foreclosure sale, would not affect the outcome of Civil Case No. CV-05-0402, on the entitlement of petitioners to damages. The Court, however, finds these arguments refuted by the allegations made by petitioners themselves in their Complaints in both cases.

Petitioners committed forum shopping by filing multiple cases based on the same cause of action, although with different prayers.

Sections 3 and 4, Rule 2 of the Rules of Court proscribe the splitting of a single cause of action:

> Section 3. A party may not institute more than one suit for a single cause of action.

---

[34] *Collantes v. Court of Appeals*, G.R. No. 169604, 6 March 2007, 517 SCRA 561, 569; *Ao-As v. Court of Appeals*, G.R. No. 128464, 20 June 2006, 491 SCRA 339, 354.

Section 4. Splitting a single cause of action; effect of.—If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.

Forum shopping occurs although the actions seem to be different, when it can be seen that there is a splitting of a cause of action.[35] A cause of action is understood to be the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff. It is true that a single act or omission can violate various rights at the same time, as when the act constitutes juridically a violation of several separate and distinct legal obligations. However, where there is only one delict or wrong, there is but a single cause of action regardless of the number of rights that may have been violated belonging to one person.[36]

Petitioners would like to make it appear that Civil Case No. CV-01-0207 was solely concerned with the nullification of the auction sale and certification of sale, while Civil Case No. CV-05-0402 was a totally separate claim for damages. Yet, a review of the records reveals that petitioners also included an explicit claim for damages in their Amended Complaint[37] in Civil Case No. CV-01-0207, to wit:

20-A. The abovementioned acts of [herein respondents] Metrobank and Atty. Celestra are in gross violation of the injunction made under Article 19 of the Civil Code, thereby entitling the [herein petitioners] **to recover damages** from the said [respondents] in such amount as may be awarded by the Court. (Emphasis ours.)

The "abovementioned acts" on which petitioners anchored their claim to recover damages were described in the immediately preceding paragraph in the same Amended Complaint, as follows.[38]

---

[35] *Cuenca v. Atas*, G.R. No. 146214, 5 October 2007, 535 SCRA 48, 86.

[36] *Joseph v. Bautista*, G.R. No. 41423, 23 February 1989, 170 SCRA 540, 544.

[37] *Rollo*, pp. 97-98.

[38] *Id.* at 97.

20. To reiterate, the [herein respondent] is fully aware that the assessed fair market value of the real properties they seek to foreclose and sell at public auction yet they have knowingly offered the said properties for sale at the amount of EIGHTY EIGHT MILLION ONE HUNDRED ONE THOUSAND NINETY THREE PESOS AND 98/100 (PhP88,101,093.98), obviously because they know that the [petitioners] or any other third person would not be able to seasonably raise the said amount and that said [respondent] Bank would be the winner by default at the said sale at public auction.

Petitioners averred in their Amended Complaint in Civil Case No. CV-01-0207 that the assessed fair market value of the subject properties was ₱176,117,000.00.[39]

The Court observes that the damages being claimed by petitioners in their Complaint in Civil Case No. CV-05-0402 were also occasioned by the supposedly fictitious 8 November 2001 foreclosure sale, thus:[40]

24. The acts of [herein respondents] in making it appear that there was an auction sale conducted on 8 November 2001 and the subsequent execution of the fictitious Certificate of Sale is TORTIOUS, which entitles the [herein petitioners] to file this instant action under the principles of Human Relations, more particularly Articles 19, 20 and 21 of the Civil Code which provide that:

xxx xxx xxx

25. As a result of the aforesaid acts of the [respondents], [petitioner's] buyers of the mortgaged properties had lost their interest anymore (sic) in buying the said mortgaged properties for not less than ₱175,000,000.00 as per appraisal report of the Philippine Appraisal Co., Inc., a copy of which is hereto attached as Annex "R" and made an integral part hereof;

26. The aborted sale of the [petitioner's] mortgaged properties for the said amount of not less than ₱175,000,000.00 could have paid off [petitioners'] loan obligation with [respondent]

---

[39] *Id*. at 94.

[40] *Id*. at 64-66.

> Metrobank for the principal amount of ₱79,650,000.00 or even the contested restructured amount of ₱103,450,391.84 (as stated in the petition for foreclosure), which would have thus enabled the plaintiff to realize a net amount of not less than SEVENTY MILLION PESOS, more or less;
>
> 27. By reason of the aforesaid acts of [respondents], [petitioners] suffered and will continue to suffer actual or compensatory, moral and exemplary or corrective damages, the nature, extent and amount of compensation of which will (sic) proven during the trial but not less than SEVENTY MILLION PESOS.

There is no question that the claims of petitioners for damages in Civil Case No. CV-01-0207 and Civil Case No. CV-05-0402 are premised on the same cause of action, *i.e.*, the purportedly wrongful conduct of respondents in connection with the foreclosure sale of the subject properties.

At first glance, said claims for damages may appear different. In Civil Case No. CV-01-0207, the damages purportedly arose from the bad faith of respondents in offering the subject properties at the auction sale at a price much lower than the assessed fair market value of the said properties, said to be **₱176,117,000.00**. On the other hand, the damages in Civil Case No. CV-05-0402, allegedly resulted from the backing out of prospective buyers, who had initially offered to buy the subject properties for "not less than **₱175,000,000.00**," because respondents made it appear that the said properties were already sold at the auction sale. Yet, it is worthy to note that petitioners quoted closely similar values for the subject properties in both cases, against which they measured the damages they supposedly suffered. Evidently, this is due to the fact that petitioners actually based the said values on the single appraisal report of the Philippine Appraisal Company on the subject properties. Even though petitioners did not specify in their Amended Complaint in Civil Case No. CV-01-0207 the exact amount of damages they were seeking to recover, leaving the same to the determination of the trial court, and petitioners expressly prayed that they be awarded damages of not less than ₱70,000,000.00 in their

Complaint in Civil Case No. CV-05-0402, petitioners cannot deny that all their claims for damages arose from what they averred was a fictitious public auction sale of the subject properties.

Petitioners' contention that the outcome of Civil Case No. CV-01-0207 will not determine that of Civil Case No. CV-05-0402 does not justify the filing of separate cases. Even if it were assumed that the two cases contain two separate remedies that are both available to petitioners, these two remedies that arose from one wrongful act cannot be pursued in two different cases. The rule against splitting a cause of action is intended to prevent repeated litigation between the same parties in regard to the same subject of controversy, to protect the defendant from unnecessary vexation; and to avoid the costs and expenses incident to numerous suits. It comes from the old maxim *nemo debet bis vexari, pro una et eadem causa* (no man shall be twice vexed for one and the same cause).[41]

Moreover, petitioners admitted in their Motion to Consolidate[42] dated 27 December 2005 before RTC-Branch 195 that both cases shared the same parties, the same central issue, and the same subject property, *viz*:

> 2. The above-captioned case is a complaint for damages as a result of the [herein respondents'] conspiracy to make it appear as if there was an auction sale conducted on November 8, 2001 when in fact there was none. The properties subject of the said auction sale are the same properties subject of Civil Case No. 01-0207.
>
> 3. Since the subject matter of both cases are the same properties and the parties of both cases are almost the same, and both cases have the same central issue of whether there was an auction sale, then necessarily, both cases should be consolidated.

If the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed **without prejudice,** on

---

[41] *Bachrach Motor Co., Inc. v. Icarangal,* 68 Phil. 287, 293 (1939).

[42] *Rollo,* pp. 455-456.

the ground of either *litis pendentia* or *res judicata*. However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed **with prejudice**.[43] In this case, petitioners did not deliberately file Civil Case No. CV-05-0402 for the purpose of seeking a favorable decision in another forum. Otherwise, they would not have moved for the consolidation of both cases. Thus, only Civil Case No. CV-05-0402 is dismissed and the hearing of Civil Case No. CV-01-0207 before RTC-Branch 258 will be continued.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. The Decision dated 31 January 2008 and Resolution dated 28 March 2008 of the Court of Appeals in CA-G.R. CV No. 88087, affirming the Order dated 3 July 2006 of Branch 258 of the Regional Trial Court of Parañaque City, dismissing Civil Case No. CV-05-0402, is *AFFIRMED*, without prejudice to the proceedings in Civil Case No. CV-01-0207. Costs against petitioners.

SO ORDERED.

Corona,[**] *Carpio Morales,*[***] *Velasco, Jr.,* and *Nachura, JJ.,* concur.

---

[43] *Collantes v. Court of Appeals, supra* note 34 at 569; *Ao-As v. Court of Appeals, supra* note 34 at 355-356.

[**] Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 13 May 2009.

[***] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 183196. August 19, 2009]

CHONA ESTACIO and LEOPOLDO MANLICLIC, *petitioners, vs.* **PAMPANGA I ELECTRIC COOPERATIVE, INC., and LOLIANO E. ALLAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; ESTOPPEL; ELEMENTS. — Estoppel, an equitable principle rooted upon natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. The party claiming estoppel must show the following elements: 1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; 2) reliance in good faith, upon the conduct or statements of the party to be estopped; and 3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice. To be sure, estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; REQUISITES FOR VALID DISMISSAL. — The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282 of the Labor Code or for any of the authorized causes under Articles 283 and 284 of the same Code.

3. ID.; ID.; ID.; ESSENCE OF DUE PROCESS, EXPLAINED. — Well-settled is the rule that the essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

4. ID.; ID.; ID.; GROSS NEGLIGENCE, CONSTRUED. — Gross negligence connotes want or absence of or failure to exercise even slight care or diligence, or the total absence of care. It evinces a thoughtless disregard or consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be gross, but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. In *JGB and Associates, Inc. v. National Labor Relations Commission,* the Court further declared that gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business.

APPEARANCES OF COUNSEL

Armando San Antonio for petitioners.
Ananias L. Canlas, Jr. for respondents.

D E C I S I O N

CHICO-NAZARIO,* *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals dated 29 May 2008 in CA-G.R. SP No. 93971, which annulled and set aside the Decision dated 30 June 2005 and Resolution dated 24 January 2006 of the National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 040757-04. The NLRC found that petitioners Chona Estacio (Estacio) and Leopoldo Manliclic (Manliclic) were illegally

* Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *rollo* p. 58.

dismissed by respondents Pampanga I Electric Cooperative, Inc. (PELCO I) and Engineer Loliano E. Allas (Engr. Allas), and ordered the reinstatement of petitioners and payment of their backwages. The NLRC reversed the Decision dated 30 April 2004 of the Labor Arbiter in NLRC Case No. RAB–III-03-5517-03 dismissing petitioners' Complaint for illegal dismissal against respondents for lack of merit.

The facts of the case as culled from the records are as follows:

Respondent PELCO I is an electric cooperative duly organized, incorporated, and registered pursuant to Presidential Decree No. 269.[2] Respondent Engr. Allas is the General Manager of respondent PELCO I.[3]

Petitioner Estacio had been employed at respondent PELCO I as a bill custodian since 1977, while petitioner Manliclic had been working for respondent PELCO I as a bill collector since June 1992.[4]

On 22 August 2002, Nelia D. Lorenzo (Lorenzo), the Internal Auditor of respondent PELCO I, submitted her "Audit Findings at the San Luis Area Office" to respondent Engr. Allas, pertinent portions of which state:

Evaluation of the results of physical inventory of bills through reconciliation of records such as aging schedule of consumer accounts receivable balance, collection reports and other related documents revealed 87 bills amounting to One Hundred Twenty Six Thousand

---

[2] Presidential Decree No. 269, "Creating the `National Electrification Administration' as a Corporation, prescribing its powers and activities, appropriating the necessary funds therefor and declaring a national policy objective for the total electrification of the Philippines on an area coverage service basis, the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes."

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

[4] Records, p. 24.

Seven Hundred Fifty and 93/100 (₱126,750.93) remained unremitted as of August 20, 2002.

Accounting of which includes the accountability of Ms. Estacio amounting to One Hundred Twenty Three Thousand Eight Hundred Seven and 14/100 (₱123,807.14) representing 86 bills.[5]

Respondent Engr. Allas issued a Memorandum dated 6 September 2002 to petitioner Estacio informing her of the audit findings, and directing her to explain in writing, within 72 hours upon receipt thereof, why no disciplinary action should be imposed upon her for Gross Negligence of Duty under Section 6.6 of Board Policy No. 01-04 dated 23 July 2001.

In her written explanation, petitioner Estacio averred that she had no control over and should not be held answerable for the failure of the bill collectors at the San Luis Area Office to remit their daily collections. Petitioner Estacio also asserted that according to her revised job description as a bill custodian, she merely had to ascertain on a daily basis the total bills collected and uncollected by collectors. Any failure on her part to update the bill custodian records by the time the audit was conducted on 9 August 2002 was due to the abnormal weather conditions during July 2002, resulting in the flooding of San Luis and Candaba, Pampanga. Such negligence could not be categorized as gross in character as would warrant the imposition of disciplinary action against her.[6]

Unsatisfied with petitioner Estacio's explanation, respondent Engr. Allas issued a Memorandum[7] dated 26 September 2002 charging Estacio with gross negligence of duty. A formal investigation/hearing then ensued, during which petitioner Estacio was duly represented by counsel. The investigating committee, in the report it submitted to respondent Engr. Allas on 23 October 2002, found petitioner Estacio guilty of dishonesty and gross

---

[5] *Id.* at 52-56.

[6] *Id.* at 50.

[7] Annex D; *rollo*, p. 88.

negligence of duty under Section 6.4[8] and Section 6.6,[9] respectively, of Board Policy No. 01-04 dated 23 July 2001; and recommended her dismissal from service with forfeiture of benefits.[10]

On 25 October 2002, respondent Engr. Allas rendered a Decision which adopted the recommendation of the investigation committee dismissing petitioner Estacio from service, with forfeiture of her benefits, effective 28 October 2002; with the modification deleting the charge of dishonesty.[11] Petitioner Estacio sought a reconsideration of the said decision but it was denied by respondent Engr. Allas.

In the same "Audit Findings at the San Luis Area Office" submitted to respondent Engineer Allas on 22 August 2002, Internal Auditor Lorenzo reported that petitioner Manliclic, a bill collector, failed to remit to respondent PELCO I management his collection amounting to ₱4,813.11, as of 20 August 2002. Respondent Engr. Allas issued a Memorandum dated 6 September 2002 directing petitioner Manliclic to explain in writing, within 48 hours from receipt thereof, why no disciplinary action should be taken against him for committing offenses against respondent PELCO I properties,[12]

---

[8] 6.4. On Dishonesty.

[9] 6.6. On Negligence of Duty.

[10] Records, p. 37.

[11] *Rollo*, p. 96.

[12] Section 2. Offenses against Coop properties. x x x

2.1 On Coop Funds

2.1.1 Malversation of Coop funds or other financial securities and such other funds or other financial securities in the care and custody of or entrusted to the Coop for which it may be held liable.

2.1.2 Failure to remit collection and/or failure to turn-over materials/equipment due the Coop within the required period of time pursuant to Coop policies and rules and regulations (Depending on the gravity as a result of the offense).

2.1.3 Malversing/misappropriating or withholding Coop funds or any attempt/frustration thereof.

under Section 2.1 of Board Policy No. 01-04 dated 23 July 2001.

On 11 September 2002, petitioner Manliclic submitted his written explanation[13] admitting the he used the amount of ₱4,813.11 from his collection to cover pressing family obligations and requesting two months to pay the same. With this admission, respondent Engr. Allas issued another Memorandum[14] dated 28 September 2002 dismissing petitioner Manliclic from service effective 1 October 2002, with forfeiture of benefits. Petitioner

---

2.1.4 Failure to turn-over to the Coop immediately upon receipt thereof any money of whatever currency or amount given by the client or his/her representative to the Coop.

[13] Manliclic's letter states:

This has reference to your Memorandum dated September 28, 2002, dismissing the undersigned from the service effective October 01, 2002 due to non-remittance of the amount of Four Thousand Eight Hundred Thirteen and Eleven Centavos (₱4,813.11) which with all candidness was admitted by the undersigned in my letter of explanation dated September 11, 2002. The undersigned opted to utilize the reason of pressing family obligations but the truth of the matter is that out of the aforesaid amount the sum of Three Thousand Seven Hundred Nineteen and Seventy-Five Centavos (₱3,719.75) was borrowed from me by Mr. Joselito Ocampo on the last week of June 2002. This is confirmed by the Affidavit of Mr. Joselito Ocampo executed last October 3, 2002, a copy of which is hereto attached for your reference.

That the remaining amount of One Thousand Ninety-Three Pesos and Thirty-Six Centavos (₱1,093.36) represents two electric bills which were not included on the first audit and such amount as well as the receipts were turn[ed] over by the bill custodian Marijo Panlilio to our auditor.

While indeed I took sole responsibility for the unremitted amount and I knew fully well that it should not have been lend (sic) by me to Mr. Ocampo the undersigned was constrained to do so out of human compassion on the predicament of Mr. Ocampo at that time. The undersigned is filing this letter of reconsideration in order to divulge the truth regarding such amount for the reconsideration of your Memorandum dated September 28, 2002.

(Sgd) Leopoldo Manliclic
Meter Reader/Collector (Records, p. 43.)

[14] *Id.* at 42.

Manliclic sought reconsideration[15] of his dismissal, but was rebuffed by respondent Engr. Allas in the latter's letter[16] dated 10 October 2002, which reads:

> Your letter of reconsideration detailed in full the manner by which the amount of ₱4,813.11 was misappropriated. You admitted having lend (sic) to Joselito Ocampo the sum of ₱3,719.75 and this is supported by the affidavit of admission of said Mr. Joselito Ocampo which was duly notarized by Notary Public, Juan Manalastas. Thus, said affidavit is taken by management as gospel truth.
>
> This affidavit does not however exculpate you from the offense of misappropriation, defined and penalized under Section 2, paragraph 2.1 ON COOP FUNDS (2.1.2, 2.1.3 & 2.1.4) of the Board Policy No. 27-96 and Administrative Policy No. 10-89.
>
> If we may inform you the money you collected are held in trust by you so that you have to remit the same to the cooperative (San Luis Area Office) at the proper time.
>
> You should not take the liberty of lending them to any co-employee because you have to account for them to the last centavo at the end of the collection day.
>
> In view of the foregoing, it is sad to say that your letter of reconsideration is hereby denied.[17]

From respondent Engr. Allas' actions on their administrative case, petitioners Estacio and Manliclic separately filed with the Board of Directors of respondent PELCO I their memoranda of appeal.[18] The Board of Directors of respondent PELCO I

---

[15] *Rollo*, p. 99.

[16] Records, p. 43.

[17] *Id.* at 45.

[18] According to Board Policy No. 01-04 dated 23 July 2001:

> An aggrieved employee who feels that the charges against him/her are not true, or that the penalty imposed on him/her by the General Manager for the alleged particular violation or offense committed is too heavy or drastic, or that his/her case has not been given proper due process/course, may appeal in writing to the General Manager for reconsideration or for a thorough review of his/her case within five (5) days from receipt of such action. The General Manager shall act on such appeal within five (5) days from receipt thereof.

subsequently passed two resolutions, with essentially the same contents, *i.e.*, Resolutions No. 38[19] dated 15 November 2002 and No. 39,[20] dated 25 November 2002, respectively. In said Resolutions, the Board of Directors of respondent PELCO I reinstated petitioners to their positions without loss of seniority, and ordered respondent Engr. Allas to pay in full the salaries and other incentives accruing to petitioners after deducting the first 15 days of their suspension.

Notwithstanding the approval of Resolutions No. 38 and No. 39, respondent Engr. Allas refused to reinstate petitioners and

---

If he/she is not yet fully satisfied with the General Manager's decision, he/she may elevate his/her case in writing to the Board of Directors, through the President, for further review/evaluation/investigation and hearing of his/her case as appealed within ten (10) days from receipt of the General Manager's action. The Board will then render its decision accordingly within thirty (30) days from receipt thereof, based on the merits and facts of the case at bar. (Annex 2, records, p. 82.)

[19] *Rollo*, p. 117.

[20] Resolution No. 39, in particular, reads:

RESOLUTION NO. 39

SERIES OF 2002

RESOLUTION GRANTING THE LETTERS OF APPEAL OF MRS. CHONA ESTACIO AND MR. LEOPOLDO MANLICLIC WITH MODIFICATION

WHEREAS, the board of Directors of PELCO I received letters of appeal of Mrs. Chona Estacio and Mr. Leopoldo Manliclic regarding their dismissal from the service.

WHEREAS, upon deliberation and thorough study of the members of the Board of Directors of PELCO I it was found out that the penalty of dismissal that were imposed against Mrs. Chona Estacio and Mr. Leopoldo Manliclic is too drastic and cruel in character.

WHEREAS, that Board of Directors of PELCO I deem it improper and unjust to reconsider the penalty of dismissal imposed to Mrs. Chona Estacio and Mr. Leopoldo Manliclic; while Director Miranda's motion that the initial disciplinary action would only be a first offense and the objection was raised by Director Dizon that he is not in favor of the reinstatement.

WHEREAS, in view of the fact that Mrs. Chona Estacio has already served a thirty (30) days preventive suspension, General Manager Loliano Allas is hereby directed to reinstate Mrs. Chona Estacio and Mr.

proceeded to dismiss them from service. Addressing the Board of Directors of respondent PELCO I, respondent Engr. Allas stated in his letter dated 29 November 2002:[21]

The act of reducing their penalties is a gross abuse of authority and commission of acts inimical to the interest of the cooperative and the public at large because you have no authority to do so since Board Policy No. 01-04 of PELCO I clearly provides the penalty of dismissal for the offenses they were found guilty. Your honors' authority to act is governed by the rules as provided in the aforesaid Board Policy. Going beyond that is abuse of authority instead of protecting the interest of the cooperative you protected the employees who through their acts depleted the earnings and funds of the cooperative.

In a letter dated 9 December 2002 by Regional Director Alberto A. Guiang of the National Electrification Administration (NEA) to the Board of Directors of respondent PELCO I, he wrote:

THE BOARD OF DIRECTORS
Pampanga I Electric Cooperative, Inc. (PELCO I)
Mexico, Pampanga

Gentlemen:

This has reference to your Board Resolution No. 38 and 39 series of 2002, granting the letters of appeal of Ms. Chona Estacio and Mr. Leopoldo Manliclic for reinstatement of their positions to the PELCO I workforce.

While we appreciate your concern to the coop operation, we wish to call your attention to the NEA Guidelines dated 27 January 1995, specifying the delineation of Roles of EC Board of Directors and General Managers, and on Memorandum No. 35. Accordingly, the Board is not

---

Leopoldo Manliclic to be included in the payroll and to receive all benefits upon effectivity of their reinstatement.

NOW, THEREFORE, upon Motion of Director Venancio S. Macapagal duly seconded by Director Albert B. Franco resolved as it is hereby resolved that upon majority votes of the Board of Directors of PELCO I approved the granting of the letters of appeal of Mrs. Chona Estacio and Mr. Leopoldo Manliclic to be reinstated. Eventually, G.M. Allas is hereby ordered to comply 2 days upon receipt of this resolution. (Records, pp. 48-49.)

[21] Annex 3, Records.

vested with the authority to hire and fire nor rehire employees. The General Manager is the only authorized official for this matter, while the Board has to formulate policies nor guidelines only for the GM to implement.

This office carefully reviewed the facts surrounding the issues raised by the concerned parties, and we found that due process was undertaken after rendering the decision by the General Manager on this matter, and should be enforced. This is healthy move of eradicating dishonesty and inefficiency among the employees. Thus, the disapproval of the above resolutions.

Thank you.

Very truly yours,

(SGD)ALBERTO A. GUIANG[22]

NEA through Regional Director Alberto A. Guiang issued another letter to the Board of Directors of respondent PELCO I dated 10 December 2002 stating that it was disapproving Resolution No. 39 issued by the Board of Directors of respondent PELCO I granting the letter of appeal of petitioners.[23]

The foregoing events prompted petitioners to file with the NLRC, Regional Arbitration Board (RAB)-III, City of San Fernando, Pampanga, their Complaints[24] against respondents for illegal dismissal and payment of backwages, 13th month pay, and other benefits. The Complaints were docketed as NLRC Case No. RAB–III-03-5517-03.

In a Decision dated 30 April 2004, the Labor Arbiter ruled in favor of respondents, for the following reasons:

Respondents under their onus were required to show that [herein petitioners] were dismissed for cause.

As to [petitioner] Chona Estacio respondents contended that she was guilty of gross negligence of duty under Sec. 6.6.6. of its Employee's Code of Discipline (Board Policy 01-04). Respondents have shown that

---

[22] Annex 5, *id.*

[23] Annex 6, *id.*

[24] Records, pp. 1 and 8.

[petitioner] Estacio failed to carry out her duties and responsibilities as a bill custodian per the latter's job description more particularly no. 2 and no. 3 of her detailed duties, namely:

> "2. Maintains an accurate record of all Official Electric Bill Receipts (OERB) issued to and returned by collectors, and sees to it that the same are properly signed or initialed by the collector as clearance to any accountability;
>
> "3. Accounts and ascertains on a daily basis the total bills collected and uncollected by collectors and those bills paid in the office by consumers through the maintenance of bill route control and related record" (Annex "1" of respondents' Reply).

It was likewise shown that this infraction carries the penalty of dismissal. Record also showed that the requirements of procedural due process was afforded the [petitioner] before she was finally separated.

In the case of [petitioner] Manliclic, respondents were able to show with the admission of the former that Sec. 2, subsection 2.1, pars. 2.1.2 to 2.1.4 of Board Policy No. 01-04 were violated by [petitioner]. The same violations carry the penalty of dismissal. The procedural requirements of notice and hearing were likewise afforded [petitioner] Manliclic before he was finally terminated.

In view of the above, we hold that there is no illegal dismissal.[25]

In the end, the Labor Arbiter decreed:

WHEREFORE, premises considered, judgment is hereby rendered dismissing instant complaint for illegal dismissal for lack of merit.

However, respondents are held liable and ordered to pay [petitioners] the following:

	Service Incentive Leave pay	13th month pay
1. Chona Estacio	₱5,765.19	₱5,074.03
2. Leopoldo Manliclic	8,294.19	6,596.25

All other claims are hereby dismissed for utter lack of merit.[26]

---

[25] *Rollo*, pp. 143-144.

[26] *Id.* at 145.

Disgruntled with the Labor Arbiter's Decision, petitioners appealed to the NLRC. The appeal was docketed as NLRC-NCR Case No. 040757-04.

The NLRC, in its Decision dated 30 June 2005, disagreed with the Labor Arbiter:

> There is nothing on record showing that Resolution No. 39, Series of 2002 is null and void. Neither is there any evidence on record showing that there is legal basis to hold the December 9 and 10, 2002 letters of Alberto A. Guiang, Regional Director, National Electrification Administration (NEA), Regional Electrification Office III as having nullified Resolution No. 39, Series of 2002. For what the mentioned letters may be worth, we are convinced they were nothing but mere opinions which bear no weight on the labor dispute obtaining between complainants and respondents. Verily, complainants' employer is Pampanga I Electric Cooperative, Inc. (PELCO), not the National Electrification Administration (NEA).
>
> Finally, jurisprudence teaches us that the Court, out of its concern for those less privileged in life, has inclined towards the worker and upheld his cause on his conflicts with the employer (*Revidad vs. NLRC,* 245 SCRA 356). Time and again we have held that should doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter (*Asuncion vs. NLRC,* G.R. No. 129329, July 31, 2001). This favored treatment is directed by the social justice policy of the Constitution (Article II of the 1987 Constitution), and embodied in Articles 3 and 4 of the Labor Code.[27]

The dispositive portion of the NLRC Decision[28] reads:

> WHEREFORE, premises considered, the decision appealed from is hereby MODIFIED.
>
> The findings *a quo* dismissing the complaint for illegal dismissal is REVERSED and SET ASIDE and a new one entered finding [herein petitioners] to have been illegally dismissed by respondents. Accordingly, respondents are hereby ordered to reinstate [petitioners] and pay them backwages pursuant to Article 279 of the Labor Code. The rest of the assailed decision is AFFIRMED.

---

[27] *Id.* at 160-161.

[28] *Id.* at 147.

Let the Arbitration Branch of origin render the appropriate computations of [petitioners'] backwages.[29]

Respondents filed a Motion for Reconsideration[30] of the NLRC Decision dated 30 June 2005, asking the Commission to affirm, instead, the Decision dated 30 April 2004 of the Labor Arbiter which dismissed petitioners' Complaints for illegal dismissal for lack of merit.

On 24 January 2006, the NLRC promulgated its Resolution[31] denying respondents' Motion for Reconsideration.[32]

Respondents elevated their case to the Court of Appeals *via* a Petition for *Certiorari*, under Rule 65 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 93971.

In a Decision dated 29 May 2008, the Court of Appeals held:

We agree with the [herein respondents], who was joined by the Labor Arbiter in their stance, pointing out that if only [herein petitioner] Estacio had conscientiously performed her duties in accordance with the revised job description of a bill custodian, then the unremitted collection of ₱123,807.14, representing different collection periods from July 3, 5, 6, 10, 23, 26, 27, 31 to August 1, 3, 5, 7, 2002, in the hands of the bill collector could have been discovered earlier and could not have accumulated to a bigger amount. [Petitioner] Estacio's excuse that if she was not able to update the records of the Bill Custodian at the time when the audit was made on August 9, 2002, it is because due to the abnormal weather condition on the month of July 2002 when San Luis and Candaba were flooded, was correctly rejected by [respondents] for being insufficient justification since the whole month of July 2002 was not flooded and she was only on leave for a total of five (5) days.

So also, from the evidence adduced by [respondents], it has been adequately established that [herein petitioner] Manliclic violated Section 2.1 of the Revised Employees' Code of Discipline under Board Policy No. 01-04 for failure on his part to remit/turn-over his collection

---

[29] *Id.* at 161.

[30] *Id.* at 163.

[31] *Id.* at 167.

[32] *Id.* at 173.

to the management and misappropriating the same for his own personal use and benefit, constituting serious misconduct.[33]

The Court of Appeals disposed of CA-G.R. SP No. 93971, thus:

> WHEREFORE, premised considered, the instant petition is GRANTED. The assailed Decision dated June 30, 2005 and the Resolution dated January 24, 2006 rendered by public respondent NLRC are hereby ANNULLED and SET ASIDE. The Decision dated 30 April 2004 of the Labor Arbiter in NLRC Case No. RAB-III-03-5517-03 is REINSTATED.[34]

Petitioners did not file a Motion for Reconsideration to the Court of Appeals.

Petitioners now come to this Court raising the following issues in the instant Petition:

> I. WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS IS IN ACCORDANCE WITH LAW AND APPLICABLE DECISION OF THE SUPREME COURT AND ITS FINDINGS AND CONCLUSIONS WHICH ARE BASED ON MISAPPREHENSION OF FACTS WITHOUT CITATION OF SPECIFIC EVIDENCE OF WHICH THEY ARE PREMISED DUE TO THE APPARENT REASON THAT THEY WERE NOT SUPPORTED BY EVIDENCE AND CONTRADICTED BY RECORDS, SHALL PREVAIL OR PREPONDERATE OVER THE DECISION OF THE NLRC, WHICH IS SUPPORTED BY EVIDENCE ADDUCED BY BOTH PARTIES, LAWS, APPLICABLE JURISPRUDENCE AND CONSTITUTIONAL PROVISIONS.
>
> II. WHETHER OR NOT THE COURT OF APPEALS ACTED IN ACCORDANCE WITH EVIDENCE ON RECORD, APPLICABLE LAWS AND JURISPRUDENCE WHEN IT RULED THAT RESOLUTIONS NOS. 38 AND 39 GRANTING THE LETTERS OF APPEAL OF ESTACIO AND MANLICLIC AND ORDERING THEIR REINSTATEMENT WITHOUT LOSS OF SENIORITY

---

[33] *Id*. at 67.

[34] *Id*. at 71.

RIGHTS AND THE PAYMENT OF THEIR BACKWAGES INVALID.

III. WHETHER OR NOT THE COURT OF APPEALS ACTED IN ACCORDANCE WITH LAWS, ESTABLISHED JURISPRUDENCE AND CONSTITUTIONAL MANDATES WHEN IT RULED THAT RESPONDENT ALLAS AS GENERAL MANAGER OF PELCO I HAS THE SOLE PREROGATIVE AND POWER TO SUSPEND AND/OR DISMISS THE EMPLOYEES OF PELCO I, BASED ON NATIONAL ELECTRIFICATION ADMINISTRATION BULLETIN NO. 35.

IV. WHETHER OR NOT THE FINDINGS OF THE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN IGNORING OR THRUSTING ASIDE THE UNDISPUTED FACTS THAT THE PETITION FOR *CERTIORARI* FILED BY ALLAS TO THE COURT OF APPEALS WHICH WAS VERIFIED BY HIM WITHOUT BOARD RESOLUTION OF PELCO I BOARD OF DIRECTORS ASSAILING OR QUESTIONING RESOLUTIONS NO. 38 AND 39 OF PELCO I BOARD OF DIRECTORS DISCLOSED HIS LACK OF LEGAL PERSONALITY CONSIDERING THAT THE LATTER IS THE GOVERNING BODY OF PELCO I, AND HAS THE DIRECT INTEREST AND CONTROL OF ITS CORPORATE POWERS AND IN OVERLOOKING OR DISREGARDING THE FACT THAT RESOLUTION NO. 53-06 BELATEDLY ISSUED BY ANOTHER SET OF MEMBERS OF BOARD OF DIRECTORS OF PELCO I ATTACHED BY ALLAS IN A MOTION FOR RECONSIDERATION IN EFFECT RATIFIED OR CONSENTED ALLAS PETITION QUESTIONING OR ASSAILING PELCO I BOARD OF DIRECTORS VERY OWN RESOLUTIONS NO. 38 AND 39 EARLIER PROMULGATED BY DIFFERENT SET OF MEMBERS OF BOARD OF DIRECTORS, DEBAR OR PRECLUDE PELCO I FOR DOING SO, FOR IT IS AN OBVIOUS INSTANCE OF ESTOPPEL AND LACHES AND AN ELOQUENT PROOF OF AFTERTHOUGHT.

V. WHETHER OR NOT RESOLUTIONS NO. 38 AND 39 WHICH WAS (sic) UPHELD BY THE NLRC IS IN ACCORDANCE WITH LAW, SETTLED JURISPRUDENCE AND CONSTITUTIONAL MANDATES.[35]

---

[35] *Id.* at 337-338.

Before delving into the substantial issues in this case, the Court must first resolve the procedural issue of whether respondent Engr. Allas had the legal personality to file before the Court of Appeals the Petition in CA-G.R. SP No. 93971.

The Court answers in the affirmative.

It bears to stress that petitioners themselves filed their Complaints before the NLRC against both respondents PELCO I **and** Engr. Allas. Respondent Engr. Allas participated in the proceedings before the Labor Arbiter and the NLRC. As a party aggrieved by the NLRC decision and resolution, respondent Engr. Allas had a substantial interest to file with the Court of Appeals the Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure, on his own behalf.[36]

As for respondent Engr. Allas' authority to file the same Petition on behalf of respondent PELCO I, it is evidenced by Board Resolution No. 53-06,[37] approved by the Board of Directors of the cooperative on 5 August 2006. Even though Board Resolution No. 53-06 was belatedly filed, the Court of Appeals rightfully accepted the same. In the present case, the findings and conclusion of the Labor Arbiter and the NLRC are at odds,

---

36 RULE 65

CERTIORARI, PROHIBITION AND *MANDAMUS*

SECTION 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person **aggrieved thereby** may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

37 Entitled "Resolution Authorizing the General Manager, Engr. Allas, to file an Appeal/Petition for Review at the Court of Appeals, *Re: Chona Estacio and Leopoldo Manliclic v. Pamapanga I Electric Cooperative Incorporated.* (*Rollo*, p. 316.)

and the case concerns a labor matter to which our fundamental law mandates the state to give utmost priority and full protection.[38] Necessarily, this Court will look beyond alleged technicalities to open the way for resolution of substantive issues.[39]

The Court cannot subscribe to petitioners' argument that after passing Resolutions No. 38 and No. 39 reversing petitioners' dismissal from service and ordering that they be reinstated and paid their backwages, the Board of Directors of respondent PELCO I was estopped from subsequently passing Board Resolution No. 53-06. The Board Resolution authorized respondent Engr. Allas to file the Petition for *Certiorari* with the Court of Appeals, challenging the NLRC judgment that petitioners were illegally dismissed.

Estoppel, an equitable principle rooted upon natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them.[40]

The party claiming estoppel must show the following elements:

1) lack of knowledge and of the means of knowledge of the truth as to the facts in question;

2) reliance in good faith, upon the conduct or statements of the party to be estopped; and

3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.[41]

In this case, the essential elements of estoppel are inexistent.[42]

---

[38] *Philippine National Construction Corporation v. Matias,* G.R. No. 156283, 6 May 2005, 458 SCRA 148, 158.

[39] *Tacloban II Neighborhood Association, Inc. v. Office of the President,* G.R. No. 168561, 26 September 2008, 566 SCRA 493, 510-511.

[40] *Philippine National Bank v. Palma,* G.R. No. 157279, 9 August 2005, 466 SCRA 307, 323-325.

[41] *The Insular Life Assurance Co. Ltd. v. Asset Builders Corp.,* 466 Phil. 751, 773 (2004).

[42] *Republic Glass v. Qua,* 479 Phil. 393 (2004).

The first element is unavailing in the case at bar. Petitioners have the knowledge and the means of knowledge of the truth as to the facts in question. In issuing Resolutions No. 38 and No. 39, the Board of Directors of respondent PELCO I relayed its initial determination that petitioners' dismissal from service was harsh and drastic. These Resolutions merely expressed the position of the Board of Directors of respondent PELCO I at the time of their issuance. The subsequent passing of Board Resolution No. 53-06 by the same Board of Directors of respondent PELCO I, explicitly conveyed a change of mind, *i.e.*, the Board now wanted to contest, through respondent Engr. Allas, the finding of the NLRC that petitioners were illegally dismissed.

Without any basis, the Court cannot conclude that by the mere issuance of Board Resolution No. 53-06, the Board of Directors of respondent PELCO I committed false representation or concealment of material facts in its earlier Resolutions No. 38 and No. 39. What is apparent to this Court, on the face of these Resolutions, is that the Board of Directors of respondent PELCO I eventually arrived at a different conclusion after reviewing the very same facts, which it considered for Resolutions No. 38 and No. 39.

Also, Board Resolution No. 53-06 was unanimously passed by all the directors of respondent PELCO I. There is no allegation, much less, evidence, of any irregularity committed by the Board in the approval and issuance of said Board Resolution. Hence, the Court cannot simply brush Board Resolution No. 53-06 aside. Questions of policy and of management are left to the honest decision of the officers and directors of a corporation (or in this case, cooperative), and the courts are without authority to substitute their judgment for the judgment of the board of directors. The board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts.[43]

Moreover, petitioners were unable to establish the third element of estoppel. It bears stressing that if there be any injury, detriment,

---

[43] *Philippine Stock Exchange, Inc. v. Court of Appeals*, 346 Phil. 218, 234 (1997).

or prejudice to the petitioners by the action of the Board of Directors in passing Resolution Nos. 38 and 39 and subsequently Resolution No. 53-06, such injury was due to petitioners' own fault. Petitioner Estacio failed to account for and ascertain on a daily basis a total of 86 bills collected and uncollected by the bill collectors of PELCO I, resulting in unremitted bills amounting to ₱123,807.14. In the case of petitioner Manliclic, he admitted having used the amount of ₱4,813.11 from his collection. Estoppel is a shield against injustice; a party invoking its protection should not be allowed to use the same to conceal his or her own lack of diligence.[44]

To be sure, estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence.[45]

The Court then proceeds to resolve the substantive issue of whether petitioners were illegally dismissed by respondents.

The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282[46] of the

---

[44] *Mijares v. Court of Appeals*, 338 Phil. 274, 289 (1997).

[45] *The Insular Life Assurance Company, Ltd. v. Asset Builders Corporation, supra* note 41 at 772.

[46] ART. 282. *TERMINATION BY EMPLOYER.* – An employer may terminate an employment for any of the following causes:

(a) Serious Misconduct or willful Disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual Neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a Crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

Labor Code or for any of the authorized causes under Articles 283[47] and 284[48] of the same Code.

Well-settled is the rule that the essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[49]

It is undisputed that petitioners were accorded due process. Through the Memoranda issued by respondent Engr. Allas, petitioners were duly informed of the results of the audit conducted by Internal Auditor Lazaro, which were unfavorable to petitioners. Petitioners were given a chance to submit their written explanations.

(e) Other causes Analogous to the foregoing.

[47] ART. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL* – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[48] ART. 284. *DISEASE AS GROUND FOR TERMINATION*. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[49] *Sarapat v. Salanga*, G.R. No. 154110, 23 November 2007, 538 SCRA 324, 332.

As to petitioner Estacio, a formal hearing/investigation was even conducted by an investigating committee. Only thereafter, did respondent Engr. Allas notify petitioners Estacio and Manliclic, through a Decision dated 25 October 2002 and Memorandum dated 28 September 2002, respectively, that they were found guilty of the charges against them and were being dismissed from service. Both petitioners had the opportunity to seek reconsideration of their dismissal.

The Court also finds that there was valid cause for petitioner Estacio's dismissal.

Petitioner Estacio was dismissed from service for the commission of an offense under Board Policy No. 01-04 dated 23 July 2001 of respondent PELCO I, particularly:

> Section 6.6 On Negligence of Duty
>
> 6.6.6 Gross negligence in assigned tasks/duties as specified in the job description.

Gross negligence connotes want or absence of or failure to exercise even slight care or diligence, or the total absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be gross, but also habitual.[50] A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[51]

In *JGB and Associates, Inc. v. National Labor Relations Commission*,[52] the Court further declared that gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Fraud and willful neglect of duties imply bad faith of the employee

---

[50] *Salas v. Aboitiz One, Inc.*, G.R. No. 178236, 27 June 2008, 556 SCRA 374, 385-386.

[51] *Premiere Development Bank v. Mantal*, G.R. No. 167716, 23 March 2006, 485 SCRA 234, 239.

[52] 324 Phil. 747 (1996); *Premiere Development Bank v. Mantal*, *id.*

in failing to perform his job, to the detriment of the employer and the latter's business.

To determine if indeed petitioner Estacio was grossly negligent in the performance of her duties, the Court must first understand what her duties were. Petitioner Estacio, as a bill custodian of respondent PELCO I –

1. Issues and accounts all electric bills issued to and returned by collectors as well as paid office bills and shall be accountable and liable for all uncollected bills under his/her custody.

2. Maintains an accurate record of all Official Electric Bill Receipts (OEBR) issued to and returned by collectors, and sees to it that the same are properly signed or initialed by the collector as clearance to any accountability.

3. Accounts and ascertains on a daily basis the total bills collected and uncollected by collectors and those bills paid in the office by consumers through the maintenance of bill route control and related records;

4. Prepares listings of delinquent consumers due for disconnection;

5. Issues or certifies to the clearance of accounts of consumers before reconnection or change of billing names is effected.

6. Issues bills due from employees to be deducted from their respective pay and correspondingly logs the same in the bill route control;

7. Files in an orderly and systematic manner all the pertinent electric bills and other related documents in her possession for easy access and reference;

8. Performs other duties that may be assigned from time to time.[53]

---

[53] CA *rollo*, p. 157.

There is no more question that petitioner Estacio did fail to account for and record the bill collections for eight days of July and four days of August 2002. As a result of petitioner Estacio's improper accounting and records keeping, the amount of ₱123,807.14 remains unremitted to respondent PELCO I. As correctly observed by the investigating committee of PELCO:[54]

> From the record of the case and investigation conducted it appears that Ms. Estacio as the designated Bill Custodian at San Luis Area Office is responsible for the safekeeping of consumers of electric bills especially the unpaid or uncollected bills. That for control and accounting purposes, she has to account daily all collected and uncollected bills in her custody including the bills paid in the office. That in issuing the bills to the bill collectors, she has to maintain an accurate record which is the basic tool in maintaining and controlling all the bills in her possession. Then in case the collectors do not return the bills uncollected and do not make a report of the collected bills in a day, as Bill Custodian, it is also her duty to require the collectors to return the bills and make a report of the collected bills. If the collector still failed to do such, the custodian should report the matter to the immediate supervisor or Area Manager. But sad to say Ms. Estacio failed to perform all the above stated duties which resulted to the accumulation of unremitted bills (86) amounting to ₱123,807.14.
>
> If only Ms. Estacio is performing her duties as Bill Custodian in accordance with what is prescribed on the job description these unremitted collections could have been discovered earlier and did not accumulate to a bigger amount.

Petitioner Estacio, despite the opportunities given to her, did not offer any satisfactory explanation or evidence in her defense. Her only reason for failing to comply with the requisite daily accounting and reporting of the bill collections was the terrible weather condition during the month of July 2002, which resulted in the flooding of the San Luis and Candaba area in Pampanga, hence, keeping her from going to work. Like the investigating committee, the Labor Arbiter, and the Court of Appeals, this

---

[54] Records, p. 86.

Court is unconvinced. Petitioner Estacio was on leave for only five days of July 2002. She had the occasion to update her records on the bill collections during the other days of July and August 2002, when the weather was fine and she was able to report for work; yet, she still did not do so. She waited until her infraction was discovered during the conduct of the internal audit, only to proffer a feeble excuse.

Petitioner Estacio's failure to make a complete accounting and reporting of the bill collections plainly demonstrated her disregard for one of her fundamental duties as a bill custodian. It was an omission repeated by petitioner Estacio for several days, spanning several billing periods for July and August 2002; thus, she allowed, during the said period, the accumulation of the amounts unremitted by bill collectors to respondent PELCO I, until these reached the substantial amount of ₱123,807.14. All the foregoing considered, the Court can only conclude that there was valid cause to dismiss petitioner Estacio for gross and habitual negligence.

Similarly, the Court rules that there is valid cause for petitioner Manliclic's dismissal from service.

To recall, petitioner Manliclic, a bill collector, admitted to having used the amount of ₱4,813.11 from his collection, lending ₱3,719.75 thereof to a Joselito Ocampo and presumably keeping the rest to himself. This qualifies as an offense against properties of respondent PELCO I, which may be committed by any of the means described in Section 2.1 of Board Policy No.01-04 dated 23 July 2001, to wit:

2.1.1. Malversation of Coop funds or other financial securities and such other funds or other financial securities in the care and custody of or entrusted to the Coop for which it maybe held liable.

2.1.2. Failure to remit collection and/or failure to turn-over materials/ equipments due the Coop within the required period of time pursuant to Coop policies and rules and regulations. (Depending on the gravity as a result of the offense.)

2.1.3. Malversing/misappropriating or withholding Coop funds or any attempt/frustration thereof.[55]

In *Piedad v. Lanao del Norte*,[56] Warlito Piedad was a bill collector with the Lanao del Norte Electric Cooperative. Upon audit, Piedad was found to have incurred a shortage in his cash collection in the amount of ₱300.00. He acknowledged having used said amount. The Court affirmed Piedad's termination from service on account of such shortage, despite his having rendered nine years of unblemished service and being awarded as Collector of the Year. We expostulated in that case that it was neither with rhyme nor reason that the petitioner was dismissed from employment. His acts need not have resulted in material damage or prejudice before his dismissal on grounds of loss of confidence may be effected. Being charged with the handling of company funds, the petitioner's position, though generally described as menial, was, nonetheless, a position of trust and confidence. No company can afford to have dishonest bill collectors.

In *Garcia v. National Labor Relations Commission*,[57] Evelyn Garcia, a cashier at a school, committed several irregularities in handling school funds. The Court upheld her dismissal from service on the ground of breach of trust. Bearing in mind that the position of cashier is a highly sensitive position, requiring as it does the attributes of absolute trust and honesty because of the temptations attendant to the daily handling of money, it could not be helped that Garcia's acts would sow mistrust and loss of confidence on the part of respondent employer.

Petitioner Manliclic's honesty and integrity are the primary considerations for his position as a bill collector because, as such, he has in his absolute control and possession — prior to remittance — a highly essential property of the cooperative, *i.e.*, its collection.

---

[55] *Rollo*, p. 106.

[56] G.R. No. 73735, 31 August 1987, 153 SCRA 500.

[57] 327 Phil. 1097 (1996).

Respondent PELCO I, as the employer, must be able to have utmost trust and confidence in its bill collectors.

The amount misappropriated by petitioner Manliclic is irrelevant. More than the resulting material damage or prejudice, it is petitioner Manliclic's very act of misappropriation that is offensive to respondent PELCO I. If taxes are the lifeblood of the state, then, by analogy, the payment collection is the lifeblood of the cooperative. The collection provides respondent PELCO I with the financial resources to continue its operations. Respondent PELCO I cannot afford to continue in its employ dishonest bill collectors.

By his own admission, petitioner Manliclic committed a breach of the trust reposed in him by his employer, respondent PELCO I. This constitutes valid cause for his dismissal from service.

WHEREFORE, premises considered, the instant Petition is *DENIED* and the Decision dated 29 May 2008 of the Court of Appeals in CA-G.R. SP No. 93971 is *AFFIRMED*. No costs.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

[**] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

EN BANC

[G.R. No. 183366. August 19, 2009]

RICARDO C. DUCO, *petitioner, vs.* **COMMISSION ON ELECTIONS, FIRST DIVISION; AND NARCISO B. AVELINO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; COMMISSION ON ELECTIONS; APPEALS; APPEAL FEES; ENUMERATION. — Under the COMELEC Rules of Procedure, the *notice of appeal* must be filed within five days after the promulgation of the decision. In filing the appeal, the appellant is required to pay the appeal fees imposed by Sec. 3, Rule 40, as amended by COMELEC Resolution No. 02-0130, namely: (1) the amount of ₱3,000.00 as appeal fee; (2) the amount of ₱50.00 as legal research fee; and (3) the amount of ₱150.00 as bailiff's fee. Pursuant to Sec. 4, Rule 40, of the COMELEC Rules of Procedure, the fees "shall be paid to, and deposited with, the Cash Division of the Commission within the period to file the notice of appeal."

2. ID.; ID.; ID.; FAILURE TO PAY THE CORRECT APPEAL FEE AS A GROUND FOR DISMISSAL; EXPLAINED. — The dismissal of the appeal was in accordance with Sec. 9 (a), Rule 22 of the COMELEC Rules of Procedure, which pertinently states: Sec. 9. *Grounds for Dismissal of Appeal*.– The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds: (a) Failure of the appellant to pay the correct appeal fee; xxx The payment of the deficiency beyond the five-day reglementary period did not cure the defect, because the date of the payment of the appeal fee is deemed the actual date of the filing of the *notice of appeal*. Accordingly, his appeal, filed already beyond the five-day reglementary period, rendered the decision of the MCTC final and immutable. At any rate, the plea for a liberal application of technical rules of procedure to promote the ends of justice is undeserving of any sympathy from us. Time and again, we have ruled that the payment of the full amount of docket fee within the period to appeal is a *sine qua non*

requirement for the perfection of an appeal. Such payment is not a mere technicality of law or procedure, but an essential requirement, without which the decision or final order appealed from becomes final and executory, as if no appeal was filed. Moreover, as we observed in *Lazaro v. Court of Appeals*: x x x the bare invocation of "interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. The Court reiterates that rules of procedure especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. x x x The petitioner ought to be reminded that appeal is not a right but a mere statutory privilege that must be exercised strictly in accordance with the provisions set by law.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION AS A GROUND; CONSTRUED. — In a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order. Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner. Alas, the petitioner did not discharge his burden.

APPEARANCES OF COUNSEL

Lord R. Marapao and *Francisco B. Sibayan* for petitioner.
The Solicitor General for public respondent.
Trabajo-Lim Law Office for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

By its April 30, 2008 order issued in EAC (BRGY.) No. 107-2008, the Commission on Elections (COMELEC), through its First Division,[1] dismissed the petitioner's appeal from the decision dated January 7, 2008 of the Municipal Circuit Trial Court of Loay-Albuquerque-Baclayon (MCTC), Branch 13, stationed in Loay, Bohol,[2] due to his failure to perfect his appeal and due to the non-payment of the correct amount of appeal fee as prescribed by the COMELEC Rules of Procedure. Likewise, the COMELEC, First Division, denied his motion for reconsideration on May 22, 2008[3] because he did not pay the motion fees prescribed on his motion for reconsideration.

He now assails the dismissal of the appeal and the denial of the motion for reconsideration, averring that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction by strictly applying its Rules of Procedure.

ANTECEDENTS

On October 29, 2007, simultaneous *barangay* and *sangguniang kabataan* (SK) elections were held all over the country. In Barangay Ibabao, Loay, Bohol, the petitioner was proclaimed as the elected *Punong Barangay*. His opponent, respondent Narciso Avelino, initiated an election protest in the Municipal Circuit Trial Court (MCTC), seeking a recount of

---

[1] Members were Commissioners Romeo A. Brawner and Moslemen T. Macarambon, Sr.; *rollo*, p. 64.

[2] *Rollo*, pp. 20-26.

[3] *Id.*, p. 74.

the ballots in four precincts upon his allegation that the election results for the position of *Punong Barangay* were spurious and fraudulent and did not reflect the true will of the electorate.

The MCTC ultimately ruled in favor of respondent Avelino,[4] to wit:

> WHEREFORE, the Court grants this petition finding petitioner NARCISO B. AVELINO to be the duly elected *Punong Barangay* of Barangay Poblacion, Ibabao, Loay, Bohol with a total of 325 votes against protestee RICARDO C. DUCO with a total of 321 votes, or a winning margin of four (4) votes.
>
> Protestee is therefore restrained from assuming the post of *Punong Barangay* of Barangay Ibabao, Loay, Bohol and from performing the functions of such office.
>
> The counterclaim of protestee RICARDO C. DUCO is hereby ordered DISMISSED in view of the foregoing findings.
>
> SO ORDERED.

Duco filed his *notice of appeal* on January 25, 2008[5] and paid as appeal fees the amounts of ₱820.00 under Official Receipt (OR) No. 3879928; ₱530.00 under OR No. 8054003; and ₱50.00 under OR No. 0207223.[6]

On April 30, 2008, however, the COMELEC dismissed Duco's appeal,[7] holding:

> Pursuant to Section 3, Rule 40 of the COMELEC Rules of Procedure which mandates the payment of appeal fee in the amount of ₱3,000.00 and Section 9 (a), Rule 22 of the same Rules which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) RESOLVED as it hereby RESOLVES to DISMISS the instant case for Protestee-Appellant's failure to perfect his appeal within five (5) days from receipt of the

---

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

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

[6] *Id.*, pp. 28-31.

[7] *Id.*, p. 64.

assailed decision sought to be appealed due to non-payment of the appeal fee as prescribed under the Comelec Rules of Procedure.

SO ORDERED.

Duco moved for reconsideration, but the COMELEC denied his motion on May 22, 2008,[8] stating:

> Protestee-Appellant's "Verified Motion for Reconsideration" filed thru mail on 12 May 2008 seeking reconsideration of the Commission's (First Division) Order dated 30 April 2008 is hereby DENIED for failure of the movant to pay the necessary motion fees under Sec. 7 (f), Rule 40 of the Comelec Rules of Procedure as amended by Comelec Resolution No. 02-0130 and for failure to specify that the evidence is insufficient to justify the assailed Order or that the same is contrary to law.
>
> ACCORDINGLY, this Commission (First Division) RESOLVES to DIRECT the Judicial Records Division-ECAD, this Commission, to return to the protestee-appellant the two (2) Postal Money Orders representing belated appeal fees attached to his verified motion for reconsideration in the amounts of Two Thousand Pesos (₱2,000.00) and One Thousand Pesos (₱1,000.00), respectively.
>
> SO ORDERED.

ISSUES

Undaunted, the petitioner comes to us on *certiorari*, contending that:

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN STRICTLY APPLYING THE COMELEC RULES OF PROCEDURE, AS AMENDED;

PUBLIC RESPONDENT AGAIN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION TO STRICTLY APPLY COMELEC RESOLUTION NO, 02-0130 DATED 18 SEPTEMBER 2002 WHEN THERE IS NO SHOWING ON THE PART OF THE PUBLIC RESPONDENT THAT ITEM # 3 OF THE SAME WAS COMPLIED WITH.

---

[8] *Id.*, p. 74.

We have to determine whether or not the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing Duco's appeal and in denying his motion for reconsideration.

RULING OF THE COURT

I

Before delving on the contentions of the petition, we cannot but point out that the assailed resolution dated May 22, 2008 was issued by the First Division when the resolution should have instead been made by the COMELEC *en banc* due to the matter thereby resolved being the petitioner's motion for reconsideration. The action of the First Division was patently contrary to Sec. 3, Article IX-C of the Constitution, which provides:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that **motions for reconsideration of decisions shall be decided by the Commission *en banc***.

In this connection, Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure, outline the correct steps to be taken in the event motions for reconsideration are filed, to wit:

> Sec. 5. *How Motion for Reconsideration Disposed Of*.—Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, **the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.**
>
> Sec. 6. *Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration.*—**The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof**.

The outlined steps were obviously not followed. There is no showing that the clerk of court of the First Division notified

the Presiding Commissioner of the motion for reconsideration within 24 hours from its filing; or that the Presiding Commissioner certified the case to the COMELEC *en banc*; or that the clerk of court of the COMELEC *en banc* calendared the motion for reconsideration within 10 days from its certification.

Lest it be supposed that the Court overlooks the violation of the Constitution, we set aside the second assailed resolution (dated May 22, 2008) for being contrary to the Constitution and in disregard of the COMELEC Rules of Procedure. For sure, the First Division could not issue the resolution because the Constitution has lodged the authority to do so in the COMELEC *en banc*.

II

Nonetheless, we do not remand the motion for reconsideration to the COMELEC *en banc* for its proper resolution. As we have done in *Aguilar v. COMELEC*,[9] we are going to resolve herein the propriety of the dismissal of the appeal "considering the urgent need for the resolution of election cases, and considering that the issue has, after all, been raised in this petition."

Under the COMELEC Rules of Procedure, the *notice of appeal* must be filed within five days after the promulgation of the decision.[10] In filing the appeal, the appellant is required to pay the appeal fees imposed by Sec. 3, Rule 40,[11] as amended

---

[9] G.R. No. 185140, June 30, 2009.

[10] Sec. 3, Rule 22.

[11] Rule 40, Sec. 3, provides:

Section 3. *Appeal Fees* – The appellant in election cases shall pay an appeal fee as follows:

(a) xxx xxx xxx

(b) Election cases appealed from courts of limited jurisdiction…….. ₱500.00

In every case, a legal research fee of ₱20.00 shall be paid by the appellant in accordance with Section 4, Republic Act No. 3870, as amended.

by COMELEC Resolution No. 02-0130,[12] namely: (1) the amount of ₱3,000.00 as appeal fee; (2) the amount of ₱50.00 as legal research fee; and (3) the amount of ₱150.00 as bailiff's fee. Pursuant to Sec. 4, Rule 40, of the COMELEC Rules of Procedure, the fees "shall be paid to, and deposited with, the Cash Division of the Commission within the period to file the notice of appeal."

The petitioner timely filed his *notice of appeal* on January 25, 2008, that is, within five days after the promulgation of the MCTC decision on January 22, 2008. On the same day, he paid ₱1,400.00 as appeal fee to the Clerk of Court of the MCTC. His payment was, however, short by ₱1,800.00, based on Sec. 3, Rule 40 of the COMELEC Rules of Procedure, as amended by Resolution No. 02-0130. Moreover, he paid the appeal fee to the MCTC cashier, contrary to the mandate of Sec. 4, Rule 40 of the COMELEC Rules of Procedure that the payment be made to the Cash Division of the COMELEC.

The petition for *certiorari* lacks merit.

The dismissal of the appeal was in accordance with Sec. 9 (a), Rule 22 of the COMELEC Rules of Procedure, which pertinently states:

Sec. 9. *Grounds for Dismissal of Appeal*.– The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the correct appeal fee;

xxx xxx xxx

The payment of the deficiency beyond the five-day reglementary period did not cure the defect, because the date of the payment of the appeal fee is deemed the actual date of the filing of the *notice of appeal*.[13] Accordingly, his appeal,

---

[12] Issued on September 18, 2002.

[13] *Zamoras v. Court of Appeals*, G. R. No. 158610, November 12, 2004, 442 SCRA 397, 404-405.

filed already beyond the five-day reglementary period, rendered the decision of the MCTC final and immutable.

Still, the petitioner contends that the COMELEC should have liberally applied its procedural rules in order not to override substantial justice. He claims that he honestly believed in good faith that his appeal fees were sufficient. He alleges that he paid the appeal fees required under A.M. No. 07-4-15-SC, which took effect May 15, 2007, per the certification dated May 19, 2008 of the Clerk of Court II of the MCTC. He submits that the COMELEC should have accepted the postal money order for ₱3,000.00 remitted with the motion for reconsideration and given him ample time to come up with any deficiency which he was more than willing to pay.

We cannot heed the petitioner's plea.

In *Loyola v. COMELEC*,[14] we emphatically announced that we would bar "any claim of good faith, excusable negligence or mistake in any failure to pay the full amount of filing fees in election cases which may be filed after the promulgation of this decision."[15]

Loyola has been reiterated in *Miranda v. Castillo*,[16] *Soller v. Commission on Elections*,[17] and *Villota v. Commission on Elections*,[18] with the Court repeating the warning that any error or deficit in the payment of filing fees in election cases was no longer excusable.

In *Zamoras v. Court of Appeals*,[19] the petitioner therein timely filed his *notice of appeal* on December 2, 2004 but paid only ₱600.00 as appeal fee. On January 17, 2003, the

---

[14] 337 Phil. 134.

[15] *Id.*, at p. 142.

[16] G. R. No. 126361, June 19, 1997, 274 SCRA 503.

[17] 394 Phil. 197.

[18] 415 Phil. 87.

[19] *Supra*.

COMELEC's Judicial Records Division directed him to remit the deficiency amount of ₱2,600.00, which he paid by postal money order on January 28, 2003, allegedly the date on which he received the notice dated January 17, 2003. Nonetheless, the COMELEC issued an order on March 10, 2003 dismissing his appeal for failure to perfect it within the 5-day reglementary period (under Sec. 3 and Sec. 9 (d), Rule 22 of the COMELEC Rules of Procedure) after it was determined that he had received the decision of the trial court on November 29, 2002 but had appealed only on December 9, 2002, or 10 days from his receipt of the decision. He filed a motion for reconsideration by registered mail on March 21, 2003, but did not pay the necessary motion fees required under Sec. 7 (f), Rule 40 of the COMELEC Rules of Procedure. He later on filed another motion for reconsideration on May 16, 2003, also by registered mail, remitting the required fees by postal money order, but the COMELEC still rejected the motion for reconsideration due to the finality of the orders earlier issued. When the COMELEC's actions were challenged, the Court held:

x x x x x x x x x

The subsequent payment of the filing fee on 28 January 2003 did not relieve Zamoras of his mistake. **A case is not deemed duly registered and docketed until full payment of the filing fee. Otherwise stated, the date of the payment of the filing fee is deemed the actual date of the filing of the notice of appeal. The subsequent full payment of the filing fee on 28 January 2003 did not cure the jurisdictional defect. The date of payment on 28 January 2003 is the actual date of filing the appeal which is almost two (2) months after Zamoras received the MTCC Decision on 29 November 2002, This is way beyond the 5-day reglementary period to file an appeal.**[20]

x x x x x x x x x

Zamoras in not only chargeable with the incomplete payment of the appeal fees but he also failed to remit the required filing fees for his motion for reconsideration. **The payment of the filing fee is a jurisdictional requirement and non-compliance is a valid basis for**

[20] At pp. 404-405.

the dismissal of the case. The subsequent full payment of the filing fee after the lapse of the reglementary period does not cure the jurisdictional defect. Such procedural lapse by Zamoras warrants the outright dismissal of his appeal. This left the COMELEC with no choice except to declare the Orders final and executory.[21]

xxx xxx xxx

At any rate, the plea for a liberal application of technical rules of procedure to promote the ends of justice is undeserving of any sympathy from us. Time and again, we have ruled that the payment of the full amount of docket fee within the period to appeal is a *sine qua non* requirement for the perfection of an appeal.[22] Such payment is not a mere technicality of law or procedure, but an essential requirement, without which the decision or final order appealed from becomes final and executory, as if no appeal was filed.[23] Moreover, as we observed in *Lazaro v. Court of Appeals*:[24]

xxx the bare invocation of "interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. The Court reiterates that rules of procedure especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. xxx

---

[21] At p. 406.

[22] *Meatmasters International Corporation v. Lelis Integrated Development Corporation,* 452 SCRA 626, 630.

[23] *Caspe v. Court of Appeals*, G. R. No. 142535, June 15, 2006, 490 SCRA 588, 591.

[24] 386 Phil. 412, 417-418.

The petitioner ought to be reminded that appeal is not a right but a mere statutory privilege that must be exercised strictly in accordance with the provisions set by law.[25]

Lastly, the petitioner's claim that the MCTC was not furnished a copy of Resolution No. 02-0130 lacks substance. The resolution was not unknown to the MCTC and to his counsel, because it had already been issued on September 18, 2002. His counsel cannot feign ignorance of the resolution for, as a lawyer, he had the duty to keep himself abreast of legal developments and prevailing or pertinent laws, rules and legal principles.

Having determined that the petitioner's appeal was properly dismissed, the COMELEC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction. In a special civil action for *certiorari*, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order.[26] Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[27] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.[28] Alas, the petitioner did not discharge his burden.

---

[25] *Caspe v. Court of Appeals*, *id.*, at p. 590.

[26] *Suliguin v. Commission on Elections*, G. R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

[27] *Reyes-Tabujara v. Court of Appeals*, G. R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

[28] *Malinias v. COMELEC*, 439 Phil. 319, 330.

III

We consider it timely to note, before closing, that on July 15, 2008, after the second assailed resolution was issued on May 22, 2008, the COMELEC promulgated its Resolution No. 8486,[29] effective on July 24, 2008,[30] ostensibly to clarify the requirement of two appeal fees being separately imposed by different jurisdictions, that is, by the Supreme Court, through A.M. No. 07-4-15-SC,[31] and by the COMELEC, through its own Rules of Procedure, as amended by Resolution No. 02-0130. For the first, the appeal fees are paid to the clerk of court of the trial court; while, for the latter, the appeal fees are paid to the clerk of court of the COMELEC.

Considering the decisive significance of the perfection of an appeal within the brief span of 5 days from notice of the decision of the trial court, the party aggrieved by the trial court's decision should be instructed that he needs to pay *both* appeal fees within such period under the existing rules of the Supreme Court and the COMELEC, or else his appeal risks dismissal.

Verily, in *Aguilar v. COMELEC*,[32] the Court has discerned the impact of Resolution No. 8486 on A.M. No. 07-4-15-SC by observing:

> [Resolution No. 8486] is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is perfected upon the filing of the

---

[29] *In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases involving Barangay and Municipal Elective Positions from the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts*.

[30] The seventh day following the publication in Philippine Star and Manila Standard Today of Resolution No. 8486, pursuant to its effectivity clause.

[31] *Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials*.

[32] G. R. No. 185140, June 30, 2009.

notice of appeal and the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. **The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal. Following, Rule 22, Section 9(a) of the COMELEC Rules, the appeal *may* be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the discretion to dismiss the appeal or not.**

Thus, recently, in *Divinagracia, Jr. v. COMELEC,*[33] the Court has issued the following dictum for the guidance of the Bench and Bar:

> In *Aguilar*, the Court recognized the Comelec's discretion to allow or dismiss a "perfected" appeal that lacks payment of the Comelec-prescribed appeal fee. The Court stated that it was more in keeping with fairness and prudence to allow the appeal which was, similar to the present case, perfected months before the issuance of Comelec Resolution No. 8486.
>
> *Aguilar* has not, however, diluted the force of Comelec Resolution No. 8486 on the matter of compliance with the Comelec-required appeal fees. To reiterate, Resolution No. 8486 merely *clarified* the rules on Comelec appeal fees which have been existing as early as 1993, the amount of which was last fixed in 2002. The Comelec even went one step backward and extended the period of payment to 15 days from the filing of the notice of appeal.
>
> Considering that a year has elapsed after the issuance on July 15, 2008 of Comelec Resolution No. 8486, and to further affirm the discretion granted to the Comelec which it precisely articulated through the specific guidelines contained in said Resolution, the Court **NOW DECLARES**, for the guidance of the Bench and Bar, that **for notices of appeal filed *after* the promulgation of this decision, errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are *no longer excusable***.[34]

---

[33] G. R. Nos. 186007 and 186016, July 27, 2009.

[34] Emphases appear in the original text.

The foregoing dictum forecloses the petitioner's plea for judicial understanding.

ACCORDINGLY, *WE* dismiss the petition for *certiorari* for lack of merit.

SO ORDERED.

Puno, C.J. Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Peralta. JJ.,* concur.

Del Castillo and *Abad, JJ.,* no part in the deliberation.

Quisumbing and *Ynares-Santiago, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 186379. August 19, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BIENVENIDO LAZARO @ BENING,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THREE GUIDING PRINCIPLES IN DETERMINING GUILT OR INNOCENCE OF THE ACCUSED. — In determining the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense. Since the crime of rape is essentially one

committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus.* In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.

2. ID.; ID.; STATUTORY RAPE; TWO ELEMENTS THEREOF. — This Court has held that if the woman is under twelve (12) years of age, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape, but also because the absence of free consent is presumed when the woman is below 12 years old. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.

3. ID.; ID.; ID.; PENALTY. — Statutory rape is punishable by *reclusion perpetua* to death. Since there was no aggravating or mitigating circumstance attendant to the crime, *reclusion perpetua* is the proper penalty.

4. ID.; ID.; ID.; CIVIL LIABILITY; AWARD THEREOF, SUSTAINED. — Also affirmed is the award of the amount of ₱ 50,000.00 as civil indemnity, the same being in conformity with the recent jurisprudence. However, the Court of Appeals' award of moral damages in the amount of ₱75,000 must be modified to ₱ 50,000.00. In *People v. Sambrano,* the Court decreed that the award of ₱75,000 as moral damages is only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves a simple rape. Hence, the amount of ₱50,000.00 as moral damages is in order.

5. REMEDIAL LAW; EVIDENCE; DENIAL; AS A NEGATIVE AND SELF-SERVING EVIDENCE; CONSTRUED. — Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters. Between the self-serving testimony of Bienvenido and the positive declaration of the victim, the latter deserves greater credence.

6. ID.; ID.; ALIBI; ELEMENTS. — For the defense of alibi to prosper, the following must be established: (a) the presence of the accused-appellant in another place at the time of the commission of the offense; and (b) the physical impossibility for him to be at the scene of the crime. Bienvenido testified that he was in the same *barangay* when the incident took place. This testimony destroys his alibi. Assuming *arguendo* that Bienvenido was in Barangay Poctoy, a neighboring *barangay*, when the questioned event took place, still there is a great possibility that he could have traveled from there to the *locus criminis* in no time. Thus, his defense of alibi cannot prosper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO,* *J.*:

For review is the Decision[1] dated 14 August 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02381, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82, finding appellant Bienvenido Lazaro *alias* Benny (Bienvenido) guilty of the crime of rape in Criminal Case No. OD-875.

Bienvenido was charged before the RTC with the complex crime of Forcible Abduction with Rape. The accusatory portion of the Complaint reads:

---

* Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Isaias Dicdican with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *rollo*, pp. 4-19.

[2] Penned by Judge Francisco F. Fanlo, Jr.

That on or about the 31st day of August, 1995 at around 6:00 o'clock in the morning, in Barangay XXX, Municipality of Odiongan, Province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, did then and there willfully and feloniously take by force and abduct the undersigned offended party by then and there taking and bringing her to the house of said accused, against her consent and by means of violence, and had carnal knowledge with her, against the latter's will.[3]

Upon arraignment on 4 March 1996, Bienvenido, assisted by counsel, pleaded not guilty to the charge.[4]

The evidence of the prosecution, as gathered from the testimonies of the victim AAA,[5] the victim's uncle BBB, and Dr. Aida Dusaban Atienza, the government physician who examined AAA, are as follows:

AAA, an eleven-year-old girl, was born on 24 December 1984.[6] She lived with her grandmother at the latter's house in Barangay XXX, Odiongan, Romblon. At 6:00 o'clock in the morning of 31 August 1995, while AAA was walking on her way to school, Bienvenido, whom AAA called *Lolo*, stopped her and brought her to his house.[7] There, Bienvenido removed AAA's panties and made her lie down on the floor, with her face up. Bienvenido took off his pants and inserted his penis into AAA's vagina and made the push and pull movement.[8] Thereafter, Bienvenido donned his pants and threatened to kill AAA if she divulged his bestial act to anyone. Afraid of Bienvenido's threatening words, AAA cried. She went back to her grandmother's house. When AAA arrived, her aunt was there, but she did not tell her aunt about the incident. On

---

[3] Records, p. 1.

[4] *Id.* at 27.

[5] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[6] TSN, 16 January 1996, pp. 9-10.

[7] TSN, 15 January 1996, pp. 3-4.

[8] TSN, 15 January 1996, pp. 4-5.

29 September 1995, worried about AAA's changing demeanor, AAA's uncle, BBB, insistently questioned her. It was then that AAA revealed her ordeal. BBB wasted no time and brought her to the health center where she was examined by Dr. Aida Atienza. Dr. Atienza's examination showed that AAA's breast was still on its pre-puberty stage. AAA's vaginal wall had been penetrated possibly by fingers or by a penis, and there were healed complete lacerations at the 4:00, 5:00 and 9:00 o'clock positions.

The defense interposed the defense of denial and alibi and presented the testimonies of Bienvenido and his niece, Yolanda Forcadas.

Bienvenido denied molesting AAA. He said that at 5:00 in the morning of 31 August 1995, he went to the port of Poctoy, Odiongan, Romblon to sell his crops. At around 12:00 noon when his goods were sold, he went to the house of his nephew, Rolando Forcadas, which was situated near the port, where he stayed until 6:00 in the morning of the following day.

At around 9:00 a.m. of 31 August 1995, he saw AAA together with a certain Felmor Perater, Jr. embracing each other. He called the attention of the two, saying that he would report the incident to AAA's grandmother. He did not report the said incident to AAA's grandmother.

However, on re-direct examination, Bienvenido made another declaration that at around 6:00 in the morning of 31 August 1995, he was in Barangay XXX, Odiongan, Romblon, harvesting corn. Thereafter, he went back to his house and took a rest. The next day, while he was in the field, he caught AAA and Felmor Perater, Jr. engaged in sexual intercourse. He scolded the two and reported the matter to AAA's grandmother. He also claimed he was the one who accompanied AAA to the Rural Health Officer for a medical examination.[9]

For her part, Yolanda Forcadas testified that on 11 August 1995, Bienvenido visited her in Barangay Batiano, Odiongan,

---

[9] TSN, 4 July 2000, p. 10.

Romblon. In the morning of 12 August 1995, Bienvenido returned to his place.

The RTC, in a decision dated 24 July 2001, convicted Bienvenido of the crime of rape only. The RTC ruled out forcible abduction, since evidence tended to show that the victim was lured by the perpetrator to go with him to his house. This was buttressed by AAA's admission that she had been given money by Bienvenido twice, and that she had been to the house of the former once. The RTC imposed upon Bienvenido the penalty of *reclusion perpetua* and ordered him to indemnify the victim in the amount of ₱50,000.00 and to pay the costs. The decretal portion reads:

> WHEREFORE, premises considered, accused BIENVENIDO LAZARO is hereby found GUILTY of rape and is hereby meted the penalty of *reclusion perpetua*, with all the accessory penalties of the law, to indemnify the victim in the amount of ₱50,000.00 and to pay the costs.
>
> Accused is entitled to full time of his preventive imprisonment pursuant to Art. 29 of the Revised Penal Code.[10]

Bienvenido appealed the judgment of conviction to the Court of Appeals. In its decision dated 14 August 2008, the Court of Appeals affirmed the guilty verdict and the sentence imposed by the RTC. In addition to the award of ₱50,000.00 as civil indemnity, the Court of Appeals ordered Bienvenido to pay the victim ₱75,000.00 as moral damages, thus:

> WHEREFORE, in view of the foregoing premises, the assailed decision of the Regional Trial Court, Branch 82, in Odiongan, Romblon in Crim. Case No. OD-875, finding accused-appellant Bienvenido Lazaro guilty of the crime of rape and imposing the penalty of *reclusion perpetua*, is hereby AFFIRMED with the MODIFICATION that accused-appellant is further ordered to pay the victim ₱75,000.00 as moral damages.[11]

---

[10] CA *rollo,* p. 134.

[11] *Rollo,* p. 184.

Hence, the instant recourse.

Bienvenido claims that it was witness BBB, the victim's uncle, who initiated the filing of the criminal complaint against him. Since Article 344[12] of the Revised Penal Code and Section 5, Rule 110[13] of the Revised Rules of Court require that the right to file an action be given to the parents, grandparents or guardians of the minor, the filing by BBB of the complaint renders the same defective.

In a bid to be exculpated from the charge, Bienvenido contends that AAA's testimony had material inconsistency as to the date of the commission, since at one point AAA declared that the rape happened on 12 August 1995; and in the rest of her testimony, she said it occurred on 31 August of the same year.

---

[12] Art. 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.* –

x x x x x x x x x

The offenses of seduction, abduction, **rape**, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

[13] Section 5, Rule 110 of the 1985 Rules of Criminal Procedure states:

Section 5. Who must prosecute criminal actions. – x x x.

The offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. In case the offended party dies or becomes incapacitated before she could file the complaint and has no known parents, grandparents, or guardian, the State shall initiate the criminal action in her behalf.

The *offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses,* independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents or guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph.

In determining the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[14]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.[15] In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[16] If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[17]

In this case, upon assessing the victim's testimony, the RTC found her credible, thus:

> There is no evidence to show any dubious reason or improper motive why the victim in the case would testify falsely against the accused or falsely implicate him in a heinous crime.
>
> xxx xxx xxx
>
> The laceration on the vagina of the girl who was examined weeks after the incident by Dra. Atienza is indicative of some object having entered it. Adding to this is the testimony of AAA that accused rode on her body and made a "pull and push movement."[18]

This Court itself has diligently pored over the transcripts of stenographic notes of this case and, like the RTC, it finds the

---

[14] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[15] *People v. Gabawa*, 446 Phil. 616, 625 (2003).

[16] *People v. Quijada*, 378 Phil. 1040, 1047 (1999).

[17] *People v. Babera*, 388 Phil. 44, 53 (2000).

[18] CA *rollo*, p. 134.

victim's testimony on the incident forthright or straightforward, consistent with an honest and realistic account of the tragedy that befell her. She narrated the incident and the circumstances immediately after it in this manner:

Q: Upon arriving in his house, where did he bring you?

A: In the upper part of his house.

Q: Upon reaching there, what did he do to you?

A: He took off my panty.

Q: After he took off your panty, what did he do to you?

A: He made me lie down.

Q: Face up or face down?

A: Face up.

Q: Where did you lie down?

A: On the floor.

Q: After making you lie down on the floor of his house, what did the accused do?

A: He took off his pants.

Q: After taking off his pants, what did he do to you?

A: He put his penis in my vagina.

Q: How did you feel when his penis was placed in your vagina?

A: It was painful.

Q: After placing his penis to your vagina, what did the accused do?

A: He made the push and pull movement.

Q: How long is this push and pull movement last?

A: About two minutes.

Q: After that push and pull movement, what did the accused do?

A: He stood up.

Q: And what did he do since he had taken off his pants?

A: He put on his pants.

Q: According to you, your panty was taken off by the accused, what did you do after that push and pull?

A: I put on my panty.

Q: After putting on your panty, what did the accused tell you, if any?

A: Don't tell anybody, if you tell I will kill you.

Q: After warning you not to tell anybody otherwise you will be killed, what did you do?

A: I cried.

x x x x x x x x x

Q: On 29 September 1995, do you know where was uncle Rolly Venus?

A: In their house.

Q: Did you see him?

A: Yes, sir.

Q: When you saw your uncle on that date, what if any transpired between you and your uncle?

A: He asked me why I am lonely and weak.

Q: What did you answer him?

A: I relayed the incident.

Q: That incident of August 31, 1995?

Q: Yes, sir.[19]

On cross examination, AAA held fast to her declaration that she was molested by Bienvenido, thus:

Q: During this time your Lolo Bening was giving you money x x x?

---

[19] TSN, 15 January 1996, pp. 4-6.

A: Yes, sir.

xxx xxx xxx

Q: Now, you were telling us that when your panty was taken off by your Lolo Bening, you were made to lie down on the floor, is that correct?

A: Yes, sir.

Q: And there, he immediately also took off his pants and ride over you for a period of two minutes?

A: Yes, sir.

Q: This was all he did to you?

A: Yes, sir.

Q: He was making the push and pull movement on your body at the same time holding your both hands with his both hands also, is that correct?

A: Yes, sir.[20]

From the foregoing, the prosecution satisfactorily established in vivid detail that during the incident in question, Bienvenido, whom AAA called *Lolo,* enticed her with monetary favor to go with him to his house. Unaware of the plot hatched by the person she treated as a grandfather and at some point a provider, AAA went along with him. Taking advantage of the trust and the tender age of AAA, Bienvenido was able to consummate his evil design. Ignorant of the ways of men, AAA did not protest or agree to the sexual advances of the malefactor. As Bienvenido inserted his penis and made a push and pull movement, AAA could only feel the pain of the insertion, not knowing that molestation had more far-reaching consequences on her emotional growth and social development.

Although the evidence is bereft of any indication that AAA, 11 years old during the incident, was coerced by the perpetrator, this fact cannot be utilized by the latter. This Court has held that if the woman is under twelve (12) years of age, proof of

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

force and consent becomes immaterial, not only because force is not an element of statutory rape, but also because the absence of free consent is presumed when the woman is below 12 years old.[21] The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.[22] Sexual congress with a girl under 12 years old is always rape.[23]

Medical findings revealed that the victim's vagina had old lacerations that were consistent with her claim that she was molested. Against the damning evidence adduced by the prosecution, what appellant could only muster is a barefaced denial. Unfortunately for him, his defense is much too flaccid to stay firm against the weighty evidence for the prosecution. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters.[24] Between the self-serving testimony of Bienvenido and the positive declaration of the victim, the latter deserves greater credence.[25]

Also unavailing is Bienvenido's insinuation that it was a certain Felmor Perater, Jr. who might have violated AAA's womanhood and not he. Again, this was simply a futile attempt on the part of the accused, unsubstantiated by any thread of evidence, to extricate himself from the charge. His differing declarations on this matter (at one point, he said AAA and Felmor were just embracing each other, then at another he said the two were engaged in sexual intercourse) expose the fallacy of his claim of innocence.

---

[21] *People v. Somodio*, 427 Phil. 363, 376 (2002).

[22] *Id*.

[23] *Id*.

[24] *People v. Morales*, 311 Phil. 279, 289 (1995).

[25] *People v. Baccay*, 348 Phil. 322, 327 (1998).

Bienvenido's defense of alibi cannot be believed. For the defense of alibi to prosper, the following must be established: (a) the presence of the accused-appellant in another place at the time of the commission of the offense; and (b) the physical impossibility for him to be at the scene of the crime.[26] Bienvenido testified that he was in the same *barangay* when the incident took place. This testimony destroys his alibi. Assuming *arguendo* that Bienvenido was in Barangay Poctoy, a neighboring *barangay*, when the questioned event took place, still there is a great possibility that he could have traveled from there to the *locus criminis* in no time. Thus, his defense of alibi cannot prosper.

Although AAA reported the incident to her uncle only on 29 September 1995, almost a month after she was ravished, this cannot be taken against her. She was seriously threatened by the malefactor if she told the said occurrence to anyone. Naturally, as a very young girl, she must have had an overpowering fear that prevented her from telling her uncle of her grueling experience in the hands of Bienvenido. It is not uncommon for a young girl to conceal for some time the assault on her virtue.[27] Her initial hesitation may be due to her youth and the molester's threat against her. Besides, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[28] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances.[29] The range of emotions shown by rape victims is yet to be captured even by calculus.[30] It is, thus, unrealistic to expect uniform reactions from them.

---

[26] *People v. Penillos*, G.R. No. 65673, 30 January 1992, 205 SCRA 546, 560.

[27] *Id*.

[28] *People v. Remoto*, 314 Phil. 432, 450 (1995).

[29] *Id*.

[30] *Id*.

Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated.[31] This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[32] It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by Bienvenido. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case, since AAA was threatened by appellant that she would be killed if ever she would tell anybody about the rape incident.

We go now to the allegation that the complaint filed was defective.

The pertinent laws existing at the time the crime was committed in 1995 were Article 344 of the Revised Penal Code (prior to its amendment by Republic Act No. 835319, otherwise known as "The Anti-Rape Law of 1997," which took effect on 22 October 1997) and Section 5 of Rule 110 of the 1985 Rules of Criminal Procedure. Under the said laws, rape was considered as a private crime, the prosecution of which must be initiated by the minor victim or her parents, grandparents or guardian. Bienvenido asserts that it was AAA's uncle BBB who filed the complaint, rendering the same defective. This assertion is baseless. It remains an allegation, since Bienvenido failed to present any proof thereof. On the contrary, a thorough examination of the complaint and the sworn affidavit would establish that the same were duly signed by private offended party AAA. There is no indication these documents were initiated by AAA's uncle. As correctly observed by the Court of Appeals, AAA's statements were only reduced into writing by the

---

[31] *People v. Malones*, 469 Phil. 301, 328 (2004).

[32] *Id*.

authorities; but, at the end part of the documents, her signature was affixed thereto conforming to the contents of AAA's affidavit and the fact that she personally initiated the complaint. The affidavit was executed by AAA in the presence of the police officers and other witnesses and was countersigned by the public prosecutor.

As to Bienvenido's claim that AAA's testimony was riddled with material inconsistencies, since she gave varying dates of the commission of the crime, the same cannot be taken in his favor.

Firstly, the exact date of the commission of rape is not material. In rape cases, the time of commission of the crime is not a material ingredient of the offense.[33] In this connection, this Court also ruled that in rape cases, victims of rape hardly retain in their memories the dates, number of times, and manner in which they were violated. In the same vein, to be material, discrepancies in the testimony of the victim should refer to significant facts that are determinative of the guilt or innocence of the accused, not to mere details that are irrelevant to the elements of the crime, such as the exact time of its commission in a case of rape.[34]

Secondly, the mention of 12 August 1995 as the date of commission of the crime was a mere inadvertence on the part of the public prosecutor. The complaint-affidavit mentions 31 August 1995 as the date when AAA was raped. There was only one instance in her whole testimony when "12 August 1995" was mentioned, on page 3 of the transcript of records taken on 1 January 1996, *viz*:

PROS. VICTORIANO ON DIRECT EXAMINATION:

xxx xxx xxx

Q: On ***August 12, 1995*** at about six (6:00) o'clock in the morning, where were you?

---

[33] *People v. Gopio*, 400 Phil. 217, 242 (2000).

[34] *People v. Pambid*, 384 Phil. 702, 727 (2000).

A: I was going to school.[35]

Later, the public prosecutor corrected himself by saying:

Q: Did you reveal to your aunt what was done to you by the accused?

A: No, sir.

xxx xxx xxx

Q: When you saw your uncle on that date, what if any transpired between you and your uncle?

A: He asked me why I am lonely and weak.

Q: What did you answer him?

A: I relayed the incident.

Q: ***That incident of August 31, 1995?***

A: Yes, sir.[36] (Emphasis supplied.)

The rest of the transcript of records referred to 31 August 1995 as the date of the rape incident. On cross-examination, this was AAA's testimony:

Q: Now, you were telling us that when your panty was taken off by your Lolo Bening, you were made to lie down on the floor, is that correct?

A: Yes, sir.

Q: And there, he immediately also took off his pants and ride over you for a period of two minutes?

A: Yes, sir.

Q: This was all that he did to you?

A: Yes, sir.

Q: He was making the push and pull movement on your body at the same time holding your both hands with his both hands also, is that correct?

---

[35] TSN, 15 January 1996, p. 3.

[36] *Id.* at 6.

A: Yes, sir.

Q: His hand therefore was not able to hold your vagina because he was holding your both hands while making the push and pull movement?

A: It was held by him.

Q: When did he hold your vagina?

A: ***On August 31.***[37] (Emphasis supplied.)

In sum, the Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant Bienvenido guilty of the charge. The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect, unless the trial court overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case.[38] In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not.[39] This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused.[40] This is especially true when the factual findings of the trial court are affirmed by the appellate court.[41]

As to the penalty imposed, the RTC correctly sentenced appellant to *reclusion perpetua*. Statutory rape is punishable by *reclusion perpetua* to death. Since there was no aggravating or mitigating

---

[37] *Id.* at 19-20.

[38] *People v. Dagpin*, 400 Phil. 728, 736 (2000).

[39] *People v. Digma*, 398 Phil. 1008, 1023 (2000).

[40] *People v. Cula*, 385 Phil. 742, 752 (2000).

[41] *People v. Gallego*, 453 Phil. 825, 846 (2003).

circumstance attendant to the crime, *reclusion perpetua* is the proper penalty.

Also affirmed is the award of the amount of ₱50,000.00 as civil indemnity, the same being in conformity with the recent jurisprudence.[42] However, the Court of Appeals' award of moral damages in the amount of ₱75,000 must be modified to ₱50,000.00. In *People v. Sambrano*,[43] the Court decreed that the award of ₱75,000 as moral damages is only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves a simple rape. Hence, the amount of ₱50,000.00 as moral damages is in order.

WHEREFORE, the instant petition is *DENIED*. The Decision of the Court of Appeals dated 14 August 2008 in CA-G.R. CR-H.C. No. 02381, finding Bienvenido Lazaro *a.k.a.* Bening *GUILTY* beyond reasonable doubt on one count of statutory rape, sentencing him to suffer the penalty of *RECLUSION PERPETUA* and ordering him to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages is hereby *AFFIRMED in toto*.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

---

[42] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[43] 446 Phil. 145, 161 (2003).

[**] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 186381. August 19, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CLEMENCIA ARGUELLES *y* TALACAY,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; SALE, ADMINISTRATION, DELIVERY DISTRIBUTION AND TRANSPORTATION OF PROHIBITED DRUGS DISTINGUISHED FROM POSSESSION OR USE OF PROHIBITED DRUGS. — The accused was charged with two crimes, which, although arising from the same transaction, are distinct crimes under RA 6425, as amended by RA 7659. Article II, Section 4 states: Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. – The penalty of *reclusion perpetua* to death and a fine from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed. Article II, Section 8, on the other hand, provides: Sec. 8. *Possession or Use of Prohibited Drugs*. – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof. Therefore, the accused must be meted separate penalties for each of the offenses. Accordingly, the penalty to be imposed should be two counts of *reclusion perpetua*, the appropriate penalty for the offenses.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is an appeal by accused Clemencia Arguelles *y* Talacay of the Court of Appeals (CA) Decision[1] dated August 19, 2008 in CA-G.R. CR-HC No. 02599 affirming accused's conviction by the Regional Trial Court (RTC) of Mandaluyong City[2] for violations of Republic Act No. 6425 (RA 6425), otherwise known as the Dangerous Drugs Act of 1972.

The facts of the case are as follows:

At about 10 o'clock in the morning of September 28, 1998, a female informant arrived at the Philippine National Police (PNP) Narcotics Unit in Camp Crame, Quezon City. She informed Police Officer 3 (PO3) Albert Colaler about a certain "Clemen," residing at Block 40, Martinez Street, Welfareville, Mandaluyong City, who allegedly requested the confidential informant to look for a buyer of ₱2,000 worth of marijuana. PO3 Colaler immediately relayed the information to his superior officer, Major Pedro Bualtabatingan. After speaking with the confidential informant, Major Bualtabatingan directed PO3 Colaler to accompany the confidential informant to the alleged residence of Clemen.[3]

At the residence of the accused, the confidential informant introduced PO3 Colaler to accused as a prospective buyer. PO3 Colaler told Clemen he intended to buy one kilo of marijuana. However, accused said that the item was not yet in her possession, and that PO3 Colaler should come back that afternoon or in the evening.[4] PO3 Colaler went back to the

---

[1] Penned by Associate Justice Isaias Dicdican, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, *rollo*, pp. 2-20.

[2] RTC Decision, CA *rollo*, pp. 22-30.

[3] *Rollo*, p. 5.

[4] *Id*.

PNP Narcotics Unit office and reported to Major Bualtabatingan. At 7 o'clock that evening, the confidential informant returned to the PNP Narcotics Unit office and told PO3 Colaler that the marijuana had been delivered to the accused. Major Bualtabatingan then instructed PO3 Colaler to conduct a buy-bust operation. PO3 Colaler was to act as poseur-buyer, while PO2 Peter Sistemio was to act as the immediate back-up officer. Four other police officers served as perimeter security. The team was given a Voyager transceiver alarm, a ₱100-bill as marked money, and pieces of paper the size of the ₱100-bill to serve as boodle money, which were then placed in a white envelope.[5]

The team proceeded to accused's residence. PO3 Colaler and the confidential informant entered the house. Upon seeing them, accused got a traveling bag under a wooden bed. She opened the bag and asked for the payment. PO3 Colaler handed her the white envelope, and the accused, in turn, handed him a square package wrapped in newspaper. After receiving the package, PO3 Colaler placed his hand in his right pocket and pressed the alarm as a signal to the other members of the team that the sale had been consummated. He took out his gun, introduced himself as a police officer, and placed accused under arrest. The rest of the team arrived. PO2 Sistemio then retrieved the traveling bag, which revealed four bricks of suspected dried marijuana leaves and nine plastic sachets of what appeared to be marijuana also. PO3 Colaler retrieved the marked money from accused. PO3 Colaler then informed accused of her constitutional rights and brought her out of the house. Accused shouted and resisted arrest. When she shouted, an old woman came out of a nearby house and tried to run away. However, the police officers caught up with her and brought her to the PNP Narcotics Unit office as well.[6]

All the items retrieved from the buy-bust operation were turned over to SPO1 Rolando Duazon, the investigating officer, who then prepared the request for laboratory examination of

[5] *Id*.

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

the specimens. The laboratory report confirmed that the specimens recovered were indeed marijuana.

Accused, for her part, denied the charges against her. She claims that she is a widow and a fish vendor residing at Fabella Housing, Mandaluyong City. She alleged that on September 28, 1998, at around 8:30 in the evening, she was at the house of a certain Vicenta Jacinto, whom she visited weekly for her body massage. While she was standing by the door of the house, a commotion occurred and a man suddenly grabbed her left arm and wanted to talk to her. She was forced to go with the man and ended up at the PNP Narcotics Unit office in Camp Crame. She further alleged that the man who grabbed her was PO3 Colaler who, at that time, was not armed with a warrant for her arrest.[7]

During cross-examination, accused appeared confused and disoriented and denied the statement she gave on direct examination about the commotion at Vicenta Jacinto's house. She said she could not remember if a commotion took place or what exactly transpired on that day. However, on the continuation of her cross-examination the next day, accused said she did remember the commotion brought about by police officers looking for Vicenta Jacinto. She also said that she and Vicenta were brought to the PNP Narcotics Unit office.[8]

Accused was then charged under two separate Informations with, first, violation of Article II, Section 4 of RA 6425, for selling 493.3 grams of marijuana to PO3 Colaler and, second, for violation of Article II, Section 8, RA 6425 for having in her possession the four bricks and nine plastic sachets of marijuana.[9]

On December 11, 2006, the RTC rendered a Decision,[10] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused, CLEMENCIA ARGUELLES *y* TALACAY,

---

[7] *Id*. at 7.

[8] *Id*. at 7.

[9] CA *rollo*, p. 22.

[10] Penned by Judge Marissa M. Guillen, CA *rollo*, pp. 22-30.

GUILTY of violation of Section 4 and 8, Article II of RA 6425, as amended in the aforementioned criminal information.

As a consequence of this judgment, the accused shall serve an imprisonment of *reclusion perpetua* and shall pay a civil indemnity of Five Hundred Thousand Pesos (Php500,000.00). The subject specimen of this case consisting of bricks of marijuana and dried leaves wrapped in newspaper and the nine plastic sachets containing marijuana shall be surrendered to the Dangerous Drugs Board for proper disposal.

Any period of preventive suspension shall be credited in favor of the accused in the service of her sentence in accordance with Article 29 of the Revised Penal Code.

The City Jail Warden for Mandaluyong City is directed to transfer the accused to the custody of the Correctional Institute for Women in Mandaluyong City for the service of her sentence.

SO ORDERED.[11]

Accused appealed her conviction to the Court of Appeals. The CA, in a Decision dated August 19, 2008, dismissed the appeal and affirmed the RTC Decision *in toto*.[12] Hence, accused is now before this Court interposing this appeal.

We deny the appeal.

The RTC and the CA both found that the prosecution established the guilt of the accused beyond reasonable doubt. We find no reason to disturb these findings. The RTC had the opportunity to examine the evidence and observe the demeanor of the witnesses. Its findings of fact are given great weight, and because they were affirmed by the CA, they are binding upon this Court.

However, the RTC overlooked a very important matter. The accused was charged with two crimes, which, although arising from the same transaction, are distinct crimes under RA 6425, as amended by RA 7659.

Article II, Section 4 states:

---

[11] CA *rollo*, p. 30.

[12] *Rollo*, p. 19.

Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. – The penalty of *reclusion perpetua* to death and a fine from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

Article II, Section 8, on the other hand, provides:

Sec. 8. *Possession or Use of Prohibited Drugs*. - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

Therefore, the accused must be meted separate penalties for each of the offenses. Accordingly, the penalty to be imposed should be two counts of *reclusion perpetua*, the appropriate penalty for the offenses.

WHEREFORE, the foregoing premises considered, the appeal is *DISMISSED* and the Decision of the Court of Appeals dated August 19, 2008 in CA-G.R. CR-HC No. 02599 is *AFFIRMED WITH MODIFICATION*. Accused is hereby sentenced to two counts of *reclusion perpetua* to be served simultaneously. In all other respects, the trial court's Decision is affirmed.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 149241. August 24, 2009]

DART PHILIPPINES, INC., *petitioner, vs.* **SPOUSES FRANCISCO and ERLINDA CALOGCOG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE APPELLATE COURT GENERALLY NOT REVIEWED BY THE SUPREME COURT; EXCEPTION. — Preliminarily, the Court admits that, ordinarily, it will not review the findings of fact made by the appellate court. However, jurisprudence lays down several exceptions, among which are the following which obtain in this case: when the judgment is based on a misapprehension of facts and when the appellate court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion. Thus, the Court finds it imperative to evaluate, as in fact it had reviewed, the records of the case, including the evidence adduced during the trial, in relation to the arguments of the parties and the applicable law and jurisprudence.

2. CIVIL LAW; HUMAN RELATIONS; EVERY PERSON MUST, IN THE EXERCISE OF HIS RIGHTS AND IN THE PERFORMANCE OF HIS DUTIES ACT WITH JUSTICE, GIVE EVERYONE HIS DUE, AND OBSERVE HONESTY AND GOOD FAITH; ABUSE OF RIGHT; ELEMENTS. — Under Article 19 of the Civil Code, every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. To find the existence of abuse of right under the said article, the following elements must be present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. Accordingly, the exercise of a right shall always be in accordance with the purpose for which it has been established, and must not be excessive or unduly harsh—there must be no intention to injure another. A person will be protected only when he acts in the legitimate

exercise of his right, that is, when he acts with prudence and in good faith, not when he acts with negligence or abuse.

3. ID.; ID.; MALICE OR BAD FAITH; WHEN PRESENT; APPLICATION IN CASE AT BAR. — Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same. Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive. At the crux of this controversy, therefore, is whether petitioner acted in bad faith or intended to injure respondents when it caused the auditing of the latter's account, when it implemented the pre-paid basis in treating the latter's orders, and when it refused to renew the distributorship agreement. From these facts, we find that bad faith cannot be attributed to the acts of petitioner. Petitioner's exercise of its rights under the agreement to conduct an audit, to vary the manner of processing purchase orders, and to refuse the renewal of the agreement was supported by legitimate reasons, principally, to protect its own business. The exercise of its rights was not impelled by any evil motive designed, whimsically and capriciously, to injure or prejudice respondents. The rights exercised were all in accord with the terms and conditions of the distributorship agreement, which has the force of law between them. Clearly, petitioner could not be said to have committed an abuse of its rights. It may not be amiss to state at this juncture that a complaint based on Article 19 of the Civil Code must necessarily fail if it has nothing to support it but innuendos and conjectures. Given that petitioner has not abused its rights, it should not be held liable for any of the damages sustained by respondents. The law affords no remedy for damages resulting from an act which does not amount to a legal wrong. Situations like this have been appropriately denominated *damnum absque injuria*. To this end, the Court

reverses and sets aside the trial and appellate courts' rulings. Nevertheless, the Court sustains the trial court's order for the reimbursement by petitioner to respondents of ₱23,500.17, with 12% interest per annum, computed from the filing of the original complaint up to actual payment, representing the salaries of the internal auditors, because, first, the award was never questioned by petitioner, and second, petitioner was the one which engaged the services of the auditors.

4. ID.; DAMAGES; ATTORNEY'S FEES; WHEN AWARD THEREOF NOT PROPER. — As regards petitioner's claim for attorney's fees, the Court cannot grant the same. We emphasized in prior cases that no premium should be placed on the right to litigate. Attorney's fees are not to be awarded every time a party wins a suit. Even when a claimant is compelled to litigate or to incur expenses to protect his rights, still attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

CARPIO MORALES, *J., concurring and dissenting opinion:*

CIVIL LAW; CONTRACTS; IMPOSITION OF 12% INTEREST NOT PROPER SINCE THERE IS NO FORBEARANCE OF MONEY INVOLVED. — I concur with the *ponencia* with respect to the reimbursement of payment of professional fees in favor of respondent spouses. However, I dissent with respect to the imposition of 12% interest *per annum* *on the reimbursable amount* which the *ponencia* regards as "com[ing] in the nature of a forbearance of money." "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. With this standard, the obligation in this case is not a forbearance of money. x x x I thus submit that the proper interest to be imposed on the reimbursable amount is 6% *per annum* from the time of judicial demand to the finality of the decision, and 12% *per annum* from the finality of the decision until full satisfaction, conformably with *Eastern Shipping Lines v. Court of Appeals*.

APPEARANCES OF COUNSEL

Meer Meer and Meer for petitioner.
Kintanar Jamon Paruñgo and Ladia Law Firm for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner assails in this Rule 45 petition the February 28, 2001 Decision[1] and the July 30, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 52474. The facts and proceedings that led to the filing of the instant petition are pertinently narrated below.

Engaged in the business of manufacturing or importing into the Philippines Tupperware products and marketing the same under a direct selling distribution system,[3] petitioner entered into a Distributorship Agreement with respondents on March 3, 1986.[4] The agreement was to expire on March 31, 1987 but was subject to an automatic renewal clause for two one-year terms.[5] On April 1, 1991, the parties again executed another

---

[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr., concurring; *rollo*, pp. 56-76.

[2] *Id.* at 33.

[3] *Rollo*, p. 9.

[4] Records, p. 116.

[5] *Id.* at 125. The March 3, 1986 Distributorship Agreement contains the following provision:

Section 7. Unless otherwise terminated, the term of this Distributorship Agreement shall be for a period beginning on the date first above written and ending on March 31, 1987 and shall be automatically renewed for two additional one (1) year terms subject to the right of the DISTRIBUTOR or SELLER to terminate this Agreement at the date of expiration of the initial period or at the end of each of the one-year renewals upon written notice to the other party at least sixty (60) days prior to such date of expiration. After the expiration of the initial term and the automatic two one (1) year term renewals thereof, the Agreement may be renewed upon such terms and conditions as may be mutually agreed upon by the parties.

Distributorship Agreement[6] which was to expire on March 31, 1992 but renewable on a yearly basis upon terms and conditions mutually agreed upon in writing by the parties.[7]

Following the expiration of the agreement, petitioner, on April 30, 1992, informed respondents that, due to the latter's several violations thereof, it would no longer renew the same.[8] Respondents then made a handwritten promise for them to observe and comply with the terms and conditions thereof.[9] This convinced petitioner to extend, on July 24, 1992, the period of the distributorship up to September 30, 1992.[10]

---

[6] *Id.* at 88-97.

[7] *Id.* at 65. The April 1, 1991 Distributorship Agreement contains the following provision:

Section 6. Unless otherwise terminated, the term of this Distributorship Agreement shall be for a one year period beginning on the date first above written and ending on March 31, 1992, and may be renewed on a yearly basis upon terms and conditions mutually agreed to in writing between the parties and provided that DISTRIBUTOR proves to the SELLER's satisfaction that it has faithfully complied with the original terms and conditions of this Agreement and that it has conducted its business in accordance with agreed policies, guidelines, rules and regulations such as but not limited to those which are in the TUPPERWARE KNOW HOW Guide, TUPPERWARE Demonstration Guide, TUPPERWARE Distributors Manual and other written communications, and furthermore, that it has conducted its affairs in a manner which protects or does not detract from the SELLER's business image and reputation for fair dealings with those related to it, either as a constituent of the sales force or as part of the consuming public.

[8] *Id.* at 98-99.

[9] *Id.* at 100.

[10] *Id.* at 86. The July 24, 1992 Agreement of the parties pertinently reads:

WHEREAS, the parties hereto entered into an AGREEMENT dated April 1, 1991 and acknowledged before Notary Public Simeon G. Hildawa as Doc. No. 279, Page No. 57, Book No. I, Series of 1991, copy of which is hereto attached and made an integral part hereof as Annex "A";

WHEREAS, by express provision of Section 6 of the said AGREEMENT, the term thereof had expired on March 31, 1992;

NOW, THEREFORE, PREMISES CONSIDERED, the parties hereto hereby agreed to extend the said AGREEMENT upon the same terms and

In the meantime, on July 2, 1992, petitioner subjected respondents' account to an audit review.[11] In September 1992, petitioner informed respondents that it had engaged the services of an auditing firm and that it was again subjecting respondents' account to an audit review.[12] Objecting to the second audit,[13] respondents disallowed the auditing firm from inspecting their books and records. As a result, petitioner only accepted respondents' purchase orders on pre-paid basis.[14]

On September 29, 1992, a day before the expiry of the Distributorship Agreement, respondents filed before the Regional Trial Court (RTC) of Pasig City a Complaint for damages with application for a writ of injunction and/or restraining order docketed as Civil Case No. 62444.[15] They alleged that petitioner abused its right when it caused the audit of their account and when it only honored their orders if they were pre-paid, thereby causing damages to them of around ₱1.3M.[16]

On November 12, 1992, the trial court issued a writ of preliminary injunction and directed petitioner to observe the terms and conditions of the Distributorship Agreement and to honor, deliver and fulfill its obligations in effecting deliveries of Tupperware products to respondents.[17] In the subsequent *certiorari* proceedings before the appellate court docketed as CA-G.R. SP No. 29560, the CA ruled that the Distributorship Agreement already expired; thus, the trial court committed grave

---

conditions stated therein, except for the period, which period shall end on September 30, 1992, which may however be further extended or renewed upon terms and conditions mutually agreed to in writing between the parties and subject to other conditions stated in the said AGREEMENT.

[11] *Id.* at 2.

[12] *Id.* at 57-58.

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

[14] *Id.* at 59.

[15] *Id.* at 1.

[16] *Id.* at 3-7.

[17] *Id.* at 179-181.

abuse of discretion in granting the writ of preliminary injunction which had the effect of enforcing a contract that had long expired.[18]

Respondents then moved before the trial court, on June 14, 1993, for the admission of their Supplemental Complaint,[19] in which they alleged that petitioner refused to award benefits to the members of respondents' sales force and coerced the said members to transfer to another distributor; that petitioner refused to comply with Sections 8 and 9[20] of the Distributorship Agreement

---

[18] *Id.* at 367. The CA rendered its Decision in CA-G.R. SP No. 29560 on May 28, 1993.

[19] *Id.* at 376-378.

[20] Sections 8 and 9 of the April 1, 1991 Distributorship Agreement provide:

Section 8. Upon termination of this Distributorship Agreement, any and all the rights and privileges of the DISTRIBUTOR under this Agreement shall be terminated, and DISTRIBUTOR agrees not to make any further sale of "PRODUCTS" or make further use of the aforementioned valid TRADEMARKS or the trading style TUPPERWARE HOME PARTIES. However, as to bonafide orders received by DISTRIBUTOR prior to date of termination (which it agrees upon request to show to SELLER), DISTRIBUTOR agrees to make deliveries of "PRODUCTS" in an orderly and businesslike manner. As to all other "PRODUCTS" on hand at date of termination, DISTRIBUTOR agrees, at SELLER's option, to sell and immediately deliver such "PRODUCTS" to seller. SELLER agrees to pay DISTRIBUTOR the parties originally paid by DISTRIBUTOR less any indebtedness, including interest, which DISTRIBUTOR owes to SELLER.

Upon termination of this Agreement, DISTRIBUTOR will immediately discontinue all uses of SELLER's TRADEMARK, copyrighted materials, trade names and trading styles, and will make or cause to be made such changes in signs and buildings, vehicles, *etc*. and redeliver such printed materials on hand as SELLER may direct in order to effectuate such discontinuance.

Section 9. The termination of a Distributorship Agreement under Sec. 8 hereinabove notwithstanding, the SELLER recognizes the right of distributors who have terminated their agreements with the SELLER after having faithfully complied with their rights and obligations during the life of the agreement, to the benefit of, or the enhancement of the image of the SELLER and the "PRODUCTS," to enter into agreements selling or transferring their "goodwill" to an INCOMING DISTRIBUTOR to whom

by not paying respondents the value of the products on hand and in their custody, and by not effecting the transfer of their good will to the absorbing distributor; and that petitioner, by its actions which resulted in the loss of respondents' sales force, had made inutile respondents' investment in their building. Respondents thus prayed for additional actual damages, specifically ₱4,495,000.00 for the good will, ₱1M for the products on hand, and ₱3M for the cost of the building.

Expectedly, petitioner opposed the admission of the supplemental complaint.[21] Amid the protestations of petitioner, the trial court admitted the supplemental complaint[22] and ordered the former to file its supplemental answer.[23]

---

the SELLER is willing to grant a new DISTRIBUTORSHIP AGREEMENT under such terms and conditions mutually agreed upon by the SELLER and the INCOMING DISTRIBUTOR; provided, that the agreement selling or transferring the "goodwill" between the OUTGOING DISTRIBUTOR and the INCOMING DISTRIBUTOR, incorporates provisions whereby the OUTGOING DISTRIBUTOR binds itself or himself for a period of three (3) years from the date of the sale or transfer agreement:

(a) Not to engage, directly or indirectly, in any direct selling operation of any product by the party plan system or by any other direct selling method, as distinguished from "shop retailing";

(b) Not to engage[,] directly or indirectly[,] in the sale of any product in competition with the "PRODUCTS" manufactured and/or sold by DART (PHILIPPINES), INC.

(c) Not to act in any manner detrimental to or prejudicial to the value of the "goodwill" and the customer list or dealer sales force transferred by the OUTGOING DISTRIBUTOR to the INCOMING DISTRIBUTOR, and

that the OUTGOING DISTRIBUTOR binds itself or himself to strictly comply with the foregoing and to answer for any damages caused by the breach of the provisions of this paragraph, as well as to pay for all expenses which may be incurred by the INCOMING DISTRIBUTOR and/or DART (PHILIPPINES), INC. in the event legal or any other action becomes necessary in order to enforce this paragraph. (*Id.* at 94-95).

[21] *Id.* at 379-384.

[22] *Id.* at 406-407, 427.

[23] *Id.* at 430, 434-437.

After trial on the merits, the RTC rendered its Decision[24] on November 27, 1995. It ruled, among others, that the second audit was unreasonable and was only made to harass respondents; that the shift from credit to pre-paid basis in the purchase orders of respondents was another act of harassment; that petitioner had no valid reason to refuse the renewal of the distributorship agreement; and that petitioner abused its rights under the said agreement. It then concluded that because of petitioner's unjustified acts, respondents suffered damages, among which were the salaries paid to the internal auditors during the first audit, the good will money, the value of the warehouse, moral and exemplary damages, and attorney's fees. The dispositive portion of the RTC decision reads:

> WHEREFORE, judgment is hereby rendered dismissing for lack of merit [respondents'] claims for payment of items subject of credit memoranda, and for products alleged to be on hand at the termination of the [distributorship] agreement. On [respondents'] other claims, judgment is hereby rendered, as follows:
>
> 1. Ordering the [petitioner] to pay [respondents] the amount of ₱23,500.17 representing the salaries of internal auditors engaged by the [petitioner] to conduct an audit on [respondents'] financial records;
>
> 2. Ordering the [petitioner] to pay [respondents] the sum of ₱4,495,000.00 representing "goodwill" money which [respondents] failed to realize;
>
> 3. Ordering the [petitioner] to pay [respondents] the sum of ₱1,000,000.00 as reasonable compensation to the [respondents] for acquiring a lot and constructing thereon a structure to serve as storage, assembly place and warehouse for [petitioner's] products;
>
> 4. Ordering the [petitioner] to pay [respondents] the sum of ₱500,000.00 as moral damages and another ₱500,000.00 as and by way of exemplary damages; and
>
> 5. Ordering the [petitioner] to pay [respondents] the sum of ₱100,000.00 as attorney's fees, plus ₱2,000.00 per Court appearance.

---

[24] *Id.* at 624-641.

[Petitioner's] counterclaims are hereby dismissed for lack of merit.

Costs against the [petitioner].

SO ORDERED.[25]

Aggrieved, petitioner timely interposed its appeal. In the assailed February 28, 2001 Decision,[26] the appellate court affirmed with modification the ruling of the trial court and disposed of the appeal as follows:

WHEREFORE, in view of the foregoing, the assailed decision of the court *a quo* is hereby AFFIRMED WITH MODIFICATION, the award for moral damages is hereby REDUCED to ₱100,000.00 and the award for exemplary damages is hereby REDUCED to ₱50,000.00. The award of ₱1,000,000.00 as reasonable compensation for the acquisition of the lot and construction of the building is hereby DELETED.

SO ORDERED.[27]

Since its motion for reconsideration was subsequently denied by the appellate court in the further assailed July 30, 2001 Resolution,[28] petitioner instituted the instant petition for review on *certiorari*, raising the following grounds:

1. The Court of Appeals committed an error in affirming the decision of the trial court admitting the supplemental complaint thereby taking cognizance of the issues raised and rendering judgment thereon.

2. The Court of Appeals committed an error in affirming the decision of the trial court holding petitioner liable to pay respondents the "goodwill money" they allegedly failed to realize.

3. While petitioner lauds the Court of Appeals' decision deleting the trial court's award of ₱1,000,000.00 by way of compensation for the alleged acquisition of the lot and construction of the building, and appreciates the reduction of the trial court's awards on the alleged moral damages and exemplary damages, the Court of Appeals still

---

[25] *Id.* at 641.

[26] *Supra* note 1.

[27] *Rollo*, pp. 75-76.

[28] *Supra* note 2.

erred in not totally dismissing respondents' claims for damages including attorney's fees.

4. The Court of Appeals committed an error in not finding for the petitioner and in not awarding damages in favor of petitioner by way of reasonable attorney's fees.[29]

The primordial issue to be resolved by the Court in the instant case is whether petitioner abused its rights under the distributorship agreement when it conducted an audit of respondents' account, when it accepted respondents' purchase orders only if they were on a pre-paid basis, and when it refused to renew the said distributorship agreement.

Preliminarily, the Court admits that, ordinarily, it will not review the findings of fact made by the appellate court. However, jurisprudence lays down several exceptions, among which are the following which obtain in this case: when the judgment is based on a misapprehension of facts and when the appellate court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion.[30] Thus, the Court finds it imperative to evaluate, as in fact it had reviewed, the records of the case, including the evidence adduced during the trial, in relation to the arguments of the parties and the applicable law and jurisprudence.

Under Article 19 of the Civil Code, every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. To find the existence of abuse of right under the said article, the following elements must be present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[31]

---

[29] *Rollo*, pp. 12-13.

[30] *Doles v. Angeles*, G.R. No. 149353, June 26, 2006, 492 SCRA 607, 615-616.

[31] *BPI Express Card Corporation v. Court of Appeals*, 357 Phil. 262, 275 (1998).

Accordingly, the exercise of a right shall always be in accordance with the purpose for which it has been established, and must not be excessive or unduly harsh—there must be no intention to injure another.[32] A person will be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith, not when he acts with negligence or abuse.[33]

Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same.[34] Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.[35]

At the crux of this controversy, therefore, is whether petitioner acted in bad faith or intended to injure respondents when it caused the auditing of the latter's account, when it implemented the pre-paid basis in treating the latter's orders, and when it refused to renew the distributorship agreement.

The Court rules in the negative. We note that in the written correspondence of petitioner to respondents on April 30, 1992

---

[32] *Heirs of Purisima Nala v. Cabansag*, G.R. No. 161188, June 13, 2008, 554 SCRA 437, 442-443.

[33] *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, 421 Phil. 532, 547 (2001).

[34] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 137916, December 8, 2004, 445 SCRA 500, 518.

[35] *Saber v. Court of Appeals*, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 278-279.

informing the latter of the non-renewal of the distributorship agreement, petitioner already pointed out respondents' violations of the agreement. The letter pertinently reads:

> We found that you have committed the following acts which are contrary to provisions of Section 2(f) of our Agreement:
>
> (a) You submitted several "Vanguard Reports" containing false statements of the sales performance of your units. A comparison of the reports you submitted to our office with that actually reported by your managers show that the sales of your units are actually much lower than that reported to Tupperware (Exhibits "G", "H", "I", "J", "L", "O", "P", "Q", and "R.")
>
> (b) The unauthorized alteration of the mechanics of "Nan's Challenge," which is a Tupperware company sponsored promotion campaign. The documentary evidence furnished us, Exhibit "E", shows that the amount of target party averages were increased by you.
>
> (c) Charging the managers for accounts of their dealers and for overdue kits (Exhibits "C" and "D").[36]

The correspondence prompted respondents to make a handwritten promise that they would observe and comply with the terms and conditions of the distributorship agreement.[37] This promise notwithstanding, petitioner was not barred from exercising its right in the agreement to conduct an audit review of respondents' account. Thus, an audit was made in July 1992. In September 1992, petitioner informed respondents that it was causing the conduct of a second audit review. And as explained in petitioner's September 11, 1992 correspondence to respondents, the second audit was intended to cover the period not subject of the initial audit (the period prior to January 1 to June 30, 1992, and the period from July 1, 1992 to September 1992).[38] Because respondents objected to the second audit, petitioner

---

[36] Records, p. 98.

[37] *Supra* note 9.

[38] Records, p. 52.

exercised its option under the agreement to vary the manner in which orders are processed—this time, instead of the usual credit arrangement, petitioner only admitted respondents' purchase orders on pre-paid basis. It may be noted that petitioner still processed respondents' orders and that the pre-paid basis was only implemented during the last month of the agreement, in September 1992. With the expiry of the distributorship agreement on September 30, 1992, petitioner no longer acceded to a renewal of the same.

From these facts, we find that bad faith cannot be attributed to the acts of petitioner. Petitioner's exercise of its rights under the agreement to conduct an audit, to vary the manner of processing purchase orders, and to refuse the renewal of the agreement was supported by legitimate reasons, principally, to protect its own business. The exercise of its rights was not impelled by any evil motive designed, whimsically and capriciously, to injure or prejudice respondents. The rights exercised were all in accord with the terms and conditions of the distributorship agreement, which has the force of law between them.[39] Clearly, petitioner could not be said to have committed an abuse of its rights. It may not be amiss to state at this juncture that a complaint based on Article 19 of the Civil Code must necessarily fail if it has nothing to support it but innuendos and conjectures.[40]

Given that petitioner has not abused its rights, it should not be held liable for any of the damages sustained by respondents. The law affords no remedy for damages resulting from an act which does not amount to a legal wrong. Situations like this have been appropriately denominated *damnum absque injuria*.[41] To this end, the Court reverses and sets aside the trial and appellate courts' rulings. Nevertheless, the Court sustains the trial court's order for the reimbursement by petitioner to respondents of ₱23,500.17, with 12% interest per annum, computed from the filing of the

---

[39] *Barons Marketing Corporation v. Court of Appeals*, G.R. No. 126486, February 9, 1998, 286 SCRA 96, 106.

[40] *Nikko Hotel Manila Garden v. Reyes*, G.R. No. 154259, February 28, 2005, 452 SCRA 532, 548.

[41] *BPI Express Card Corporation v. Court of Appeals*, *supra* note 31, at 276.

original complaint up to actual payment, representing the salaries of the internal auditors, because, first, the award was never questioned by petitioner, and second, petitioner was the one which engaged the services of the auditors.

As regards petitioner's claim for attorney's fees, the Court cannot grant the same. We emphasized in prior cases that no premium should be placed on the right to litigate. Attorney's fees are not to be awarded every time a party wins a suit. Even when a claimant is compelled to litigate or to incur expenses to protect his rights, still attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[42]

With the above disquisition, the Court finds no compelling reason to resolve the other issues raised in the petition.

WHEREFORE, premises considered, the petition is GRANTED. The decisions of the Regional Trial Court of Pasig City in Civil Case No. 62444 and of the Court of Appeals in CA-G.R. CV No. 52474 are *REVERSED* and *SET ASIDE*. Petitioner is *ORDERED* to pay respondents *₱23,500.17* with interest at 12% per annum computed from the date of filing of the original complaint.

SO ORDERED.

Chico-Nazario (Acting Chairperson),[*] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

Carpio Morales, J.,[**] see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

---

[42] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 529 (1999).

[*] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

[**] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

CARPIO MORALES, *J.*:

I concur with the *ponencia* with respect to the reimbursement of payment of professional fees in favor of respondent spouses. However, I dissent with respect to the imposition of 12% interest *per annum* on the reimbursable amount which the *ponencia* regards as "com[ing] in the nature of a forbearance of money."

"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] With this standard, the obligation in this case is not a forbearance of money.

In similar or analogous cases involving reimbursements or refunds, the interest of *6% per annum* was imposed, *viz: Heirs of Aguilar-Reyes v. Spouses Mijares*,[2] *JL Investment & Development v. Tendon Phils.*,[3] *Spouses Alinas v. Spouses Alinas*[4] and *ICTSI v. FGU Insurance*.[5]

I thus submit that the proper interest to be imposed on the reimbursable amount is 6% *per annum* from the time of judicial demand to the finality of the decision, and 12% *per annum* from the finality of the decision until full satisfaction, conformably with *Eastern Shipping Lines v. Court of Appeals*.[6]

WHEREFORE, I concur with the *ponencia* insofar as it reverses the appealed decision, but I dissent with respect to the rate of interest to be imposed on the judgment award in light of my foregoing submission.

---

[1] *Crismina Garments v. CA*, G.R. No. 128721, 356 Phil. 701 (1999).

[2] 457 Phil. 120 (2003).

[3] G.R. No. 148596, January 2, 2007.

[4] G.R. No. 158040, April 14, 2008.

[5] G.R. No. 161539, April 24, 2009.

[6] G.R. No. 97412, 234 SCRA 78 (1994).

FIRST DIVISION

[G.R. No. 156660. August 24, 2009]

ORMOC SUGARCANE PLANTERS' ASSOCIATION, INC. (OSPA), OCCIDENTAL LEYTE FARMERS MULTI-PURPOSE COOPERATIVE, INC. (OLFAMCA), UNIFARM MULTI-PURPOSE COOPERATIVE, INC. (UNIFARM) and ORMOC NORTH DISTRICT IRRIGATION MULTI-PURPOSE COOPERATIVE, INC. (ONDIMCO), *petitioners, vs.* **THE COURT OF APPEALS (Special Former Sixth Division), HIDECO SUGAR MILLING CO., INC., and ORMOC SUGAR MILLING CO., INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER; NOT PRESENT IN CASE AT BAR. — At the outset, it must be noted that petitioners filed the instant petition for *certiorari* under Rule 65 of the Rules of Court, to challenge the judgment of the CA. Section 1 of Rule 65 states: Section 1. Petition for *Certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction and there is **no appeal, or any plain, speedy and adequate remedy in the course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental relief as law and justice require. x x x The instant recourse is improper because the resolution of the CA was a final order from which the remedy of appeal was available under Rule 45 in relation to Rule 56. The existence and availability of the right of appeal proscribes resort to *certiorari* because one of the requirements for availment of the latter is precisely that there should be no appeal. It is elementary that for *certiorari* to prosper, it is not enough that

the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction; the requirement that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied. The proper mode of recourse for petitioners was to file a petition for review of the CA's decision under Rule 45. x x x Where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for *certiorari*. Erroneous findings and conclusions do not render the appellate court vulnerable to the corrective writ of *certiorari*. For where the court has jurisdiction over the case, even if its findings are not correct, they would, at most constitute errors of law and not abuse of discretion correctable by *certiorari*.

2. ID.; R.A. NO. 876 (THE ARBITRATION LAW); TWO MODES OF ARBITRATION; CONSTRUED. — Section 2 of R.A. No. 876 (the Arbitration Law) pertinently provides: Sec. 2. Persons and matters subject to arbitration. – **Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission** and which may be the subject of an action, **or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them**. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract. x x x The foregoing provision speaks of two modes of arbitration: (a) an agreement to submit to arbitration some future dispute, usually stipulated upon in a civil contract between the parties, and known as an *agreement to submit to arbitration*, and (b) an agreement submitting an existing matter of difference to arbitrators, termed the *submission agreement*. Article XX of the milling contract is an *agreement to submit to arbitration* because it was made in anticipation of a dispute that might arise between the parties after the contract's execution. Except where a compulsory arbitration is provided by statute, the first step toward the settlement of a difference by arbitration is the entry by the parties into a valid agreement to arbitrate. An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts.

In an agreement for arbitration, the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or by implication. The requirements that an arbitration agreement must be written and subscribed by the parties thereto were enunciated by the Court in *B.F. Corporation v. CA.*

3. ID.; ID.; ID.; FORMAL REQUIREMENTS; NOT PRESENT IN CASE AT BAR. — The formal requirements of an agreement to arbitrate are therefore the following: (a) it must be in writing and (b) it must be subscribed by the parties or their *representatives*. To *subscribe* means to write underneath, as one's name; to sign at the end of a document. That word may sometimes be construed to mean to give consent to or to attest. Petitioners would argue that they could sue respondents, notwithstanding the fact that they were not signatories in the miling contracts because they are the recognized *representatives* of the Planters. This claim has no leg to stand on since petitioners did not sign the milling contracts at all, whether as a party or as a representative of their member Planters. The individual Planter and the appropriate central were the only signatories to the contracts and there is no provision in the milling contracts that the individual Planter is authorizing the association to represent him/her in a legal action in case of a dispute over the milling contracts. Moreover, even assuming that petitioners are indeed representatives of the member Planters who have milling contracts with the respondents and assuming further that petitioners signed the milling contracts as *representatives* of their members, petitioners could not initiate arbitration proceedings **in their own name** as they had done in the present case. As mere agents, they should have brought the suit in the name of the principals that they purportedly represent. Even if Section 4 of R.A. No. 876 allows the agreement to arbitrate to be signed by a representative, the principal is still the one who has the right to demand arbitration. Indeed, Rule 3, Section 2 of the Rules of Court requires suits to be brought in the name of the real party in interest. x x x In *Uy v. Court of Appeals*, this Court held that the agents of the parties to a contract do not have the right to bring an action even if they rendered some service on behalf of their principals. To quote from that decision: … [Petitioners] are mere agents

of the owners of the land subject of the sale. As agents, they only render some service or do something in representation or on behalf of their principals. **The rendering of such service did not make them parties to the contracts** of sale executed in behalf of the latter. Since a contract may be violated only by the parties thereto as against each other, **the real parties-in-interest, either as plaintiff or defendant, in an action upon that contract must, generally, either be parties to said contract.**

4. ID.; CONTRACTS; STIPULATION *POUR AUTRUI* (A STIPULATION IN FAVOR OF A THIRD PERSON); REQUISITES. — To summarize, the requisites of a stipulation *pour autrui* or a stipulation in favor of a third person are the following: (1) there must be a stipulation in favor of a third person, (2) the stipulation must be a part, not the whole, of the contract, (3) the contracting parties must have clearly and deliberately conferred a favor upon a third person, not a mere incidental benefit or interest, (4) the third person must have communicated his acceptance to the obligor before its revocation, and (5) neither of the contracting parties bears the legal representation or authorization of the third party. To be considered a *pour autrui* provision, an incidental benefit or interest, which another person gains, is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. Even the clause stating that respondents must secure the consent of the association if respondents grant better benefits to a Planter has for its rationale the protection of the member Planter. The only interest of the association therein is that its member Planter will not be put at a disadvantage *vis a vis* other Planters. Thus, the associations' interest in these milling contracts is only incidental to their avowed purpose of advancing the welfare and rights of their member Planters.

APPEARANCES OF COUNSEL

Gica Del Socorro Espinoza Teleron Villarmia Limkakeng and Tan for petitioners.

Aggabao & Associates for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a special civil action for *certiorari* assailing the Decision[1] dated December 7, 2001 and the Resolution dated October 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 56166 which set aside the Joint Orders[2] dated August 26, 1999 and October 29, 1999 issued by the Regional Trial Court (RTC) of Ormoc City, Branch 12 upholding petitioners' legal personality to demand arbitration from respondents and directing respondents to nominate two arbitrators to represent them in the Board of Arbitrators.

Petitioners are associations organized by and whose members are individual sugar planters (Planters). The membership of each association follows: 264 Planters were members of OSPA; 533 Planters belong to OLFAMCA; 617 Planters joined UNIFARM; 760 Planters enlisted with ONDIMCO; and the rest belong to BAP-MPC which did not join the lawsuit.

Respondents Hideco Sugar Milling Co., Inc. (Hideco) and Ormoc Sugar Milling Co., Inc. (OSCO) are sugar centrals engaged in grinding and milling sugarcane delivered to them by numerous individual sugar planters, who may or may not be members of an association such as petitioners.

Petitioners assert that the relationship between respondents and the individual sugar planters is governed by milling contracts. To buttress this claim, petitioners presented representative samples of the milling contracts.[3]

Notably, Article VII of the milling contracts provides that 34% of the sugar and molasses produced from milling the

---

[1] Penned by Associate Justice Eloy R. Bello, Jr. (ret.), with Associate Justices Godardo A. Jacinto (ret.) and Josefina Guevarra-Salonga, concurring; *rollo*, pp. 43-55.

[2] *Id*. at 153-156.

[3] *Id*. at 88-105.

Planter's sugarcane shall belong to the centrals (respondents) as compensation, 65% thereof shall go to the Planter and the remaining 1% shall go to the association to which the Planter concerned belongs, as aid to the said association. The 1% aid shall be used by the association for any purpose that it may deem fit for its members, laborers and their dependents. If the Planter was not a member of any association, then the said 1% shall revert to the centrals. Article XIV, paragraph B[4] states that the centrals may not, during the life of the milling contract, sign or execute any contract or agreement that will provide better or more benefits to a Planter, without the written consent of the existing and recognized associations except to Planters whose plantations are situated in areas beyond thirty (30) kilometers from the mill. Article XX provides that all differences and controversies which may arise between the parties concerning the agreement shall be submitted for discussion to a Board of Arbitration, consisting of five (5) members—two (2) of which shall be appointed by the centrals, two (2) by the Planter and the fifth to be appointed by the four appointed by the parties.

On June 4, 1999, petitioners, without impleading any of their individual members, filed twin petitions with the RTC for *Arbitration under R.A. 876, Recovery of Equal Additional Benefits, Attorney's Fees and Damages*, against HIDECO and OSCO, docketed as Civil Case Nos. 3696-O and 3697-O, respectively.

Petitioners claimed that respondents violated the Milling Contract when they gave to independent planters who do not belong to any association the 1% share, instead of reverting said share to the centrals. Petitioners contended that respondents unduly accorded the independent Planters more benefits and thus prayed that an order be issued directing the parties to commence with arbitration in accordance with the terms of the milling contracts. They also demanded that respondents be

[4] In the sample Milling Contract with OSCO, this provision is found in Article XV, paragraph B.

penalized by increasing their member Planters' 65% share provided in the milling contract by 1% to 66%.

Respondents filed a motion to dismiss on ground of lack of cause of action because petitioners had no milling contract with respondents. According to respondents, only some eighty (80) Planters who were members of OSPA, one of the petitioners, executed milling contracts. Respondents and these 80 Planters were the signatories of the milling contracts. Thus, it was the individual Planters, and not petitioners, who had legal standing to invoke the arbitration clause in the milling contracts. Petitioners, not being privy to the milling contracts, had no legal standing whatsoever to demand or sue for arbitration.

On August 26, 1999, the RTC issued a Joint Order[5] denying the motion to dismiss, declaring the existence of a milling contract between the parties, and directing respondents to nominate two arbitrators to the Board of Arbitrators, to wit:

> When these cases were called for hearing today, counsels for the petitioners and respondents argued their respective stand. The Court is convinced that there is an existing milling contract between the petitioners and respondents and these planters are represented by the officers of the associations. The petitioners have the right to sue in behalf of the planters.
>
> This Court, acting on the petitions, directs the respondents to nominate two arbitrators to represent HIDECO/HISUMCO and OSCO in the Board of Arbitrators within fifteen (15) days from receipt of this Order. xxx
>
> However, if the respondents fail to nominate their two arbitrators, upon proper motion by the petitioners, then the Court will be compelled to use its discretion to appoint the two (2) arbitrators, as embodied in the Milling Contract and R.A. 876.
>
> xxx xxx xxx

Their subsequent motion for reconsideration having been denied by the RTC in its Joint Order[6] dated October 29, 1999,

---

[5] *Rollo*, p. 153.

[6] *Id*. at 154-156.

respondents elevated the case to the CA through a *Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.*

On December 7, 2001, the CA rendered its challenged Decision, setting aside the assailed Orders of the RTC. The CA held that petitioners neither had an existing contract with respondents nor were they privy to the milling contracts between respondents and the individual Planters. In the main, the CA concluded that petitioners had no legal personality to bring the action against respondents or to demand for arbitration.

Petitioners filed a motion for reconsideration, but it too was denied by the CA in its Resolution[7] dated October 30, 2002. Thus, the instant petition.

At the outset, it must be noted that petitioners filed the instant petition for *certiorari* under Rule 65 of the Rules of Court, to challenge the judgment of the CA. Section 1 of Rule 65 states:

> Section 1. Petition for ***Certiorari***. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction and there is **no appeal, or any plain, speedy and adequate remedy in the course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental relief as law and justice require. xxx xxx xxx (emphasis ours)

The instant recourse is improper because the resolution of the CA was a final order from which the remedy of appeal was available under Rule 45 in relation to Rule 56. The existence and availability of the right of appeal proscribes resort to *certiorari* because one of the requirements for availment of the latter is precisely that there should be no appeal. It is elementary that for *certiorari* to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess

[7] *Id*. at 57-59.

of jurisdiction; the requirement that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied.[8] The proper mode of recourse for petitioners was to file a petition for review of the CA's decision under Rule 45.

Petitioners principally argue that the CA committed a grave error in setting aside the challenged Joint Orders of the RTC which allegedly unduly curtailed the right of petitioners to represent their planters-members and enforce the milling contracts with respondents. Petitioners assert the said which orders were issued in accordance with Article XX of the Milling Contract and the applicable provisions of Republic Act (R.A.) No. 876.

Where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for *certiorari*. Erroneous findings and conclusions do not render the appellate court vulnerable to the corrective writ of *certiorari*. For where the court has jurisdiction over the case, even if its findings are not correct, they would, at most constitute errors of law and not abuse of discretion correctable by *certiorari*.[9]

Moreover, even if this Court overlooks the procedural lapse committed by petitioners and decides this matter on the merits, the present petition will still not prosper.

Stripped to the core, the pivotal issue here is whether or not petitioners — sugar planters' associations — are clothed with legal personality to file a suit against, or demand arbitration from, respondents in their own name without impleading the individual Planters.

---

[8] *Manacop, Jose F. v. Equitable PCIBank*, G.R. Nos. 162814-17, August 25, 2005, 468 SCRA 256, 270-271.

[9] *New York Marine Manager v. CA, et al.*, G.R. No. 111837, Oct. 24, 1995, 249 SCRA 416, 420.

On this point, we agree with the findings of the CA.

Section 2 of R.A. No. 876 (the Arbitration Law)[10] pertinently provides:

> Sec. 2. Persons and matters subject to arbitration. – **Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission** and which may be the subject of an action, **or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them.** Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract. xxx (Emphasis ours)

The foregoing provision speaks of two modes of arbitration: (a) an agreement to submit to arbitration some future dispute, usually stipulated upon in a civil contract between the parties, and known as an *agreement to submit to arbitration*, and (b) an agreement submitting an existing matter of difference to arbitrators, termed the *submission agreement*. Article XX of the milling contract is an *agreement to submit to arbitration* because it was made in anticipation of a dispute that might arise between the parties after the contract's execution.

Except where a compulsory arbitration is provided by statute, the first step toward the settlement of a difference by arbitration is the entry by the parties into a valid agreement to arbitrate. An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts.[11] In an agreement for arbitration, the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or by implication.

---

[10] Otherwise known as AN ACT TO AUTHORIZE THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS, TO PROVIDE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES, AND FOR OTHER PURPOSES.

[11] 5 Am Jur 2d Appeal and Error, Arbitration and Award, p. 527.

The requirements that an arbitration agreement must be written and subscribed by the parties thereto were enunciated by the Court in *B.F. Corporation v. CA.*[12]

During the proceedings before the CA, it was established that there were more than two thousand (2,000) Planters in the district at the time the case was commenced at the RTC in 1999. The CA further found that of those 2,000 Planters, only about eighty (80) Planters, who were all members of petitioner OSPA, in fact individually executed milling contracts with respondents. No milling contracts signed by members of the other petitioners were presented before the CA.

By their own allegation, petitioners are associations duly existing and organized under Philippine law, *i.e.* they have juridical personalities separate and distinct from that of their member Planters. It is likewise undisputed that the eighty (80) milling contracts that were presented were signed only by the member Planter concerned and one of the Centrals as parties. In other words, none of the petitioners were parties or signatories to the milling contracts. This circumstance is fatal to petitioners' cause since they anchor their right to demand arbitration from the respondent sugar centrals upon the arbitration clause found in the milling contracts. There is no legal basis for petitioners' purported right to demand arbitration when they are not parties to the milling contracts, especially when the language of the arbitration clause expressly grants the right to demand arbitration only to the parties to the contract.

Simply put, petitioners do not have any agreement to arbitrate with respondents. Only eighty (80) Planters who were all members of OSPA were shown to have such an agreement to arbitrate, included as a stipulation in their individual milling contracts. The other petitioners failed to prove that any of their members had milling contracts with respondents, much less, that respondents had an agreement to arbitrate with the petitioner associations themselves.

---

[12] G.R. No. 120105, March 27, 1998, 288 SCRA 267.

Even assuming that all the petitioners were able to present milling contracts in favor of their members, it is undeniable that under the arbitration clause in these contracts it is the parties thereto who have the right to submit a controversy or dispute to arbitration.

Section 4 of R.A. 876 provides:

> Section 4. Form of Arbitration Agreement – A contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy, shall be in writing and subscribed by the party sought to be charged, or by his lawful agent.
>
> The making of a contract or submission for arbitration described in section two hereof, providing for arbitration of any controversy, shall be deemed a consent of the parties to the jurisdiction of the Court of First Instance of the province or city where any of the parties resides, to enforce such contract of submission.

The formal requirements of an agreement to arbitrate are therefore the following: (a) it must be in writing and (b) it must be subscribed by the parties or their *representatives*. To *subscribe* means to write underneath, as one's name; to sign at the end of a document. That word may sometimes be construed to mean to give consent to or to attest.[13]

Petitioners would argue that they could sue respondents, notwithstanding the fact that they were not signatories in the milling contracts because they are the recognized *representatives* of the Planters.

This claim has no leg to stand on since petitioners did not sign the milling contracts at all, whether as a party or as a representative of their member Planters. The individual Planter and the appropriate central were the only signatories to the contracts and there is no provision in the milling contracts that the individual Planter is authorizing the association to represent him/her in a legal action in case of a dispute over the milling contracts.

---

[13] *BF Corporation v. CA, supra* note 12, p. 283.

Moreover, even assuming that petitioners are indeed representatives of the member Planters who have milling contracts with the respondents and assuming further that petitioners signed the milling contracts as *representatives* of their members, petitioners could not initiate arbitration proceedings **in their own name** as they had done in the present case. As mere agents, they should have brought the suit in the name of the principals that they purportedly represent. Even if Section 4 of R.A. No. 876 allows the agreement to arbitrate to be signed by a representative, the principal is still the one who has the right to demand arbitration.

Indeed, Rule 3, Section 2 of the Rules of Court requires suits to be brought in the name of the real party in interest, to wit:

> Sec. 2. Parties in interest. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

We held in *Oco v. Limbaring*[14] that:

> As applied to the present case, this provision has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Necessarily, the purposes of this provision are 1) to prevent the prosecution of actions by persons without any right, title or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid a multiplicity of suits; and 4) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.

***Interest* within the meaning of the Rules means material interest or an interest in issue to be affected by the decree or judgment of the case**, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. **When the**

[14] G.R. No. 161298, January 31, 2006, 481 SCRA 348, 358-359.

plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.

x x x x x x x x x

The parties to a contract are the real parties in interest in an action upon it, as consistently held by the Court. Only the contracting parties are bound by the stipulations in the contract; **they are the ones who would benefit from and could violate it**. Thus, one who is not a party to a contract, and for whose benefit it was not expressly made, **cannot maintain an action on it**. One cannot do so, **even if the contract performed by the contracting parties would incidentally inure to one's benefit.** (emphasis ours)

In *Uy v. Court of Appeals*,[15] this Court held that the agents of the parties to a contract do not have the right to bring an action even if they rendered some service on behalf of their principals. To quote from that decision:

…[Petitioners] are mere agents of the owners of the land subject of the sale. As agents, they only render some service or do something in representation or on behalf of their principals. **The rendering of such service did not make them parties to the contracts** of sale executed in behalf of the latter. Since a contract may be violated only by the parties thereto as against each other, **the real parties-in-interest, either as plaintiff or defendant, in an action upon that contract must, generally, either be parties to said contrac**t. (emphasis and words in brackets ours)

The main cause of action of petitioners in their request for arbitration with the RTC is the alleged violation of the clause in the milling contracts involving the proportionate sharing in the proceeds of the harvest. Petitioners essentially demand that respondents increase the share of the member Planters to 66% to equalize their situation with those of the non-member Planters. Verily, from petitioners' own allegations, the party who would be injured or benefited by a decision in the arbitration proceedings will be the member Planters involved and **not petitioners.** In sum, petitioners are not the real parties in interest in the present case.

---

[15] G.R. No. 120465, September 9, 1999, 314 SCRA 76, 77.

Assuming petitioners had properly brought the case in the name of their members who had existing milling contracts with respondents, petitioners must still prove that they were indeed authorized by the said members to institute an action for and on the members' behalf. In the same manner that an officer of the corporation cannot bring action in behalf of a corporation unless it is clothed with a board resolution authorizing an officer to do so, an authorization from the individual member planter is a *sine qua non* for the association or any of its officers to bring an action before the court of law. The mere fact that petitioners were organized for the purpose of advancing the interests and welfare of their members does not necessarily mean that petitioners have the authority to represent their members in legal proceedings, including the present arbitration proceedings.

As we see it, petitioners had no intention to litigate the case in a representative capacity, as they contend. All the pleadings from the RTC to this Court belie this claim. Under Section 3 of Rule 3, where the action is allowed to be prosecuted by a representative, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. As repeatedly pointed out earlier, the individual Planters were not even impleaded as parties to this case. In addition, petitioners need a power-of-attorney to represent the Planters whether in the lawsuit or to demand arbitration.[16] None was ever presented here.

Lastly, petitioners theorize that they could demand and sue for arbitration independently of the Planters because the milling contract is a contract *pour autrui* under Article 1311 of the Civil Code.

ART. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by

[16] Article 1878. Special Powers of Attorney are necessary in the following cases:

x x x x x x x x x

(3) To compromise, to submit questions to arbitration, xxx.

stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

To summarize, the requisites of a stipulation *pour autrui* or a stipulation in favor of a third person are the following: (1) there must be a stipulation in favor of a third person, (2) the stipulation must be a part, not the whole, of the contract, (3) the contracting parties must have clearly and deliberately conferred a favor upon a third person, not a mere incidental benefit or interest, (4) the third person must have communicated his acceptance to the obligor before its revocation, and (5) neither of the contracting parties bears the legal representation or authorization of the third party.[17] These requisites are not present in this case.

Article VI of the Milling Contract is the solitary provision that mentions some benefit in favor of the association of which the planter is a member and we quote:

VI

SHARE IN THE SUGAR

Thirty four per centrum (34%) of the sugar ad (sic) molasses resulting from the milling of the PLANTER's sugarcane, as computed from the weight and analysis of the sugarcane delivered by the PLANTER, shall belong to the CENTRAL; sixty five per centum (65%) thereof to the PLANTER, and one per centum (1%) as aid to the association of the PLANTER; provided that, if the PLANTER is not a member of any association recognized by the CENTRAL, said one per centum (1%) shall revert to the CENTRAL. The 1% aid shall be used by the association for any purpose that it may deem fit for its members, laborers and their dependents, or for its other socio-economic projects.

---

[17] *South Pachem Development, Inc. v. CA and Makati Commercial Estate Association, Inc.*, G.R. No. 126260, December 16, 2004, 447 SCRA 85, 94.

The foregoing provision cannot, by any stretch of the imagination, be considered as a stipulation *pour autrui* or for the benefit of the petitioners. The primary rationale for the said stipulation is to ensure a just share in the proceeds of the harvest to the Planters. In other words, it is a stipulation meant to benefit the Planters. Even the 1% share to be given to the association as aid does not redound to the benefit of the association but is intended to be used for its member Planters. Not only that, it is explicit that said share reverts back to respondent sugar centrals if the contracting Planter is not affiliated with any recognized association.

To be considered a *pour autrui* provision, an incidental benefit or interest, which another person gains, is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.[18] Even the clause stating that respondents must secure the consent of the association if respondents grant better benefits to a Planter has for its rationale the protection of the member Planter. The only interest of the association therein is that its member Planter will not be put at a disadvantage *vis a vis* other Planters. Thus, the associations' interest in these milling contracts is only incidental to their avowed purpose of advancing the welfare and rights of their member Planters.

In all, the Court finds no grave abuse of discretion nor reversible error committed by the CA in setting aside the Joint Orders issued by the RTC.

WHEREFORE, petition is hereby *DISMISSED*.

Costs against petitioners.

SO ORDERED.

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

---

[18] *Associated Bank v. CA*, G.R. No. 123793, June 29, 1998, 291 SCRA 511, 526.

FIRST DIVISION

[G.R. No. 161042. August 24, 2009]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **AGRIPINA DELA RAGA,** *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE APPELLATE COURT IS BINDING ON THE SUPREME COURT; EXCEPTIONS. — The factual findings of the RTC, especially when affirmed by the Court of Appeals, are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. The Republic did not show that the present case falls under any of the exceptions.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Geraldine N. Francisco for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 18 November 2003 Decision[2] of the Court of Appeals in CA-G.R. CV No. 66687. The Court of Appeals affirmed *in toto* the 18 November 1999 Decision[3] of the Regional Trial Court (RTC), Judicial Region 1, Branch 47, Urdaneta, Pangasinan, in Pet. Case No. U-1449.

The Facts

Agripina dela Raga (Dela Raga) is the granddaughter and the only surviving heir of spouses Ignacio Serran (Ignacio) and Catalina Laguit (Laguit). At a very young age, Dela Raga lost her parents and her grandparents Ignacio and Laguit.

Dela Raga possessed a 79,570-square meter parcel of land covered by Original Certificate of Title (OCT) No. 49266 and located in Barrio Dungon, Sison, Pangasinan. A relative informed Dela Raga that Ignacio was the titled owner of the property. Desirous to obtain a copy of OCT No. 49266, Dela Raga went to the Registers of Deeds of Lingayen, San Fernando, and Manila to inquire about the property. In the Register of Deeds of Manila, Dela Raga found Decree No. 196266 declaring the property in the names of Ignacio and Laguit and the spouses Felipe Serafica (Serafica) and Cornelia Serran (Cornelia).

Dela Raga filed with the RTC a petition[4] for the reconstitution of OCT No. 49266 in the names of Ignacio, Laguit, Serafica,

---

[1] *Rollo,* pp. 17-40.

[2] *Id.* at 10-14. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes, concurring.

[3] *Id.* at 66-70. Penned by Judge Meliton G. Emuslan.

[4] *Id.* at 48-51.

and Cornelia. In her petition dated 8 December 1998, Dela Raga stated:

Comes now the petitioner, thru counsel, and before this Honorable Court, respectfully states:

x x x x x x x x x

2. That Ignacio Serran is the titled owner of a parcel of land located in Dungon, Sison, Pangasinan, particularly described as follows: x x x the property is covered by Original Certificate of Title No. 49266;

x x x x x x x x x x x x

5. That petitioner is the granddaughter of Ignacio Serran whose daughter Anecita Serran is the mother of petitioner;

6. That when Ignacio Serran died Aniceta Serran inherited the property, subject matter of this petition and when the latter also died petitioner likewise inherited the same property;

7. That when the mother of petitioner died the latter was only six years old and she has never seen any owner's duplicate copy of OCT No. 49266;

8. That even when petitioner has reached discerning age she continued possessing the subject property in the concept of an owner not minding the fact that she is not in possession of the owners' duplicate copy of OCT No. 49266;

9. That it was only in the later years that petitioner realized the importance of having a duplicate copy of OCT No. 49266 hence, she tried to asked [sic] immediate relatives of the whereabouts of the said copy to no avail;

10. That petitioner has considered the owner's duplicate copy of OCT No. 49266 to have been lost and beyond recovery hence, she attempted to file a petition for the issuance of new owner's duplicate copy in lieu of the lost one by requesting from Register of Deeds of Lingayen, Pangasinan the certification as to the existence of OCT No. 49266 but to the surprised [sic] of petitioner the copy of OCT No. 49266 in the custody of the Register of Deeds was also one of those Original Certificate of Title [sic] issued before the pre war [sic] that were destroyed or deemed lost, copy of the certification of Register of Deeds is hereto attached as Annex A;

11. That for purposes of reconstituting Original Certificate of Title No. 49266, Decree No. 196266 may be used as a basis thereof, copy of the Decree No. 196266 which was the basis of issuance of the lost OCT No. 49266 certified by the Land Registration Authority is hereto attached as Annex B.[5]

The RTC set the initial hearing on 18 August 1999. Dela Raga presented her documentary evidence: (1) copy of the petition, (2) certificate of posting, (3) notice of order dated 19 February 1999, (4) proof of service to different government agencies, (5) certificate of publication, (6) notice to adjacent owners, (7) birth certificate of her mother Aniceta Serran, (8) certificate from the Register of Deeds that OCT No. 49266 could not be found despite diligent efforts, and (9) Tax Receipt No. 1144140. As testimonial evidence, Dela Raga and a certain Pascua Estibar testified.

The RTC's Ruling

In its Decision dated 18 November 1999, the RTC granted the petition. The RTC found that (1) Dela Raga is the granddaughter of Ignacio, (2) Ignacio owned the property, (3) the property was covered by OCT No. 49266, (4) OCT No. 49266 was in the name of Ignacio, (5) the Register of Deeds' copy of OCT No. 49266 was destroyed during the war, and (6) Dela Raga complied with all the jurisdictional requirements for the reconstitution of OCT No. 49266. The RTC stated:

From the evidence presented during the *ex-parte* presentation of evidence before the Branch Clerk of Court, the following facts were proven:

The petitioner is the grandchild of Ignacio Serran, one of the registered owners of the land subject of this petition. The petitioner's mother was Aniceta Serran, one of the daughetrs (sic) of Ignacio Serran as evidenced by Exh. "N". The name of the other child of Ignacio Serran was Cornelia Serran. Both children have already died including Ignacio Serran.

---

[5] *Id*. at 48-50.

When Ignacio Serran died, he left a property located at Dungon, Sison, Pangasinan. The same property was covered by a title. However, the office copy of the title was destroyed during the World War II as evidenced by a pre-war inventory of the Registry of Deeds of Pangasinan marked as EXH. "O". From such inventory of original certificates of the Registry of Deeds of Pangasinan (Exh. "0-1"), there was an entry O.C.T. No. 49266 to 49267 — mutilated. In Exh. "O", Original Certificate No. 49266, Vol. 162, Page 239 was in the name of Serran, Ignacio, *et al.* A Certification, Exh. "P" was issued by the Registry of Deeds of Pangasinan certifying to the effect that the Original Certificate of Title No. 49266 could not be found or located among the files in the registry, thus it was presumed lost or destroyed.

Another document that proved the ownership of Ignacio Serran, *et al.*, was an application for the registration of title (EXH. "T") filed before the Court of First Instance for the Province of Pangasinan by Ignacio Serran on October 3, 1924 represented by E.Q. Turner. Annexed thereto were Description of Property as surveyed for Ignacio Serran (Exh. "T-2"), Registration of Titles, Case No. 5507, G.L.R.O. Record No. 26031 (Exh. "T-3"), Decision of the Juzgado de Primera Instancia de Pangasinan in G.L.R.O. Rec. No. 26031, Ignacio Serran, Solicitante, (Exh. "T-9"); and Order for the Issuance of the Decree (Exh. "T-11").

On November 28, 1925, Enrique Altavas, Chief of the General Land Registration Office issued Decree No. 196266 in accordance with the Order for the Issuance of the Decree issued by the Court in undivided equal shares, in the name of the conjugal partnership of the spouses IGNACIO SERRAN and CATALINA LAGUIT, and the conjugal partnership of the spouses FELIPE SERAFICA and CORNELIA SERRAN. The said Decree covers Case No. 5507, G.L.R.O. Record No. 26031 over a parcel of land (Plan Psu-35755) situated in the Barrio of Dungon, Municipality of Sison, containing an area of SEVENTY NINE THOUSAND FIVE HUNDRED & SEVENTY SQUARE METERS (79,570). The said Decree was certified to by the Chief, Docket Division of the Land Registration Authority.

xxx xxx xxx

The petitioner had been paying the taxes on the subject land as evidenced by Tax Declaration No. 019-00002 (Exh. "V") and the Tax Receipt as Exh. "U". At present the petitioner is enjoying the fruits of the land. The petitioner also testified that she has no knowledge whatsoever of any mortgage over the land in favor of a person, agency

or banking institution. Further, the petitioner has no knowledge if other persons are claiming the property.

xxx xxx xxxx

After an analysis of the documentary and testimonial evidence on record and finding them to be sufficient and substantial to support the petition, and finding further compliance of the jurisdictional requirements, this Court grants the reconstitution of the lost title.[6]

The Republic of the Philippines (Republic) appealed the 18 November 1999 Decision to the Court of Appeals. In its brief[7] dated 11 December 2000, the Republic claimed that Dela Raga failed to prove her relationship to Ignacio and that the report of the Register of Deeds was insufficient. The Republic stated:

[T]he record is bereft of proof to show that indeed, appellee is the granddaughter of the registered owner.

xxx xxx xxx

Except for the bare allegations in the petition, appellee failed to present any proof to establish her relationship to Ignacio Serran, one of the registered owners. The fact that appellee carried the name dela Raga, inescapably carries no presumption for her relationship to any of the registered owners bearing different names. Appellee's self-serving testimony that she is the granddaughter of Ignacio Serran cannot be accepted, hook line and sinker.

Having failed to prove interest over the land covered by the decree over the certificate of title, the trial court should have dismissed the petition.

At any rate, even if appellee had established her interest in the subject property, the trial court should have dismissed the petition for reconstitution just the same, because there is no showing that OCT No. 49266 was still valid and subsisting, that is, not superseded by any transfer certificate of title, at the time of its loss and destruction.

---

[6] *Id*. at 67-69.

[7] *Id*. at 73-87.

The certification of the Register of Deeds merely states:

CERTIFICATION

TO WHOM IT MAY CONCERN:

> This is to certify that the original file copy of TRANSFER/ ORIGINAL CERTIFICATE OF TITLE NO. 49266, could not be found or located among the file in this registry, despite diligent effort the same could not be found, therefore it is presumed lost or destroyed (eaten by anays).
>
> xxx xxx xxx

The foregoing certification fails to show that the certificate of title was valid and subsisting at the time of loss. It fell short of the required data which must be reported by the Register of Deed [sic], as provided in paragraph 12, LRA Circular No. 35, stating that:

> 12. The Register of Deeds, upon receipt of a copy of the petition and notice of hearing, shall verify the status of the title — whether valid and subsisting at the time of the alleged loss; whether or not another title exists in the said office covering the same property; and as to the existence of transactions registered or pending registration, which maybe adversely affected thereby. He shall submit his written findings to the Court on or before the date of initial hearing of the petition.[8]

The Court of Appeals' Ruling

In its Decision dated 18 November 2003, the Court of Appeals affirmed *in toto* the RTC's 18 November 1999 Decision. The Court of Appeals held that the Republic failed to show convincing evidence to discredit the RTC's factual findings and that the Republic's claim that the Register of Deeds' report was insufficient was without substance. The Court of Appeals stated:

> The Republic failed to show substantial and convincing evidence to rebut the lower court's findings of fact. As between the negation of the Republic and the conclusion reached by the court *a quo* as to the filiation of herein petitioner-appellee to Ignacio Serran, having as basis thereof the documents presented during the *ex-parte* hearing

[8] *Id*. at 82-85.

and the testimony of one Pascual Estibal, we give the lower court's findings, due respect.

> "*Factual findings of the trial court shall not be disturbed on appeal unless the trial court has overlooked or ignored some fact or circumstance or sufficient weight or significance which, if considered, would alter the situation.*"
>
> "*It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth.*"

The Republic's argument that the Certification issued by the Register of Deeds does not show that OCT No. 49266 is still valid and subsisting, hence, the petition for reconstitution should be dismissed, is unsubstantial to deserve consideration.

The Register of Deeds was notified of the instant petition for reconstitution as a jurisdictional requirement. If it so believes that the subject OCT is tainted with any flaw, defect or infirmity, it should have filed an opposition, which it did not.[9]

Hence, the present petition.

The Issue

In its petition dated 14 January 2004, the Republic raised as sole issue that "THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT FAILED TO PROVE THAT THE ORIGINAL CERTIFICATE OF TITLE WAS VALID AND SUBSISTING AT THE TIME OF ITS ALLEGED LOSS OR DESTRUCTION."[10] The Republic stated:

It is settled that reconstitution of title presupposes a valid and existing title at the time of its loss or destruction. The certification issued by the Register of Deeds of Pangasinan merely states that OCT No. 49266 could not be found or located in the files of said registry and is therefore presumed lost or destroyed, thus:

---

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

[10] *Id*. at 28.

CERTIFICATION

TO WHOM IT MAY CONCERN:

> This is to certify that the original copy of TRANSFER/ ORIGINAL CERTIFICATE OF TITLE NO. 49266, could not be found or located among the file in this registry, despite diligent effort the same could not be found, therefore it is presumed lost or destroyed (eaten by annays).

Notably, the certification issued by the Register of Deeds of Pangasinan fell short of the required data which must be reported by the Register of Deeds, as provided in paragraph 12, LRA Circular No. 35, stating that:

> 12. The Register of Deeds, upon receipt of a copy of the petition and notice of hearing, shall verify the status of the title — whether valid and subsisting at the time of the alleged loss; whether or not another title exists in the said office covering the same property; and as to the existence of transactions registered or pending registration, which maybe adversely affected thereby. He shall submit his written findings to the Court on or before the date of initial hearing of the petition.

Petitioner takes exception to the Court of Appeals' finding that the absence of active opposition by the Register of Deeds is adequate to support a conclusion that the subject original certificate of title is valid and subsisting at the time of loss. The alleged absence of active opposition of the Register of Deeds did not relieve respondent of the burden of proving the merits of her petition for reconstitution.

x x x x x x x x x

Given the allegation that that [sic] it has been over 75 years that the alleged OCT had been existing and the fact that it is registered in the name of two sets of spouses, the burden lies on respondent to show proof that aside from the fact that the subject OCT was valid and subsisting at the time of its loss, no other title exists in the said office covering the same property as well as the absence of any transaction affecting said title, pursuant to LRA Circular No. 35 dated June 13, 1983.

The Court's Ruling

The petition is unmeritorious.

The sufficiency of the Register of Deeds' report is not an indispensable requirement in reconstitution cases. The report may even be disregarded. In *Puzon v. Sta. Lucia Realty and Development, Inc.*,[11] the Court held:

> Even LR[A] Circular No. 35, which is also mentioned in Circular 7-96, does not require any clearance. Rather, it requires the Chief of the Clerks of Court Division to make a report, and likewise the Register of Deeds to write a report of his or her findings after verifying the status of the title, which is the subject of the reconstitution. Both reports are to be submitted to the reconstitution court on or before the date of the initial hearing. **It is not mandatory, however, for the reconstitution court to wait for such reports** indefinitely. **If none is forthcoming on or before the date of the initial hearing, it may validly issue an order or judgment granting reconstitution**. This is implied from the provisions of Section 16 of the same Circular, which states:
>
> > "16. Should an order or judgment granting reconstitution be issued by the Court without awaiting the report and the recommendations of this Commission as well as the verification of the Register of Deeds concerned, or while the examination, verification and preparation of the report and recommendation are still pending in the said Offices due to the failure of the Clerk of Court or the petitioner to comply with all the necessary requirements as called for herein, and it appears that there is a valid ground to oppose the reconstitution, a motion to set aside the order/judgment granting reconstitution or to stay the period of finality of said order/judgment shall be filed by the Land Registration Commissioner and/or the Register of Deeds thru the Solicitor General or the provincial or city fiscal concerned."

In the present case, therefore, **neither was the Petition for reconstitution affected nor was the RTC divested of its jurisdiction by the fact that the trial court rendered the judgment ordering the reconstitution of a lost or destroyed certificate of title without awaiting the report and recommendations of the** land registration commissioner and the **register of deeds of Quezon City**. (Emphasis supplied)

---

[11] 406 Phil. 263, 278 (2001).

Section 15 of Republic Act No. 26 states:

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.

In the present case, the RTC found Dela Raga's evidence sufficient and proper to warrant the reconstitution of OCT No. 49266. The RTC held:

From the evidence presented during the *ex-parte* presentation of evidence before the Branch Clerk of Court, the following facts were proven:

The petitioner is the grandchild of Ignacio Serran, one of the registered owners of the land subject of this petition. The petitioner's mother was Aniceta Serran, one of the daughetrs (sic) of Ignacio Serran as evidenced by Exh. "N". The name of the other child of Ignacio Serran was Cornelia Serran. Both children have already died including Ignacio Serran.

When Ignacio Serran died, he left a property located at Dungon, Sison, Pangasinan. The same property was covered by a title. However, the office copy of the title was destroyed during the World War II as evidenced by a pre-war inventory of the Registry of Deeds of Pangasinan marked as EXH. "O". **From such inventory of original certificates of the Registry of Deeds of Pangasinan** (Exh. "0-1"), **there was an entry O.C.T. No. 49266 to 49267 — mutilated**. In Exh. "O", **Original Certificate No. 49266, Vol. 162, Page 239 was in the name of Serran, Ignacio, *et al.*** A Certification, Exh. "P" was issued by the Registry of Deeds of Pangasinan certifying to the effect that the Original Certificate of Title No. 49266 could not be found or located among the files in the registry, thus it was presumed lost or destroyed.

Another document that proved the ownership of Ignacio Serran, *et al.*, was an application for the registration of title (EXH. "T") **filed before the Court of First Instance for the Province of Pangasinan**

by Ignacio Serran on October 3, 1924 represented by E.Q. Turner. Annexed thereto were Description of Property as surveyed for Ignacio Serran (Exh. "T-2"), **Registration of Titles, Case No. 5507, G.L.R.O. Record No. 26031** (Exh. "T-3"), **Decision of the Juzgado de Primera Instancia de Pangasinan in G.L.R.O. Rec. No. 26031, Ignacio Serran, Solicitante**, (Exh. "T-9"); **and Order for the Issuance of the Decree** (Exh. "T-11").

On November 28, 1925, Enrique Altavas, Chief of the General Land Registration Office issued Decree No. 196266 in accordance with the Order for the Issuance of the Decree issued by the Court in undivided equal shares, in the name of the conjugal partnership of the spouses IGNACIO SERRAN and CATALINA LAGUIT, and the conjugal partnership of the spouses FELIPE SERAFICA and CORNELIA SERRAN. The said Decree covers Case No. 5507, G.L.R.O. Record No. 26031 over a parcel of land (Plan Psu-35755) situated in the Barrio of Dungon, Municipality of Sison, containing an area of SEVENTY NINE THOUSAND FIVE HUNDRED & SEVENTY SQUARE METERS (79,570). The said Decree was certified to by the Chief, Docket Division of the Land Registration Authority.

xxx xxx xxx

The petitioner had been paying the taxes on the subject land as evidenced by Tax Declaration No. 019-00002 (Exh. "V") **and the Tax Receipt** as Exh. "U". **At present the petitioner is enjoying the fruits of the land. The petitioner also testified that she has no knowledge whatsoever of any mortgage over the land in favor of a person, agency or banking institution. Further, the petitioner has no knowledge if other persons are claiming the property**.

xxx xxx xxx

After an analysis of the documentary and testimonial evidence on record and finding them to be sufficient and substantial to support the petition, and finding further compliance of the jurisdictional requirements, this Court grants the reconstitution of the lost title.[12] (Emphasis supplied)

When the RTC found Dela Raga's evidence sufficient and proper to warrant the reconstitution of OCT No. 49266, the

---

[12] *Rollo,* pp. 67-69.

RTC had the duty to issue the order of reconstitution. In *Republic v. Casimiro*,[13] the Court held:

> When a court, after hearing of a petition for reconstitution, finds that the evidence presented is sufficient and proper to grant the same, x x x it becomes the duty of the court to issue the order of reconstitution. ***This duty is mandatory***. The law does not give the court discretion to deny the reconstitution if all the basic requirements have been complied with. (Emphasis supplied)

The factual findings of the RTC, especially when affirmed by the Court of Appeals, are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[14] The Republic did not show that the present case falls under any of the exceptions.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the 18 November 2003 Decision of the Court of Appeals in CA-G.R. CV No. 66687.

SO ORDERED.

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

---

[13] G.R. No. 166139, 20 June 2006, 491 SCRA 499, 523-524.

[14] *Ilagan-Mendoza v. Court of Appeals*, G.R. No. 171374, 8 April 2008, 550 SCRA 635, 647.

FIRST DIVISION

[G.R. No. 163788. August 24, 2009]

ESTER B. MARALIT, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; WHEN GRAVE ABUSE OF DISCRETION THEREBY COMMITTED. — Grave abuse of discretion arises when a court or tribunal exercises powers granted by law capriciously, whimsically, or arbitrarily. Indeed, the law grants the NLRC the power to review decisions of labor arbiters. However, the fact that the law grants the NLRC the power to review decisions of labor arbiters does not automatically rule out the possibility of grave abuse of discretion. Grave abuse of discretion may arise if the NLRC exercises such power in a capricious, whimsical, arbitrary, or despotic manner. x x x Labor officials commit grave abuse of discretion when their factual findings are arrived at arbitrarily or in disregard of the evidence. In the present case, the Labor Arbiter and the NLRC acted with grave abuse of discretion because their factual findings were arrived at in disregard of the evidence.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS HAS AMPLE AUTHORITY TO MAKE ITS OWN FACTUAL DETERMINATION; SUSTAINED. — In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination. In *Gutib v. Court of Appeals*, the Court held: [I]t has been said that **a wide breath of discretion is granted a court of justice in *certiorari* proceedings.** The cases in which *certiorari* will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the**

writ will be granted where necessary to prevent a substantial wrong or to do substantial justice. In *Globe Telecom, Inc. v. Florendo-Flores*, the Court held: [T]he Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. **The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for *certiorari*; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.** The Court of Appeals can grant a petition for *certiorari* when, as in the present case, it find that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.

3. ID.; ID.; ID.; AUTHORITY TO RECEIVE NEW EVIDENCE AND PERFORM ANY ACT NECESSARY TO RESOLVE THE ISSUE, EXPLAINED. — In a special civil action for *certiorari*, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues. Section 9 of Batas Pambansa Blg. 129, as amended, states that, "**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." In *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, the Court held: **[I]t is already settled that under Section 9 of Batas Pambansa Blg. 129,** as amended by Republic Act No. 7902 (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the Judiciary Reorganization Act of 1980), **the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues**. As clearly stated in Section 9 of Batas Pambansa Blg. 129, as amended by Republic

Act 7902: "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. x x x ."

4. ID.; RULES OF COURT; STRICT RULES OF PROCEDURE MAY BE SET ASIDE TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE. — Strict rules of procedure may be set aside to serve the demands of substantial justice. Labor cases must be decided according to justice, equity, and the substantial merits of the controversy. In *Azul v. Banco Filipino Savings and Mortgage Bank*, the Court held: The seriousness of petitioner's infraction demanded the setting aside of strict rules of procedure as to allow the determination on the merits of whether he was lawfully dismissed. As held by the Court, the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases, because they must be decided according to justice and equity and the substantial merits of the controversy. There is substantial evidence showing that there was valid cause for the bank to dismiss petitioner's employment for loss of trust and confidence. Petitioner was a bank accountant, which is a position of trust and confidence. The amount involved is significant, almost ₱4.5 million.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; SERIOUS MISCONDUCT AS A GROUND; DEFINED. — PNB may rightfully terminate Maralit's services for a just cause, including serious misconduct. Serious misconduct is improper conduct, a transgression of some established and definite rule of action, a forbidden act, or a dereliction of duty. Having been dismissed for a just cause, Maralit is not entitled to her retirement benefits.

APPEARANCES OF COUNSEL

Perfecto Nixon C. Tabora for petitioner.
Chief Legal Counsel (PNB) for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 31 May 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 72540. The Court of Appeals set aside the 27 August 2001 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 027826-01, affirming with modification the 22 January 2001 Decision[4] of the Labor Arbiter in Sub-RAB Case No. 05-09-00316-00.

The Facts

Petitioner Ester B. Maralit (Maralit) worked for respondent Philippine National Bank (PNB) from 27 August 1968 to 31 December 1998. She began as a casual clerk and climbed her way to become branch manager.

In February 1998, PNB offered its personnel an early retirement plan. In its 25 February 1998 Board Resolution No. 1, PNB approved the Special Separation Incentive Plan (SSIP). On 7 July 1998, PNB issued General Circular No. 1-355/98[5] laying down the guidelines for the availment of the SSIP. Under the Circular, personnel with pending administrative cases or who are under preliminary investigation may avail of the SSIP. However, payment of their benefits shall be made only after the resolution of their cases and only if they are not disqualified from receiving such benefits. The Circular stated:

---

[1] *Rollo*, pp. 8-57.

[2] *Id. at* 60-70. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Cancio C. Garcia and Lucas P. Bersamin, concurring.

[3] *Id.* at 85-87. Penned by Presiding Commissioner Roy V. Señeres, with Commissioners Vicente S.E. Veloso and Alberto R. Quimpo, concurring.

[4] *Id.* at 71-84. Penned by Labor Arbiter Rolando L. Bobis.

[5] CA *rollo*, pp. 53-57.

A. Period for Submission of Prescribed Forms Under the Plan

Officers and employees who will retire or will be separated from the service under the Plan shall accomplish the attached prescribed form for availment of the separation benefits under the SSIP (Annex A). The duly accomplished forms shall be submitted directly to the Personnel Administration and Industrial Relations Division (PAIRD). These forms will only be received and acknowledged by PAIRD starting 8:00 AM of July 13, 1998 up to but not later than 5:00 PM of September 30, 1998.

The deadline for submission will strictly be observed and submissions made after 5:00 PM of September 30, 1998 will no longer be accepted.

All duly accomplished forms received by PAIRD during the prescribed period can no longer be withdrawn.

xxx xxx xxx

D. Personnel With Administrative Cases/Exclusions

1. **Personnel with pending administrative cases or those who are under preliminary investigation can also submit duly accomplished forms for availment of benefits under the SSIP but payment thereof shall be made only upon final resolution of their cases provided that the decision in said case does not disqualify them from the enjoyment of said benefits.**[6] (Emphasis supplied)

In its 8 September 1998 memorandum,[7] PNB's Internal Audit Group (IAG) found that Maralit violated bank policies, which resulted in the return of unfunded checks amounting to ₱54,950,000. The IAG stated that:

BASIS OF THIS REPORT

Memorandum of VP Florencio C. Lat of Branch Operations and Consumer Banking Division — Southern Luzon/Bicol dated July 9, 1998 referring to IAG for an immediate investigation the possible kiting operation in Pili Branch as reported in the memorandum dated July 8, 1998 of Per Pro Gay Ophelia T. Alano of Pili Branch addressed to SAM Ben-Hur Relativo of Branch Accounting Supervision Division on DAUD accommodation (Annexes A & B).

---

[6] *Id.* at 53-54.

[7] *Id.* at 38-47.

x x x x x x x x x

VIOLATIONS OF BANK POLICIES AND PRESCRIBED PROCEDURES

Sanao Marketing Corporation was allowed drawings against uncollected deposits contrary to the provisions of Gen. Cir. 3-335/97 of May 15, 1997 Re: Drawings Against Uncollected Deposits (DAUD) which provides, among others, that (Annex W):

> "In view of the inherent risk involved and the sanction that may be imposed by BSP in allowing DAUDs, concerned officers are enjoined to strictly observe the BSP and the Bank's policy on DAUD."

The following personnel allowed these DAUDs which resulted in the return of unfunded checks for ₱54.950 MM and its debit to Accounts Receivable — Others:

1) Manager Ester B. Maralit

> a. For approving (as co-signatory) the issuance of five Manager's Checks totalling ₱49.550 MM against the uncleared five Maybank checks for the same amount which she approved for deposit on the same day.
>
> b. For Failure to stop the apparent kiting operation of Sanao Marketing Corporation wherein Manager's Checks payable to Amado Sanao were purchased against uncleared check deposits drawn by Mr. Sanao against his current account maintained at Maybank — Naga Branch where the Manager's Checks purchased were negotiated.

In her memorandum dated July 9, 1998, addressed to VP Florencio Lat of Branch Operations & Consumer Banking Division — SOL/Bicol, Manager Maralit stated, among others, that (Annex X):

x x x x x x x x x

ACTIONS TAKEN

1. SVP Leopoldo A. Manuel approved the recommendation of AVP Milagros Pastrana of Branch Administrative Office — Southern Luzon and Bicol dated July 9, 1998, for the 60-day temporary assignment of Manager Ester B. Maralit to Naga Branch vice Per Pro Ildefonso T. Lizaso, Unit Head — Loans, Naga Branch who was assigned as Officer-In-Charge of Pili Branch, effective upon assumption of duties

upon approval, without change in salary and allowances and without per diems (Annex Y).

Manager Maralit and Per Pro Lizaso assumed assumed (sic) their new assignments on July 15, 1998.

2. Branch Manager Lizaso furnished IAG, with a copy of Pili Branch report to Bangko Sentral ng Pilipinas dated July 28, 1998 on the "Report on Crime/Losses — ₱54,950,000.00 Drawings Against Uncollected Deposits — Sanao Marketing Corporation" (Annex Z). The report is in compliance with Gen Cir. 7-26/90 dated March 1, 1990 prescribing the format and requiring the submission of the report within five days from knowledge of crimes (Annex AA).[8]

The IAG recommended that Maralit be required to submit her written explanation under oath.

On 15 September 1998, Maralit filed with PNB's Personnel Administration and Industrial Relations Division her application[9] for early retirement.

In its 29 September 1998 memorandum,[10] PNB charged Maralit with serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. PNB stated:

You are hereby charged with Serious Misconduct, Gross Violation of Bank Rules and Regulations, and Conduct Grossly Prejudicial to the Best Interest of the Service consisting of giving undue and unwarranted preference, advantage or benefit to a private party through manifest partiality and evident bad faith committed by you while performing your duties as Manager of Pili Branch as follows:

1. On July 1, 1998, you approved five (5) unfunded Maybank-Naga Branch checks aggregating ₱49.550 MM for deposit to Current Account No. 377-830027-8 of Sanao Marketing Corporation and were used to purchase five Manager's Checks for the same amount against uncleared balance.

---

[8] *Id.* at 38, 44-47.

[9] *Id.* at 52.

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

On July 2, 1998, the said Maybank checks were returned for reason drawn against uncollected deposits (DAUD). On the following day, these checks were redeposited. On July 6, 1998, said checks were again returned for reason "DAIF."

2. On July 6, 1998, you consented tolerated, and abetted the approval of four (4) unfunded Maybank-Naga Branch checks aggregating ₱5.4 MM for deposit to the abovementioned account to cover the over-the-counter encashment of "on-us" checks and incoming clearing checks on the day of the deposit, which eventually were returned on July 7, 1998 for reason "DAIF."

3. On July 7, 1998, you approved five (5) unfunded PCIBank-Paseo de Roxas Branch checks aggregating ₱54.950 MM for deposit to CA #377-830027-8 to fund the previously returned unfunded Maybank checks for ₱52.950 MM. The said PCIBank checks were likewise returned for reason "Payment Stopped" and "Insufficient Fund."

4. As a consequence of your foregoing acts, Bank funds were used for the benefit of the above-named private party to the damage and prejudice of the Bank.

BANK LOSS

As of July 10, 1998, the Bank stands to suffer losses in the total amount of ₱54.950 MM representing unpaid amount of the aforesaid returned checks, exclusive of interest and other charges.

In view of the foregoing, please submit to the Inspection and Investigation Unit (IIU) of the Internal Audit Group (IAG) your written answer under oath to the above charges together with whatever affidavits and other documentary evidence you may wish to submit within five (5) days from receipt of this memorandum why you should not be penalized for Serious Misconduct, Willful Breach of Trust and Gross Violation of Bank Rules and Regulations under Article 282 of the Labor Code.

Further, you are hereby informed that you have the right to be assisted by a representative in the preparation of your answer and you are entitled to all the rights you have under the labor laws.

Attached is the Internal Audit report dated September 8, 1998.

PNB directed Maralit to submit her written answer under oath, together with affidavits and other documentary evidence,

explaining why she should not be punished under Article 282 of the Labor Code for serious misconduct, willful breach of trust, and gross violation of bank rules and regulations.

In its 16 October 1998 memorandum,[11] PNB placed Maralit under preventive suspension. PNB stated:

> In connection with the Special Audit report of Internal Audit Group dated September 8, 1998 re: Unfunded Returned Checks for ₱54.950 MM of Sanao Marketing Corporation — Pili Branch, which cited you as one of the personnel who allowed/approved drawings against uncollected deposits (DAUD) that resulted in the return of unfunded checks for ₱54.950 MM, you are hereby placed under preventive suspension for thirty (30) days effective upon receipt hereof pursuant to Section 3, Rule XIV of the Omnibus Rules Implementing the Labor Code.

On 20 November 1998, PNB conditionally approved Maralit's application for early retirement effective at the close of business hours on 31 December 1998. PNB stated that, "Payment of Special Separation Incentive and other Benefits shall be made only upon final resolution of the administrative case against you, provided that the decision in said investigation does not disqualify you from the enjoyment of said benefits." Under the SSIP, Maralit was entitled to ₱1,359,086.02 retirement benefits.

Maralit submitted her answer dated 11 January 1999. She stated that "The favorable accommodations granted to (a certain) Mr. Amado A. Sanao were made in good faith and intended for the higher interests of the Bank," and that "Said accommodations was [sic] a business decision, bearing in mind the consequential interests beneficial to the Bank." She admitted that the accommodations were "deviation[s] from Bank's policies."

In its report dated 22 September 1999, PNB's Inspection and Investigation Unit found that (1) Maralit did not deny the irregular transactions imputed against her, (2) Maralit's approval

---

[11] *Id.* at 48.

of drawings against uncollected deposits was a wanton violation of the policy of the Bangko Sentral ng Pilipinas (BSP) and PNB, (3) Maralit was fully aware of the prohibition against drawings against uncollected deposits, (4) Maralit's actions prejudiced PNB, (5) Maralit had no discretion to do prohibited acts, and (6) PNB's interest was unreasonably put at risk.

On 14 April 2000, Maralit received a letter[12] dated 23 March 2000 together with a copy of PNB's Administrative Adjudication Panel's decision[13] dated 14 February 2000 finding her guilty of serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. PNB dismissed Maralit from the service with forfeiture of her retirement benefits effective at the close of business hours on 31 December 1998.

Maralit filed with the arbitration branch of the NLRC a complaint for non-payment of retirement benefits and separation pay, and for damages against PNB.

The Labor Arbiter's Ruling

In his 22 January 2001 Decision, the Labor Arbiter held that Maralit was entitled to ₱1,359,086.02 retirement benefits, ₱200,000 exemplary damages, and ₱155,908.60 attorney's fees. The Labor Arbiter found that (1) Maralit was not under preliminary investigation when she filed her application for early retirement; (2) had Maralit known that she would be administratively charged, she would not have availed of the SSIP so that she could continue receiving her monthly salary; (3) when PNB approved Maralit's application for early retirement, the Administrative Adjudication Panel had not decided the administrative case against her; (4) there was no hearing or conference held where Maralit could respond to the charge, present her evidence, or rebut the evidence presented against her; and (5) PNB illegally dismissed Maralit and committed an act oppressive to labor.

---

[12] *Id.* at 64.

[13] *Id.* at 61-63.

PNB appealed to the NLRC, claiming that the Labor Arbiter gravely abused his discretion and erred in his factual findings.

The NLRC's Ruling

In its 27 August 2001 Resolution, the NLRC affirmed with modification the Labor Arbiter's 22 January 2001 Decision. The NLRC deleted the award of ₱200,000 exemplary damages. The NLRC held that (1) there was no grave abuse of discretion on the part of the Labor Arbiter, (2) the material facts as found by the Labor Arbiter were consistent with the evidence, and (3) the award of exemplary damages lacked basis.

PNB filed with the Court of Appeals a petition[14] for *certiorari* under Rule 65 of the Rules of Court with prayer for preliminary injunction. PNB claimed that the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's 22 January 2001 Decision because (1) Maralit was not entitled to retirement benefits, (2) Maralit was afforded due process, and (3) Maralit was not entitled to attorney's fees.

The Court of Appeals' Ruling

In its 31 May 2004 Decision, the Court of Appeals set aside the 27 August 2001 Resolution of the NLRC. The Court of Appeals held that the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's 22 January 2001 Decision. The Court of Appeals found that Maralit was under preliminary investigation when she filed her application for early retirement and that she was afforded due process.

Hence, the present petition.

The Issues

In her petition dated 16 July 2004, Maralit raised the following issues:

I. WHETHER THE ACT OF THE HONORABLE NLRC IN AFFIRMING *IN TOTO* [sic] THE DECISION OF ITS LABOR ARBITER CONSTITUTES A GRAVE ABUSE OF DISCRETION.

[14] *Id*. at 2-26.

II. WHETHER THE ALLEGED ERRORS ATTRIBUTED BY THE COURT *A QUO* TO THE LABOR AGENCY CONSTITUTE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION OR JUST MERELY ERRORS OF JUDGMENT.

III. WHETHER IN A SPECIAL CIVIL ACTION FOR *CERTIORARI* THE COURT *A QUO* CAN SUBSTITUTE ITS OWN FINDINGS OF FACTS AND CONCLUSIONS WITH THAT OF THE LABOR AGENCY WHICH ARE ALL SUPPORTED BY SUBSTANTIAL EVIDENCE, AFTERWARDS, DECLARE THE LATTER TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION[.]

IV. WHETHER THE COURT *A QUO* IN A SPECIAL CIVIL ACTION FOR *CERTIORARI* CAN ENTERTAIN NEW EVIDENCE TO PROVE FACTS NOT PROVEN BEFORE THE LABOR AGENCY.

V. WHETHER THE COURT *A QUO* ERRED IN NOT UPHOLDING THE RETIREMENT OF PETITIONER FROM THE SERVICE OF RESPONDENT EFFECTIVE 31 DECEMBER 1998[.]

VI. WHETHER OR NOT PETITIONER HAS RETIRED OR WAS DISMISSED FROM THE SERVICE EFFECTIVE 31 DECEMBER 1998.

VII. WHETHER THE DECISION OF THE LABOR ARBITER DATED 22 JANUARY 2001 HAD LONG BECOME FINAL AND EXECUTORY, BY REASON OF RESPONDENT'S UNTIMELY APPEAL TO THE HONORABLE NLRC. OR PUT OTHERWISE, WHETHER THE DECISION OF THE LABOR ARBITER DATED 22 JANUARY 2001 CAN BE REINSTATED.

The Court's Ruling

The petition is unmeritorious.

Maralit claims that Articles 217[15] and

[15] Article 217 of the Labor Code provides:

Art. 217. *Jurisdiction of Labor Arbiters and the Commission.* — (a) Except as otherwise provided under this Code, the Labor Arbiters shall

223[16] of the Labor Code grant the NLRC the power to review decisions of labor arbiters. Since the law expressly grants the

---

have the original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;

(2) Termination disputes;

(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

(6) Except claims for employees compensation, social security, medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service involving an amount exceeding five thousand pesos (₱5,000), whether or not accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

[16] Article 223 of the Labor Code provides:

Art. 223. *Appeal.* — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

NLRC the power to review decisions of labor arbiters, the NLRC did not commit grave abuse of discretion when it affirmed with modification the Labor Arbiter's 22 January 2001 Decision. She stated:

With all due respect, the appellate powers of the Honorable NLRC to affirm, modify, reverse, or set aside decisions of Labor Arbiters are legally mandated. In this case, when the Honorable NLRC issued

---

(a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely on questions of law; and

(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders.

the Resolution dated 27 August 2001 (Appendix "C"), affirming with modification the decision of the Labor Arbiter dated 22 January 2001 (Appendix "B"), it is to be considered as merely exercising a duty mandated by law. Hence, said act of affirming *per se* cannot be considered as an act of "grave abuse of discretion."

Said powers of the Commission are contained in the Labor Code as amended by R.A. No. 6715.

xxx xxx xxx

[T]he act of the Honorable NLRC in affirming *in toto* the decision of its Labor Arbiter does not constitute a grave abuse of discretion, but instead, a valid discharge or exercise of a duty mandated by law.[17]

The Court is unimpressed. Grave abuse of discretion arises when a court or tribunal exercises powers granted by law capriciously, whimsically, or arbitrarily.[18] Indeed, the law grants the NLRC the power to review decisions of labor arbiters. However, the fact that the law grants the NLRC the power to review decisions of labor arbiters does not automatically rule out the possibility of grave abuse of discretion. Grave abuse of discretion may arise if the NLRC exercises such power in a capricious, whimsical, arbitrary, or despotic manner.

Maralit claims that the Labor Arbiter's findings that she was not under preliminary investigation when she filed her application for early retirement and that she was denied due process were errors of judgment, and thus the Labor Arbiter did not commit grave abuse of discretion. She stated:

With all due respect, the aforesaid findings relied upon by the court *a quo* in nullifying the Resolution of the Honorable NLRC dated 27 August 2001 are mere "Errors of Judgment" and not acts constituting "Grave Abuse of Discretion." It may be observed, the court *a quo* even stated in "First Error" found above that the "*Labor Arbiter erred*," thereby admitting that the same was a mere error of judgment.[19]

---

[17] *Rollo*, pp. 27-29.

[18] *Fernandez v. Commission on Elections*, G.R. No. 171821, 9 October 2006, 504 SCRA 116, 119.

[19] *Rollo*, p. 30.

The Court is unimpressed. Labor officials commit grave abuse of discretion when their factual findings are arrived at arbitrarily or in disregard of the evidence.[20] In the present case, the Labor Arbiter and the NLRC acted with grave abuse of discretion because their factual findings were arrived at in disregard of the evidence.

In his 22 January 2001 Decision, the Labor Arbiter found that Maralit was not under preliminary investigation when she filed her application for early retirement. In its 27 August 2001 Resolution, the NLRC held that the material facts as found by the Labor Arbiter were consistent with the evidence.

The evidence shows that Maralit was under preliminary investigation when she filed her application for early retirement: (1) in a memorandum dated **8 July 1998**, a certain Gay Ophelia T. Alano reported Maralit's irregular transactions; (2) in a memorandum dated **9 July 1998**, Vice President Florencio C. Lat of Branch Operations and Consumer Banking Division for Southern Luzon and Bicol referred Maralit's irregular transactions to the IAG for immediate investigation; (3) Maralit submitted a memorandum dated **9 July 1998** admitting the irregular transactions; (4) on **9 July 1998**, Vice President Milagros Pastrana of Branch Administrative Office for Southern Luzon and Bicol recommended that Maralit be temporarily assigned to the Naga Branch; (5) on **15 July 1998**, Maralit assumed her new assignment at the Naga Branch; (6) on **28 July 1998**, PNB reported to the BSP the ₱54,950,000 drawings against uncollected deposits; (7) in a memorandum dated **8 September 1998**, the IAG found that Maralit violated bank policies which resulted in the return of unfunded checks amounting to ₱54,950,000 and recommended that Maralit be required to submit her written answer under oath; (8) on **15 September 1998**, Maralit filed her application for early

---

[20] *Triumph International, Inc. v. Apostol*, G.R. No. 164423, 16 June 2009; *Marival Trading, Inc. v. National Labor Relations Commission,* G.R. No. 169600, 26 June 2007, 525 SCRA 708, 722-723; *Escareal v. National Labor Relations Commission*, G.R. No. 99359, 2 September 1992, 213 SCRA 472, 490.

retirement; (9) in its 29 September 1998 memorandum, PNB stated, "Attached is the Internal Audit report dated **September 8, 1998**"; and (10) in its 16 October 1998 memorandum, PNB stated, "In connection with the Special Audit report of Internal Audit Group dated **September 8, 1998**."

In his 22 January 2001 Decision, the Labor Arbiter found that there was no hearing or conference held where Maralit could respond to the charges against her, present her evidence, or rebut the evidence presented against her, and thus PNB illegally dismissed Maralit and committed an act oppressive to labor. In its 27 August 2001 Resolution, the NLRC held that the material facts as found by the Labor Arbiter were consistent with the evidence.

The evidence shows that Maralit was afforded due process. The essence of due process is an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side. A formal or trial-type hearing is not essential.[21] In the present case, PNB gave Maralit ample opportunity to explain her side. In its 29 September 1998 memorandum, PNB directed Maralit to submit her written answer under oath together with affidavits and other documentary evidence:

> In view of the foregoing, **please submit to the Inspection and Investigation Unit (IIU) of the Internal Audit Group (IAG) your written answer under oath to the above charges together with whatever affidavits and other documentary evidence you may wish to submit** within five (5) days from receipt of this memorandum why you should not be penalized for Serious Misconduct, Willful Breach of Trust and Gross Violation of Bank Rules and Regulations under Article 282 of the Labor Code.
>
> Further, you are hereby informed that **you have the right to be assisted by a representative in the preparation of your answer and you are entitled to all the rights you have under the labor laws**.[22] (Emphasis supplied)

---

[21] *Philippine Long Distance Company v. Bolso*, G.R. No. 159701, 17 August 2007, 530 SCRA 550, 564-565.

[22] CA *rollo*, p. 60.

In its comment[23] dated 23 September 2004, PNB described its procedure in investigating erring employees:

> The administrative investigation in PNB undergoes a three-tiered process which commences with an audit report made by the Internal Audit Division (IAD). IAD comes up with its findings on the administrative lapses and audit exceptions involved and advises the employee concerned to submit his comment under oath. Subsequently, if the circumstances warrant, IAD forwards the matter to a fact-finding body in the Legal Department known as the IIU which stands for Investigation and Inspection Unit. The employee is again given the opportunity to file an answer under oath. If still the circumstances warrant further investigation, the matter is elevated to the Administration and Adjudication Panel (AAP) which is a special body created by the Bank to conduct its own formal inquiry and summon the employee concerned for proper ventilation of his defenses. Thereafter, the AAP submits its findings and recommendation to the Office of the President for approval.
>
> It bears to stress that all these three investigative bodies are separate and independent from each other, and they proceed without influence from the other bodies having their own respective mandates and processes.[24]

Maralit submitted her answer dated 11 January 1999. In her answer, Maralit admitted that she violated PNB's policy against drawings against uncollected deposits. She stated that, "The accommodations — though admittedly a deviation from Bank's policies, were all aboveboard and well-motivated." In *Lagatic v. NLRC*,[25] the Court held that there is no necessity for a formal hearing when the employee admits responsibility for an alleged misconduct.

Maralit claims that, in a special civil action for *certiorari*, the Court of Appeals cannot make its own factual determination. She stated:

---

[23] *Rollo,* pp. 106-118.

[24] *Id.* at 115-116.

[25] 349 Phil. 172, 182 (1998).

Such an act of the court *a quo* in substituting its own findings of facts with that of the Labor Agency is not allowed in *certiorari* proceedings under Rule 65 of the Rules of Court as it tantamount [sic] to excessive exercise of jurisdiction. x x x

As earlier discussed, in a *certiorari* proceedings [sic] under Rule 65 of the Rules of Court, the Court is confined only in [sic] issues of want of jurisdiction and grave abuse of discretion amounting to lack or excess of jurisdiction.[26]

The Court is unimpressed. In a special civil action for *certiorari*, the Court of Appeals has ample authority to make its own factual determination. In *Gutib v. Court of Appeals*,[27] the Court held:

[I]t has been said that **a wide breadth of discretion is granted a court of justice in *certiorari* proceedings**. The cases in which *certiorari* will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice**. (Emphasis supplied)

In *Globe Telecom, Inc. v. Florendo-Flores*,[28] the Court held:

[T]he Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. **The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over**

---

[26] *Rollo*, p. 34.

[27] 371 Phil. 293, 307 (1999).

[28] 438 Phil. 756, 764-765 (2002).

labor cases elevated through a petition for *certiorari*; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC. (Emphasis supplied)

The Court of Appeals can grant a petition for *certiorari* when, as in the present case, it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination.[29]

Maralit claims that, in a special civil action for *certiorari*, the Court of Appeals cannot receive new evidence. She stated that, "the court *a quo* gave utmost credence to [the IAG's 8 September 1998 memorandum], disregarding all the evidence presented by the parties before the Labor Agency. Worse, it nullified the decisions of the Honorable NLRC relying primarily on said 'belated evidence.' This is not allowed x x x."

The Court is unimpressed. In a special civil action for *certiorari*, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues. Section 9 of Batas Pambansa Blg. 129, as amended, states that, "**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." In *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*,[30] the Court held:

[**I**]**t is already settled that under Section 9 of *Batas Pambansa Blg*. 129**, as amended by Republic Act No. 7902 (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the Judiciary Reorganization Act of 1980), **the Court of Appeals —**

---

[29] *Marival Trading, Inc. v. National Labor Relations Commission, supra* note 20.

[30] G.R. No. 153144, 16 October 2006, 504 SCRA 336, 348-350.

pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. As clearly stated in Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act 7902:

> "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. x x x." (Emphasis supplied)

Maralit claims that PNB had already approved her application for early retirement and she had effectively retired, thus PNB could no longer dismiss her. She stated:

Petitioner's retirement was approved by respondent's President Benjamin P. Palma Gil and communicated to her through a letter dated 20 November 1998 sent by respondent's PAIRD. [sic] where respondent even appreciated petitioner's 30 years of loyal service x x x.

It is clearly established in the foregoing discussion that petitioner has retired from the service effective 31 December 1998 on the basis of respondent's approval of her application for retirement under the SSIP on 20 November 1998. This fact was even confirmed by the court *a quo* in its assailed decision when it states that "*Private respondent's separation from the service took effect after the business hours of 31 December 1998.*" (APPENDIX "A", p. 4).

x x x x x x x x x

Basic is the rule, an employee who has already retired can no longer be subsequently dismissed, as naturally, how can you dismiss an employee who has already retired?. [sic] However, in this case, respondent in trying to circumvent this principle, made the dismissal of the petitioner to take effect retroactively on 31 December 1998, the date of petitioner's retirement. x x x

Invoking the principle on *estoppel*, an employer who accepts or approves the retirement of an employee loses the right to dismiss such employee in a subsequent action. "Retirement" and "Dismissal" are entirely different and incompatible from each other. Each is a distinct and separate mode of extinguishing an employer-employee

relationship, and has its own legal effects in our jurisdiction. Consequently, they cannot be taken together for the purpose of terminating employment relation.

xxx xxx xxxx

It is therefore our view that the subsequent action of respondent dismissing petitioner after she had long retired from the service, have [sic] no legal force and effect, for the simple reason that when respondent issued its administrative Decision on 14 February 2000, there was no longer an employer-employee relationship between the parties, as such relationship had long been extinguished or severed away back on December 31, 1998 when petitioner retired from the service.[31]

The Court is unimpressed. The evidence shows that Maralit was under preliminary investigation when she filed her application for early retirement. PNB consistently stated that payment of Maralit's retirement benefits shall be paid **only after final resolution of the administrative case against her, provided that she is not disqualified to receive such benefits**. PNB's 7 July 1998 General Circular No. 1-355/98, which laid down the guidelines for the availment of the SSIP, stated:

Personnel with pending administrative cases or those who are under preliminary investigation can also submit duly accomplished forms for availment of benefits under the SSIP but payment thereof shall be made only upon final resolution of their cases provided that the decision in said case does not disqualify them from the enjoyment of said benefits.[32]

PNB's 20 November 1998 letter, which approved Maralit's application for early retirement effective at the close of business hours on 31 December 1998, stated that, "Payment of Special Separation Incentive and other Benefits shall be made only upon final resolution of the administrative case against you, provided that the decision in said investigation does not disqualify you from the enjoyment of said benefits."

---

[31] *Rollo*, pp. 40, 45, 47-48.

[32] CA *rollo*, p. 54.

In its 14 February 2000 decision, PNB's Administrative Adjudication Panel found Maralit guilty of serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. Maralit violated bank policies which resulted in the return of unfunded checks amounting to ₱54,950,000. Accordingly, PNB dismissed Maralit from the service with forfeiture of her retirement benefits effective at the close of business hours on 31 December 1998.

PNB may rightfully terminate Maralit's services for a just cause, including serious misconduct.[33] Serious misconduct is improper conduct, a transgression of some established and definite rule of action, a forbidden act, or a dereliction of duty. Having been dismissed for a just cause, Maralit is not entitled to her retirement benefits.[34]

Maralit claims that the Labor Arbiter's 22 January 2001 Decision had already become final and executory on 18 February 2001, thus, all proceedings taken after 18 February 2001 are void. She stated:

> The decision of the Labor Arbiter dated 22 January 2001 (Appendix "B") was received by respondent on 08 February 2001.
>
> On 20 February 2001, or after 12 days from receipt of said Decision, respondent filed an Appeal Memorandum, and paid therefor the corresponding appeal fee and posted the required appeal bond, as per Certification dated 22 February 2001 issued by the Arbitration Branch of the NLRC, hereto attached and marked as APPENDIX "G";
>
> On 22 February 2001, petitioner filed a Motion to Dismiss respondent's Appeal on the ground that the appeal was filed "out of time." Copy of the "Motion to Dismiss Appeal, *etc.,*" is hereto attached and marked as APPENDIX "H";
>
> On 28 February 2001, respondent filed its opposition thereto. On 06 March 2001, petitioner filed her reply to such opposition. However, on 13 March 2001, petitioner received a copy of a Letter of Transmittal

---

[33] LABOR CODE, Art. 282(a).

[34] *Philippine Long Distance Company v. Bolso, supra* note 21 at 559-564.

from the Labor Arbiter transmitting all the records of the case to NLRC, Manila on appeal, but without resolving the aforesaid incident

On 2 April 2001, petitioner filed with the Honorable Commision a "Manifestation with Motion to Resolve Complainant's Motion to Dismiss Appeal" as said motion was not resolved by the Labor Arbiter. Without resolving said incident, the Honorable Commission, issued its Resolution dated 27 August 2001 (Appendix "C") affirming the decision of the Labor Arbiter dated 22 January 2001 (Appendix "B").

When respondent brought this case before the Honorable Court of Appeal[s] on *Certiorari* under Rule 65, petitioner raised the same issue in her "Comment," x x x but said issue was never passed upon by the court *a quo* in the assailed Decision.

x x x x x x x x x

With the foregoing, we humbly submit that the decision of the Labor Arbiter dated 22 January 2001 (Appendix "B") had long become final and executory or to be exact on 18 February 2001. Hence, all proceedings taken from said dated (sic) and up to the present, except those related to its execution, are null and void *ab initio*. We asked, therefore, that said decision be ordered REINSTATED.[35]

The Court is unimpressed. The gravity of Maralit's infraction demands the relaxation of strict rules of procedure. Strict rules of procedure may be set aside to serve the demands of substantial justice. Labor cases must be decided according to justice, equity, and the substantial merits of the controversy. In *Azul v. Banco Filipino Savings and Mortgage Bank*,[36] the Court held:

The seriousness of petitioner's infraction demanded the setting aside of strict rules of procedure as to allow the determination on the merits of whether he was lawfully dismissed. As held by the Court, the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases, because they must be decided according to justice and equity and the substantial merits of the controversy.

---

[35] *Rollo*, pp. 50-51, 55.

[36] G.R. No. 172401, 30 October 2006, 506 SCRA 290, 295.

There is substantial evidence showing that there was valid cause for the bank to dismiss petitioner's employment for loss of trust and confidence. Petitioner was a bank accountant, which is a position of trust and confidence. The amount involved is significant, almost ₱4.5 million.

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 31 May 2004 Decision of the Court of Appeals in CA-G.R. SP No. 72540 which set aside the 27 August 2001 Resolution of the National Labor Relations Commission in NLRC NCR CA No. 027826-01 which, in turn, affirmed with modification the 22 January 2001 Decision of the Labor Arbiter in Sub-RAB Case No. 05-09-00316-00.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 168910. August 24, 2009]

REPUBLIC CEMENT CORPORATION, *petitioner, vs.* **PETER I. GUINMAPANG,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL FROM THE DECISIONS, AWARDS, OR ORDERS OF THE LABOR ARBITER; PERIOD OF APPEAL; WHEN ONE DAY DELAY IN THE PERFECTION OF APPEAL IS EXCUSED.— Article 223 of the Labor Code, the governing law on the timeliness of an appeal from the decisions, awards or orders of the Labor Arbiter, provides that the aggrieved party has 10 calendar days from receipt thereof to appeal to the NLRC.

---

[*] Designated additional member per Raffle dated 17 August 2009.

Section 1 of Rule VI of the 2005 Revised Rules of the NLRC implements the said provision of the Labor Code. Section 1 provides: Section 1. *Periods of Appeal*. – Decisions, awards or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof x x x. The general rule is that the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. The purpose behind the limitation of the period of appeal is to avoid an **unreasonable** delay in the administration of justice and to put an end to controversies. In *Chronicle Securities Corporation v. NLRC*, we ruled: In not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time honored principle that cases should be decided only after giving all the parties the chance to argue their causes and defenses. Technicality and procedural imperfections should thus not serve as bases of decisions. In that way, the ends of justice would be better served. For indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice. Indeed the prevailing trend is to accord party litigants the amplest opportunity for the proper and just determination of their causes, free from the constraints of needless technicalities. A one-day delay in the perfection of the appeal was excused in *Gana v. NLRC*, *Surigao del Norte Electric Cooperative v. NLRC*, *City Fair Corporation v. NLRC*, *Pacific Asia Overseas Shipping Corp. v. NLRC*, and *Insular Life Assurance Co., Ltd. v. NLRC*. We agree with the Court of Appeals that since no intent to delay the administration of justice could be attributed to Guinmapang, a one day delay does not justify the appeal's denial. More importantly, the Court of Appeals declared that Guinmapang's appeal, on its face, appears to be impressed with merit. The constitutional mandate to accord full protection to

> labor and to safeguard the employee's means of livelihood should be given proper attention and sanction. A greater injustice may occur if said appeal is not given due course than if the reglementary period to appeal were strictly followed. In this case, we are inclined to excuse the one day delay in order to fully settle the merits of the case. This is in line with our policy to encourage full adjudication of the merits of an appeal.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako Law Offices for petitioner.

Pro-Labor Legal Assistance Center (PLACE) for respondent.

R E S O L U T I O N

CARPIO, *J.*:

This is a petition for review[1] of the 17 March 2005 Decision[2] and 7 July 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 86025. In its 17 March 2005 Decision, the Court of Appeals set aside the 29 January 2004[4] Order of the National Labor Relations Commission (NLRC) which dismissed the appeal of respondent Peter I. Guinmapang (Guinmapang) for being filed out of time. In its 7 July 2005 Resolution, the Court of Appeals denied the motion for reconsideration of petitioner Republic Cement Corporation (Republic Cement).

Guinmapang was an employee of Republic Cement from May 1996 to 15 August 2001. Guinmapang's last position was supervisor with a monthly salary of ₱13,100.

---

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

[2] *Rollo*, pp. 25-28. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Romeo A. Brawner and Edgardo P. Cruz, concurring.

[3] *Id.* at 30-32.

[4] CA *rollo*, pp. 18-22. Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring.

On 4 July 2001, Republic Cement issued General Circular No. 101-027 announcing the implementation of a retrenchment program. On 12 July 2001, Guinmapang received a notice from Republic Cement that his services were being terminated effective 15 August 2001 pursuant to the retrenchment program. On the same date, Republic Cement also sent the required notice to the Department of Labor and Employment. However, Guinmapang refused to receive the separation package offered by Republic Cement.

Thereafter, Guinmapang filed a complaint for illegal dismissal and other money claims against Republic Cement.[5]

On 30 May 2003, the Labor Arbiter ruled in Republic Cement's favor.[6] The dispositive portion of the 30 May 2003 decision provides:

> WHEREFORE, premises considered, let the complaint be, as it is hereby, DISMISSED for lack of merit. However, respondent Republic Cement Corporation, is hereby ordered to pay the complainant his separation pay in the amount of Seventy Eight Thousand Six Hundred Pesos (Php 78,600).
>
> SO ORDERED.[7]

The Labor Arbiter said that retrenchment to prevent losses is an authorized cause to terminate the employer-employee relationship. According to the Labor Arbiter, Republic Cement was able to prove that it sustained losses from 1998 to 2000. As to the procedural requirements, the Labor Arbiter found that Republic Cement complied with the notice requirement.

On 23 June 2003, Guinmapang's counsel received a copy of the Labor Arbiter's 30 May 2003 Decision. However, Guinmapang's counsel filed his appeal with the NLRC only on 4 July 2003, one day beyond the 10-day reglementary period to file an appeal.

---

[5] *Id.* at 31.

[6] *Rollo*, pp. 41-57. Penned by Labor Arbiter Florentino R. Darlucio.

[7] *Id.* at 57.

In its 29 January 2004 Order, the NLRC dismissed Guinmapang's appeal. The 29 January 2004 Order of the NLRC provides:

> WHEREFORE, premises considered, the instant appeal, having been filed after the reglementary period, is hereby, DISMISSED.
>
> The Decision herein sought to be appealed, is hereby, AFFIRMED, *in toto*.
>
> SO ORDERED.[8]

The NLRC said that the 10-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature. The NLRC added that Guinmapang's failure to file the appeal within the reglementary period rendered the Labor Arbiter's decision final and executory and deprived the NLRC of jurisdiction to alter the judgment, much less to entertain the appeal.

Guinmapang filed a motion for reconsideration. In its 31 May 2004 Order,[9] the NLRC denied the motion.

Thereafter, Guinmapang filed a petition for *certiorari* before the Court of Appeals. Guinmapang alleged that the NLRC acted with grave abuse of discretion amounting to lack of jurisdiction when, in affirming the Labor Arbiter's Decision, it held that Guinmapang's retrenchment was legal and that Guinmapang was not entitled to damages, attorney's fees and litigation costs.

The Court of Appeals granted Guinmapang's petition. The 17 March 2005 Decision of the Court of Appeals provides:

> WHEREFORE, the petition is GRANTED. Accordingly, the January 29, 2004 Order and the May 31, 2004 Order, which denied the motion for reconsideration thereof, are hereby REVERSED and SET ASIDE. The public respondent is hereby ordered to decide the petitioner's appeal on the merits.
>
> SO ORDERED.[10]

---

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

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

[10] *Rollo*, p. 28.

The Court of Appeals noted that, in their pleadings, both parties discussed the merits of the case. However, since the NLRC's 29 January 2004 Order dealt only with the dismissal of the case for having been filed beyond the 10-day reglementary period, the Court of Appeals did not rule on the merits of the case. The Court of Appeals limited its discussion of the case to the procedural issue.

The Court of Appeals started by declaring that in labor cases, the rules of procedure are not to be strictly adhered to. The Court of Appeals said that technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. The Court of Appeals gave credence to Guinmapang's explanation that the appeal was filed one day late because Guinmapang's counsel suffered from an asthma attack a few days before the last day for the filing of the appeal. The Court of Appeals added that the delay of one day was not deliberate. Moreover, the Court of Appeals found that Guinmapang's Memorandum of Appeal before the NLRC raised valid and meritorious arguments. Therefore, in the interest of justice, the Court of Appeals ruled that the NLRC should have taken cognizance of Guinmapang's appeal even if it was filed out of time.

Hence, this petition.

Republic Cement raises the sole issue:

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE NLRC AND ORDERING IT TO DECIDE THE APPEAL OF RESPONDENT PETER GUINMAPANG ON THE MERITS, DESPITE THE FAILURE OF THE RESPONDENT TO PERFECT HIS APPEAL WITHIN THE TEN (10) – DAY REGLEMENTARY PERIOD FOR APPEALING A DECISION OF THE LABOR ARBITER TO THE NLRC.[11]

The petition has no merit.

Republic Cement, while acknowledging that technical rules of procedure are not binding in labor cases, argues that the

[11] *Id.* at 15.

NLRC should not disregard and violate the implementing rules which it had itself promulgated. Republic Cement insists that, in the settlement of labor disputes, delays cannot be countenanced.

On the other hand, Guinmapang argues that in labor cases, the technical rules of procedure are not to be strictly applied. Guinmapang explains that his counsel presented a medical certificate showing that he suffered from "mild resistant asthma" on the last day of filing. Guinmapang maintains that the one day delay was not a gross violation of the rules on filing an appeal.

Article 223 of the Labor Code, the governing law on the timeliness of an appeal from the decisions, awards or orders of the Labor Arbiter, provides that the aggrieved party has 10 calendar days from receipt thereof to appeal to the NLRC. Section 1 of Rule VI of the 2005 Revised Rules of the NLRC implements the said provision of the Labor Code. Section 1 provides:

> Section 1. *Periods of Appeal*. – Decisions, awards or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof x x x.

There is no dispute that Guinmapang received a copy of the Labor Arbiter's Decision on 23 June 2003. Thus, pursuant to Article 223 of the Labor Code and Section 1, Rule VI of the 2005 Revised Rules of the NLRC, Guinmapang had only until 3 July 2003, the 10th calendar day from 23 June 2003, within which to file an appeal. However, due to the asthma attack suffered by Guinmapang's counsel, Guinmapang's appeal was filed on 4 July 2003, a day late.

The general rule is that the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and

unappealable.[12] By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof.[13] The purpose behind the limitation of the period of appeal is to avoid an **unreasonable** delay in the administration of justice and to put an end to controversies.[14]

In *Chronicle Securities Corporation v. NLRC*,[15] we ruled:

> In not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time honored principle that cases should be decided only after giving all the parties the chance to argue their causes and defenses. Technicality and procedural imperfections should thus not serve as bases of decisions. In that way, the ends of justice would be better served. For indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[16]

Indeed the prevailing trend is to accord party litigants the amplest opportunity for the proper and just determination of their causes, free from the constraints of needless technicalities.[17]

---

[12] *Kathy-O Enterprises v. National Labor Relations Commission*, 350 Phil. 380 (1998); *Asuncion v. National Labor Relations Commission*, G.R. No. 109311, 17 June 1997, 273 SCRA 498; *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 120506, 28 October 1996, 263 SCRA 638.

[13] *Manaya v. Alabang Country Club Incorporated*, G.R. No. 168988, 19 June 2007, 525 SCRA 140; *Philippine Airlines, Inc. v. National Labor Relations Commission*, *supra*.

[14] *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, 15 November 2005, 475 SCRA 41; *Samala v. Court of Appeals*, 416 Phil. 1 (2001).

[15] 486 Phil. 560 (2004).

[16] *Id.* at 568.

[17] *Philippine National Construction Corporation v. Matias*, 497 Phil. 476 (2005).

A one-day delay in the perfection of the appeal was excused in *Gana v. NLRC*,[18] *Surigao del Norte Electric Cooperative v. NLRC*,[19] *City Fair Corporation v. NLRC*,[20] *Pacific Asia Overseas Shipping Corp. v. NLRC*,[21] and *Insular Life Assurance Co., Ltd. v. NLRC*.[22]

We agree with the Court of Appeals that since no intent to delay the administration of justice could be attributed to Guinmapang, a one day delay does not justify the appeal's denial.[23] More importantly, the Court of Appeals declared that Guinmapang's appeal, on its face, appears to be impressed with merit. The constitutional mandate to accord full protection to labor and to safeguard the employee's means of livelihood should be given proper attention and sanction.[24] A greater injustice may occur if said appeal is not given due course than if the reglementary period to appeal were strictly followed.[25] In this case, we are inclined to excuse the one day delay in order to fully settle the merits of the case. This is in line with our policy to encourage full adjudication of the merits of an appeal.[26]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 17 March 2005 Decision and the 7 July 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 86025.

SO ORDERED.

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

---

[18] G.R. No. 164640, 13 June 2008, 554 SCRA 471.

[19] 368 Phil. 537 (1999).

[20] 313 Phil. 464 (1995).

[21] 244 Phil. 127 (1988).

[22] No. 74191, 21 December 1987, 156 SCRA 740.

[23] *Philippine Amusement and Gaming Corporation v. Angara, supra* note 14; *Dalton-Reyes v. Court of Appeals*, 493 Phil. 631 (2005).

[24] *Philippine National Construction Corporation v. Matias, supra*.

[25] *City Fair Corporation v. National Labor Relations Commission, supra* note 20.

[26] *Philippine Amusement and Gaming Corporation v. Angara, supra* note 14.

FIRST DIVISION

[G.R. No. 170674. August 24, 2009]

FOUNDATION SPECIALISTS, INC., *petitioner, vs.* **BETONVAL READY CONCRETE, INC. and STRONGHOLD INSURANCE CO., INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES NOT RAISED IN THE TRIAL COURT MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL. — It is well-settled that issues not raised in the trial court may not be raised for the first time on appeal. Furthermore, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF; THE SUBJECT OF EXECUTION IS THAT DECREED IN THE DISPOSITIVE PORTION. — [T]he portion of a decision that becomes the subject of an execution is that ordained or decreed in the dispositive portion. In this case, there was no award in favor of FSI of the value of the balance of the unused cement as reflected in the invoices.

3. CIVIL LAW; OBLIGATIONS; MODES OF EXTINGUISHMENT; NOVATION; DEFINED. — Novation is one of the modes of extinguishing an obligation. It is done by the substitution or change of the obligation by a subsequent one which extinguishes the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. Novation may: [E]ither be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties.

4. ID.; ID.; ID.; ID.; EXTINCTIVE NOVATION; EXPLAINED. — Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that

the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superceded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first. An extinctive novation would thus have the twin effects of, *first*, extinguishing an existing obligation and, *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of the old obligation, and (4) the birth of a valid new obligation.

5. ID.; ID.; ID.; ID.; MODIFICATORY NOVATION; CONSTRUED. — Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.*, a change in interest rates or an extension of time to pay; in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.) The obligation to pay a sum of money is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones or the new contract merely supplements the old one.

6. ID.; CONTRACTS; WAIVER; EXPLAINED. — A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege. A waiver must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. FSI did not adduce proof that a valid waiver was made by Betonval. FSI's claim is therefore baseless.

7. ID.; ID.; FORBEARANCE OF CREDIT; LEGAL INTEREST OF 12%, SUSTAINED. — We likewise hold that the imposition of a 12% p.a. interest on the award to Betonval (in addition to the 24% p.a. interest) in the assailed judgment is proper. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 12% p.a. from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

8. ID.; ID.; FRAUDULENT INTENTION MUST BE PRESENT TO JUSTIFY ATTACHMENT OF DEBTOR'S PROPERTIES. — In *Ng Wee v. Tankiansee*, we held that the applicant must be able to demonstrate that the debtor intended to defraud the creditor. Furthermore: The fraud must relate to the execution of the agreement and must have been the reason which induced the other party i nto giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case. In other words, mere failure to pay its debt is, of and by itself, not enough to justify an attachment of the debtor's properties. A fraudulent intention not to pay (or not to comply with the obligation) must be present.

9. REMEDIAL LAW; APPEALS; A PARTY WHO DOES NOT APPEAL MAY NOT OBTAIN AN AFFIRMATIVE RELIEF FROM THE APPELLATE COURT. — It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court whose decision is brought up on appeal.

APPEARANCES OF COUNSEL

Nelson A. Clemente for petitioner.

Chaves Hechanova & Lim Law Offices for Betonval Ready Concrete, Inc.

Mendoza Taguian and Garces Law Offices for Stronghold Insurance Company, Inc.

D E C I S I O N

CORONA, *J.*:

On separate dates, petitioner Foundation Specialists, Inc. (FSI) and respondent Betonval Ready Concrete, Inc. (Betonval) executed three contracts[1] for the delivery of ready mixed concrete by Betonval to FSI. The basic stipulations were: (a) for FSI to supply the cement to be made into ready mixed concrete; (b) for FSI to pay Betonval within seven days after presentation of the invoices plus 30% interest p.a. in case of overdue payments and (c) a credit limit of ₱600,000 for FSI.

Betonval delivered the ready mixed concrete pursuant to the contracts but FSI failed to pay its outstanding balances starting January 1992. As an accommodation to FSI, Betonval extended the seven day credit period to 45 days.[2]

On September 1, 1992, Betonval demanded from FSI its balance of ₱2,349,460.[3] Betonval informed FSI that further defaults would leave it no other choice but to impose the stipulated interest for late payments and take appropriate legal action to protect its interest.[4] While maintaining that it was still verifying the correctness of Betonval's claims, FSI sent Betonval a proposed

---

[1] Individually denominated as "Contract Proposals and Agreements" dated July 23, 1991, September 18, 1991 and March 26, 1992, respectively. *Rollo*, pp. 86-91.

[2] Records, Vol. I, pp. 143-145. The extension of the credit term from seven days to 45 days was made in a letter dated March 6, 1992. Attached to this letter was a detailed summary of payments based on invoices not paid or covered by postdated checks issued by FSI for various deliveries made or to be made by Betonval between January 14, 1992 to August 18, 1992. The 45-day credit extension was likewise reflected in the various invoices dated between March 31, 1992 to September 3, 1992, all duly received by FSI. *Id.*, pp. 16-66.

[3] Records, Vol. I, pp. 68-69. This amount included the previously unpaid amount and new billings.

[4] *Rollo*, p. 203.

schedule of payments devised with a liability for late payments fixed at 24% p.a.[5]

Thereafter, FSI paid Betonval according to the terms of its proposed schedule of payments. It was able to reduce its debt to ₱1,114,203.34 as of July 1993, inclusive of the 24% annual interest computed from the due date of the invoices.[6] Nevertheless, it failed to fully settle its obligation.

Betonval thereafter filed an action for sum of money and damages in the Regional Trial Court (RTC).[7] It also applied for the issuance of a writ of preliminary attachment alleging that FSI employed fraud when it contracted with Betonval and that it was disposing of its assets in fraud of its creditors.

FSI denied Betonval's allegations and moved for the dismissal of the complaint. The amount claimed was allegedly not due and demandable because they were still reconciling their respective records. FSI also filed a counterclaim and prayed for actual damages, alleging that its other projects were delayed when Betonval attached its properties and garnished its bank accounts. It likewise prayed for moral and exemplary damages and attorney's fees.

The RTC issued a writ of preliminary attachment and approved the ₱500,000 bond of respondent Stronghold Insurance Co., Inc. (Stronghold). FSI filed a counterbond of ₱500,000 thereby discharging the writ of preliminary attachment, except with respect to FSI's excavator, crawler crane and Isuzu pick-up truck, which remained in *custodia legis*.[8] An additional

---

[5] *Id.*, pp. 72-73. FSI's proposed schedule of payments had reference to the statement of account of Betonval. Of particular note in this statement of account is Betonval's computation of interest at 24% computed from due date of the invoices, to which FSI acceded per its September 3, 1992 letter.

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

[7] Makati City, Branch 125. The action was docketed as Civil Case No. 93-2430. *Id.*, p. 59.

[8] *Id.*, p. 63.

counterbond of ₱350,000 lifted the garnishment of FSI's receivables from the Department of Public Works and Highways.

On January 29, 1999, the RTC ruled for Betonval.[9] However, it awarded ₱200,000 compensatory damages to FSI on the ground that the attachment of its properties was improper.[10]

FSI and Stronghold separately filed motions for reconsideration while Betonval filed a motion for clarification and reconsideration. In an order dated May 19, 1999, the RTC denied the motions for reconsideration of Betonval and Stronghold. However, the January 29, 1999 decision was modified in that the award of actual or compensatory damages to FSI was increased to ₱1.5 million.[11]

---

[9] Penned by then Acting Presiding Judge Oscar B. Pimentel. *Id.*, pp. 214-221.

[10] *Id.*, pp. 214-221. The dispositive portion of the January 29, 1999 decision stated:

WHEREFORE, premises considered, judgment is hereby rendered, ordering the defendant to pay plaintiff the sum of ₱1,114,203.34, plus legal interest at the rate of 12% per annum from date of judicial demand or filing of this complaint until the full amount is paid; and, the sum of ₱50,000.00 as and by way of reasonable attorney's fees, and the costs.

On defendant's counterclaim, the award of moral and exemplary damages as prayed for is denied for lack of merit.

However, plaintiff and surety are held jointly and severally liable on their attachment bond for actual damages to defendant and are hereby ordered to pay defendant ₱200,000.00 as reasonable compensatory damages arising from the improper attachment caused by the negligence of plaintiff.

The writ of attachment having been improperly issued, is hereby ordered dissolved and the counterbond of defendant discharged.

SO ORDERED.

[11] *Id.*, 235. The modification read:

WHEREFORE**, premises considered**, finding merit on the motion of defendant the same is hereby given DUE COURSE. Consequently, the dispositive portion of the decision of this Court dated 29 January 1999, is hereby amended to read as:

"WHEREFORE, premises considered, judgment is hereby rendered, ordering the defendant to pay plaintiff the sum of ₱1,114,203.34, plus legal interest at the rate of 12% per annum from date of judicial demand or

All parties appealed to the Court of Appeals (CA). However, only the respective appeals of Betonval and Stronghold were given due course because FSI's appeal was dismissed for nonpayment of the appellate docket fees.[12]

In its appeal, Betonval assailed the award of actual damages as well as the imposition of legal interest at only 12%, instead of 24% as agreed on. Stronghold, on the other hand, averred that the attachment was proper.

In its decision[13] dated January 20, 2005, the CA upheld the May 19, 1999 RTC order with modification. The CA held that FSI should pay Betonval the value of unpaid ready mixed concrete at 24% p.a. interest plus legal interest at 12%. The CA, however, reduced the award to FSI of actual and compensatory damages, thus:

---

filing of this complaint until the full amount is paid; and, the sum of ₱50,000.00 as and by way of reasonable attorney's fees, and costs.

On defendant's counterclaim, the award of moral and exemplary damages as prayed for is denied for lack of merit.

However, plaintiff is hereby held liable on its attachment bond for actual damages to defendant and is hereby ordered to pay said defendant a reasonable amount of ₱1,500,000.00 as actual and compensatory damages arising from the improper attachment caused by the negligence of plaintiff. As to the surety, Stronghold Insurance Company, Inc. the same is hereby held jointly and severally liable with the plaintiff for the aforesaid liability and is ordered to pay the defendant in the amount of ₱500,000.00 as covered by the attachment bond.

The writ of attachment having been improperly issued, is hereby ordered dissolved and the counterbond of defendant discharged."

The motion for reconsideration filed by the plaintiff as well as that of Stronghold Insurance Company, Inc. is hereby DENIED for lack of merit.

SO ORDERED. (emphasis in the original)

[12] *Id.*, p. 67.

[13] Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman (now retired) of the Seventh Division of the Court of Appeals. *Id.*, pp. 59-78.

WHEREFORE**,** premises considered, the appealed Order dated May 19, 1999 is **MODIFIED** as follows: (a) to increase the rate of interest imposable on the ₱1,114,203.34 awarded to appellant Betonval from 12% to 24% per annum, with the aggregate sum to further earn an annual interest rate of 12% from the finality of this decision, until full payment; (b) to reduce the award of actual damages in favor of appellee from ₱1,500,000.00 to ₱200,000.00; (c) to hold both appellants jointly and severally liable to pay said amount; and (d) to hold appellant Betonval liable for whatever appellant surety may be held liable under the attachment bond. The rest is AFFIRMED *in toto*.

FSI's motion for reconsideration was denied.[14]

In this petition for review on *certiorari*,[15] FSI prays for the following:

(a) decrease the rate of imposable interest on the ₱1,114,203.34 award to Betonval, from 12% to 6% p.a. from date of judicial demand or filing of the complaint until the full amount is paid;

(b) deduct [from the award to Betonval] the cost or value of unused cement based on [its] invoice stating 1,307.45 bags computed at the prevailing price;

(c) award actual and compensatory damages at ₱3,242,771.29;

(d) hold Betonval and Stronghold jointly and severally liable to pay such actual and compensatory damages;

(e) hold Betonval liable for whatever Stronghold may be held liable under the attachment bond and

(f) affirm *in toto* the rest of the order.[16]

The petition has no merit.

---

[14] *Id.*, pp. 80-84.

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

[16] *Rollo*, p. 53.

BETONVAL'S COMPLAINT WAS NOT PREMATURE

FSI argues that Betonval's complaint was prematurely filed. There was allegedly a need to reconcile accounts, particularly with respect to the value of the unused cement supplied by FSI, totaling 2,801.2 bags[17] which supposedly should have been deducted from FSI's outstanding obligation. FSI's repeated requests for reconciliation of accounts were allegedly not heeded by Betonval's representatives.

FSI's contention is untenable. It neither alleged any discrepancies in nor objected to the accounts within a reasonable time.[18] As held by the RTC, FSI was deemed to have admitted the truth and correctness of the entries in the invoices since:

> **[N]o attempts were made to reconcile [FSI's] own record with [Betonval] until after the filing of the complaint**, inspite of claims in [FSI's] Answer about its significance, **and despite having had plenty of opportunity to do so from the time of receipt of the invoices or demand letters from [Betonval]. [FSI's] excuse that it was impractical to reconcile accounts during the middle of transactions is defeated by the absence of any showing on record that a formal request to reconcile was issued to [Betonval] despite the completion of deliveries or [FSI's] discovery of the alleged discrepancies, as well as its failure to initiate any meeting with [Betonval], including one which the parties were directed to hold for that purpose by the Court.** Since [FSI] failed to prove the correctness of its entries against those in [Betonval's] invoices, its record is self-serving. xxx (emphasis supplied)

In view of FSI's failure to dispute this finding of the RTC because of its failure to perfect its appeal, FSI is now estopped from raising this issue. There is no cogent reason to depart from the RTC's finding.

Undaunted, FSI retracts. Instead of claiming the balance of the unused cement **as reflected in its records,** it now bases

---

[17] As reflected in FSI's record of Bulk Cement Status as opposed to Betonval's last invoice which only reflected 1,307.45 bags. *Id.*, p. 20.

[18] *Id.*, p. 217.

its claim on the **invoices of Betonval.** FSI relies on the RTC's statement in the May 19, 1999 order:

> Still it can claim the cost of the balance of unused cement based on [Betonval's] invoices, notwithstanding its admission of the obligation in the letter, as it neither expressed nor implied any intent to waive that claim by said admission.

FSI contends that this declaration has become final and executory and must be implemented in the name of substantial justice. Betonval, however, avers that that the issue on the alleged unused cement was never raised as an affirmative defense in its answer or in its motion for reconsideration to the January 29, 1999 decision. Neither was this issue raised in the CA. Hence, FSI must not be allowed to broach it for the first time in this Court. Betonval is correct.

It is well-settled that issues not raised in the trial court may not be raised for the first time on appeal. Furthermore, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.[19]

More importantly, the portion of a decision that becomes the subject of an execution is that ordained or decreed in the dispositive portion.[20] In this case, there was no award in favor of FSI of the value of the balance of the unused cement as reflected in the invoices.

THE APPLICABLE INTEREST RATE IS 24% P.A.

There is no dispute that FSI and Betonval stipulated the payment of a 30% p.a. interest in case of overdue payments. There is likewise no doubt that FSI failed to pay Betonval on time.

FSI acknowledged its indebtedness to Betonval in the principal amount of ₱1,114,203.34. However, FSI opposed the CA's

---

[19] RULES OF COURT, Rule 9, Sec. 1.

[20] *Davao Light and Power Company, Inc. v. Diaz*, G.R. No. 150253, 30 November 2006, 509 SCRA 152, 169.

imposition of a 24% p.a. interest on the award to Betonval allegedly because: (a) the grant to FSI of a 45-day credit extension novated the contracts insofar as FSI's obligation to pay any interest was concerned; (b) Betonval waived its right to enforce the payment of the 30% p.a. interest when it granted FSI a new credit term and (c) Betonval's prayer for a 24% p.a. interest instead of 30%, resulted in a situation where, in effect, no interest rate was supposedly stipulated, thus necessitating the imposition only of the legal interest rate of 6% p.a. from judicial demand.

FSI's contentions have no merit.

Novation is one of the modes of extinguishing an obligation.[21] It is done by the substitution or change of the obligation by a subsequent one which extinguishes the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.[22] Novation may:

> [E]ither be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. **Extinctive novation is never presumed; there must be an express intention to novate**; **in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one**. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superceded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.

An extinctive novation would thus have the twin effects of, *first*, extinguishing an existing obligation and, *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of

---

[21] Civil Code, Art. 1231.

[22] Tolentino, Arturo M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES (VOLUME FOUR)*, Central Book Supply, Inc., p. 381.

the old obligation, and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.*, a change in interest rates or an extension of time to pay; in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.)[23]

The obligation to pay a sum of money is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones or the new contract merely supplements the old one.[24]

The grant by Betonval to FSI of a 45-day credit extension did not novate the contracts so as to extinguish the latter. There was no incompatibility between them. There was no intention by the parties to supersede the obligations under the contracts. In fact, the intention of the 45-day credit extension was precisely to revive the old obligation after the original period expired with the obligation unfulfilled. The grant of a 45-day credit period merely modified the contracts by extending the period within which FSI was allowed to settle its obligation. Since the contracts remained the source of FSI's obligation to Betonval, the stipulation to pay 30% p.a. interest likewise remained.

Obviously, the extension given to FSI was triggered by its own request, to help it through its financial difficulties. FSI would now want to take advantage of that generous accommodation by claiming that its liability for interest was extinguished by its creditor's benevolence.

Neither did Betonval waive the stipulated interest rate of 30% p.a., as FSI erroneously claims. A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege.[25] A waiver must be couched in clear and unequivocal terms which

---

[23] *Iloilo Traders Finance, Inc. v. Heirs of Oscar Soriano, Jr.*, 452 Phil. 82, 89-90 (2003).

[24] *Spouses Reyes v. BPI Family Savings Bank*, G.R. Nos. 149840-41, 31 March 2006, 486 SCRA 276, 282.

[25] *R.B. Michael Press and Escobia v. Galit*, G.R. No. 153510, 13 February 2008, 545 SCRA 23, 31.

leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him.[26] FSI did not adduce proof that a valid waiver was made by Betonval. FSI's claim is therefore baseless.

Parties are bound by the express stipulations of their contract as well as by what is required by the nature of the obligation in keeping with good faith, usage and law.[27] Corollarily, if parties to a contract expressly provide for a particular rate of interest, then that interest shall be applied.[28]

It is clear that Betonval and FSI agreed on the payment of interest. It is beyond comprehension how Betonval's prayer for a 24% interest on FSI's balance could have resulted in a situation as if no interest rate had been agreed upon. Besides, FSI's proposed schedule of payments (September 3, 1992),[29] referring to Betonval's statement of account,[30] contained computations of FSI's arrears and billings with 24% p.a. interest.

There can be no other conclusion but that Betonval had reduced the imposable interest rate from 30% to 24% p.a. and this reduced interest rate was accepted, albeit impliedly, by FSI when it proposed a new schedule of payments and, in fact, actually made payments to Betonval with 24% p.a. interest. By its own actions, therefore, FSI is estopped from questioning the imposable rate of interest.

We likewise hold that the imposition of a 12% p.a. interest on the award to Betonval (in addition to the 24% p.a. interest) in the assailed judgment is proper. When the judgment of the court awarding a sum of money becomes final and executory,

---

[26] *Id*.

[27] *Spouses Quiamco v. Capital Insurance & Surety Co., Inc.*, G.R. No. 170852, 12 September 2008.

[28] *Casa Filipino Development Corporation v. Deputy Executive Secretary*, G.R. No. 96494, 28 May 1992, 209 SCRA 399, 405.

[29] Records, Vol. I, p. 72.

[30] *Id.*, p. 73.

the rate of legal interest shall be 12% p.a. from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[31]

THERE WAS IMPROPER ATTACHMENT OF FSI'S PROPERTIES

Betonval's application for the issuance of the writ of preliminary attachment was based on Section 1(d) and (e), Rule 57 of the Rules of Court.[32] However, the CA affirmed the RTC's factual findings that there was improper attachment of FSI's properties. In debunking FSI's claim for actual damages, respondents insist that the attachment was proper and that Betonval was able to sufficiently prove the existence of the grounds for attachment. However, these are factual matters that have been duly passed upon by the RTC and the CA and which are inappropriate in a petition for review.

Moreover, we agree with the RTC and the CA that FSI's properties were improperly attached. Betonval was not able to sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from FSI's mere nonpayment of the debt or failure to comply with its obligation. In *Ng Wee v. Tankiansee*,[33] we held that the applicant must

---

[31] *Eastern Shipping Lines, Inc. v. CA*, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 97.

[32] SECTION 1. *Grounds upon which attachment may issue.* – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) x x x x x x x x x

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; xxx

[33] G.R. No. 171124, 13 February 2008, 545 SCRA 263, 272-273.

be able to demonstrate that the debtor intended to defraud the creditor. Furthermore:

> The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case.[34]

In other words, mere failure to pay its debt is, of and by itself, not enough to justify an attachment of the debtor's properties. A fraudulent intention not to pay (or not to comply with the obligation) must be present.

PETITIONER IS NOT ENTITLED TO THE AMOUNT OF ACTUAL DAMAGES PRAYED FOR

In its bid for a bigger award for actual damages it allegedly suffered from the wrongful attachment of its properties, FSI enumerates the standby costs of equipment[35] and manpower standby costs[36] it allegedly lost. We cannot grant FSI's prayer. FSI did not pursue its appeal to the CA as shown by its failure to pay the appellate docket fees. It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he

---

[34] *Id.*, citing *Liberty Insurance Corporation v. Court of Appeals*, G.R. No. 104405, 13 May 1993, 222 SCRA 37.

[35] Standby cost of equipment for its EDSA/Boni/Pioneer Interchange project amounted to ₱2,353,952.29. For its Bulacan Bridge project, the standby equipment cost was pegged at ₱98,154.

[36] Manpower standby costs for its EDSA/Boni/Pioneer Interchange project was ₱312,312 and ₱478,344 for its Perla Mansion project.

has obtained from the lower court whose decision is brought up on appeal.[37]

WHEREFORE, the petition is hereby *DENIED***.**

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171035. August 24, 2009]

WILLIAM ONG GENATO, *petitioner, vs.* **BENJAMIN BAYHON, MELANIE BAYHON, BENJAMIN BAYHON, JR., BRENDA BAYHON, ALINA BAYHON-CAMPOS, IRENE BAYHON-TOLOSA, and the minor GINO BAYHON, as represented herein by his natural mother as guardian *ad-litem,* JESUSITA M. BAYHON,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; VOID AND INEXISTENT CONTRACTS; FOR BEING A SIMULATED OR FICTITIOUS CONTRACT, THE SUBJECT *DACION EN PAGO* IS VOID.— We affirm the ruling of the appellate court that the subject *dacion en pago* is a simulated or fictitious contract, and hence void. The evidence shows that at the time it was allegedly signed by the wife of the respondent, his wife was already dead. This finding of fact cannot be reversed. We now go to the ruling of the appellate court extinguishing the obligation of respondent.

---

[37] *Bank of the Philippine Islands v. Lifetime Marketing Corp.*, G.R. No. 176434, 25 June 2008, 555 SCRA 373, 382.

2. ID.; ID.; ID.; RELATIVITY OF CONTRACTS; AS A RULE, A PARTY'S CONTRACTUAL RIGHTS AND OBLIGATIONS ARE TRANSMISSIBLE TO THE SUCCESSORS; DEBT CONTRACTED BY THE RESPONDENT WHO DIED DURING THE PENDENCY OF THE CASE SUBSISTS AGAINST HIS ESTATE.— As a general rule, obligations derived from a contract are transmissible. Article 1311, par.1 of the Civil Code provides: Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent. In ***Estate of Hemady v. Luzon Surety Co., Inc.***, the Court, through Justice JBL Reyes, held: While in our successional system the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, **the principle remains intact that these heirs succeed not only to the rights of the deceased but also to his obligations.** Articles 774 and 776 of the New Civil Code (and Articles 659 and 661 of the preceding one) expressly so provide, thereby confirming Article 1311 already quoted. "ART. 774. — Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law." "ART. 776. — The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death." The Court proceeded further to state the general rule: **Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors.** The rule is a consequence of the progressive "depersonalization" of patrimonial rights and duties that, as observed by Victorio Polacco, has characterized the history of these institutions. From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony to patrimony, with the persons occupying only a representative position, barring those rare cases where the obligation is strictly personal, *i.e.*, is contracted *intuitu personae*, in consideration of its performance by a specific person and by no other. The transition is marked by the disappearance of the imprisonment for debt. The loan in this case was contracted by respondent. He died while the case was pending before the

Court of Appeals. While he may no longer be compelled to pay the loan, the debt subsists against his estate. No property or portion of the inheritance may be transmitted to his heirs unless the debt has first been satisfied. Notably, throughout the appellate stage of this case, the estate has been amply represented by the heirs of the deceased, who are also his co-parties in Civil Case No. Q-90-7012.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES TO CIVIL ACTIONS; ACTION ON CONTRACTUAL MONEY CLAIMS THAT SURVIVES THE DEATH OF DEFENDANT; FAVORABLE JUDGMENT OBTAINED BY THE PLAINTIFF SHOULD BE ENFORCED AGAINST THE ESTATE OF THE DECEASED DEFENDANT.— The procedure in vindicating monetary claims involving a defendant who dies before final judgment is governed by Rule 3, Section 20 of the Rules of Civil Procedure, to wit: When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person. Pursuant to this provision, petitioner's remedy lies in filing a claim against the estate of the deceased respondent.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; IN A LOAN OF FORBEARANCE OF MONEY, THE INTEREST DUE SHOULD BE THAT STIPULATED IN WRITING, AND IN THE ABSENCE THEREOF, OR WHERE THE STIPULATED INTEREST IS UNCONSCIONABLE, THE RATE SHOULD BE 12% PER ANNUM; CASE AT BAR.— We now go to the interest awarded by the trial court. We note that the interest has been pegged at 5% per month, or 60% per annum. This is unconscionable, hence cannot be enforced. In light of this, the rate of interest for this kind of loan transaction has been fixed in the case of ***Eastern Shipping Lines v. Court of Appeals***, at 12% per annum, calculated from October 3, 1989, the date of extrajudicial demand.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
Orioste Lim and Calderon Law Offices for private respondents.

D E C I S I O N

PUNO, *C.J.*:

At bar is a Petition for Review on *Certiorari* assailing the Decision of the Court of Appeals dated September 16, 2005[1] and Resolution denying the petitioner's motion for reconsideration issued on January 6, 2006.

This is a consolidated case stemming from two civil cases filed before the Regional Trial Court (RTC) – Civil Case No. Q-90-7012 and Civil Case No. Q-90-7551.

Civil Case No. Q-90-7012

On October 18, 1990, respondents Benjamin M. Bayhon, Melanie Bayhon, Benjamin Bayhon Jr., Brenda Bayhon, Alina Bayhon-Campos, Irene Bayhon-Tolosa and the minor Gino Bayhon, as represented by his mother Jesusita M. Bayhon, filed an action before the RTC, Quezon City, Branch 76, docketed as Civil Case No. Q-90-7012. In their Complaint, respondents sought the declaration of nullity of a *dacion en pago* allegedly executed by respondent Benjamin Bayhon in favor of petitioner William Ong Genato.[2]

Respondent Benjamin Bayhon alleged that on July 3, 1989, he obtained from the petitioner a loan amounting to

---

[1] CA G.R.-CV No. 63626, *Benjamin M. Bayhon, Melanie Bayhon, Benjamin Bayhon, Jr., Brenda Bayhon, Alina Bayhon-Campos, Irene Bayhon-Tolosa, and the minor Gino Bayhon, represented herein by his natural mother as guardian-ad-litem, Jesusita M. Bayhon v. William Ong Genato*; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[2] Original Records, pp. 1-9.

Php 1,000,000.00;[3] that to cover the loan, he executed a Deed of Real Estate Mortgage over the property covered by Transfer Certificate of Title (TCT) No. 38052; that, however, the execution of the Deed of Real Estate Mortgage was conditioned upon the personal assurance of the petitioner that the said instrument is only a private memorandum of indebtedness and that it would neither be notarized nor enforced according to its tenor.[4]

Respondent further alleged that he filed a separate proceeding for the reconstitution of TCT No. 38052 before the RTC, Quezon City, Branch 87.[5] Petitioner William Ong Genato filed an Answer in Intervention in the said proceeding and attached a copy of an alleged *dacion en pago* covering said lot.[6] Respondent assailed the *dacion en pago* as a forgery alleging that neither he nor his wife, who had died 3 years earlier, had executed it.[7]

In his Answer, petitioner Genato denied the claim of the respondent regarding the death of the latter's wife.[8] He alleged that on the date that the real estate mortgage was to be signed, respondent introduced to him a woman as his wife.[9] He alleged that the respondent signed the *dacion en pago* and that the execution of the instrument was above-board.[10]

Civil Case No. Q-90-7551

On December 20, 1990, petitioner William Ong Genato filed Civil Case No. Q-90-7551, an action for specific performance, before the RTC, Quezon City, Branch 79. In his Complaint, petitioner alleged that respondent obtained a loan from him in the amount of Php 1,000,000.00. Petitioner alleged further that

---

[3] *Id.,* pp. 3-4.

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

[5] Designated as LRC Case No. Q-1957.

[6] Original Records, p. 4.

[7] *Id.,* p. 5.

[8] *Id.,* p. 166.

[9] *Id.,* p. 169.

[10] *Id.,* p. 170.

respondent failed to pay the loan and executed on October 21, 1989 a *dacion en pago* in favor of the petitioner. The *dacion en pago* was inscribed and recorded with the Registry of Deeds of Quezon City.[11]

Petitioner further averred that despite demands, respondent refused to execute the requisite documents to transfer to him the ownership of the lot subject of the *dacion en pago*. Petitioner prayed, *inter alia*, for the court to order the respondent to execute the final deed of sale and transfer of possession of the said lot.[12]

Decision of the Consolidated Cases

The two cases were consolidated and transferred to the RTC, Quezon City, Branch 215. On October 9, 1997, the trial court rendered its Decision. It found that respondent obtained a loan in the amount of Php 1,000,000.00 from the petitioner on July 3, 1989. The terms of the loan were interest payment at 5% per month with an additional 3% penalty in case of nonpayment.[13]

With respect to the *dacion en pago*, the trial court held that the parties have novated the agreement.[14] It deduced the novation from the subsequent payments made by the respondent to the petitioner. Of the principal amount, the sum of PhP 102,870.00 had been paid: PhP 27,870.00 on March 23, 1990, PhP 55,000.00 on 26 March 1990 and Php 20,000.00 on 16 November 1990.[15] All payments were made after the purported execution of the *dacion en pago*.

The trial court likewise found that at the time of the execution of the real estate mortgage, the wife of respondent, Amparo Mercado, was already dead. It held that the property covered by TCT No. 38052 was owned in common by the respondents

---

[11] *Id.*, pp. 353-354.

[12] *Id.*

[13] *Id.*, p. 650.

[14] *Id.*, p. 657.

[15] *Id.*, pp. 656-657.

and not by respondent Benjamin Bayhon alone. It concluded that the said lot could not have been validly mortgaged by the respondent alone; the deed of mortgage was not enforceable and only served as evidence of the obligation of the respondent.[16]

In sum, the trial court upheld the respondent's liability to the petitioner and ordered the latter to pay the sum of Php 5,647,130.00.[17] This amount included the principal, the stipulated interest of 5% per month, and the penalty; and, was calculated from the date of demand until the date the RTC rendered its judgment.

Appeal to the Court of Appeals

Respondents appealed before the Court of Appeals. On March 28, 2002, respondent Benjamin Bayhon died while the case was still pending decision.[18] On September 16, 2005, the Court of Appeals rendered a decision reversing the trial court.

The Court of Appeals held that the real estate mortgage and the *dacion en pago* were both void. The appellate court ruled that at the time the real estate mortgage and the *dacion en pago* were executed, or on July 3, 1989 and October 21, 1989, respectively, the wife of respondent Benjamin Bayhon was already dead.[19] Thus, she could not have participated in the execution of the two documents. The appellate court struck down both the *dacion en pago* and the real estate mortgage as being simulated or fictitious contracts pursuant to Article 1409 of the Civil Code.[20]

---

[16] *Id.*, p. 658.

[17] *Id.*, p. 659.

[18] CA *rollo*, p. 148.

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

[20] Article 1409 provides that:

> The following contracts are inexistent and void from the beginning:
>
> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
>
> (2) Those which are absolutely simulated or fictitious;
>
> (3) Those whose cause or object did not exist at the time of the transaction;

The Court of Appeals held further that while the principal obligation is valid, the death of respondent Benjamin Bayhon extinguished it.[21] The heirs could not be ordered to pay the debts left by the deceased.[22] Based on the foregoing, the Court of Appeals dismissed petitioner's appeal. Petitioner's motion for reconsideration was denied in a resolution dated January 6, 2006.[23]

Petition for Review

Petitioner now comes before this Court assailing the decision of the Court of Appeals and raising the following issues:

Whether or not Benjamin Bayhon is liable to Mr. Genato in the amount of Php 5,647,130.00 in principal and interest as of October 3, 1997 and 5% monthly interest thereafter until the account shall have been fully paid.[24]

The Court of Appeals erred in declaring the Real Estate Mortgage dated July 3, 1989 and the *Dacion en Pago* dated October 21, 1989, null and void.[25]

We shall first tackle the nullity of the *dacion en pago*.

We affirm the ruling of the appellate court that the subject *dacion en pago* is a simulated or fictitious contract, and hence void. The evidence shows that at the time it was allegedly signed

---

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[21] *Rollo*, p. 46.

[22] *Id*.

[23] *Id.*, pp. 37-39.

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

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

by the wife of the respondent, his wife was already dead. This finding of fact cannot be reversed.

We now go to the ruling of the appellate court extinguishing the obligation of respondent. As a general rule, obligations derived from a contract are transmissible. Article 1311, par.1 of the Civil Code provides:

> Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

In ***Estate of Hemady v. Luzon Surety Co., Inc.***,[26] the Court, through Justice JBL Reyes, held:

> While in our successional system the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, **the principle remains intact that these heirs succeed not only to the rights of the deceased but also to his obligations.** Articles 774 and 776 of the New Civil Code (and Articles 659 and 661 of the preceding one) expressly so provide, thereby confirming Article 1311 already quoted.
>
> "ART. 774. — Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law."
>
> "ART. 776. — The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death."[27] (Emphasis supplied)

The Court proceeded further to state the general rule:

> **Under our law, therefore, the general rule is that a party's contractual rights and obligations are transmissible to the successors.** The rule is a consequence of the progressive

---

[26] No. L-8437, 100 Phil. 388 (1958).

[27] *Id.*, p. 393.

"depersonalization" of patrimonial rights and duties that, as observed by Victorio Polacco, has characterized the history of these institutions. From the Roman concept of a relation from person to person, the obligation has evolved into a relation from patrimony to patrimony, with the persons occupying only a representative position, barring those rare cases where the obligation is strictly personal, *i.e.*, is contracted *intuitu personae*, in consideration of its performance by a specific person and by no other. The transition is marked by the disappearance of the imprisonment for debt.[28] (Emphasis supplied)

The loan in this case was contracted by respondent. He died while the case was pending before the Court of Appeals. While he may no longer be compelled to pay the loan, the debt subsists against his estate. No property or portion of the inheritance may be transmitted to his heirs unless the debt has first been satisfied. Notably, throughout the appellate stage of this case, the estate has been amply represented by the heirs of the deceased, who are also his co-parties in Civil Case No. Q-90-7012.

The procedure in vindicating monetary claims involving a defendant who dies before final judgment is governed by Rule 3, Section 20 of the Rules of Civil Procedure, to wit:

When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person.

Pursuant to this provision, petitioner's remedy lies in filing a claim against the estate of the deceased respondent.

We now go to the interest awarded by the trial court. We note that the interest has been pegged at 5% per month, or 60% per annum. This is unconscionable, hence cannot be

---

[28] *Id.*, p. 394.

enforced.[29] In light of this, the rate of interest for this kind of loan transaction has been fixed in the case of ***Eastern Shipping Lines v. Court of Appeals***,[30] at 12% per annum, calculated from October 3, 1989, the date of extrajudicial demand.[31]

Following this formula, the total amount of the obligation of the estate of Benjamin Bayhon is as follows:

Principal	Php 1,000,000.00	
Less: Partial Payments		27,870.00
		55,000.00
		20,000.00
		897,130.00
Plus: Interest (12% per annum x 20 years)		2,153,552.00
	TOTAL:	Php 3,050,682.00

IN VIEW WHEREOF, the decision of the Court of Appeals dated September 16, 2005 is *AFFIRMED* with the

that the obligation to pay the principal loan and interest contracted by the deceased Benjamin Bayhon subsists against his estate and is computed at PhP 3,050,682.00.

No costs.

SO ORDERED.

Carpio, Corona, Leonardo-de Castro, and *Bersamin, JJ.*, concur.

---

[29] *Imperial v. Jaucian,* G.R. No. 149004, 14 April 2004, 427 SCRA 517, 525.

[30] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[31] *Rollo,* p. 28.

FIRST DIVISION

[G.R. No. 171169. August 24, 2009]

GC DALTON INDUSTRIES, INC., *petitioner, vs.* **EQUITABLE PCI BANK,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTION; SECTION 14, ARTICLE VIII THEREOF; RULE THAT EVERY DECISION MUST STATE CLEARLY ITS FACTUAL AND LEGAL BASIS; NOT APPLICABLE TO AN ORDER FOR ISSUANCE OF A WRIT OF POSSESSION WHICH IS SUMMARY AND MINISTERIAL IN NATURE.— The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title. The trial court does not exercise discretion in the issuance thereof. For this reason, an order for the issuance of a writ of possession is not the judgment on the merits contemplated by Section 14, Article VIII of the Constitution [which requires that every decision must clearly and distinctly state its factual and legal basis.] Hence, the CA correctly upheld the December 10, 2005 order of the Bulacan RTC.

2. MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 8791 (GENERAL BANKING LAW OF 2000); FORECLOSURE OF REAL ESTATE MORTGAGE; MORTGAGOR LOSES ALL LEGAL INTEREST OVER FORECLOSED PROPERTY AFTER EXPIRATION OF REDEMPTION PERIOD.— The mortgagor loses all legal interest over the foreclosed property after the expiration of the redemption period. Under Section 47 of the General Banking Law, if the mortgagor is a *juridical* person, it can exercise the right to redeem the foreclosed property until, but not after, the registration of the certificate of foreclosure sale within three months after foreclosure, whichever is earlier. Thereafter, such mortgagor loses its right of redemption. Respondent filed the certificate of sale and affidavit of consolidation with the Register of Deeds of Bulacan on September 13, 2004. This terminated the redemption period granted by Section 47 of the General

Banking Law. Because consolidation of title becomes a right upon the expiration of the redemption period, respondent became the owner of the foreclosed properties. Therefore, when petitioner opposed the *ex parte* motion for the issuance of the writ of possession on January 10, 2005 in the Bulacan RTC, it no longer had any legal interest in the Bulacan properties.

3. CIVIL LAW; ACT 3135 (EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE); MORTGAGOR HAS THE REMEDY OF ANNULMENT OF THE AUCTION SALE AND WRIT OF POSSESSION WITHIN THIRTY DAYS AFTER PURCHASER WAS GIVEN POSSESSION; CASE AT BAR.— Even if the ownership of the Bulacan properties had already been consolidated in the name of respondent, petitioner still had, and could have availed of, the remedy provided in Section 8 of Act 3135. It could have filed a petition to annul the August 3, 2004 auction sale and to cancel the December 19, 2005 writ of possession, within 30 days after respondent was given possession. But it did not. Thus, inasmuch as the 30-day period to avail of the said remedy had already lapsed, petitioner could no longer assail the validity of the August 3, 2004 sale.

APPEARANCES OF COUNSEL

Alexander L. Bansil for petitioner.
Villaraza and Angangco Law Offices for respondent.

D E C I S I O N

CORONA, *J.*:

In 1999, respondent Equitable PCI Bank extended a ₱30-million credit line to Camden Industries, Inc. (CII) allowing the latter to avail of several loans (covered by promissory notes) and to purchase trust receipts. To facilitate collection, CII executed a "hold-out" agreement in favor of respondent authorizing it to deduct from its savings account any amounts due. To guarantee payment, petitioner GC Dalton Industries, Inc. executed a third-party mortgage of its real properties

in Quezon City[1] and Malolos, Bulacan[2] as security for CII's loans.[3]

CII did not pay its obligations despite respondent's demands. By 2003, its outstanding consolidated promissory notes and unpaid trust receipts had reached a staggering ₱68,149,132.40.[4]

Consequently, respondent filed a petition for extrajudicial foreclosure of petitioner's Bulacan properties in the Regional Trial Court (RTC) of Bulacan on May 7, 2004.[5] On August 3, 2004, the mortgaged properties were sold at a public auction where respondent was declared the highest bidder. Consequently, a certificate of sale[6] was issued in respondent's favor on August 3, 2004.

On September 13, 2004, respondent filed the certificate of sale and an affidavit of consolidation of ownership[7] in the Register of Deeds of Bulacan pursuant to Section 47 of the General Banking Law.[8] Hence, petitioner's TCTs covering the Bulacan properties

---

[1] Covered by TCT No. 351231. *Rollo*, p. 53.

[2] Covered by TCT Nos. T-37150, T-37151 and T-37152. *Id.*, pp. 80-82.

[3] Dated August 16, 1999. *Id.*, pp. 76-79.

[4] Petition for Sale, Annex "1", *Id.*, pp. 196-198.

[5] Docketed as Civil Case No. 47-M-2005.

[6] *Id.*, p. 83.

[7] *Id.*, p. 84.

[8] GENERAL BANKING LAW, Sec. 47 provides:

Section 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, **the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale**

were cancelled and new ones were issued in the name of respondent.[9]

In view of the foregoing, respondent filed an *ex parte* motion for the issuance of a writ of possession[10] in the RTC Bulacan, Branch 10 on January 10, 2005.[11]

Previously, however, on August 4, 2004, CII had filed an action for specific performance and damages[12] in the RTC of Pasig, Branch 71 (Pasig RTC), asserting that it had allegedly paid its obligation in full to respondent.[13] CII sought to compel respondent to render an accounting in order to prove that the bank fraudulently foreclosed on petitioner's mortgaged properties.

Because respondent allegedly failed to appear during the trial, the Pasig RTC rendered a decision on March 30, 2005[14] based on the evidence presented by CII. It found that, while CII's past due obligation amounted only to ₱14,426,485.66 as

---

and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, **juridical persons whose property is being sold pursuant to an extrajudicial foreclosure**, **shall have the right to redeem the property in accordance with this provision until**, **but not after**, **the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure**, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. (emphasis supplied)

[9] *Rollo*, pp. 85-86. The titles were issued sometime in December 2004.

[10] Docketed as LRC Case No. P-47-2005.

[11] *Rollo,* pp. 70-73.

[12] Docketed as Civil Case No. 70098.

[13] *Rollo,* pp. 87-90.

[14] Penned by Judge Celso D. Laviña. *Id.*, pp. 52-60.

of November 30, 2002, respondent had deducted a total of ₱108,563,388.06 from CII's savings account. Thus, the Pasig RTC ordered respondent: (1) to return to CII the "overpayment" with legal interest of 12% *per annum* amounting to ₱94,136,902.40; (2) to compensate it for lost profits amounting to ₱2,000,000 per month starting August 2004 with legal interest of 12% *per annum* until full payment and (3) to return the TCTs covering the mortgaged properties to petitioner. It likewise awarded CII ₱2,000,000 and ₱300,000, respectively, as moral and exemplary damages and ₱500,000 as attorney's fees.

Respondent filed a notice of appeal. CII, on the other hand, moved for the immediate entry and execution of the abovementioned decision.

In an order dated December 7, 2005,[15] the Pasig RTC dismissed respondent's notice of appeal due to its failure to pay the appellate docket fees. It likewise found respondent guilty of forum-shopping for filing the petition for the issuance of a writ of possession in the Bulacan RTC. Thus, the Pasig RTC ordered the immediate entry of its March 30, 2005 decision.[16]

Meanwhile, in view of the pending case in the Pasig RTC, petitioner opposed respondent's *ex parte* motion for the issuance of a writ of possession in the Bulacan RTC. It claimed that respondent was guilty of fraud and forum-shopping, and that it was not informed of the foreclosure. Furthermore, respondent fraudulently foreclosed on the properties since the Pasig RTC had not yet determined whether CII indeed failed to pay its obligations.

In an order dated December 10, 2005, the Bulacan RTC granted the motion and a writ of possession was issued in respondent's favor on December 19, 2005.

Petitioner immediately assailed the December 10, 2005 order of the Bulacan RTC via a petition for *certiorari* in the Court

---

[15] Penned by Acting Judge David L. Mirasol. *Id.*, pp. 131-138.

[16] *Id*.

of Appeals (CA). It claimed that the order violated Section 14, Article VIII of the Constitution[17] which requires that every decision must clearly and distinctly state its factual and legal bases. In a resolution dated January 13, 2006,[18] the CA dismissed the petition for lack of merit on the ground that an order involving the issuance of a writ of possession is not a judgment on the merits, hence, not covered by the requirement of Section 14, Article VIII of the Constitution.

Petitioner elevated the matter to this Court, assailing the January 13, 2006 resolution of the CA. It insists that the December 10, 2005 order of the Bulacan RTC was void as it was bereft of factual and legal bases.

Petitioner likewise cites the conflict between the December 10, 2005 order of the Bulacan RTC and the December 7, 2005 order of the Pasig RTC. Petitioner claims that, since the Pasig RTC already ordered the entry of its March 30, 2005 decision (in turn ordering respondent to return TCT No. 351231 and all such other owner's documents of title as may have been placed in its possession by virtue of the subject trust receipt and loan transactions), the same was already final and executory. Thus, inasmuch as CII had supposedly paid respondent in full, it was erroneous for the Bulacan RTC to order the issuance of a writ of possession to respondent.

Respondent, on the other hand, asserts that petitioner is raising a question of fact as it essentially assails the propriety of the issuance of the writ of possession. It likewise points out that petitioner did not truthfully disclose the status of the March 30, 2005 decision of the Pasig RTC because, in an order dated

---

[17] Constitution, Art. VIII, Sec. 14 provides:

Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

[18] Penned by Associate Justice Marina A. Buzon (retired) and concurred in by Associate Justices Aurora Santiago-Lagman (retired) and Arcangelita Romilla-Lontok of the Special Sixteenth Division of the Court of Appeals. *Rollo,* pp. 23-28.

April 4, 2006, the Pasig RTC partially reconsidered its December 7, 2005 order and gave due course to respondent's notice of appeal. (The propriety of the said April 4, 2006 order is still pending review in the CA.)

We deny the petition.

The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title.[19] The trial court does not exercise discretion in the issuance thereof.[20] For this reason, an order for the issuance of a writ of possession is not the judgment on the merits contemplated by Section 14, Article VIII of the Constitution. Hence, the CA correctly upheld the December 10, 2005 order of the Bulacan RTC.

Furthermore, the mortgagor loses all legal interest over the foreclosed property after the expiration of the redemption period.[21] Under Section 47 of the General Banking Law,[22] if the mortgagor is a *juridical* person, it can exercise the right to redeem the foreclosed property until, but not after, the registration of the certificate of foreclosure sale within three months after foreclosure, whichever is earlier. Thereafter, such mortgagor loses its right of redemption.

Respondent filed the certificate of sale and affidavit of consolidation with the Register of Deeds of Bulacan on September 13, 2004. This terminated the redemption period granted by Section 47 of the General Banking Law. Because consolidation of title becomes a right upon the expiration of the redemption period,[23] respondent became the owner of the

---

[19] *Spouses Yulienco v. Court of Appeals,* 441 Phil. 397, 407 (2002).

[20] *Mallari v. Banco Filipino Savings & Mortgage Bank,* G.R. No. 157660, 29 August 2008.

[21] *Spouses Yulienco v. Court of Appeals, supra* note 19 at 406.

[22] *Supra* note 8.

[23] *Tarnate v. Court of Appeals,* G.R. No. 100635, 13 February 1995, 241 SCRA 254, 260.

foreclosed properties.[24] Therefore, when petitioner opposed the *ex parte* motion for the issuance of the writ of possession on January 10, 2005 in the Bulacan RTC, it no longer had any legal interest in the Bulacan properties.

Nevertheless, even if the ownership of the Bulacan properties had already been consolidated in the name of respondent, petitioner still had, and could have availed of, the remedy provided in Section 8 of Act 3135.[25] It could have filed a petition to annul the August 3, 2004 auction sale and to cancel the December 19, 2005 writ of possession,[26] within 30 days after respondent was given possession.[27] But it did not. Thus, inasmuch as the 30-day period to avail of the said remedy had already lapsed, petitioner could no longer assail the validity of the August 3, 2004 sale.

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the

---

[24] *Philippine Commercial International Bank v. Court of Appeals*, 398 Phil. 534, 540 (2000).

[25] Section 8. **The debtor may**, **in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him**, **because the mortgage was not violated or the sale was not made in accordance with the provisions hereof**, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (emphasis supplied)

[26] *Suico Industrial Corporation v. Court of Appeals*, 361 Phil. 160, 170 (1999) and *Sulit v. Court of Appeals*, 335 Phil. 914, 924 (1997).

[27] *Supra* note 25.

purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.[28]

Needless to say, petitioner committed a misstep by completely relying and pinning all its hopes for relief on its complaint for specific performance and damages in the Pasig RTC,[29] instead of resorting to the remedy of annulment (of the auction sale and writ of possession) under Section 8 of Act 3135 in the Bulacan RTC.

WHEREFORE, the petition is hereby *DENIED.*

Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185711. August 24, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO SANZ LABOA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED GREAT WEIGHT AND RESPECT BY THE SUPREME COURT.— It is a fundamental rule that the trial court's

---

[28] *Fernandez v. Espinosa*, G.R. No. 156421, 14 April 2008.

[29] *Suico Industrial Corporation v. Court of Appeals*, *supra* note 26.

[*] Additional member per raffle dated August 17, 2009.

factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and are binding upon this Court, particularly when affirmed by the Court of Appeals. This is so because the trial court is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial. The appellate courts will generally not disturb such findings, unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. In this case, this Court finds no cogent reason to disturb the findings of both the trial court and the Court of Appeals that, indeed, appellant is guilty of the crime of consummated rape and not merely of attempted rape.

2. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; MERE INTRODUCTION OF THE MALE ORGAN INTO THE LABIA *MAJORA* OF THE VICTIM'S GENITALIA, AND NOT THE FULL PENETRATON OF THE PRIVATE PART, CONSUMMATES THE CRIME; CASE AT BAR.— As observed by the trial court, AAA had testified in a straightforward, candid and convincing manner on how she was raped by the appellant. Truly, AAA did not know whether the penis of the appellant penetrated her vagina or not. But, it does not mean that the appellant did not consummate the crime of rape. Settled is the rule that in order to establish rape, it is not necessary to show that the hymen was ruptured, **as full penetration of the penis is not an indispensable requirement**. What is fundamental is that the entrance, or at least the introduction of the male organ into the labia of the pudendum, is proved. The **mere introduction of the male organ into the labia *majora* of the victim's genitalia**, and not the full penetration of the complainant's private part, **consummates the crime**. Hence, the "touching" or "entry" of the penis into the labia *majora* or the labia *minora* of the pudendum of the victim's genitalia constitutes consummated rape. In this case, AAA categorically stated that the appellant raped her by having sexual intercourse with her. She vividly described that after the appellant removed her shorts and underwear, the appellant, in turn, opened his pants and unzipped it. Thereafter, the appellant spread her legs, held his penis and placed it in her vagina. At such instance, she felt pain in her private part. From the said testimony of AAA, there can be no doubt that there was at least a partial entry, so as

to make the crime consummated rape, considering the pain the entry caused.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS, SUFFICIENT BASIS EXISTS TO WARRANT A CONCLUSION THAT THE ESSENTIAL REQUISITE OF CARNAL KNOWLEDGE HAS THEREBY BEEN ESTABLISHED.— The fact that the rape was consummated was also supported by the medical findings of the examining physician, Dr. Calingin, who found incomplete fresh hymenal lacerations at the 2:00 o'clock and 7:00 o'clock positions on AAA's vagina. According to him, said lacerations were possibly caused by an attempt to sexually penetrate AAA's private part. As the Court of Appeals stated in its Decision, while Dr. Calingin said that the lacerations could have also been possibly caused by bicycle riding or horse riding, said circumstance was not however shown to be the usual activities of AAA. Thus, when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.

4. ID.; ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE DECLARATION OF THE VICTIM, UNLESS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.— x x x [T]he evidence presented by the defense consisted mainly of bare denials. Denial, like alibi, is inherently a weak defense. Unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim, who, in a simple and straightforward manner, convincingly identified the appellant as the one who had sexually molested her in the afternoon of 26 June 2001.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; MANDATORY UPON THE FINDING OF THE FACT OF RAPE.— This Court affirms the award of ₱50,000.00 as civil indemnity given by the Court of Appeals to the victim. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.

6. ID.; ID.; MORAL DAMAGES; AWARD THEREOF IS PROPER IN RAPE CASES.— Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma

of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require the victim's recital thereof at the trial, since we even assume and acknowledge such agony as a gauge of her credibility. Thus, this Court finds the award of moral damages by both lower courts in the amount of ₱50,000.00, proper.

7. ID.; ID.; EXEMPLARY DAMAGES; NOT PROPER IN CASE AT BAR SINCE NO AGGRAVATING CIRCUMSTANCES ATTENDED THE COMMISSION OF THE CRIME.— As to the award of exemplary damages, the same must be deleted. Article 2231 of the Civil Code provides that exemplary damages may be awarded if the crime was committed with one or more aggravating circumstances. Thus, this Court is constrained not to award exemplary damages in this case, since no aggravating circumstances attended the commission of the crime.

CARPIO MORALES, *J., concurring and dissenting opion:*

CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; MINORITY OF THE VICTIM ALONE WARRANTS SUCH AWARD; EXPLAINED.— I concur in the Decision, except with respect to the deletion of the award of exemplary damages. I am of the view that the minority of the victim alone warrants such award. Paying particular attention to rape cases, however, I consider to be the better view that espoused by the Court in its very recent Decisions awarding exemplary damages to minor victims of rape without requiring any other circumstance to concur with minority. In *People v. Sia*, the Court *en banc* even *increased* the exemplary damages awarded by the appellate court on account of the victim's minority from ₱25,000 to ₱30,000. The Court sustained the appellate court's ratiocination that the purpose of the award is to deter individuals with perverse tendencies from sexually abusing young children. *People v. Wasit* and *People v. Cruz* echoed the *Sia* holding. All these cases were unanimously decided by the participating members of the Court. The underlying public policy behind the award of exemplary damages is to set a public example or correction for the public good. This is effectively defeated by the strict application of Article 2230 of the Civil Code in rape cases wherein the victim is a minor.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO,[*] *J.*:

For review is the Decision[1] dated 31 January 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00211-MIN, which affirmed with modification the Decision[2] dated 22 July 2003 of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19, in Criminal Case No. 2838, finding herein appellant Reynaldo Sanz Laboa guilty beyond reasonable doubt of the crime of rape committed against AAA[3] and sentencing him to suffer the penalty of *reclusion perpetua*.

---

[*] Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias, concurring; *rollo*, pp. 6-23.

[2] Penned by Judge German M. Malcampo; CA *rollo*, pp. 10-30.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members, other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of R.A. No. 7610, otherwise known as *Special Protection*

Appellant Reynaldo Sanz Laboa was charged before the RTC of Isulan, Sultan Kudarat with raping AAA in an Information which reads:

> That on or about in the afternoon of [26 June 2001], at Barangay XXX, Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the said [appellant] with lewd and unchaste design and by means of force and intimidation, did then and there, willfully and feloniously lie and succeeded in having carnal knowledge of one AAA, a minor, under twelve (12) years old against her will and consent.[4]

Upon arraignment, the appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged. After pre-trial was terminated, trial on the merits ensued.

The prosecution presented the testimonies of the following witnesses: Dr. Alfredo Calingin (Dr. Calingin), Municipal Health Officer of Sen. Ninoy Aquino, Sultan Kudarat, who conducted the physical examination on AAA; Police Inspector (PO) 1 Melinda Dedoro Rosal (PO1 Rosal), Women and Children Protection Desk Officer at Sen. Ninoy Aquino Municipal Police Station, who conducted the investigation on the complaint of AAA; Ariel Estabillo (Ariel), laborer at the corn drier of the victim's parents; BBB, the mother of AAA; and AAA, the private complainant herself.

The evidence for the prosecution, culled from the testimonies of the aforesaid witnesses, established the following facts:

On 26 June 2001, AAA, then nine years old, was helping her parents at their corn drier located in XXX, XXX, XXX, which is about 300 meters away from their house. At around 5:00 p.m., AAA was instructed by her father to go home and to cook rice. Before going home, AAA gathered firewood. When she reached

---

of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of R.A. No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective November 15, 2004.

[4] CA *rollo*, pp. 4-5.

their house, she was already tired, so she decided to lie down on a long bench where she eventually fell asleep. At that time, the appellant was already outside their house making a divider, because he was hired by AAA's mother to make a divider for them.[5]

While AAA was sleeping on a long bench inside their house, the appellant entered, went directly to where she was and started removing her short pants and underwear. AAA was awakened, but the appellant still proceeded to undress her. The appellant then placed saliva on her vagina, spread her legs and went on top of her. Thereafter, the appellant unzipped his pants, held his penis and placed it in AAA's vagina. AAA felt that the penis of the appellant was hard. She also felt pain when the appellant tried to insert his penis into her vagina. She tried to resist but to no avail. After a while, AAA felt something wet in her vagina.[6]

At this juncture, Ariel arrived; he went there in order to return an adjustable tool that he borrowed from the parents of AAA. Ariel was so shocked seeing the appellant, whose pants' zipper was open, on top of AAA, who was naked from the waist down. At once, Ariel struck the appellant at the back with the tool he was holding. The appellant immediately stood up, fixed his long pants, closed his zipper, gathered his carpentry tools and left. AAA was then crying and asked Ariel to punch the appellant. Subsequently, Ariel brought AAA to her parents, who were at their corn drier. AAA was silent but teary-eyed when Ariel informed her mother about her ordeal.[7]

Upon being informed, BBB, together with AAA, immediately reported the rape incident to the *barangay* chairman. As the latter was unavailable, they reported the said incident to the officer-in-charge, who ordered to look for the appellant. With the help of the Civilian Armed Forces Geographical Unit

---

[5] Testimony of AAA, TSN, 4 July 2002, pp. 47-49.

[6] *Id.* at 50-54.

[7] Testimony of Ariel Estabillo, TSN, 4 July 2002, pp. 10-16; Testimony of AAA, TSN, 4 July 2002, pp. 54-56.

(CAFGU), the appellant was picked up in the house of one Bartoloy Dema. He was then brought to the *barangay* hall.[8]

AAA and her parents also went at the Municipal Police Station of Sen. Ninoy Aquino to report the rape incident. It was PO1 Rosal, the Women and Children Protection Desk Officer assigned to that Police Station, who conducted the investigation on the said rape incident. She took AAA's sworn statement on how the appellant ravished her. Then, she referred AAA to the Department of Social Welfare and Development (DSWD) and to the Municipal Health Office for medical examination.[9]

AAA was examined by Dr. Calingin, the Municipal Health Officer of Sen. Ninoy Aquino. Dr. Calingin found incomplete fresh hymenal lacerations on AAA's vagina at the 2:00 o'clock and 7:00 o'clock positions. The findings were contained in the Medical Certificate dated 28 June 2001,[10] which he issued. According to Dr. Calingin, said lacerations could have been possibly caused by bicycle riding, horse riding or an attempt to sexually penetrate AAA's private part.[11]

Thereafter, a Criminal Information for Rape was filed against the appellant. After an Order of Detention was issued, the appellant was arrested by the Philippine National Police (PNP) personnel.[12]

For its part, the defense presented the lone testimony of the appellant, who interposed the defense of denial.

The appellant claimed that on 26 June 2001, at around 5:00 p.m., he entered the house of AAA's parents to get the bench, which he would use in attaching the door of the divider he was

---

[8] Testimony of BBB, TSN, 4 July 2002, pp. 30-32.

[9] Testimony of PO1 Melinda Dedoro Rosal, TSN, 1 July 2002, pp. 15-18.

[10] Records, p. 12.

[11] Testimony of Dr. Alfredo Calingin, TSN, 1 July 2002, pp. 7-12.

[12] Testimony of PO1 Melinda Dedoro Rosal, TSN, 1 July 2002, pp. 17-21.

making. Since AAA was lying on the said bench, he kicked the bench to wake her up, but AAA refused to get up. He then pushed the bench. At such instance, Ariel arrived. The appellant averred that Ariel touched him on his back with the tool the latter was carrying. The appellant told Ariel to assist him in making the divider; however, as it was already late in the afternoon, the appellant just gathered his carpentry tools and left the house of AAA's parents. On cross-examination, however, the appellant testified that after kicking the bench, AAA was still asleep, and this prompted him to shake the bench to wake her up. He also admitted that he was bending over the bench, as he was holding the two legs of AAA when suddenly Ariel arrived. The appellant asserted that Ariel merely misinterpreted such position of him as having sexual intercourse with AAA.[13]

After trial, a Decision was rendered by the court *a quo* on 22 July 2003 finding the appellant guilty beyond reasonable doubt of the crime of rape. The trial court found AAA's testimony on how she was raped by the appellant on 26 June 2001 to be straightforward, credible, truthful and convincing. Moreover, AAA's positive identification of the appellant as her ravisher completely overturned appellant's defense of denial. The trial court thus decreed:

> WHEREFORE, upon all the foregoing considerations, the Court finds the [appellant], Reynaldo Sanz Laboa, guilty beyond reasonable doubt of the crime of rape.
>
> Accordingly, the Court hereby sentences the [appellant], Reynaldo Sanz Laboa:
>
> (a) to suffer the penalty of ***RECLUSION PERPETUA***;
>
> (b) to indemnify the private offended party, AAA;
>
> 1. the amount of **FIFTY THOUSAND (₱50,000.00) PESOS**, as moral damages

---

[13] Testimony of the appellant, TSN, 23 July 2002, pp. 2-14.

2. the amount of **SEVENTY FIVE THOUSAND (₱75,000.00) PESOS**, by way of civil indemnity, consistent with current prevailing jurisprudence;

3. the amount of **TWENTY FIVE THOUSAND (₱25,000.00) PESOS**, as exemplary damages; and

(c) to pay the costs.

Being a detention prisoner, the [appellant] Reynaldo Sanz Laboa, is entitled to full credit of the entire period of his preventive imprisonment, in accordance with Article 27 of the Revised Penal code, as amended by R.A. No. 6127, provided he had agreed in writing to abide by the same disciplinary rules and regulations imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.[14]

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[15] the records were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, the appellant raised his lone assigned error:

THE TRIAL COURT ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME OF CONSUMMATED RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[16]

On 31 January 2008, the Court of Appeals rendered a Decision affirming the conviction of the appellant for the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua*, with the modification reducing the amount of civil indemnity awarded by the trial court to AAA from ₱75,000.00 to ₱50,000.00.

The appellant appealed to this Court, contending that his conviction for the crime charged was based mainly on the testimonies of AAA, Dr. Calingin and Ariel. Appellant claimed that the testimonies of the aforesaid witnesses showed uncertainty as to his participation or how he consummated the crime charged.

---

[14] CA *rollo*, pp. 29-30.

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

[16] CA *rollo*, p. 61.

According to the appellant, AAA herself admitted that she did not know whether the appellant's penis penetrated her vagina. Similarly, Dr. Calingin testified that the fresh hymenal lacerations on AAA's vagina could have been possibly caused by bicycle riding, horse riding or an attempt to sexually penetrate AAA's vagina. In the same way, Ariel admitted that he failed to see neither the penis of the appellant nor the actual penetration of the same on AAA's vagina. With the foregoing circumstances, the appellant claims that penetration of AAA's vagina by his penis was not proven beyond reasonable doubt. Thus, he may only be held guilty of the crime of attempted rape and not of consummated rape.

Appellant's contentions are bereft of merit.

It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and are binding upon this Court, particularly when affirmed by the Court of Appeals.[17] This is so because the trial court is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial. The appellate courts will generally not disturb such findings, unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[18]

In this case, this Court finds no cogent reason to disturb the findings of both the trial court and the Court of Appeals that, indeed, appellant is guilty of the crime of consummated rape and not merely of attempted rape.

As it has been repeatedly said, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense, unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.[19]

---

[17] *People v. Mahinay*, G.R. No. 179190, 20 January 2009.

[18] *People v. Jose*, 367 Phil. 68, 76 (1999).

[19] *People v. Lopez*, 362 Phil. 285, 293 (1999).

As observed by the trial court, AAA had testified in a straightforward, candid and convincing manner on how she was raped by the appellant. Truly, AAA did not know whether the penis of the appellant penetrated her vagina or not. But, it does not mean that the appellant did not consummate the crime of rape. Settled is the rule that in order to establish rape, it is not necessary to show that the hymen was ruptured, **as full penetration of the penis is not an indispensable requirement**. What is fundamental is that the entrance, or at least the introduction of the male organ into the labia of the pudendum, is proved. The **mere introduction of the male organ into the labia *majora* of the victim's genitalia**, and not the full penetration of the complainant's private part, **consummates the crime**. Hence, the "touching" or "entry" of the penis into the labia *majora* or the labia *minora* of the pudendum of the victim's genitalia constitutes consummated rape.[20]

In this case, AAA categorically stated that the appellant raped her by having sexual intercourse with her. She vividly described that after the appellant removed her shorts and underwear, the appellant, in turn, opened his pants and unzipped it. Thereafter, the appellant spread her legs, held his penis and placed it in her vagina. At such instance, she felt pain in her private part.[21] From the said testimony of AAA, there can be no doubt that there was at least a partial entry, so as to make the crime consummated rape, considering the pain the entry caused.

The fact that the rape was consummated was also supported by the medical findings of the examining physician, Dr. Calingin, who found incomplete fresh hymenal lacerations at the 2:00 o'clock and 7:00 o'clock positions on AAA's vagina. According to him, said lacerations were possibly caused by an attempt to sexually penetrate AAA's private part. As the Court of Appeals stated in its Decision, while Dr. Calingin said that the lacerations could have also been possibly caused by bicycle riding or horse riding, said circumstance was not however shown to be the usual activities of AAA. Thus, when the testimony of a rape victim is consistent

---

[20] *People v. Velasquez*, 427 Phil. 454, 461 (2002).

[21] Testimony of AAA, TSN, 4 July 2002, pp. 50-54.

with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[22]

Although Ariel, one of the prosecution witnesses, failed to see the penis of the appellant or its actual penetration on AAA's vagina, still, his testimony clearly established and corroborated AAA's testimony that, indeed, she was raped by the appellant. Records revealed that Ariel declared before the court *a quo* that when he saw the appellant on top of AAA, who was naked from the waist down, the appellant's pants were lowered down to his buttocks while doing the push and pull movement.[23] Such action of the appellant cannot be interpreted in any way other than having sexual intercourse with AAA.

In contrast, the evidence presented by the defense consisted mainly of bare denials. Denial, like alibi, is inherently a weak defense. Unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim,[24] who, in a simple and straightforward manner, convincingly identified the appellant as the one who had sexually molested her in the afternoon of 26 June 2001.

Clearly from the foregoing, the prosecution witnesses persuasively established beyond reasonable doubt the guilt of the appellant of the crime of consummated rape. Thus, this Court is convinced that the trial court and the appellate court correctly convicted him of the crime of rape,[25] which is punishable by *reclusion perpetua*.[26]

---

[22] *People v. Galisim*, 421 Phil. 638, 647 (2001).

[23] Testimony of Ariel Estabillo, TSN, 4 July 2002, pp. 18-19; 23-24.

[24] *People v. Agravante*, 392 Phil. 543, 551 (2000).

[25] ART. 266-A. *Rape: When and How Committed*. – Rape is committed:

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

x x x x x x x x x

d) When the offended party is under twelve (12) years of age x x x (Revised Penal Code).

[26] ART. 266-B. *Penalties*.– Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. (Revised Penal Code).

This Court affirms the award of ₱50,000.00 as civil indemnity given by the Court of Appeals to the victim. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[27]

Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require the victim's recital thereof at the trial, since we even assume and acknowledge such agony as a gauge of her credibility.[28] Thus, this Court finds the award of moral damages by both lower courts in the amount of ₱50,000.00, proper.

As to the award of exemplary damages, the same must be deleted. Article 2231 of the Civil Code provides that exemplary damages may be awarded if the crime was committed with one or more aggravating circumstances.[29] Thus, this Court is constrained not to award exemplary damages in this case, since no aggravating circumstances attended the commission of the crime.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00211-MIN dated 31 January 2008 finding herein appellant guilty beyond reasonable doubt of the crime of rape is hereby *AFFIRMED with the modification* that the award of exemplary damages is deleted. No costs.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro,[**] and *Peralta, JJ.,* concur.

Carpio Morales,[***] *J.,*see concurring and dissenting opinion.

---

[27] *People v. Callos*, 424 Phil. 506, 516 (2002).

[28] *People v. Docena*, 379 Phil. 903, 917-918 (2000).

[29] *People v. Amba*, 417 Phil. 852, 865 (2001).

[**] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 16 February 2009.

[***] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

CONCURRING and DISSENTING OPINION

CARPIO MORALES, *J.*:

I concur in the Decision, except with respect to the deletion of the award of exemplary damages. I am of the view that the minority of the victim alone warrants such award.

The majority insists on a strict construction of Article 2230 of the Civil Code providing that in criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. I am not unaware of jurisprudence either applying this rule *strictissimi juris* or requiring the concurrence of minority and relationship in rape cases in order to warrant the award of exemplary damages.

Paying particular attention to rape cases, however, I consider to be the better view that espoused by the Court in its very recent Decisions awarding exemplary damages to minor victims of rape without requiring any other circumstance to concur with minority.

In *People v. Sia,*[1] the Court *en banc* even *increased* the exemplary damages awarded by the appellate court on account of the victim's minority from ₱25,000 to ₱30,000. The Court sustained the appellate court's ratiocination that the purpose of the award is to deter individuals with perverse tendencies from sexually abusing young children. *People v. Wasit*[2] and *People v. Cruz*[3] echoed the *Sia* holding. All these cases were unanimously decided by the participating members of the Court.

The underlying public policy behind the award of exemplary damages is to set a public example or correction for the public good. This is effectively defeated by the strict application of Article 2230 of the Civil Code in rape cases wherein the victim is a minor.

I, therefore, vote to AFFIRM *in toto* the challenged Decision of the Court of Appeals.

---

[1] G.R. No. 174059, February 27, 2009.

[2] G.R. No. 182454, July 23, 2009.

[3] G.R. No. 186129, August 4, 2009.

THIRD DIVISION

[A.C. No. 7399. August 25, 2009]

ANTERO J. POBRE, *complainant, vs.* **SEN. MIRIAM DEFENSOR-SANTIAGO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; PARLIAMENTARY IMMUNITY; RATIONALE.— The immunity Senator Santiago claims is rooted primarily on the provision of Article VI, Section 11 of the Constitution, which provides: "A Senator or Member of the House of Representative shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. **No member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof**." Explaining the import of the underscored portion of the provision, the Court, in *Osmeña, Jr. v. Pendatun*, said: Our Constitution enshrines parliamentary immunity which is a fundamental privilege cherished in every legislative assembly of the democratic world. As old as the English Parliament, its purpose "is to enable and encourage a representative of the public to discharge his public trust with firmness and success" for "it is indispensably necessary that he should enjoy the fullest liberty of speech and that he should be protected from resentment of every one, however, powerful, to whom the exercise of that liberty may occasion offense." As American jurisprudence puts it, this legislative privilege is founded upon long experience and arises as a means of perpetuating inviolate the functioning process of the legislative department. Without parliamentary immunity, parliament, or its equivalent, would degenerate into a polite and ineffective debating forum. Legislators are immune from deterrents to the uninhibited discharge of their legislative duties, not for their private indulgence, but for the public good. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a judge's speculation as to the motives. This

Court is aware of the need and has in fact been in the forefront in upholding the institution of parliamentary immunity and promotion of free speech. Neither has the Court lost sight of the importance of the legislative and oversight functions of the Congress that enable this representative body to look diligently into every affair of government, investigate and denounce anomalies, and talk about how the country and its citizens are being served.

2. ID.; ID.; DOCTRINE OF SEPARATION OF POWERS; COURTS DO NOT INTERFERE WITH THE LEGISLATURE OR ITS MEMBERS IN THE MANNER THEY PERFORM THEIR FUNCTIONS IN THE LEGISLATIVE FLOOR OR IN COMMITTEE ROOMS; DISMISSAL OF THE COMPLAINT FOR DISBARMENT OR DISCIPLINARY ACTION IS WARRANTED.— Courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms. Any claim of an unworthy purpose or of the falsity and *mala fides* of the statement uttered by the member of the Congress does not destroy the privilege. The disciplinary authority of the assembly and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity. For the above reasons, the plea of Senator Santiago for the dismissal of the complaint for disbarment or disciplinary action is well taken. Indeed, her privilege speech is not actionable criminally or in a disciplinary proceeding under the Rules of Court. It is felt, however, that this could not be the last word on the matter.

3. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS, AS MEMBERS OF THE BAR AND OFFICERS OF THE COURT, ARE DUTY-BOUND TO UPHOLD THE DIGNITY AND AUTHORITY OF THE SUPREME COURT AND TO MAINTAIN THE RESPECT DUE ITS MEMBERS; VIOLATED BY RESPONDENT IN CASE AT BAR.— The Court wishes to express its deep concern about the language Senator Santiago, a member of the Bar, used in her speech and its effect on the administration of justice. To the Court, the lady senator has undoubtedly crossed the limits of decency and good professional conduct. It is at once apparent that her statements in question were intemperate and highly improper in substance. To reiterate, she was quoted as stating

that she wanted "to spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court," and calling the Court a "Supreme Court of idiots." No lawyer who has taken an oath to maintain the respect due to the courts should be allowed to erode the people's faith in the judiciary. In this case, the lady senator clearly violated Canon 8, Rule 8.01 and Canon 11 of the Code of Professional Responsibility, which respectively provide: Canon 8, Rule 8.01.—A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper. Canon 11.—A lawyer shall observe and maintain the respect due to the courts and to the judicial officers and should insist on similar conduct by others. Senator/Atty. Santiago is a cut higher than most lawyers. Her achievements speak for themselves. She was a former Regional Trial Court judge, a law professor, an oft-cited authority on constitutional and international law, an author of numerous law textbooks, and an elected senator of the land. Needless to stress, Senator Santiago, as a member of the Bar and officer of the court, like any other, is duty-bound to uphold the dignity and authority of this Court and to maintain the respect due its members. Lawyers in public service are keepers of public faith and are burdened with the higher degree of social responsibility, perhaps higher than their brethren in private practice. Senator Santiago should have known, as any perceptive individual, the impact her statements would make on the people's faith in the integrity of the courts.

4. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; PARLIAMENTARY IMMUNITY; NOT AN INDIVIDUAL PRIVILEGE OF INDIVIDUAL MEMBERS OF THE CONGRESS FOR THEIR PERSONAL BENEFITS BUT A PRIVILEGE FOR THE BENEFIT OF THE PEOPLE AND THE INSTITUTION THAT REPRESENTS THEM.— A careful re-reading of her utterances would readily show that her statements were expressions of personal anger and frustration at not being considered for the post of Chief Justice. In a sense, therefore, her remarks were outside the pale of her official parliamentary functions. Even parliamentary immunity must not be allowed to be used as a vehicle to ridicule, demean, and destroy the reputation of the Court and its magistrates, nor as armor for personal wrath and disgust. Authorities are agreed that parliamentary immunity is not an individual privilege accorded

the individual members of the Parliament or Congress for their personal benefit, but rather a privilege for the benefit of the people and the institution that represents them. To be sure, Senator Santiago could have given vent to her anger without indulging in insulting rhetoric and offensive personalities. Lest it be overlooked, Senator Santiago's outburst was directly traceable to what she considered as an "unjust act" the JBC had taken in connection with her application for the position of Chief Justice. But while the JBC functions under the Court's supervision, its individual members, save perhaps for the Chief Justice who sits as the JBC's *ex-officio* chairperson, have no official duty to nominate candidates for appointment to the position of Chief Justice. The Court is, thus, at a loss to understand Senator Santiago's wholesale and indiscriminate assault on the members of the Court and her choice of critical and defamatory words against all of them. We, however, would be remiss in our duty if we let the Senator's offensive and disrespectful language that definitely tended to denigrate the institution pass by. It is imperative on our part to re-instill in Senator/Atty. Santiago her duty to respect courts of justice, especially this Tribunal, and remind her anew that the parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions **for their own benefit**, but to enable them, as the people's representatives, to perform the functions of their office without fear of being made responsible before the courts or other forums outside the congressional hall. It is intended to protect members of Congress against government pressure and intimidation aimed at influencing the decision-making prerogatives of Congress and its members.

5. LEGAL ETHICS; ATTORNEYS; DISCIPLINE OF ATTORNEYS; GENERALLY, A LAWYER HOLDING A GOVERNMENT OFFICE MAY NOT BE DISCIPLINED AS A MEMBER OF THE BAR FOR MISCONDUCT COMMITTED WHILE IN THE DISCHARGE OF OFFICIAL DUTIES, UNLESS SAID MISCONDUCT ALSO CONSTITUTES A VIOLATION OF HIS/HER OATH AS A LAWYER.— The lady senator belongs to the legal profession bound by the exacting injunction of a strict Code. Society has entrusted that profession with the administration of the law and dispensation of justice. Generally speaking, a lawyer holding a government office may not be

disciplined as a member of the Bar for misconduct committed while in the discharge of official duties, unless said misconduct also constitutes a violation of his/her oath as a lawyer.

6. ID.; ID.; ID.; LAWYERS MAY BE DISCIPLINED EVEN FOR ANY CONDUCT COMMITTED IN THEIR PRIVATE CAPACITY, AS LONG AS THEIR MISCONDUCT REFLECTS THEIR WANT OF PROBITY OR GOOD DEMEANOR.— Lawyers may be disciplined even for any conduct committed in their private capacity, as long as their misconduct reflects their want of probity or good demeanor, a good character being an essential qualification for the admission to the practice of law and for continuance of such privilege. When the Code of Professional Responsibility or the Rules of Court speaks of "conduct" or "misconduct," the reference is not confined to one's behavior exhibited in connection with the performance of lawyers' professional duties, but also covers any misconduct, which—albeit unrelated to the actual practice of their profession—would show them to be unfit for the office and unworthy of the privileges which their license and the law invest in them.

7. ID.; ID.; ID.; TO PROMOTE THE PEOPLE'S FAITH IN COURTS AND TRUST IN THE RULE OF LAW, THE SUPREME COURT HAS THE AUTHORITY TO DISCIPLINE LAWYERS; CASE AT BAR.— This Court, in its unceasing quest to promote the people's faith in courts and trust in the rule of law, has consistently exercised its disciplinary authority on lawyers who, for malevolent purpose or personal malice, attempt to obstruct the orderly administration of justice, trifle with the integrity of courts, and embarrass or, worse, malign the men and women who compose them. We have done it in the case of former Senator Vicente Sotto in *Sotto*, in the case of Atty. Noel Sorreda in *Sorreda*, and in the case of Atty. Francisco B. Cruz in *Tacordan v. Ang* who repeatedly insulted and threatened the Court in a most insolent manner. The Court is not hesitant to impose some form of disciplinary sanctions on Senator/Atty. Santiago for what otherwise would have constituted an act of utter disrespect on her part towards the Court and its members. The factual and legal circumstances of this case, however, deter the Court from doing so, even without any sign of remorse from her. Basic constitutional consideration dictates this kind of disposition.

8. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; RULES OF THE SENATE ON UNPARLIAMENTARY ACTS AND LANGUAGE; ENJOINS A SENATOR FROM USING OFFENSIVE OR IMPROPER LANGUAGE AGAINST ANOTHER SENATOR OR ANY PUBLIC INSTITUTION UNDER ANY CIRCUMSTANCE; CASE AT BAR.— The Rules of the Senate itself contains a provision on *Unparliamentary Acts and Language* that enjoins a Senator from using, under any circumstance, "offensive or improper language against another Senator or **against any public institution**." But as to Senator Santiago's unparliamentary remarks, the Senate President had not apparently called her to order, let alone referred the matter to the Senate Ethics Committee for appropriate disciplinary action, as the Rules dictates under such circumstance. The lady senator clearly violated the rules of her own chamber. It is unfortunate that her peers bent backwards and avoided imposing their own rules on her.

9. LEGAL ETHICS; ATTORNEYS; DISCIPLINE OF ATTORNEYS; RESPONDENT'S USE OF INTEMPERATE LANGUAGE TO DEMEAN AND DENIGRATE THE HIGHEST COURT OF THE LAND IS A CLEAR VIOLATION OF THE DUTY OF RESPECT LAWYERS OWE TO THE COURTS, WHICH IS A PROPER SUBJECT OF DISCIPLINARY PROCEEDINGS.— x x x [T]he lady senator questions Pobre's motives in filing his complaint, stating that disciplinary proceedings must be undertaken solely for the public welfare. We cannot agree with her more. We cannot overstress that the senator's use of intemperate language to demean and denigrate the highest court of the land is a clear violation of the duty of respect lawyers owe to the courts.

APPEARANCES OF COUNSEL

Defensor Santiago Law Firm for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

In his sworn letter/complaint dated December 22, 2006, with enclosures, Antero J. Pobre invites the Court's attention to the

following excerpts of Senator Miriam Defensor-Santiago's speech delivered on the Senate floor:

> x x x I am not angry. I am irate. I am foaming in the mouth. I am homicidal. I am suicidal. I am humiliated, debased, degraded. And I am not only that, I feel like throwing up to be living my middle years in a country of this nature. I am nauseated. I spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court, I am no longer interested in the position [of Chief Justice] if I was to be surrounded by idiots. I would rather be in another environment but not in the Supreme Court of idiots x x x.

To Pobre, the foregoing statements reflected a total disrespect on the part of the speaker towards then Chief Justice Artemio Panganiban and the other members of the Court and constituted direct contempt of court. Accordingly, Pobre asks that disbarment proceedings or other disciplinary actions be taken against the lady senator.

In her comment on the complaint dated April 25, 2007, Senator Santiago, through counsel, does not deny making the aforequoted statements. She, however, explained that those statements were covered by the constitutional provision on parliamentary immunity, being part of a speech she delivered in the discharge of her duty as member of Congress or its committee. The purpose of her speech, according to her, was to bring out in the open controversial anomalies in governance with a view to future remedial legislation. She averred that she wanted to expose what she believed "to be an unjust act of the Judicial Bar Council [JBC]," which, after sending out public invitations for nomination to the soon to-be vacated position of Chief Justice, would eventually inform applicants that only incumbent justices of the Supreme Court would qualify for nomination. She felt that the JBC should have at least given an advanced advisory that non-sitting members of the Court, like her, would not be considered for the position of Chief Justice.

The immunity Senator Santiago claims is rooted primarily on the provision of Article VI, Section 11 of the Constitution, which provides: "A Senator or Member of the House of Representative shall, in all offenses punishable by not more

than six years imprisonment, be privileged from arrest while the Congress is in session. **No member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof**." Explaining the import of the underscored portion of the provision, the Court, in *Osmeña, Jr. v. Pendatun*, said:

> Our Constitution enshrines parliamentary immunity which is a fundamental privilege cherished in every legislative assembly of the democratic world. As old as the English Parliament, its purpose "is to enable and encourage a representative of the public to discharge his public trust with firmness and success" for "it is indispensably necessary that he should enjoy the fullest liberty of speech and that he should be protected from resentment of every one, however, powerful, to whom the exercise of that liberty may occasion offense."[1]

As American jurisprudence puts it, this legislative privilege is founded upon long experience and arises as a means of perpetuating inviolate the functioning process of the legislative department. Without parliamentary immunity, parliament, or its equivalent, would degenerate into a polite and ineffective debating forum. Legislators are immune from deterrents to the uninhibited discharge of their legislative duties, not for their private indulgence, but for the public good. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a judge's speculation as to the motives.[2]

This Court is aware of the need and has in fact been in the forefront in upholding the institution of parliamentary immunity and promotion of free speech. Neither has the Court lost sight of the importance of the legislative and oversight functions of the Congress that enable this representative body to look diligently into every affair of government, investigate and denounce anomalies, and talk about how the country and its citizens are

---

[1] 109 Phil. 863 (1960); cited in Bernas, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 643 (1996).

[2] *Tenney v. Brandhove*, 34 US 367, 71 S. Ct. 783786.

being served. Courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms. Any claim of an unworthy purpose or of the falsity and *mala fides* of the statement uttered by the member of the Congress does not destroy the privilege.[3] The disciplinary authority of the assembly[4] and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity.[5]

For the above reasons, the plea of Senator Santiago for the dismissal of the complaint for disbarment or disciplinary action is well taken. Indeed, her privilege speech is not actionable criminally or in a disciplinary proceeding under the Rules of Court. It is felt, however, that this could not be the last word on the matter.

The Court wishes to express its deep concern about the language Senator Santiago, a member of the Bar, used in her speech and its effect on the administration of justice. To the Court, the lady senator has undoubtedly crossed the limits of decency and good professional conduct. It is at once apparent that her statements in question were intemperate and highly improper in substance. To reiterate, she was quoted as stating that she wanted "to spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court," and calling the Court a "Supreme Court of idiots."

The lady senator alluded to *In Re: Vicente Sotto*.[6] We draw her attention to the ensuing passage in *Sotto* that she should have taken to heart in the first place:

> x x x [I]f the people lose their confidence in the honesty and integrity of this Court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos would be the result.

---

[3] *Id*.

[4] *Osmena, Jr., supra*.

[5] *Tenney*, *supra* note 2.

[6] 82 Phil. 595, 602 (1949).

No lawyer who has taken an oath to maintain the respect due to the courts should be allowed to erode the people's faith in the judiciary. In this case, the lady senator clearly violated Canon 8, Rule 8.01 and Canon 11 of the Code of Professional Responsibility, which respectively provide:

> Canon 8, Rule 8.01.—A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.
>
> Canon 11.—A lawyer shall observe and maintain the respect due to the courts and to the judicial officers and should insist on similar conduct by others.

Senator/Atty. Santiago is a cut higher than most lawyers. Her achievements speak for themselves. She was a former Regional Trial Court judge, a law professor, an oft-cited authority on constitutional and international law, an author of numerous law textbooks, and an elected senator of the land. Needless to stress, Senator Santiago, as a member of the Bar and officer of the court, like any other, is duty-bound to uphold the dignity and authority of this Court and to maintain the respect due its members. Lawyers in public service are keepers of public faith and are burdened with the higher degree of social responsibility, perhaps higher than their brethren in private practice.[7] Senator Santiago should have known, as any perceptive individual, the impact her statements would make on the people's faith in the integrity of the courts.

As Senator Santiago alleged, she delivered her privilege speech as a prelude to crafting remedial legislation on the JBC. This allegation strikes the Court as an afterthought in light of the insulting tenor of what she said. We quote the passage once more:

> x x x **I** am not angry. **I** am irate. **I** am foaming in the mouth. **I** am homicidal. **I** am suicidal. **I** am humiliated, debased, degraded. And **I** am not only that, I feel like throwing up to be living my middle years in a country of this nature. **I** am nauseated. **I** spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme

[7] *Ali v. Bubong*, A.C. No. 4018, March 8, 2005, 453 SCRA 1, 13.

Court, **I** am no longer interested in the position [of Chief Justice] if I was to be surrounded by idiots. **I** would rather be in another environment but not in the Supreme Court of idiots x x x. (Emphasis ours.)

A careful re-reading of her utterances would readily show that her statements were expressions of personal anger and frustration at not being considered for the post of Chief Justice. In a sense, therefore, her remarks were outside the pale of her official parliamentary functions. Even parliamentary immunity must not be allowed to be used as a vehicle to ridicule, demean, and destroy the reputation of the Court and its magistrates, nor as armor for personal wrath and disgust. Authorities are agreed that parliamentary immunity is not an individual privilege accorded the individual members of the Parliament or Congress for their personal benefit, but rather a privilege for the benefit of the people and the institution that represents them.

To be sure, Senator Santiago could have given vent to her anger without indulging in insulting rhetoric and offensive personalities.

Lest it be overlooked, Senator Santiago's outburst was directly traceable to what she considered as an "unjust act" the JBC had taken in connection with her application for the position of Chief Justice. But while the JBC functions under the Court's supervision, its individual members, save perhaps for the Chief Justice who sits as the JBC's *ex-officio* chairperson,[8] have no official duty to nominate candidates for appointment to the position of Chief Justice. The Court is, thus, at a loss to understand Senator Santiago's wholesale and indiscriminate assault on the members of the Court and her choice of critical and defamatory words against all of them.

At any event, equally important as the speech and debate clause of Art. VI, Sec. 11 of the Constitution is Sec. 5(5) of Art. VIII of the Constitution that provides:

Section 5. The Supreme Court shall have the following powers:

---

[8] CONSTITUTION, Art. VIII, Sec. 8.

x x x x x x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of the law, **the Integrated Bar**, and legal assistance to the underprivileged. (Emphasis ours.)

The Court, besides being authorized to promulgate rules concerning pleading, practice, and procedure in all courts, exercises specific authority to promulgate rules governing the Integrated Bar with the end in view that the integration of the Bar will, among other things:

(4) Shield the judiciary, which traditionally cannot defend itself except within its own forum, from the assaults that politics and self interest may level at it, and assist it to maintain its integrity, impartiality and independence;

x x x x x x x x x

(11) Enforce rigid ethical standards x x x.[9]

In *Re: Letter Dated 21 February 2005 of Atty. Noel S. Sorreda*,[10] we reiterated our pronouncement in *Rheem of the Philippines v. Ferrer*[11] that the duty of attorneys to the courts can only be maintained by rendering no service involving any disrespect to the judicial office which they are bound to uphold. The Court wrote in *Rheem of the Philippines*:

x x x As explicit is the first canon of legal ethics which pronounces that "[i]t is the duty of a lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance." That same canon, as a corollary, makes it peculiarly incumbent upon lawyers to support the courts against "unjust criticism and clamor." And more. The attorney's oath solemnly binds him to a conduct that should be "with all good fidelity x x x to the courts."

---

[9] *In re Integration of the Bar of the Philippines*, January 9, 1973, 49 SCRA 22, 26-27.

[10] A.M. No. 05-3-04-SC, July 22, 2005, 464 SCRA 43.

[11] No. L-22979, June 26, 1967, 20 SCRA 441, 444.

Also, in *Sorreda*, the Court revisited its holding in *Surigao Mineral Reservation Board v. Cloribel*[12] that:

> A lawyer is an officer of the courts; he is, "like the court itself, an instrument or agency to advance the ends of justice." His duty is to uphold the dignity and authority of the courts to which he owes fidelity, "not to promote distrust in the administration of justice." Faith in the courts, a lawyer should seek to preserve. For, to undermine the judicial edifice "is disastrous to the continuity of government and to the attainment of the liberties of the people." Thus has it been said of a lawyer that "[a]s an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice."[13]

The lady senator belongs to the legal profession bound by the exacting injunction of a strict Code. Society has entrusted that profession with the administration of the law and dispensation of justice. Generally speaking, a lawyer holding a government office may not be disciplined as a member of the Bar for misconduct committed while in the discharge of official duties, unless said misconduct also constitutes a violation of his/her oath as a lawyer.[14]

Lawyers may be disciplined even for any conduct committed in their private capacity, as long as their misconduct reflects their want of probity or good demeanor,[15] a good character being an essential qualification for the admission to the practice of law and for continuance of such privilege. When the Code of Professional Responsibility or the Rules of Court speaks of "conduct" or "misconduct," the reference is not confined to one's behavior exhibited in connection with the performance of lawyers' professional duties, but also covers any misconduct, which–albeit unrelated to

---

[12] No. L-27072, January 9, 1970, 31 SCRA 1, 16-17.

[13] *Id.*; citing *People ex rel. Karlin v. Culkin*, 60 A.L.R. 851,855; *Sotto*, *supra* note 6; Malcolm, *LEGAL AND JUDICIAL ETHICS* 160 (1949); and *People v. Carillo*, 77 Phil. 572 (1946).

[14] *Vitriolo v. Dasig*, A.C. No. 4984, April 1, 2003, 400 SCRA 172, 178.

[15] *Gacias v. Balauitan*, A.C. No. 7280, November 16, 2006, 507 SCRA 11, 12.

the actual practice of their profession—would show them to be unfit for the office and unworthy of the privileges which their license and the law invest in them.[16]

This Court, in its unceasing quest to promote the people's faith in courts and trust in the rule of law, has consistently exercised its disciplinary authority on lawyers who, for malevolent purpose or personal malice, attempt to obstruct the orderly administration of justice, trifle with the integrity of courts, and embarrass or, worse, malign the men and women who compose them. We have done it in the case of former Senator Vicente Sotto in *Sotto*, in the case of Atty. Noel Sorreda in *Sorreda*, and in the case of Atty. Francisco B. Cruz in *Tacordan v. Ang*[17] who repeatedly insulted and threatened the Court in a most insolent manner.

The Court is not hesitant to impose some form of disciplinary sanctions on Senator/Atty. Santiago for what otherwise would have constituted an act of utter disrespect on her part towards the Court and its members. The factual and legal circumstances of this case, however, deter the Court from doing so, even without any sign of remorse from her. Basic constitutional consideration dictates this kind of disposition.

We, however, would be remiss in our duty if we let the Senator's offensive and disrespectful language that definitely tended to denigrate the institution pass by. It is imperative on our part to re-instill in Senator/Atty. Santiago her duty to respect courts of justice, especially this Tribunal, and remind her anew that the parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions **for their own benefit**, but to enable them, as the people's representatives, to perform the functions of their office without fear of being made responsible before the courts or other forums outside the congressional hall.[18] It is intended to protect members of Congress against government pressure and intimidation aimed at influencing the decision-making prerogatives of Congress and its members.

---

[16] *Id.*

[17] G.R. No. 159286, April 5, 2005 (*En Banc* Resolution).

[18] *Osmeña, Jr., supra.*

The Rules of the Senate itself contains a provision on *Unparliamentary Acts and Language* that enjoins a Senator from using, under any circumstance, "offensive or improper language against another Senator or **against any public institution**."[19] But as to Senator Santiago's unparliamentary remarks, the Senate President had not apparently called her to order, let alone referred the matter to the Senate Ethics Committee for appropriate disciplinary action, as the Rules dictates under such circumstance.[20] The lady senator clearly violated the rules of her own chamber. It is unfortunate that her peers bent backwards and avoided imposing their own rules on her.

Finally, the lady senator questions Pobre's motives in filing his complaint, stating that disciplinary proceedings must be undertaken solely for the public welfare. We cannot agree with her more. We cannot overstress that the senator's use of intemperate language to demean and denigrate the highest court of the land is a clear violation of the duty of respect lawyers owe to the courts.[21]

Finally, the Senator asserts that complainant Pobre has failed to prove that she in fact made the statements in question. Suffice it to say in this regard that, although she has not categorically denied making such statements, she has unequivocally said making them as part of her privilege speech. Her implied admission is good enough for the Court.

WHEREFORE, the letter-complaint of Antero J. Pobre against Senator/Atty. Miriam Defensor-Santiago is, conformably to Art. VI, Sec. 11 of the Constitution, *DISMISSED*.

SO ORDERED.

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

Carpio Morales,[*] *J.*, in the result.

---

[19] Rule XXXIV, Sec. 93.

[20] *Id.,* Secs. 95 & 97.

[21] *Tiongco v. Savillo,* A.M. No. RTJ-02-1719, March 31, 2006, 486 SCRA 48, 63.

[*] Additional member as per August 3, 2009 raffle.

THIRD DIVISION

[G.R. No. 160346. August 25, 2009]

PURITA PAHUD, SOLEDAD PAHUD, and IAN LEE CASTILLA (represented by Mother and Attorney-in-Fact VIRGINIA CASTILLA), *petitioners, vs.* **COURT OF APPEALS, SPOUSES ISAGANI BELARMINO and LETICIA OCAMPO, EUFEMIA SAN AGUSTIN-MAGSINO, ZENAIDA SAN AGUSTIN-McCRAE, MILAGROS SAN AGUSTIN-FORTMAN, MINERVA SAN AGUSTIN-ATKINSON, FERDINAND SAN AGUSTIN, RAUL SAN AGUSTIN, ISABELITA SAN AGUSTIN-LUSTENBERGER and VIRGILIO SAN AGUSTIN,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SPECIAL CONTRACTS; AGENCY; SPECIAL POWERS OF ATTORNEY; NECESSARY FOR THE VALIDITY OF SALE OF A PIECE OF LAND THROUGH AN AGENT; SALE WITH RESPECT TO THE 4/8 PORTION IN CASE AT BAR IS VALID.— The focal issue to be resolved is the status of the sale of the subject property by Eufemia and her co-heirs to the Pahuds. We find the transaction to be valid and enforceable. Article 1874 of the Civil Code plainly provides: Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. Also, under Article 1878, a special power of attorney is necessary for an agent to enter into a contract by which the ownership of an immovable property is transmitted or acquired, either gratuitously or for a valuable consideration. x x x In several cases, we have repeatedly held that the absence of a written authority to sell a piece of land is, *ipso jure*, void, precisely to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another. Based on the foregoing, it is not difficult to conclude, in principle, that the sale made by Eufemia, Isabelita and her two brothers to the Pahuds sometime in 1992 should

be valid only with respect to the 4/8 portion of the subject property.

2. ID.; ID.; ESTOPPEL; VALIDATES THE SALE WITH RESPECT TO THE 3/8 PORTION OF THE SUBJECT PROPERTY WHICH WAS OTHERWISE VOID BY EXPRESS PROVISION OF LAW AND NOT SUSCEPTIBLE TO RATIFICATION; CASE AT BAR.— While the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification, we nevertheless uphold its validity on the basis of the common law principle of estoppel. Article 1431 of the Civil Code provides: Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. True, at the time of the sale to the Pahuds, Eufemia was not armed with the requisite special power of attorney to dispose of the 3/8 portion of the property. Initially, in their answer to the complaint in intervention, Eufemia and her other co-heirs denied having sold their shares to the Pahuds. During the pre-trial conference, however, they admitted that they had indeed sold 7/8 of the property to the Pahuds sometime in 1992. Thus, the previous denial was superseded, if not accordingly amended, by their subsequent admission. Moreover, in their Comment, the said co-heirs again admitted the sale made to petitioners. Interestingly, in no instance did the three (3) heirs concerned assail the validity of the transaction made by Eufemia to the Pahuds on the basis of want of written authority to sell. They could have easily filed a case for annulment of the sale of their respective shares against Eufemia and the Pahuds. Instead, they opted to remain silent and left the task of raising the validity of the sale as an issue to their co-heir, Virgilio, who is not privy to the said transaction. They cannot be allowed to rely on Eufemia, their attorney-in-fact, to impugn the validity of the first transaction because to allow them to do so would be tantamount to giving premium to their sister's dishonest and fraudulent deed. Undeniably, therefore, the silence and passivity of the three co-heirs on the issue bar them from making a contrary claim. It is a basic rule in the law of agency that a principal is subject to liability for loss caused to another by the latter's reliance upon a deceitful representation by an agent in the course of his employment (1) if the representation is authorized; (2) if it is within the implied authority of the agent

to make for the principal; or (3) if it is apparently authorized, regardless of whether the agent was authorized by him or not to make the representation. By their continued silence, Zenaida, Milagros and Minerva have caused the Pahuds to believe that they have indeed clothed Eufemia with the authority to transact on their behalf. Clearly, the three co-heirs are now estopped from impugning the validity of the sale from assailing the authority of Eufemia to enter into such transaction. Accordingly, the subsequent sale made by the seven co-heirs to Virgilio was void because they no longer had any interest over the subject property which they could alienate at the time of the second transaction. *Nemo dat quod non habet*. Virgilio, however, could still alienate his 1/8 undivided share to the Belarminos.

3. ID.; ID.; SPECIAL CONTRACTS; SALES; AS A GENERAL RULE, A PURCHASER OF REAL PROPERTY IS NOT REQUIRED TO MAKE ANY FURTHER INQUIRY BEYOND WHAT THE CERTIFICATE OF TITLE INDICATES ON ITS FACE; EXCEPTION; CASE AT BAR.— The Belarminos, for their part, cannot argue that they purchased the property from Virgilio in good faith. As a general rule, a purchaser of a real property is not required to make any further inquiry beyond what the certificate of title indicates on its face. But the rule excludes those who purchase with knowledge of the defect in the title of the vendor or of facts sufficient to induce a reasonable and prudent person to inquire into the status of the property. Such purchaser cannot close his eyes to facts which should put a reasonable man on guard, and later claim that he acted in good faith on the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his obvious neglect by closing his eyes to the possibility of the existence of a defect in the vendor's title, will not make him an innocent purchaser for value, if afterwards it turns out that the title was, in fact, defective. In such a case, he is deemed to have bought the property at his own risk, and any injury or prejudice occasioned by such transaction must be borne by him. In the case at bar, the Belarminos were fully aware that the property was registered not in the name of the immediate transferor, Virgilio, but remained in the name of Pedro San Agustin and Agatona Genil. This fact alone is sufficient impetus to make further inquiry and, thus, negate their claim that they are purchasers for value in good faith. They knew that the

property was still subject of partition proceedings before the trial court, and that the compromise agreement signed by the heirs was not approved by the RTC following the opposition of the counsel for Eufemia and her six other co-heirs. The Belarminos, being transferees *pendente lite*, are deemed buyers in *mala fide*, and they stand exactly in the shoes of the transferor and are bound by any judgment or decree which may be rendered for or against the transferor. Furthermore, had they verified the status of the property by asking the neighboring residents, they would have been able to talk to the Pahuds who occupy an adjoining business establishment and would have known that a portion of the property had already been sold. All these existing and readily verifiable facts are sufficient to suggest that the Belarminos knew that they were buying the property at their own risk.

CARPIO MORALES, *J., concurring and dissenting opion*:

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; VALIDITY OF THE SALE TO RESPONDENT SPOUSES BELARMINO EXTENDS TO 4/8 OR ONE-HALF OF THE PROPERTY, INCLUDING THE 3/8 SHARE PORTION OVER WHICH NO WRITTEN AUTHORITY FROM THE RESPONDENT-SISTERS WAS SECURED.— I submit that the validity of the sale to spouses Belarmino extends to 4/8 or one-half of the property, inclusive of the combined 3/8 share of respondents-sisters Zenaida, Milagros and Minerva, all bearing the maiden surname of San Agustin, thus leaving only one-half of the property to petitioners Purita Pahud, *et al*. who earlier purchased from Eufemia San Agustin (Eufemia) the property including the 3/8 portion over which no written authority from the three sisters was secured. The *ponente*, Justice Nachura, in fact, agrees to this proposition "in principle."

2. ID.; ID.; AGENCY; SPECIAL POWER OF ATTORNEY; NECESSARY FOR AN AGENT TO ENTER INTO ANY CONTRACT BY WHICH THE OWNERSHIP OF AN IMMOVABLE IS TRANSMITTED OR ACQUIRED EITHER GRATUITOUSLY OR FOR A VALUABLE CONSIDERATION; AUTHORITY OF THE AGENT TO SELL A PIECE OF LAND SHALL BE IN WRITING.— Indeed, as the *ponencia* elucidates, Articles 1874 and 1878 of the Civil Code clearly provide that a special power of attorney is necessary for an agent to "enter

into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration" and that specifically in cases of sale of a piece of land or any interest therein through an agent**,** "the authority of the latter shall be in writing; otherwise the sale shall be **void**."

3. ID.; ID.; ESTOPPEL; CANNOT BE APPLIED IN THE PRESENCE OF A LAW CLEARLY APPLICABLE TO THE CASE; ELUCIDATED.— The *ponencia* takes one step further, however, in upholding the validity of the sale of the 3/8 portion belonging to the 3 sisters to petitioner notwithstanding the want of a written authority to sell, by applying the principle of estoppel. It ratiocinates: While the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification, we nevertheless uphold its validity on the basis of the common law principle of estoppel. x x x It is from this aspect of the *ponencia* that I respectfully dissent. Equity cannot supplant or contravene the law. Article 1432 of the Civil Code expressly states that the principles of estoppel are adopted "insofar as they are not in conflict with the provisions of this Code," among other laws. Indeed, estoppel, being a principle in equity, cannot be applied in the presence of a law clearly applicable to the case. The Court is first and foremost a court of law. While equity might tilt on the side of one party, the same cannot be enforced so as to overrule positive provisions of law in favor of the other. Moreover, the evident purpose of the legal requirement of such written authority is not only to safeguard the interest of an unsuspecting owner from being prejudiced by the unauthorized act of another, but also to caution the buyer to assure himself of the specific authorization of the putative agent. In other words, the drafters of the law already saw the risky predicament of selling lands through agents which, in the absence of a specific law, would otherwise ultimately depend on equity to resolve disputes such as the present case. The law undoubtedly seeks to prevent the following confusion: Case law tells us that the elements of estoppel are: "first, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any

claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action." The depicted scenario is precisely the misunderstanding between parties to such type of sale which the lawmakers sought to avoid in prescribing the conditions for the validity of such sale of land. The present case is a classic example of a tedious litigation which had ensued as a result of such misunderstanding. This is what the law endeavors to avert. It is not for the Court to suspend the application of the law and revert to equitable grounds in resolving the present dispute.

4. ID.; ID.; ID.; SPEAKS OF ONE'S PRIOR ADMISSION OR REPRESENTATION, HENCE, DOES NOT APPLY TO CASE AT BAR; EXPLAINED.— Assuming *arguendo* that estoppel can contradict positive law, I submit that Article 1431 of the Civil Code does not apply since it speaks of one's ***prior*** *admission or representation*, without which the other person could not have relied on it before acting accordingly. The *ponencia* cites acts or omissions on the part of the three sisters which came **after the fact** such as their "admission" and "continued silence" which, however, could not retroact to the time of the previous sale as to consider petitioners to have accordingly relied on such admission or representation before buying the property from Eufemia. The application of the principle of estoppel is proper and timely in heading off shrewd efforts at renouncing one's **previous acts** to the prejudice of another who had dealt honestly and in good faith. It is thus erroneous to conclude that Zenaida, Milagros and Minerva have caused petitioners to believe that they have clothed Eufemia with the authority to transact on their behalf. Could the three sisters ratify the previous sale through their *subsequent* acts or omissions? I opine they cannot. The *ponencia* concedes that "the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification." The previous sale being violative of an express mandate of law, such cannot be ratified by estoppel. Estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. Neither can the defense of illegality be waived. An action or defense for the declaration of the inexistence of a contract does not prescribe. Amid the confusion from the double dealing made by their sibling

Eufemia, the three sisters expectedly kept mum about it. Succinctly, their "continued silence" cannot be taken against them. Bargaining away a provision of law should not be countenanced.

5. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; ALLOWS THE PARTIES TO ADMIT TO THE STATEMENT OF FACT THAT THE SALE TOOK PLACE, BUT NOT TO THE CONCLUSION OF LAW THAT THE SALE WAS VALID; ADMISSION TO A QUESTION OF LAW DOES NOT BIND THE PARTIES; CASE AT BAR.— Neither can their "admission" to a question of law bind them. The *ponencia* highlights the admission made by Eufemia and her co-heirs during the pre-trial conference before the trial court and in their Comment on the present petition that they had earlier sold 7/8 of the property to petitioners. These statements could not mean, however, as an admission in petitioners' favor that Zenaida, Milagros and Minerva validly sold their respective shares to petitioners. They could only admit to the statement of fact that the sale took place, but not to the conclusion of law that the sale was valid, precisely because the validity of the sales transaction is at issue as it was contested by the parties.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; AGENCY; RULE INVOLVING A PRINCIPAL'S RESPONSIBILITY FOR AN AGENT'S MISREPRESENTATION WITHIN THE SCOPE OF AN AGENT'S AUTHORITY IS INAPPLICABLE TO CASE AT BAR.— x x x [T]he textbook citation of the rule involving a principal's responsibility for an agent's misrepresentation within the scope of an agent's authority as annotated by the cited author under Article 1900 of the Civil Code is inapplicable. The qualifying phrase "in the course of his employment" presupposes that an agency relationship is existing. The quoted rule clearly recites that a principal is held liable if the "deceitful representation" (not the agency relationship) is authorized either expressly, impliedly, or apparently. In this case, there was no agency relationship to speak of.

APPEARANCES OF COUNSEL

Hilarion L. Aquino for petitioners.

Saguisag & Associates for Sps. Isagani Belarmino & Leticia Ocampo.

Demetrio L. Hilbero for Eufemia San Agustin-Magsino, *et al.*

Carmelino F. Pansacola for Virgilio San Agustin.

D E C I S I O N

NACHURA, *J.*:

For our resolution is a petition for review on *certiorari* assailing the April 23, 2003 Decision[1] and October 8, 2003 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 59426. The appellate court, in the said decision and resolution, reversed and set aside the January 14, 1998 Decision[3] of the Regional Trial Court (RTC), which ruled in favor of petitioners.

The dispute stemmed from the following facts.

During their lifetime, spouses Pedro San Agustin and Agatona Genil were able to acquire a 246-square meter parcel of land situated in *Barangay* Anos, Los Baños, Laguna and covered by Original Certificate of Title (OCT) No. O-(1655) 0-15.[4] Agatona Genil died on September 13, 1990 while Pedro San Agustin died on September 14, 1991. Both died intestate, survived by their eight (8) children: respondents Eufemia, Raul, Ferdinand, Zenaida, Milagros, Minerva, Isabelita and Virgilio.

Sometime in 1992, Eufemia, Ferdinand and Raul executed a Deed of Absolute Sale of Undivided Shares[5] conveying in favor of petitioners (the Pahuds, for brevity) their respective shares from the lot they inherited from their deceased parents for ₱525,000.00.[6] Eufemia also signed the deed on behalf of her four (4) other co-heirs, namely: Isabelita on the basis of a special power of attorney executed on September 28, 1991,[7] and also

---

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Mercedes Gozo-Dadole and Hakim S. Abdulwahid, concurring; *rollo*, pp. 35-45.

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

[3] *Rollo*, pp. 121-146.

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

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

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

[7] *Id.* at 61.

for Milagros, Minerva, and Zenaida but without their apparent written authority.[8] The deed of sale was also not notarized.[9]

On July 21, 1992, the Pahuds paid ₱35,792.31 to the Los Baños Rural Bank where the subject property was mortgaged.[10] The bank issued a release of mortgage and turned over the owner's copy of the OCT to the Pahuds.[11] Over the following months, the Pahuds made more payments to Eufemia and her siblings totaling to ₱350,000.00.[12] They agreed to use the remaining ₱87,500.00[13] to defray the payment for taxes and the expenses in transferring the title of the property.[14] When Eufemia and her co-heirs drafted an extra-judicial settlement of estate to facilitate the transfer of the title to the Pahuds, Virgilio refused to sign it.[15]

On July 8, 1993, Virgilio's co-heirs filed a complaint[16] for judicial partition of the subject property before the RTC of Calamba, Laguna. On November 28, 1994, in the course of the proceedings for judicial partition, a Compromise Agreement[17] was signed with seven (7) of the co-heirs agreeing to sell their undivided shares to Virgilio for ₱700,000.00. The compromise agreement was, however, not approved by the trial court because Atty. Dimetrio Hilbero, lawyer for Eufemia and her six (6) co-heirs, refused to sign the agreement because he knew of the previous sale made to the Pahuds.[18]

---

[8] *Id.* at 37.

[9] *Id.* at 50, 140.

[10] *Id.* at 13.

[11] *Id.* at 38.

[12] *Id.* at 89-96.

[13] *Id.* at 97.

[14] *Id.* at 13, 140.

[15] *Id.* at 38.

[16] *Id.* at 51-54. The complaint was docketed as Civil Case No. 2011-93-C.

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

[18] *Id.* at 136, 139.

On December 1, 1994, Eufemia acknowledged having received ₱700,000.00 from Virgilio.[19] Virgilio then sold the entire property to spouses Isagani Belarmino and Leticia Ocampo (Belarminos) sometime in 1994. The Belarminos immediately constructed a building on the subject property.

Alarmed and bewildered by the ongoing construction on the lot they purchased, the Pahuds immediately confronted Eufemia who confirmed to them that Virgilio had sold the property to the Belarminos.[20] Aggrieved, the Pahuds filed a complaint in intervention[21] in the pending case for judicial partition.

After trial, the RTC upheld the validity of the sale to petitioners. The dispositive portion of the decision reads:

WHEREFORE, the foregoing considered, the Court orders:

1. the sale of the 7/8 portion of the property covered by OCT No. O (1655) O-15 by the plaintiffs as heirs of deceased Sps. Pedro San Agustin and Agatona Genil in favor of the Intervenors-Third Party plaintiffs as valid and enforceable, but obligating the Intervenors-Third Party plaintiffs to complete the payment of the purchase price of ₱437,500.00 by paying the balance of ₱87,500.00 to defendant Fe (sic) San Agustin Magsino. Upon receipt of the balance, the plaintiff shall formalize the sale of the 7/8 portion in favor of the Intervenor[s]-Third Party plaintiffs;

2. declaring the document entitled "Salaysay sa Pagsang-ayon sa Bilihan" (Exh. "2-a") signed by plaintiff Eufemia San Agustin attached to the unapproved Compromise Agreement (Exh. "2") as not a valid sale in favor of defendant Virgilio San Agustin;

3. declaring the sale (Exh. "4") made by defendant Virgilio San Agustin of the property covered by OCT No. O (1655)-O-15 registered in the names of Spouses Pedro San Agustin and Agatona Genil in favor of Third-party defendant Spouses Isagani and Leticia Belarmino as not a valid sale and as inexistent;

4. declaring the defendant Virgilio San Agustin and the Third-Party defendants spouses Isagani and Leticia Belarmino as in bad

[19] *Id.* at 106.

[20] *Id.* at 135-136.

[21] *Id.* at 72-84.

faith in buying the portion of the property already sold by the plaintiffs in favor of the Intervenors-Third Party Plaintiffs and the Third-Party Defendant Sps. Isagani and Leticia Belarmino in constructing the two-[storey] building in (*sic*) the property subject of this case; and

5. declaring the parties as not entitled to any damages, with the parties shouldering their respective responsibilities regarding the payment of attorney[']s fees to their respective lawyers.

No pronouncement as to costs.

SO ORDERED.[22]

Not satisfied, respondents appealed the decision to the CA arguing, in the main, that the sale made by Eufemia for and on behalf of her other co-heirs to the Pahuds should have been declared void and inexistent for want of a written authority from her co-heirs. The CA yielded and set aside the findings of the trial court. In disposing the issue, the CA ruled:

WHEREFORE, in view of the foregoing, the Decision dated January 14, 1998, rendered by the Regional Trial Court of Calamba, Laguna, Branch 92 in Civil Case No. 2011-93-C for *Judicial Partition* is hereby REVERSED and SET ASIDE, and a new one entered, as follows:

(1) The case for partition among the plaintiffs-appellees and appellant Virgilio is now considered closed and terminated;

(2) Ordering plaintiffs-appellees to return to intervenors-appellees the total amount they received from the latter, plus an interest of 12% per annum from the time the complaint [in] intervention was filed on April 12, 1995 until actual payment of the same;

(3) Declaring the sale of appellant Virgilio San Agustin to appellants spouses, Isagani and Leticia Belarmino[,] as valid and binding;

(4) Declaring appellants-spouses as buyers in good faith and for value and are the owners of the subject property.

No pronouncement as to costs.

SO ORDERED.[23]

---

[22] *Id.* at 145-146.

[23] *Id.* at 44-45.

Petitioners now come to this Court raising the following arguments:

I. The Court of Appeals committed grave and reversible error when it did not apply the second paragraph of Article 1317 of the New Civil Code insofar as ratification is concerned to the sale of the 4/8 portion of the subject property executed by respondents San Agustin in favor of petitioners;

II. The Court of Appeals committed grave and reversible error in holding that respondents spouses Belarminos are in good faith when they bought the subject property from respondent Virgilio San Agustin despite the findings of fact by the court *a quo* that they were in bad faith which clearly contravenes the presence of long line of case laws upholding the task of giving utmost weight and value to the factual findings of the trial court during appeals; [and]

III. The Court of Appeals committed grave and reversible error in holding that respondents spouses Belarminos have superior rights over the property in question than petitioners despite the fact that the latter were prior in possession thereby misapplying the provisions of Article 1544 of the New Civil Code.[24]

The focal issue to be resolved is the status of the sale of the subject property by Eufemia and her co-heirs to the Pahuds. We find the transaction to be valid and enforceable.

Article 1874 of the Civil Code plainly provides:

Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Also, under Article 1878,[25] a special power of attorney is necessary for an agent to enter into a contract by which the

---

[24] *Id.* at 19.

[25] Article 1878(5) provides:

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x x x x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.

ownership of an immovable property is transmitted or acquired, either gratuitously or for a valuable consideration. Such stringent statutory requirement has been explained in *Cosmic Lumber Corporation v. Court of Appeals*:[26]

> [T]he authority of an agent to execute a contract [of] sale of real estate must be conferred in writing and must give him **specific authority**, either to conduct the general business of the principal or to execute a binding contract containing terms and conditions which are in the contract he did execute. A special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration. **The express mandate** required by law to enable an appointee of an agency (couched) in general terms to sell **must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the act mentioned.** For the principal to confer the right upon an agent to sell real estate, a power of attorney must so express the powers of the agent in clear and unmistakable language. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document.[27]

In several cases, we have repeatedly held that the absence of a written authority to sell a piece of land is, *ipso jure*, void,[28] precisely to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another.

Based on the foregoing, it is not difficult to conclude, in principle, that the sale made by Eufemia, Isabelita and her two brothers to the Pahuds sometime in 1992 should be valid only with respect to the 4/8 portion of the subject property. The sale with respect to the 3/8 portion, representing the shares of

---

[26] 332 Phil. 948 (1996).

[27] *Id.* at 957-958. (Emphasis supplied, citations omitted.)

[28] *Estate of Lino Olaguer, etc. v. Hon. CA and Emiliano M. Ongjoco*, G.R. No. 173312, August 26, 2008; *Dizon v. Court of Appeals*, G.R. Nos. 122544 and 124741, January 28, 2003, 396 SCRA 151, 155; *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.*, 424 Phil. 446, 455 (2002); *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, G.R. No. 129459, September 29, 1998, 296 SCRA 631, 648.

Zenaida, Milagros, and Minerva, is void because Eufemia could not dispose of the interest of her co-heirs in the said lot absent any written authority from the latter, as explicitly required by law. This was, in fact, the ruling of the CA.

Still, in their petition, the Pahuds argue that the sale with respect to the 3/8 portion of the land should have been deemed ratified when the three co-heirs, namely: Milagros, Minerva, and Zenaida, executed their respective special power of attorneys[29] authorizing Eufemia to represent them in the sale of their shares in the subject property.[30]

While the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification,[31] we nevertheless uphold its validity on the basis of the common law principle of estoppel.

Article 1431 of the Civil Code provides:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

True, at the time of the sale to the Pahuds, Eufemia was not armed with the requisite special power of attorney to dispose

---

[29] Special Power of Attorney of Isabelita San Agustin-Lustenberger was executed on September 28, 1991, *rollo*, p. 61 (Annex "E"); Special Power of Attorney of Milagros San Agustin-Fortman was executed in December 1992, *id.* at 62 (Annex "F"); Special Power of Attorney of Minerva San Agustin-Atkinson was executed, undated, but was witnessed by G.R. Stephenson, Commissioner for Oaths, on February 12, 1993, *id.* at 63 (Annex "G"); and Special Power of Attorney of Zenaida San Agustin-McCrae was executed on May 10, 1993, *id.* at 64 (Annex "H").

[30] *Rollo*, p. 20.

[31] CIVIL CODE, Art. 1409 provides in part:

> Art. 1409. The following contracts are inexistent and void from the beginning:
>
> x x x x x x x x x
>
> (7) Those expressly prohibited or declared void by law.
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

of the 3/8 portion of the property. Initially, in their answer to the complaint in intervention,[32] Eufemia and her other co-heirs denied having sold their shares to the Pahuds. During the pre-trial conference, however, they admitted that they had indeed sold 7/8 of the property to the Pahuds sometime in 1992.[33] Thus, the previous denial was superseded, if not accordingly amended, by their subsequent admission.[34] Moreover, in their Comment,[35] the said co-heirs again admitted the sale made to petitioners.[36]

Interestingly, in no instance did the three (3) heirs concerned assail the validity of the transaction made by Eufemia to the Pahuds on the basis of want of written authority to sell. They could have easily filed a case for annulment of the sale of their respective shares against Eufemia and the Pahuds. Instead, they opted to remain silent and left the task of raising the validity of the sale as an issue to their co-heir, Virgilio, who is not privy to the said transaction. They cannot be allowed to rely on Eufemia, their attorney-in-fact, to impugn the validity of the

---

[32] I Records, op. 26; Exh."I-A", entitled Answer to Counterclaim dated December 14, 1993.

[33] II Records, pp. 262-264.

[34] RULES OF COURT, Rule 10, Sec. 5 provides in full:

SEC. 5. *Amendment to conform to or authorize presentation of evidence*. – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[35] *Rollo*, pp. 200-204.

[36] *Id.* at 200.

first transaction because to allow them to do so would be tantamount to giving premium to their sister's dishonest and fraudulent deed. Undeniably, therefore, the silence and passivity of the three co-heirs on the issue bar them from making a contrary claim.

It is a basic rule in the law of agency that a principal is subject to liability for loss caused to another by the latter's reliance upon a deceitful representation by an agent in the course of his employment (1) if the representation is authorized; (2) if it is within the implied authority of the agent to make for the principal; or (3) if it is apparently authorized, regardless of whether the agent was authorized by him or not to make the representation.[37]

By their continued silence, Zenaida, Milagros and Minerva have caused the Pahuds to believe that they have indeed clothed Eufemia with the authority to transact on their behalf. Clearly, the three co-heirs are now estopped from impugning the validity of the sale from assailing the authority of Eufemia to enter into such transaction.

Accordingly, the subsequent sale made by the seven co-heirs to Virgilio was void because they no longer had any interest over the subject property which they could alienate at the time of the second transaction.[38] *Nemo dat quod non habet*. Virgilio, however, could still alienate his 1/8 undivided share to the Belarminos.

---

[37] *See* De Leon, *Comments and Cases on Partnership, Agency and Trusts*, 2005 edition, p. 538, citing ***Mechem***, *Cases on the Law of Agency*, p. 230.

[38] CIVIL CODE, Art. 1409 provides in part:

> Art. 1409. The following contracts are inexistent and void from the beginning:
>
> x x x x x x x x x
>
> (3) Those whose cause or object did not exist at the time of the transaction;
>
> x x x x x x x x x
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

The Belarminos, for their part, cannot argue that they purchased the property from Virgilio in good faith. As a general rule, a purchaser of a real property is not required to make any further inquiry beyond what the certificate of title indicates on its face.[39] But the rule excludes those who purchase with knowledge of the defect in the title of the vendor or of facts sufficient to induce a reasonable and prudent person to inquire into the status of the property.[40] Such purchaser cannot close his eyes to facts which should put a reasonable man on guard, and later claim that he acted in good faith on the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his obvious neglect by closing his eyes to the possibility of the existence of a defect in the vendor's title, will not make him an innocent purchaser for value, if afterwards it turns out that the title was, in fact, defective. In such a case, he is deemed to have bought the property at his own risk, and any injury or prejudice occasioned by such transaction must be borne by him.[41]

In the case at bar, the Belarminos were fully aware that the property was registered not in the name of the immediate transferor, Virgilio, but remained in the name of Pedro San Agustin and Agatona Genil[42] This fact alone is sufficient impetus to make further inquiry and, thus, negate their claim that they are purchasers for value in good faith.[43] They knew that the property was still subject of partition proceedings before the trial court, and that the compromise agreement signed by the

---

[39] *Lu v. Intermediate Appellate Court*, G.R. No. 70149, January 30, 1989, 169 SCRA 595, 604; *Lopez v. Court of Appeals*, G.R. No. 49739, January 20, 1989, 169 SCRA 271, 275-276.

[40] *Abad v. Guimba*, G.R. No. 157002, July 29, 2005, 465 SCRA 356, 367.

[41] *Bailon-Casilao v. Court of Appeals*, G.R. No. 78178, April 15, 1988, 160 SCRA 738, 750.

[42] I Records, pp. 5-6.

[43] *Guaranteed Homes, Inc. v. Heirs of Maria P. Valdez, et al.*, G.R. No. 171531, January 30, 2009.

heirs was not approved by the RTC following the opposition of the counsel for Eufemia and her six other co-heirs.[44] The Belarminos, being transferees *pendente lite*, are deemed buyers in *mala fide*, and they stand exactly in the shoes of the transferor and are bound by any judgment or decree which may be rendered for or against the transferor.[45] Furthermore, had they verified the status of the property by asking the neighboring residents, they would have been able to talk to the Pahuds who occupy an adjoining business establishment[46] and would have known that a portion of the property had already been sold. All these existing and readily verifiable facts are sufficient to suggest that the Belarminos knew that they were buying the property at their own risk.

WHEREFORE, premises considered, the April 23, 2003 Decision of the Court of Appeals as well as its October 8, 2003 Resolution in CA-G.R. CV No. 59426, are *REVERSED* and *SET ASIDE*. Accordingly, the January 14, 1998 Decision of Branch 92 of the Regional Trial Court of Calamba, Laguna is *REINSTATED* with the *MODIFICATION* that the sale made by respondent Virgilio San Agustin to respondent spouses Isagani Belarmino and Leticia Ocampo is valid only with respect to the 1/8 portion of the subject property. The trial court is ordered to proceed with the partition of the property with dispatch.

SO ORDERED.

Chico-Nazario (Acting Chairperson),[*] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

Carpio Morales, J.,[**] please see concurring and dissenting opinion.

---

[44] I Records, pp. at 60-61.

[45] *Voluntad v. Dizon,* G.R. No. 132294, August 26, 1999, 313 SCRA 209.

[46] *Rollo,* p. 16.

[*] In lieu of Associate Justice Consuelo-Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

[**] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

CONCURRING AND DISSENTING OPINION

CARPIO MORALES, *J.*:

The *ponencia* reinstates the trial court's Decision of January 14, 1998 with the modification that "the sale made by respondent Virgilio San Agustin to respondent spouses Isagani Belarmino and Leticia Ocampo is valid only with respect to the 1/8 portion of the subject property."[1]

I submit that the validity of the sale to spouses Belarmino extends to 4/8 or one-half of the property, inclusive of the combined 3/8 share of respondents-sisters Zenaida, Milagros and Minerva, all bearing the maiden surname of San Agustin, thus leaving only one-half of the property to petitioners Purita Pahud, *et al*. who earlier purchased from Eufemia San Agustin (Eufemia) the property including the 3/8 portion over which no written authority from the three sisters was secured. The *ponente*, Justice Nachura, in fact, agrees to this proposition "in principle."[2]

The *ponencia* even rejects petitioners' contention that the special power of attorney subsequently executed by Zenaida, Milagros and Minerva in favor of Eufemia effectively ratified their earlier purchase of the property insofar as the 3/8 portion is concerned, for the established reason that void contracts or the illegal terms thereof[3] are not susceptible to ratification. The subsequent execution by the three sisters of the respective special powers of attorney only means that they considered the previous sale null and recognized the salability of their 3/8 portion, thus paving the way for its transfer to Virgilio San Agustin and its eventual sale to the spouses Belarmino.

Indeed, as the *ponencia* elucidates, Articles 1874 and 1878 of the Civil Code clearly provide that a special power of attorney

---

[1] *Ponencia*, p. 12 (underscoring supplied).

[2] *Ponencia*, p. 7.

[3] Civil Code, Art. 1420 in relation to Art. 493.

is necessary for an agent to "enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration" and that specifically in cases of sale of a piece of land or any interest therein through an agent**,** "the authority of the latter shall be in writing; otherwise the sale shall be **void**."

The *ponencia* takes one step further, however, in upholding the validity of the sale of the 3/8 portion belonging to the 3 sisters to petitioner notwithstanding the want of a written authority to sell, by applying the principle of estoppel. It ratiocinates:

> While the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification, we nevertheless uphold its validity on the basis of the common law principle of estoppel.
>
> Article 1431 of the Civil Code provides:
>
> > Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon
>
> True, at the time of the sale to the Pahuds, Eufemia was not armed with the requisite special power of attorney to dispose of the 3/8 portion of the property. Initially, in their answer to the complaint in intervention, Eufemia and her other co-heirs denied having sold their shares to the Pahuds. During the pre-trial conference, however, they admitted that they had indeed sold 7/8 of the property to the Pahuds sometime in 1992. Thus, the previous denial was superseded, if not accordingly amended, by their subsequent admission. Moreover, in their Comment, the said co-heirs again admitted the sale made to petitioners.
>
> Interestingly, in no instance did the three (3) heirs concerned assail the validity of the transaction made by Eufemia to the Pahuds on the basis of want of written authority to sell. They could have easily filed a case for annulment of the sale of their respective shares against Eufemia and the Pahuds. Instead, they opted to remain silent and left the task of raising the validity of the sale as an issue to their co-heir, Virgilio, who is not privy to the said transaction. They cannot be allowed to rely on Eufemia, their attorney-in-fact, to impugn the validity of the first transaction because to allow them to do so would

be tantamount to giving premium to their sister's dishonest and fraudulent deed. Undeniably, therefore, the silence and passivity of the three co-heirs on the issue bar them from making a contrary claim.

It is a basic rule in the law of agency that a principal is subject to liability for loss caused to another by the latter's reliance upon a deceitful representation by an agent **in the course of his employment** (1) if the representation is authorized; (2) if it is within the implied authority of the agent to make for the principal; or (3) if it is apparently authorized, regardless of whether the agent was authorized by him or not to make the representation.

By their continued silence, Zenaida, Milagros and Minerva have caused the Pahuds to believe that they have indeed clothed Eufemia with the authority to transact on their behalf. Clearly, the three co-heirs are now estopped from impugning the validity of the sale from assailing the authority of Eufemia to enter such transaction.[4] (Emphasis and underscoring supplied)

It is from this aspect of the *ponencia* that I respectfully dissent.

Equity cannot supplant or contravene the law.[5]

Article 1432 of the Civil Code expressly states that the principles of estoppel are adopted "insofar as they are not in conflict with the provisions of this Code," among other laws.

Indeed, estoppel, being a principle in equity, cannot be applied in the presence of a law clearly applicable to the case. The Court is first and foremost a court of law. While equity might tilt on the side of one party, the same cannot be enforced so as to overrule positive provisions of law in favor of the other.[6]

Moreover, the evident purpose of the legal requirement of such written authority is not only to safeguard the interest of

---

[4] *Ponencia*, pp. 8-10.

[5] *Valdevieso v. Damalerio*, 492 Phil. 51, 59 (2005).

[6] *Vide id*. A waiver will be inoperative and void if it infringes on the rights of others (*Ouano v. Court of Appeals*, infra at 704).

an unsuspecting owner from being prejudiced by the unauthorized act of another, but also to caution the buyer to assure himself of the specific authorization of the putative agent. In other words, the drafters of the law already saw the risky predicament of selling lands through agents which, in the absence of a specific law, would otherwise ultimately depend on equity to resolve disputes such as the present case. The law undoubtedly seeks to prevent the following confusion:

> Case law tells us that the elements of estoppel are: "first, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action."[7]

The depicted scenario is precisely the misunderstanding between parties to such type of sale which the lawmakers sought to avoid in prescribing the conditions for the validity of such sale of land. The present case is a classic example of a tedious litigation which had ensued as a result of such misunderstanding. This is what the law endeavors to avert.[8] It is not for the Court to suspend the application of the law and revert to equitable grounds in resolving the present dispute.

Assuming *arguendo* that estoppel can contradict positive law, I submit that Article 1431 of the Civil Code does not apply since it speaks of one's ***prior*** *admission or representation*, without which the other person could not have relied on it before acting accordingly.

---

[7] *Phil. Bank of Communications v. CA*, 352 Phil. 1, 9 (1998).

[8] Cf. *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643, 653 (2003) for analogy respecting the vital preconditions to the validity of a contract for additional works under Article 1724 of the Civil Code.

The *ponencia* cites acts or omissions on the part of the three sisters which came **after the fact** such as their "admission" and "continued silence" which, however, could not retroact to the time of the previous sale as to consider petitioners to have accordingly relied on such admission or representation before buying the property from Eufemia. The application of the principle of estoppel is proper and timely in heading off shrewd efforts at renouncing one's **previous acts** to the prejudice of another who had dealt honestly and in good faith.[9] It is thus erroneous to conclude that Zenaida, Milagros and Minerva have caused petitioners to believe that they have clothed Eufemia with the authority to transact on their behalf.

Could the three sisters ratify the previous sale through their *subsequent* acts or omissions? I opine they cannot. The *ponencia* concedes that "the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification."

The previous sale being violative of an express mandate of law, such cannot be ratified by estoppel. Estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. Neither can the defense of illegality be waived.[10] An action or defense for the declaration of the inexistence of a contract does not prescribe.[11] Amid the confusion from the double dealing made by their sibling Eufemia, the three sisters expectedly kept mum about it. Succinctly, their "continued silence" cannot be taken against them. Bargaining away a provision of law should not be countenanced.

Neither can their "admission" to a question of law bind them. The *ponencia* highlights the admission made by Eufemia and her co-heirs during the pre-trial conference before the trial court and in their Comment on the present petition that they

---

[9] *Vide Pureza v. CA*, 352 Phil. 717, 722 (1998).

[10] *Vide Ouano v. Court of Appeals*, 446 Phil. 690, 708 (2003).

[11] CIVIL CODE, Art. 1410.

had earlier sold 7/8 of the property to petitioners. These statements could not mean, however, as an admission in petitioners' favor that Zenaida, Milagros and Minerva validly sold their respective shares to petitioners. They could only admit to the statement of fact[12] that the sale took place, but not to the conclusion of law that the sale was valid, precisely because the validity of the sales transaction is at issue as it was contested by the parties.

Further, the textbook citation of the rule involving a principal's responsibility for an agent's misrepresentation within the scope of an agent's authority as annotated by the cited author under Article 1900 of the Civil Code is inapplicable. The qualifying phrase "in the course of his employment" presupposes that an agency relationship is existing. The quoted rule clearly recites that a principal is held liable if the "deceitful representation" (not the agency relationship) is authorized either expressly, impliedly, or apparently. In this case, there was no agency relationship to speak of.

I, therefore, vote to reinstate the trial court's January 14, 1998 Decision with modification that the sale made by respondent Virgilio San Agustin to respondent spouses Isagani Belarmino and Leticia Ocampo is valid with respect to the 4/8 portion of the subject property.

---

[12] RULES OF COURT, Rule 18, Sec. 2 (d). Pre-trial allows the parties to obtain stipulations or admissions of fact and of documents.

THIRD DIVISION

[G.R. No. 161419. August 25, 2009]

EUGENIO ENCINARES, *petitioner, vs.* **DOMINGA ACHERO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT HAS AUTHORITY TO REVIEW AND, IN PROPER CASES, REVERSE THE FACTUAL FINDINGS OF LOWER COURTS WHEN THE FINDINGS OF FACT OF THE TRIAL COURT ARE IN CONFLICT WITH THOSE OF THE APPELLATE COURT.— While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court. In this light, our review of the records of this case is justified.

2. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION OF PUBLIC LANDS; TORRENS SYSTEM; FREE PATENT; QUALIFICATIONS OF APPLICANT.— A Free Patent may be issued where the applicant is a natural-born citizen of the Philippines; is not the owner of more than twelve (12) hectares of land; has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public land subject to disposition, for at least 30 years prior to the effectivity of Republic Act No. 6940; and has paid the real taxes thereon while the same has not been occupied by any other person.

3. ID.; ID.; ID.; ID.; ID.; INDEFEASIBILITY OF TORRENS TITLE ISSUED PURSUANT TO THE PATENT EXCEPT WHEN THERE IS FRAUD.— Once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain, becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance.

However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.

4. ID.; ID.; ID.; ID.; ID.; KINDS OF FRAUD; ELUCIDATED.— x x x [O]ur ruling in *Republic v. Guerrero*, is instructive: Fraud is of two kinds: actual or constructive. **Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact**. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. **The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant**. The distinctions assume significance because **only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration**. Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court. We have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided. Thus, we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony, or in basing

the judgment on a fraudulent compromise agreement, or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.

5. ID.; ID.; ID.; ID.; ID.; ACTUAL AND EXTRINSIC FRAUD, ABSENT IN CASE AT BAR.— No actual and extrinsic fraud existed in this case; at least, no convincing proof of such fraud was adduced. Other than his bare allegations, petitioner failed to prove that there was fraud in the application, processing and grant of the Free Patent, as well as in the issuance of OCT No. P-23505. Neither was it proven that respondent actually took part in the alleged fraud. We agree with the judicious findings of the CA, to wit: It must be mentioned though that the records of the case do not show that there has been any irregularity in the issuance of the Free Patent or the OCT for that matter, as, despite the posting of the notice of appellant's application for Free Patent, the appellee filed his opposition/ protest (*Exhibit "O"*, Record[s], p. 31) thereto only after the same had already been issued in favor of the appellant. The fact that appellee is in possession of several tax declarations and deeds of sale over the property, the earliest of which was in the year 1951, does not in any way refute appellant's allegation in her application that she inherited the property and that her predecessor-in-interest possessed the property even before the Japanese occupation. Moreover, the evidence also show that the Bureau of Lands conducted an investigation (*Investigation Report, Exhibit "9"*, Record[s], p. 195) of the application and found that the appellant was entitled to the parcel of land she was applying for.

6. ID.; ID.; ID.; ID.; TAX DECLARATIONS AND TAX RECEIPTS DO NOT CONCLUSIVELY PROVE OWNERSHIP; CASE AT BAR.— Petitioner's heavy reliance on the tax declarations in his name and in the names of his predecessors-in-interest is unavailing. We hold that while it is true that tax declarations and tax receipts are good *indicia* of possession in the concept of an owner, the same must be accompanied by possession for a period sufficient for acquisitive prescription to set in. By themselves, tax declarations and tax receipts do not conclusively prove ownership. It was established that respondent was clearly in possession of the subject property. Thus, notwithstanding the existence of the tax declarations issued in favor of petitioner, it was not refuted that respondent and her successors were

and are still in actual possession and cultivation of the subject property, and, in fact, the respondent also declared in her name the subject property for taxation purposes. These circumstances further boost respondent's claim that, from the start, she believed that the subject property was exclusively hers.

7. ID.; TORRENS SYSTEM; SYSTEM OF REGISTRATION OF TITLES TO LANDS; PURPOSE.— We reiterate our recent ruling in *Rabaja Ranch Development Corporation v. AFP Retirement and Separation Benefits System*, to wit: The Torrens system is not a mode of acquiring titles to lands; it is merely a system of registration of titles to lands, x x x justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties. The general rule that the direct result of a previous void contract cannot be valid[, is inapplicable] in this case as it will directly contravene the Torrens system of registration. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, this Court cannot disregard such rights and order the cancellation of the certificate. The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will, in no way, oblige him to go behind the certificate to determine the condition of the property.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Gil S. Gojol for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated April 28, 2003 which reversed and set aside the Decision[3] dated January 20, 2000 of the Regional Trial Court (RTC) of Sorsogon, Sorsogon, Branch 52.

The Facts

On July 13, 1989, petitioner Eugenio Encinares (petitioner) filed a Complaint[4] for Quieting of Title and Reconveyance against respondent Dominga Achero[5] (respondent). Petitioner alleged that he bought several parcels of land from Roger U. Lim as evidenced by a Deed of Absolute Sale of Real Properties[6] dated April 9, 1980. Among these was the subject property, a parcel of land dedicated to *abaca* production, containing 16,826 square meters, known as Lot No. 1623, and situated in Sitio Maricot, *Barangay* Buraburan, Juban, Sorsogon (subject property). He, however, discovered that, sometime in June 1987, respondent

---

[1] *Rollo*, pp. 9-25.

[2] Particularly docketed as CA-G.R. CV No. 67371, penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Rosmari D. Carandang, concurring; *rollo*, pp. 78-90.

[3] *Rollo*, pp. 55-60.

[4] Records, pp. 1-2.

[5] Also referred to as Dominga Hachero in other pleadings and documents.

[6] Records, pp. 17-18.

was able to register the said property and cause it to be titled under the Free Patent System.

Petitioner asseverated that he is the owner and actual possessor of the subject property which is covered by Tax Declaration No. 07132. He claimed that, for more than thirty (30) years, he had been in actual, continuous, adverse, and open possession in the concept of an owner of the subject property, tacking the possession of his predecessors-in-interest. However, sometime in June 1987, the respondent, by means of misrepresentation, fraud, deceit, and machination, caused one-half portion of the subject property to be titled in her name under the Free Patent System. Petitioner alleged that, despite the fact that respondent's application has no legal basis as she is not the owner and actual possessor of the subject property, a free patent was issued in her favor and Original Certificate of Title (OCT) No. P-23505, covering an area of 23,271 square meters, was issued in her name. Thus, petitioner postulated that, with the inclusion of one-half portion of his property, the issuance of said title casts doubt on his ownership over the same. Moreover, petitioner demanded that respondent execute in his favor a deed of reconveyance involving the portion of his land, which is now covered by respondent's title, but the latter refused, compelling him to file this case. Petitioner, therefore, prayed that he be declared the owner and actual possessor of the subject property and that respondent be ordered to execute a deed of reconveyance in his favor.

In her Answer[7] dated September 7, 1989, respondent denied petitioner's material allegations and, by way of affirmative defense, averred that the complaint constituted an indirect and collateral attack on her title, which is not allowed, and rendered the complaint defective, thereby requiring its dismissal. Respondent alleged that OCT No. P-23505 was issued under her name and the property covered by the OCT is exclusively hers and does not include petitioner's property.

---

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

Upon joint motion of the parties, the RTC issued an Order[8] dated March 9, 1990, directing a duly authorized representative/ surveyor of the Bureau of Lands to conduct a relocation survey on the two (2) parcels of land involved in the case, namely: Lot No. 1623 and the lot covered by OCT No. P-23505.

Subsequently, Engineer Eduardo P. Sabater submitted his Commissioner's Report[9] (Report) on August 3, 1993. The Report stated that the limits of the common boundaries of the parties were defined by large trees and stones marked by "X." The Report also stated that the actual area as claimed by petitioner contained 19,290 square meters, while that of respondent contained 3,981 square meters.

On September 21, 1994, petitioner filed a Motion for Leave to Amend Complaint,[10] alleging that there were some mistaken and inadequate allegations in the original complaint, and that the amendments to be made would not substantially change the cause of action in the complaint. Because no objection was interposed by respondent's counsel, the Motion was granted by the RTC in an Order[11] dated October 18, 1994.

On October 20, 1994, petitioner filed the Amended Complaint,[12] inserting the word "ENTIRE" in paragraph four (4) thereof. Thus, petitioner averred that respondent, through fraud, caused the ENTIRE area of the above-described land to be titled under the Free Patent System. For her part, respondent manifested that she would no longer file an answer to the Amended Complaint. Thereafter, trial on the merits ensued. In January 1996,

---

[8] *Id.* at 39-40.

[9] *Id.* at 56.

[10] *Id.* at 92.

[11] *Id.* at 94.

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

respondent passed away.[13] Respondent was duly substituted by her son, Vicente Achero (Vicente).[14]

The RTC's Ruling

On January 20, 2000, the RTC rendered a Decision in favor of petitioner, declaring him as the absolute owner of Lot 1623-B, containing an area of 19,290 square meters. The RTC declared that while Section 32[15] of Presidential Decree (P.D.) No. 1529 (The Property Registration Decree) provides that a decree of registration and certificate of title become incontrovertible after the lapse of one year, the aggrieved party whose land has been registered through fraud in the name of another person may file an ordinary civil action for reconveyance of his property, provided that the same had not been transferred to innocent purchasers for value. Thus, the RTC disposed of the case in this wise:

---

[13] TSN, July 29, 1998, p. 11.

[14] Also referred to as "Vicente Hachero" in other pleadings and documents.

[15] SECTION 32. *Review of decree of registration; Innocent purchaser for value*. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, to wit:

1. Declaring plaintiff Eugenio Encinares the absolute owner of Lot 1623-B containing an area of 19,290 sq. m. which is a portion included in OCT No. P-23505 in the name of Dominga Achero of the Registry of Deeds of Sorsogon;

2. Declaring OCT No. P-23505 covering Lot 1623 with an area of 19,290 sq. m. in the name of the defendant Dominga Achero as null and void[;]

3. Ordering the defendant Dominga Achero and/or Vicente Achero to reconvey that portion found in the Relocation Survey Report marked as Exh. "R" and denominated as Lot 1623-B as surveyed for Eugenio Encinares and Dominga Achero[;]

4. Ordering the Register of Deeds of Sorsogon to make an annotation on the Certificate of Title No. P-23505 covering the land in question as the same was fraudulently procured[;]

5. Dismissing the counterclaim of the defendants[;]

[6.] Ordering the defendant to pay the costs.

SO ORDERED.[16]

Aggrieved, respondent appealed to the CA.[17]

The CA's Ruling

On April 28, 2003, the CA reversed and set aside the RTC's ruling, upheld the validity of OCT No. P-23505, and dismissed the complaint for quieting of title and reconveyance filed by petitioner. The CA held that the RTC erred in declaring OCT No. P-23505 as null and void because in an action for reconveyance, the decree of registration is respected as incontrovertible. Moreover, the CA held that petitioner failed to prove by clear and convincing evidence his title to the subject property and the fact of fraud. Petitioner's evidence, consisting

---

[16] *Rollo*, p. 60.

[17] Records, p. 212.

of tax declarations and deeds of sale, acknowledged that the subject property had not been registered. Likewise, the CA noted that petitioner's evidence showed that the possession of his predecessors-in-interest started only sometime in 1951; thus, petitioner could be presumed to have acquired a title pursuant to Section 48(b)[18] of Commonwealth Act 141 (The Public Land Act) as amended by P.D. No. 1073. The CA opined that it was erroneous for the RTC to award 19,290 square meters to petitioner when the Deed of Absolute Sale of Real Properties, from which he allegedly derived his rights, stated that the lot sold to him consisted only of 16,826 square meters. Lastly, the CA found no irregularity in the issuance of the Free Patent and OCT No. P-23505.

Undaunted, petitioner filed a Motion for Reconsideration,[19] which the CA, however, denied in its Resolution[20] dated December 19, 2003. Hence this Petition, raising the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE REGIONAL TRIAL COURT.

II.

WHETHER THE PETITIONER HAS THE RIGHT TO SEEK THE RECONVEYANCE OF THE SUBJECT LAND WHICH WAS WRONGFULLY REGISTERED IN THE NAME OF THE RESPONDENT.[21]

---

[18] (b) Those who by themselves or through their predecessors-in-interest **have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title**, except when prevented by wars or *force majeure*. Those shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis supplied.)

[19] CA *rollo*, pp. 111-115.

[20] *Id.* at 124.

[21] *Rollo*, p. 18.

Petitioner claims that the subject property was sold by Simeon Achero (Simeon),[22] eldest son of Eustaqio Achero[23] (Eustaqio), to Cecilia Grajo who, in turn, sold the same to Cipriano Bardilo.[24] Subsequently, Cipriano Bardilo sold the subject property to Pedro Guevarra,[25] who then sold the same to Roger Lim,[26] from whom petitioner bought the subject property in 1980. Petitioner asserts that he has been in actual, continuous, adverse, and open possession in the concept of an owner thereof for more than thirty (30) years when tacked with the length of possession of his predecessors-in-interest; and that he has introduced some improvements on the subject property and has been enjoying its produce. Petitioner argues that contrary to the CA's findings, he was able to prove by preponderance of evidence that he is the true and actual owner of the subject property; that he has equitable title thereto; and that there was fraud in the acquisition of the Free Patent. Petitioner also argues that, as pointed out by the RTC, the tax declarations[27] of petitioner and his predecessors-in-interest show that, in fact, petitioner, as well as his predecessors-in-interest, has been in actual possession of the subject property since 1951 or even prior thereto; that the factual findings of the RTC in this case should not have been disturbed by the CA, as the former's findings were clearly based on evidence; and that the law protects only holders of title in good faith and does not permit its provisions to be used as a shield for the commission of fraud or for one's enrichment at the expense of another.[28]

On the other hand, respondent avers that the subject property had been originally claimed, occupied and cultivated since 1928

---

[22] Also referred to as "Simeon Hachero" in other pleadings and documents.

[23] Also referred to as "Eustaquio Hachero," "Eustaqui Achero" or "Eustaqui Hachero" in other pleadings and documents.

[24] Records, p. 21.

[25] *Id.* at 20.

[26] *Id.* at 19.

[27] *Id.* at 22-30.

[28] *Rollo,* pp.118-129.

by Eustaqio, father of Simeon and father-in-law of respondent. Before Eustaqio died in 1942, he gave the subject property to respondent, as evidenced by the Joint Affidavit[29] of Dalmacio Venus and Elias Aurelio. Respondent continued the possession, occupation and cultivation of the subject property in the concept of an owner up to the present. On October 1, 1986, respondent executed a Deed of Ratification and Confirmation of Ownership.[30] Documents were submitted to the Bureau of Lands, which conducted an ocular inspection and relocation survey and issued a Final Investigation Report.[31] Finding respondent's application for a Free Patent to be proper in form and substance, and in accordance with law, the same was granted per Order: Approval of Applications and Issuance of Patent.[32] Subsequently, OCT No. P-23505, covering the subject property with a total area of 23,271 square meters, was issued in favor of respondent. Respondent manifested that she was unlettered, and that her only preoccupation was working on the land like other ordinary tillers. As such, in the absence of evidence, petitioner could not validly claim that respondent employed fraud in the application and issuance of a Free Patent, in the same way that no fraud attended the issuance of OCT No. P-23505. Respondent relied on the presumption of regularity in the performance of official functions of the personnel of the Bureau of Lands.[33]

Simply put, the main issue is who, between petitioner and respondent, has a better right over the subject property.

Our Ruling

The instant Petition is bereft of merit.

While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or

---

[29] Records, p. 190.

[30] *Id.* at 188.

[31] *Id.* at 195.

[32] *Id.* at 194.

[33] *Rollo*, pp. 131-140.

contrast the oral and documentary evidence *de novo*, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.[34] In this light, our review of the records of this case is justified.

In essence, petitioner seeks relief before this Court, on the contention that the registered Free Patent from which respondent derived her title had been issued through fraud.

We reject petitioner's contention.

A Free Patent may be issued where the applicant is a natural-born citizen of the Philippines; is not the owner of more than twelve (12) hectares of land; has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public land subject to disposition, for at least 30 years prior to the effectivity of Republic Act No. 6940; and has paid the real taxes thereon while the same has not been occupied by any other person.[35]

Once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain, becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance. However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.[36]

On this point, our ruling in *Republic v. Guerrero*,[37] is instructive:

---

[34] *Tan v. Court of Appeals*, 421 Phil. 134, 141-142 (2001).

[35] *Republic v. Court of Appeals*, 406 Phil. 597, 606 (2001).

[36] *Heirs of Carlos Alcaraz v. Republic*, G.R. No. 131667, July 28, 2005, 464 SCRA 280, 291. (Citations omitted.)

[37] G.R. No. 133168, March 28, 2006, 485 SCRA 424.

Fraud is of two kinds: actual or constructive. **Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact**. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons.

Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. **The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant**.

The distinctions assume significance because **only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration**. Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.

We have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided. Thus, we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony, or in basing the judgment on a fraudulent compromise agreement, or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.[38]

---

[38] *Id.* at 436-438. (Emphasis supplied.)

No actual and extrinsic fraud existed in this case; at least, no convincing proof of such fraud was adduced. Other than his bare allegations, petitioner failed to prove that there was fraud in the application, processing and grant of the Free Patent, as well as in the issuance of OCT No. P-23505. Neither was it proven that respondent actually took part in the alleged fraud. We agree with the judicious findings of the CA, to wit:

> It must be mentioned though that the records of the case do not show that there has been any irregularity in the issuance of the Free Patent or the OCT for that matter, as, despite the posting of the notice of appellant's application for Free Patent, the appellee filed his opposition/protest (*Exhibit "O"*, Record[s], p. 31) thereto only after the same had already been issued in favor (sic) the appellant. The fact that appellee is in possession of several tax declarations and deeds of sale over the property, the earliest of which was in the year 1951, does not in any way refute appellant's allegation in her application that she inherited the property and that her predecessor-in-interest possessed the property even before the Japanese occupation. Moreover, the evidence also show that the Bureau of Lands conducted an investigation (*Investigation Report, Exhibit "9"*, Record[s], p. 195) of the application and found that the appellant was entitled to the parcel of land she was applying for.[39]

Petitioner's heavy reliance on the tax declarations in his name and in the names of his predecessors-in-interest is unavailing. We hold that while it is true that tax declarations and tax receipts are good *indicia* of possession in the concept of an owner, the same must be accompanied by possession for a period sufficient for acquisitive prescription to set in. By themselves, tax declarations and tax receipts do not conclusively prove ownership.[40]

---

[39] *Supra* note 2, at 89.

[40] *Espino v. Vicente*, G.R. No. 168396, June 22, 2006, 492 SCRA 330, 341, citing *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 403 SCRA 291, 299 (2003).

It was established that respondent was clearly in possession of the subject property.[41] Thus, notwithstanding the existence of the tax declarations issued in favor of petitioner, it was not refuted that respondent and her successors were and are still in actual possession and cultivation of the subject property, and, in fact, the respondent also declared in her name the subject property for taxation purposes. These circumstances further boost respondent's claim that, from the start, she believed that the subject property was exclusively hers.

We reiterate our recent ruling in *Rabaja Ranch Development Corporation v. AFP Retirement and Separation Benefits System*,[42] to wit:

> The Torrens system is not a mode of acquiring titles to lands; it is merely a system of registration of titles to lands, x x x justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties.
>
> The general rule that the direct result of a previous void contract cannot be valid[, is inapplicable] in this case as it will directly contravene the Torrens system of registration. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, this Court cannot disregard such rights and order the cancellation of the certificate. The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the

---

[41] TSN, November 24, 1998, p. 25; TSN, July 29, 1998, p. 4; TSN, May 20, 1998, p. 3; TSN, June 25, 1997, pp. 4-5.

[42] G.R. No. 177181, July 7, 2009. (Citations omitted.)

evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will, in no way, oblige him to go behind the certificate to determine the condition of the property.

All told, we find no reversible error which will justify our having to disturb, much less, reverse the assailed CA Decision.

WHEREFORE, the instant Petition is *DENIED* and the assailed Court of Appeals Decision is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 167304. August 25, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (THIRD DIVISION) and VICTORIA AMANTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; DETERMINED AT THE TIME OF THE INSTITUTION OF THE ACTION; EXCEPTION; CASE AT BAR.— The applicable law in this case is Section 4 of P.D. No. 1606, as amended by Section 2 of R.A. No. 7975 which took effect on May 16, 1995,

---

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

which was again amended on February 5, 1997 by R.A. No. 8249. The alleged commission of the offense, as shown in the Information was on or about December 19, 1995 and the filing of the Information was on May 21, 2004. The jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense. The exception contained in R.A. 7975, as well as R.A. 8249, where it expressly provides that to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code is not applicable in the present case as the offense involved herein is a violation of The Auditing Code of the Philippines. The last clause of the opening sentence of paragraph (a) of the said two provisions states: Sec. 4. *Jurisdiction*. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving: A. Violations of Republic Act No. 3019, as amended, other 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**: The present case falls under Section 4(b) where other offenses and felonies committed by public officials or employees in relation to their office are involved. Under the said provision, no exception is contained. Thus, the general rule that jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense applies in this present case. Since the present case was instituted on May 21, 2004, the provisions of R.A. No. 8249 shall govern.

2. ID.; ID.; PRESIDENTIAL DECREE NO. 1606, AS AMENDED; ORIGINAL JURISDICTION OF THE SANDIGANBAYAN.— [P.D. No. 1606, as amended] is clear as to the composition of the original jurisdiction of the Sandiganbayan. Under Section 4(a), the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the Sandiganbayan to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional

director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. Those that are classified as Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan provided that they hold the positions thus enumerated by the same law. Particularly and exclusively enumerated are provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads; city mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads; officials of the diplomatic service occupying the position as consul and higher; Philippine army and air force colonels, naval captains, and all officers of higher rank; PNP chief superintendent and PNP officers of higher rank; City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. In connection therewith, Section 4(b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the Sandiganbayan.

3. ID.; ID.; ID.; ID.; RESPONDENT *SANGGUNIANG PANLUNGSOD* MEMBER FALLS WITHIN THE ORIGINAL JURISDICTION OF THE SANDIGANBAYAN; EXPLAINED.— By simple analogy, applying the provisions of the pertinent law, respondent Amante, being a member of the *Sangguniang Panlungsod* at the time of the alleged commission of an offense in relation to her office, falls within the original jurisdiction of the Sandiganbayan. x x x According to petitioner, the *Inding* case did not categorically nor implicitly constrict or confine the application of the enumeration provided for under Section 4(a)(1) of P.D. No. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. No. 3019, R.A. No. 1379, or Chapter II, Section 2, Title VII of the Revised Penal Code. This observation is true in light of the facts contained in the said case. In the *Inding* case, the public official involved was a member of the *Sangguniang Panlungsod* with Salary Grade 25 and was charged with violation of R.A. No. 3019. In ruling

that the Sandiganbayan had jurisdiction over the said public official, this Court concentrated its disquisition on the provisions contained in Section 4(a)(1) of P.D. No. 1606, as amended, where the offenses involved are specifically enumerated and not on Section 4(b) where offenses or felonies involved are those that are in relation to the public officials' office. Section 4(b) of P.D. No. 1606, as amended, provides that: b. Other offenses or felonies committed by public officials and employees mentioned in subsection (a) of this section in relation to their office. A simple analysis after a plain reading of the above provision shows that those public officials enumerated in Section 4(a) of P.D. No. 1606, as amended, may not only be charged in the Sandiganbayan with violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code, but also with other offenses or felonies in relation to their office. The said other offenses and felonies are broad in scope but are limited only to those that are committed in relation to the public official or employee's office. This Court had ruled that as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, there being no personal motive to commit the crime and had the accused not have committed it had he not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his office. x x x [A] close reading of the Information filed against respondent Amante for violation of The Auditing Code of the Philippines reveals that the said offense was committed in relation to her office, making her fall under Section 4(b) of P.D. No. 1606, as amended.

4. ID.; ID.; ID.; OFFENSES IN SECTION 4(A) AND IN SECTION 4(B), DISTINGUISHED.— According to the assailed Resolution of the Sandiganbayan, if the intention of the law had been to extend the application of the exceptions to the other cases over which the Sandiganbayan could assert jurisdiction, then there would have been no need to distinguish between violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code on the one hand, and other offenses or felonies committed by public officials and employees in relation to their office on the other. The said reasoning is misleading because a distinction apparently exists. In the

offenses involved in Section 4(a), it is not disputed that public office is essential as an element of the said offenses themselves, while in those offenses and felonies involved in Section 4(b), it is enough that the said offenses and felonies were committed in relation to the public officials or employees' office.

5. ID.; ID.; ID.; ID.; OFFENSES DEEMED TO HAVE COMMITTED IN RELATION TO OFFICE, ELUCIDATED.— x x x In expounding the meaning of *offenses deemed to have been committed in relation to office*, this Court held: In *Sanchez v. Demetriou* [227 SCRA 627 (1993)], the Court elaborated on the scope and reach of the term "offense committed in relation to [an accused's] office" by referring to the principle laid down in *Montilla v. Hilario* [90 Phil. 49 (1951)], and to an exception to that principle which was recognized in *People v. Montejo* [108 Phil. 613 (1960)]. The principle set out in *Montilla v. Hilario* is that an offense may be considered as committed in relation to the accused's office if "the offense cannot exist without the office" such that "the office [is] a constituent element of the crime x x x." In *People v. Montejo*, the Court, through Chief Justice Concepcion, said that "although public office is not an element of the crime of murder in [the] abstract," the facts in a particular case may show that x x x the offense therein charged is intimately connected with [the accused's] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, [the accused] had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. x x x Moreover, it is beyond clarity that the same provision of Section 4(b) does not mention any qualification as to the public officials involved. It simply stated, *public officials and employees mentioned in subsection (a) of the same section*. Therefore, it refers to those public officials with Salary Grade 27 and above, except those specifically enumerated. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The intention of the lawmakers—who are, ordinarily, untrained philologists and lexicographers — to use statutory phraseology in such a manner is always presumed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Santos Santos & Santos for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the Resolution[2] of the Sandiganbayan (Third Division) dated February 28, 2005 dismissing Criminal Case No. 27991, entitled *People of the Philippines v. Victoria Amante* for lack of jurisdiction.

The facts, as culled from the records, are the following:

Victoria Amante was a member of the *Sangguniang Panlungsod* of Toledo City, Province of Cebu at the time pertinent to this case. On January 14, 1994, she was able to get hold of a cash advance in the amount of ₱71,095.00 under a disbursement voucher in order to defray seminar expenses of the Committee on Health and Environmental Protection, which she headed. As of December 19, 1995, or after almost two years since she obtained the said cash advance, no liquidation was made. As such, on December 22, 1995, Toledo City Auditor Manolo V. Tulibao issued a demand letter to respondent Amante asking the latter to settle her unliquidated cash advance within seventy-two hours from receipt of the same demand letter. The Commission on Audit, on May 17, 1996, submitted an investigation report to the Office of the Deputy Ombudsman for Visayas (OMB-Visayas), with the recommendation that respondent Amante be further investigated to ascertain whether appropriate charges could be filed against her under Presidential Decree (P.D.) No. 1445, otherwise known as *The Auditing*

---

[1] Dated April 20, 2005, *rollo*, pp. 30-58.

[2] Penned by Associate Justice Godofredo L. Legaspi (now retired), with Associate Justices Efren N. De La Cruz and Norberto Y. Geraldez, concurring, *rollo*, pp. 59-75.

Code of the Philippines. Thereafter, the OMB-Visayas, on September 30, 1999, issued a Resolution recommending the filing of an Information for Malversation of Public Funds against respondent Amante. The Office of the Special Prosecutor (OSP), upon review of the OMB-Visayas' Resolution, on April 6, 2001, prepared a memorandum finding probable cause to indict respondent Amante.

On May 21, 2004, the OSP filed an Information[3] with the Sandiganbayan accusing Victoria Amante of violating Section 89 of P.D. No. 1445, which reads as follows:

> That on or about December 19, 1995, and for sometime prior or subsequent thereto at Toledo City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused VICTORIA AMANTE, a high-ranking public officer, being a member of the Sangguniang Panlungsod of Toledo City, and committing the offense in relation to office, having obtained cash advances from the City Government of Toledo in the total amount of SEVENTY-ONE THOUSAND NINETY-FIVE PESOS (₱71,095.00), Philippine Currency, which she received by reason of her office, for which she is duty-bound to liquidate the same within the period required by law, with deliberate intent and intent to gain, did then and there, wilfully, unlawfully and criminally fail to liquidate said cash advances of ₱71,095.00, Philippine Currency, despite demands to the damage and prejudice of the government in aforesaid amount.
>
> CONTRARY TO LAW.

The case was raffled to the Third Division of the Sandiganbayan. Thereafter, Amante filed with the said court a MOTION TO DEFER ARRAIGNMENT AND MOTION FOR REINVESTIGATION[4] dated November 18, 2004 stating that the Decision of the Office of the Ombudsman (Visayas) dated September 14, 1999 at Cebu City from of an incomplete proceeding in so far that respondent Amante had already liquidated and/or refunded the unexpected balance of her cash advance, which at the time of the investigation was not included

---

[3] Sandiganbayan *rollo*, pp. 1-3.

[4] *Id.* at 34-35.

as the same liquidation papers were still in the process of evaluation by the Accounting Department of Toledo City and that the Sandiganbayan had no jurisdiction over the said criminal case because respondent Amante was then a local official who was occupying a position of salary grade 26, whereas Section 4 of Republic Act (R.A.) No. 8249 provides that the Sandiganbayan shall have original jurisdiction only in cases where the accused holds a position otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989, R.A. No. 6758.

The OSP filed its Opposition[5] dated December 8, 2004 arguing that respondent Amante's claim of settlement of the cash advance dwelt on matters of defense and the same should be established during the trial of the case and not in a motion for reinvestigation. As to the assailed jurisdiction of the Sandiganbayan, the OSP contended that the said court has jurisdiction over respondent Amante since at the time relevant to the case, she was a member of the *Sangguniang Panlungsod* of Toledo City, therefore, falling under those enumerated under Section 4 of R.A. No. 8249. According to the OSP, the language of the law is too plain and unambiguous that it did not make any distinction as to the salary grade of city local officials/heads.

The Sandiganbayan, in its Resolution[6] dated February 28, 2005, dismissed the case against Amante, the dispositive portion of which reads:

> WHEREFORE, IN VIEW OF ALL THE FOREGOING, this case is hereby dismissed for lack of jurisdiction. The dismissal, however, is without prejudice to the filing of this case to the proper court.
>
> The Motion for Reinvestigation filed by the movant is hereby considered moot and academic.
>
> SO ORDERED.

Hence, the present petition.

Petitioner raises this lone issue:

---

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

[6] *Id.* at 54-70.

WHETHER OR NOT THE SANDIGANBAYAN HAS JURISDICTION OVER A CASE INVOLVING A SANGGUNIANG PANLUNGSOD MEMBER WHERE THE CRIME CHARGED IS ONE COMMITTED IN RELATION TO OFFICE, BUT NOT FOR VIOLATION OF RA 3019, RA 1379 OR ANY OF THE FELONIES MENTIONED IN CHAPTER II, SECTION 2, TITLE VII OF THE REVISED PENAL CODE.

In claiming that the Sandiganbayan has jurisdiction over the case in question, petitioner disputes the former's appreciation of this Court's decision in *Inding v. Sandiganbayan.*[7] According to petitioner, *Inding* did not categorically nor implicitly constrict or confine the application of the enumeration provided for under Section 4(a)(1) of P.D. No. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. No. 3019, R.A. No. 1379, or Chapter II, Section 2, Title VII of the Revised Penal Code. Petitioner adds that the enumeration in Section (a)(1) of P.D. No. 1606, as amended by R.A. No. 7975 and R.A. No. 8249, which was made applicable to cases concerning violations of R.A. No. 3019, R.A. No. 1379 and Chapter II, Section 2, Title VII of the Revised Penal Code, equally applies to offenses committed in relation to public office.

Respondent Amante, in her Comment[8] dated January 16, 2006, averred that, with the way the law was phrased in Section 4 of P.D. No. 1606, as amended, it is obvious that the jurisdiction of the Sandiganbayan was defined first, enumerating the several exceptions to the general rule, while the exceptions to the general rule are provided in the rest of the paragraph and sub-paragraphs of Section 4. Therefore, according to respondent Amante, the Sandiganbayan was correct in ruling that the latter has original jurisdiction only over cases where the accused is a public official with salary grade 27 and higher; and in cases where the accused is public official below grade 27 but his position is one of those mentioned in the enumeration in Section 4(a)(1)(a) to (g) of P.D. No. 1606, as amended and his offense involves a violation of R.A. No. 3019, R.A. No. 1379 and Chapter II, Section 2, Title VII of the Revised Penal

---

[7] G..R. No. 143047, July 14, 2004, 434 SCRA 388.

[8] *Rollo*, pp. 96-102.

Code; and if the indictment involves offenses or felonies other than the three aforementioned statutes, the general rule that a public official must occupy a position with salary grade 27 and higher in order that the Sandiganbayan could exercise jurisdiction over him must apply. The same respondent proceeded to cite a decision[9] of this Court where it was held that jurisdiction over the subject matter is conferred only by the Constitution or law; it cannot be fixed by the will of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties, neither is it conferred by acquiescence of the court.

In its Reply[10] dated March 23, 2006, the OSP reiterated that the enumeration of public officials in Section 4(a)(1) to (a) to (g) of P.D. No. 1606 as falling within the original jurisdiction of the Sandiganbayan should include their commission of other offenses in relation to office under Section 4(b) of the same P.D. No. 1606. It cited the case of *Esteban v. Sandiganbayan, et al.*[11] wherein this Court ruled that an offense is said to have been committed in relation to the office if the offense is "intimately connected" with the office of the offender and perpetrated while he was in the performance of his official functions.

The petition is meritorious.

The focal issue raised in the petition is the jurisdiction of the Sandiganbayan. As a background, this Court had thoroughly discussed the history of the conferment of jurisdiction of the Sandiganbayan in *Serana v. Sandiganbayan, et al.*,[12] thus:

x x x The Sandiganbayan was created by P.D. No. 1486, promulgated by then President Ferdinand E. Marcos on June 11, 1978. It was promulgated to attain the highest norms of official conduct required of public officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility,

---

[9] *Municipality of Sogod v. Rosal*, G.R. No. L-38204, September 24, 1991, 201 SCRA 632.

[10] *Rollo*, pp. 106-110.

[11] G.R. Nos. 146646-49, March 11, 2005, 453 SCRA 236, 242, citing *People v. Montejo*, 108 Phil. 613 (1960).

[12] G.R. No. 162059, January 22, 2008, 542 SCRA 224.

integrity, loyalty and efficiency and shall remain at all times accountable to the people.[13]

P.D. No. 1486 was, in turn, amended by P.D. No. 1606 which was promulgated on December 10, 1978. P.D. No. 1606 expanded the jurisdiction of the Sandiganbayan.[14]

---

[13] *Id.* at 238-239, citing Presidential Decree No. 1486.

[14] *Id.*, citing Section 4. *Jurisdiction.* – The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise, known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

(b) Crimes committed by public officers and employees including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c) Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office.

The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than *prision correccional*, or its equivalent, except as herein provided; in other offenses, it shall be concurrent with the regular courts.

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.

Where an accused is tried for any of the above offenses and the evidence is insufficient to establish the offense charged, he may nevertheless be convicted and sentenced for the offense proved, included in that which is charged.

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall, at all times, be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, 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 action shall be recognized; Provided, however, that, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had therefore been filed separately with a regular court but judgment therein has not yet been rendered and the criminal case is hereafter filed with the Sandiganbayan, said civil action shall be transferred to the Sandiganbayan for consolidation and joint determination with the criminal action, otherwise, the criminal action may no longer be filed with

P.D. No. 1606 was later amended by P.D. No. 1861 on March 23, 1983, further altering the Sandiganbayan jurisdiction. R.A. No. 7975 approved on March 30, 1995 made succeeding amendments to P.D. No. 1606, which was again amended on February 5, 1997 by R.A. No. 8249. Section 4 of R.A. No. 8249 further modified the jurisdiction of the Sandiganbayan. x x x

Specifically, the question that needs to be resolved is whether or not a member of the *Sangguniang Panlungsod* under Salary Grade 26 who was charged with violation of The Auditing Code of the Philippines falls within the jurisdiction of the Sandiganbayan.

This Court rules in the affirmative.

The applicable law in this case is Section 4 of P.D. No. 1606, as amended by Section 2 of R.A. No. 7975 which took effect on May 16, 1995, which was again amended on February 5, 1997 by R.A. No. 8249. The alleged commission of the offense, as shown in the Information was on or about December 19, 1995 and the filing of the Information was on May 21, 2004. The jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense.[15] The exception contained in R.A. 7975, as well as R.A. 8249, where it expressly provides that to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code is not applicable in the present case as the offense involved herein is a violation of The Auditing Code

---

the Sandiganbayan, its exclusive jurisdiction over the same notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction; Provided, further, that, in cases within the concurrent jurisdiction of the Sandiganbayan and the regular courts, where either the criminal or civil action is first filed with the regular courts, the corresponding civil or criminal action, as the case may be, shall only be filed with the regular courts of competent jurisdiction.

Excepted from the foregoing provisions, during martial law, are criminal cases against officers and members of the armed forces in the active service.

[15] *Subido, Jr. v. Sandiganbayan*, G.R. No. 122641, January 20, 1997, 266 SCRA 379.

of the Philippines. The last clause of the opening sentence of paragraph (a) of the said two provisions states:

Sec. 4. *Jurisdiction.* — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, other 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**:

The present case falls under Section 4(b) where other offenses and felonies committed by public officials or employees in relation to their office are involved. Under the said provision, no exception is contained. Thus, the general rule that jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense applies in this present case. Since the present case was instituted on May 21, 2004, the provisions of R.A. No. 8249 shall govern. Verily, the pertinent provisions of P.D. No. 1606 as amended by R.A. No. 8249 are the following:

Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code, where one or more of the principal 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 city department heads;

(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) PNP chief superintendent and PNP officers of higher rank;

(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.

The above law is clear as to the composition of the original jurisdiction of the Sandiganbayan. Under Section 4(a), the following offenses are specifically enumerated: violations of

R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the Sandiganbayan to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. Those that are classified as Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan provided that they hold the positions thus enumerated by the same law. Particularly and exclusively enumerated are provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads; city mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads; officials of the diplomatic service occupying the position as consul and higher; Philippine army and air force colonels, naval captains, and all officers of higher rank; PNP chief superintendent and PNP officers of higher rank; City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. In connection therewith, Section 4(b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the Sandiganbayan.

By simple analogy, applying the provisions of the pertinent law, respondent Amante, being a member of the *Sangguniang Panlungsod* at the time of the alleged commission of an offense in relation to her office, falls within the original jurisdiction of the Sandiganbayan.

However, the Sandiganbayan, in its Resolution, dismissed the case with the following ratiocination:

x x x the ruling of the Supreme Court in the Inding case, stating that the Congress' act of specifically including the public officials therein mentioned, "obviously intended cases mentioned in Section 4 (a) of P.D. No. 1606, as amended by Section 2 of R.A. No. 7975, when committed by the officials enumerated in (1)(a) to (g) thereof, regardless of their salary grades, to be tried by the Sandiganbayan." Obviously, the Court was referring to cases involving violation of R.A. No. 3019, R.A. No. 1379 and Chapter II, Section 2, Title VII of the Revised Penal Code only because they are the specific cases mentioned in Section 4 (a) of P.D. No. 1606 as amended, so that when they are committed even by public officials below salary grade '27', provided they belong to the enumeration, jurisdiction would fall under the Sandiganbayan. When the offense committed however, falls under Section 4(b) or 4(c) of P.D. No. 1606 as amended, it should be emphasized that the general qualification that the public official must belong to grade '27' is a requirement so that the Sandiganbayan could exercise original jurisdiction over him. Otherwise, jurisdiction would fall to the proper regional or municipal trial court.

In the case at bar, the accused is a Sangguniang Panlungsod member, a position with salary grade '26'. Her office is included in the enumerated public officials in Section 4(a) (1) (a) to (g) of P.D. No. 1606 as amended by Section 2 of R.A. No. 7975. However, she is charged with violation of Section 89 of The Auditing Code of the Philippines which is not a case falling under Section 4(a) but under Section 4(b) of P.D. No. 1606 as amended. This being the case, the principle declared in Inding is not applicable in the case at bar because as stated, the charge must involve a violation of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code. Therefore, in the instant case, even if the position of the accused is one of those enumerated public officials under Section 4(a)(1)(a) to (g), since she is being prosecuted of an offense not mentioned in the aforesaid section, the general qualification that accused must be a public official occupying a position with salary grade '27' is a requirement before this Court could exercise jurisdiction over her. And since the accused occupied a public office with salary grade 26, then she is not covered by the jurisdiction of the Sandiganbayan.

Petitioner is correct in disputing the above ruling of the Sandiganbayan. Central to the discussion of the Sandiganbayan

is the case of *Inding v. Sandiganbayan*[16] where this Court ruled that the officials enumerated in (a) to (g) of Section 4(a)(1) of P. D. No. 1606, as amended are included within the original jurisdiction of the Sandiganbayan regardless of salary grade. According to petitioner, the *Inding* case did not categorically nor implicitly constrict or confine the application of the enumeration provided for under Section 4(a)(1) of P.D. No. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. No. 3019, R.A. No. 1379, or Chapter II, Section 2, Title VII of the Revised Penal Code. This observation is true in light of the facts contained in the said case. In the *Inding* case, the public official involved was a member of the *Sangguniang Panlungsod* with Salary Grade 25 and was charged with violation of R.A. No. 3019. In ruling that the Sandiganbayan had jurisdiction over the said public official, this Court concentrated its disquisition on the provisions contained in Section 4(a)(1) of P.D. No. 1606, as amended, where the offenses involved are specifically enumerated and not on Section 4(b) where offenses or felonies involved are those that are in relation to the public officials' office. Section 4(b) of P.D. No. 1606, as amended, provides that:

> b. Other offenses or felonies committed by public officials and employees mentioned in subsection (a) of this section in relation to their office.

A simple analysis after a plain reading of the above provision shows that those public officials enumerated in Section 4(a) of P.D. No. 1606, as amended, may not only be charged in the Sandiganbayan with violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code, but also with other offenses or felonies in relation to their office. The said other offenses and felonies are broad in scope but are limited only to those that are committed in relation to the public official or employee's office. This Court had ruled that as long as the offense charged in the information is intimately connected with the office and is alleged to have been

---

[16] *Supra* note 7.

perpetrated while the accused was in the performance, though improper or irregular, of his official functions, there being no personal motive to commit the crime and had the accused not have committed it had he not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his office.[17] Thus, in the case of *Lacson v. Executive Secretary*,[18] where the crime involved was murder, this Court held that:

> The phrase "other offenses or felonies" is too broad as to include the crime of murder, provided it was committed in relation to the accused's official functions. Thus, under said paragraph b, what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender – that is, whether he is one of those public officers or employees enumerated in paragraph a of Section 4. x x x.

Also, in the case *Alarilla v. Sandiganbayan*,[19] where the public official was charged with grave threats, this Court ruled:

> x x x In the case at bar, the amended information contained allegations that the accused, petitioner herein, took advantage of his official functions as municipal mayor of Meycauayan, Bulacan when he committed the crime of grave threats as defined in Article 282 of the Revised Penal Code against complainant Simeon G. Legaspi, a municipal councilor. The Office of the Special Prosecutor charged petitioner with aiming a gun at and threatening to kill Legaspi during a public hearing, after the latter had rendered a privilege speech critical of petitioner's administration. Clearly, based on such allegations, the crime charged is intimately connected with the discharge of petitioner's official functions. This was elaborated upon by public respondent in its April 25, 1997 resolution wherein it held that the "accused was performing his official duty as municipal mayor when he attended said public hearing" and that "accused's violent act was precipitated by complainant's criticism of his administration as the mayor or chief executive of the municipality, during the latter's privilege speech. It was his response to private complainant's attack to his office. If he was not the mayor, he would not have been irritated or angered by whatever

---

[17] *Rodrigez v. Sandiganbayan* 468 Phil. 374, 387 (2004), citing *People v. Montejo, supra* note 11, at 622.

[18] G.R. No. 128096, January 20, 1999, 301 SCRA 298, 318.

[19] 393 Phil. 143, 157-158 (2000).

private complainant might have said during said privilege speech." Thus, based on the allegations in the information, the Sandiganbayan correctly assumed jurisdiction over the case.

Proceeding from the above rulings of this Court, a close reading of the Information filed against respondent Amante for violation of The Auditing Code of the Philippines reveals that the said offense was committed in relation to her office, making her fall under Section 4(b) of P.D. No. 1606, as amended.

According to the assailed Resolution of the Sandiganbayan, if the intention of the law had been to extend the application of the exceptions to the other cases over which the Sandiganbayan could assert jurisdiction, then there would have been no need to distinguish between violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code on the one hand, and other offenses or felonies committed by public officials and employees in relation to their office on the other. The said reasoning is misleading because a distinction apparently exists. In the offenses involved in Section 4(a), it is not disputed that public office is essential as an element of the said offenses themselves, while in those offenses and felonies involved in Section 4(b), it is enough that the said offenses and felonies were committed in relation to the public officials or employees' office. In expounding the meaning of *offenses deemed to have been committed in relation to office*, this Court held:

> In *Sanchez v. Demetriou* [227 SCRA 627 (1993)], the Court elaborated on the scope and reach of the term "offense committed in relation to [an accused's] office" by referring to the principle laid down in *Montilla v. Hilario* [90 Phil. 49 (1951)], and to an exception to that principle which was recognized in *People v. Montejo* [108 Phil. 613 (1960)]. The principle set out in *Montilla v. Hilario* is that an offense may be considered as committed in relation to the accused's office if "the offense cannot exist without the office" such that "the office [is] a constituent element of the crime x x x." In *People v. Montejo*, the Court, through Chief Justice Concepcion, said that "although public office is not an element of the crime of murder in [the] abstract," the facts in a particular case may show that

> x x x the offense therein charged is intimately connected with [the accused's] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, [the accused] had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. x x x[20]

Moreover, it is beyond clarity that the same provision of Section 4(b) does not mention any qualification as to the public officials involved. It simply stated, *public officials and employees mentioned in subsection (a) of the same section.* Therefore, it refers to those public officials with Salary Grade 27 and above, except those specifically enumerated. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification,[21] unless it is evident that the legislature intended a technical or special legal meaning to those words.[22] The intention of the lawmakers who are, ordinarily, untrained philologists and lexicographers to use statutory phraseology in such a manner is always presumed.[23]

WHEREFORE, the Petition dated April 20, 2005 is hereby *GRANTED* and the Resolution of the Sandiganbayan (Third Division) dated February 28, 2005 is *NULLIFIED* and *SET ASIDE*. Consequently, let the case be *REMANDED* to the Sandiganbayan for further proceedings.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Nachura, JJ.,* concur.

---

[20] *Cunanan v. Arceo,* G.R. No. 116615, March 1, 1995, 242 SCRA 88, 96.

[21] *Romualdez v. Sandiganbayan,* 479 Phil. 265, 287 (2004), citing *Mustang Lumber, Inc. v. Court of Appeals,* 257 SCRA 430, 448 (1996).

[22] *Id.,* citing *PLDT v. Eastern Telecommunications Phil., Inc.,* 213 SCRA 16, 26 (1992).

[23] *Id.,* citing *Estrada v. Sandiganbayan, supra,* at 347-348.

[*] Designated as an additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] Per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 174209. August 25, 2009]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **RIZALINA RAUT, LEILA EMNACE and GINA CAPISTRANO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; RULES OF PROCEDURE; APPEALS; PERFECTION OF APPEALS; A CERTIFICATE OF NON-FORUM SHOPPING IS REQUIRED.— The perfection of an appeal necessarily includes the filing of a *complete* (not a defective) memorandum of appeal *within* the ten (10) day reglementary period. Petitioner conveniently disregards that the NLRC Rules of Procedure requires the appeal to be accompanied by a Certificate of Non-Forum Shopping. Thus, petitioner's filing of a memorandum of appeal without the requisite certificate did not stop the running of the period to perfect an appeal. In short, the Order of Execution of the Labor Arbiter became final and executory.

2. ID.; ID.; ID.; APPEALS; NATURE; CASE AT BAR.— Our ruling in *Accessories Specialist, Inc. v. Alabanza* emphasizes the nature of an appeal: Furthermore, we would like to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Thus, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. Perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. In the case at bar, the judgment against petitioner became final and executory on March 26, 2000. However, to

this day, respondents are prevented from enjoying fruits of the final judgment in their favor because of petitioner's frivolous appeal against an order of execution.

3. ID.; ID.; NATURE OF EMPLOYMENT; REGULAR EMPLOYMENT; ORDER OF REINSTATEMENT OF RESPONDENTS, WHO ARE REGULAR EMPLOYEES, IS PROPER.— x x x It is quite apparent from the respective decisions of the Labor Arbiter, the NLRC, and the CA that respondents were found to be regular employees of petitioner. Article 279, in relation to Article 280 of the Labor Code, confirms the nature of employment of respondents regardless of petitioner's unschooled opinion. The articles read: **ART. 279. Security of Tenure.** – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. **ART. 280. Regular and Casual Employment.** – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. Thus, the lower tribunals all affirmed the order of reinstatement of respondents and their corresponding entitlement to the payment of salaries and other benefits received by petitioner's regular employees.

4. ID.; ID.; ID.; APPEALS; ORDER OF EXECUTION; COVERED THE CORRECT COMPUTATION OF WAGES AND OTHER PAYMENTS IN CASE AT BAR.— x x x [O]n the increase in the computation of the monetary award to respondents, the decision of the Labor Arbiter specified that for purposes of putting up a bond should petitioner appeal, the backwages were computed only for a certain period. Otherwise, the *actual*

backwages to be paid to respondents are computed from the date of dismissal until the finality of the decision. In addition, because petitioner continues to refuse and accord regular status to respondents and to pay them their corresponding wages even after the lapse of two (2) years from the finality of the Labor Arbiter's decision, the Labor Arbiter correctly included that in its order of execution. Thus, the Labor Arbiter's order of execution simply covered the correct computation of wages and other payments enjoyed by petitioner's regular employees.

APPEARANCES OF COUNSEL

Nicanor G. Nuevas for petitioner.

Quijano Quijano Jugao & Pedaria Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] in CA-GR SP. No. 85829 which affirmed the National Labor Relations Commission's (NLRC's) dismissal[2] of petitioner Philippine Long Distance Telephone Company's Memorandum of Appeal for failure to attach thereto the requisite Certificate of Non-Forum Shopping.

The facts, as summarized by the CA, are as follows:

This case was originally filed on December 17, 1996 by Rizalina Raut and [Leila] Emnace against Philippine Long Distance Telephone Company (PLDT for brevity) for illegal dismissal and non-payment of salaries, overtime pay, night shift differential, 13th month pay, service incentive leave, backwages with moral damages and attorney's fees. Gina Capistrano followed suit by filing a similar case on January 18, 1997. These cases were consolidated by the Labor Arbiter on February 25, 1997 due to similarity of facts and issues involved.

---

[1] Penned by Associate Justice Pampio A. Abarintos, with Justices Enrico Lanzanas and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 37-45.

[2] *Rollo*, pp. 67-69.

In the complaint, signed and verified by the respondents, they alleged that they were illegally dismissed on November 30, 1996 and December 16, 1996 respectively.

In the decision of the Labor Arbiter promulgated on July 30, 1997, it reinstated the respondents x x x to their former position as telephone operators or if not feasible anymore to another equal position without loss of seniority rights and benefits and to pay the following backwages which are subject to recomputation up to the date of the finality of the decision as follows:

1.	Rizalina Raut	- ₱32,505.00
2.	[Leila] Emnace	- ₱32,505.00
3.	Gina Capistrano	- ₱34,320.00
		₱99,330.00

Soon after, the respondents were reinstated on December 16, 1998, but allegedly continued to be treated as temporary employees of the petitioner.

Petitioner appealed the decision, alleging grave abuse of discretion on the part of the Honorable Labor Arbiter, insisting that the respondents were never employees of the petitioner but that of independent contractor, Peerless Integrated Services, Inc.

In respondents' Answer to the Appeal, respondents argued that their functions were no different from those performed by the regular employees. They aver that they were trained by petitioner to become Traffic Operator, a position that is categorized as technical. Now, if they were trained to be skilled workers, how come they were extended only contractual employment of ten (10) months? Aside from that, respondents maintained that the claim of the petitioner that their arrangement with Peerless to supply it with various types of workers "in order to augment its present workforce" is but a scheme to subvert their tenurial security. According to respondents, petitioner expressly admits that Peerless provides only the workers. Thus, its contract with the former is one of "labor only" contracting, which is specifically prohibited under Sec. 9 (b) Rule VIII of the Omnibus Rules in relation to Article 106 of the Labor Code of the Philippines.

Subsequently, on April 30, 1998, the NLRC rendered a Decision affirming with modification the Decision of the Honorable Labor Arbiter. In addition to those already granted, petitioner x x x is further

ordered to pay respondents their overtime pay, nightshift differential pay, service incentive leave pay and 13th month pay.

Petitioner filed a motion for reconsideration but the same was denied in a Resolution promulgated by the NLRC dated September 25, 1998.

Consequently, petitioner filed a petition for *certiorari* before the Court of Appeals. However, the court rendered a Decision dated September 24, 1999, the dispositive portion of which reads as follows:

> "Wherefore, with the modification that the 13th month pay for respondents Raut and Emnace for the period August 16, 1995 to June 15, 1996 and for respondent Capistrano for the period of August 1, 1995 to May 31, 1996 should be deducted from the computation of the awards to private respondents, the assailed Decision of the National Labor Relations Commission is AFFIRMED."

Petitioner filed a Motion for Reconsideration, which was denied by the court. In effect, its aforesaid Decision became final and executory on March 26, 2000 per Entry of Judgment.

On April 24, 2002, respondents filed a Motion for Issuance of Writ of Execution which was granted by the Labor Arbiter in an Order dated June 21, 2002, the dispositive portion of which *viz*.:

> "Wherefore, let a writ of execution be issued for the enforcement of the following awards:
>
> | | | |
> |---|---|---|
> | 1. | Rizalina Raut | - ₱354,535.36 |
> | 2. | [Leila] Emnace | - ₱354,535.36 |
> | 3. | Gina Capistrano | - ₱354,535.36 |
> | | | ₱1,063,606.00"[3] |

Aggrieved, petitioner appealed the order to the NLRC which, as previously adverted to, dismissed petitioner's Memorandum of Appeal for failure to attach a Certificate of Non-Forum Shopping.

Undaunted, petitioner filed a petition for *certiorari* before the CA alleging grave abuse of discretion in the NLRC's dismissal

[3] *Id*. at 38-40.

of its appeal. Once again, petitioner fared no better in the CA; its petition for *certiorari* was denied due course.

Indefatigably, petitioner comes before us on appeal by *certiorari* raising the following issues for our resolution:

1. WHETHER x x x THE DECISION DATED APRIL 18, 2006 OF THE COURT OF APPEALS, WHICH AFFIRMED RESOLUTION DATED JANUARY 15, 2004 AND RESOLUTION DATED JULY 26, 2004, BOTH ISSUED BY THE NLRC, IS IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.
2. WHETHER x x x THE OMISSION OF THE CERTIFICATION OF NON-FORUM SHOPPING IN THE APPEAL MEMORANDUM WARRANTS THE DISMISSAL OF THE PETITIONER'S APPEAL FROM THE ORDER DATED JUNE 21, 2002 OF THE LABOR ARBITER TO THE NLRC.
3. WHETHER x x x THE ORDER DATED JUNE 21, 2002 OF LABOR ARBITER ERNESTO F. CARREON DIRECTING THE ISSUANCE OF A WRIT OF EXECUTION FOR THE ENFORCEMENT OF THE AWARD OF [₱]354,535.36 TO EACH OF THE RESPONDENTS, WHICH WAS AFFIRMED *IN TOTO* BY THE NLRC'S DECISION DATED JANUARY 15, 2004[,] AND WHICH[,] IN TURN[,] WAS AFFIRMED BY THE COURT OF APPEALS DECISION DATED APRIL 18, 2006, IS NULL AND VOID.[4]

The definitive issue boils down to whether the CA erred in affirming the NLRC's dismissal of petitioner's appeal for failing to attach a Certificate of Non-Forum Shopping.

We find the petition bereft of merit. We note that petitioner deftly brought to the fore the validity of the Labor Arbiter's order of execution. However, even on this issue, the appeal lacks merit.

The decision of the CA is consistent with both law and jurisprudence. Petitioner's contention – that the only jurisdictional requirements of appeal are: (1) the perfection of the appeal

[4] *Id.* at 260.

within the reglementary period of ten (10) days from receipt of the decision, award, or order; and (2) the posting of a cash or surety bond in appeals involving monetary awards, as specified under Article 223 of the Labor Code – is wrong. Petitioner is mistaken in confining the perfection of an appeal to compliance with just those requisites.

The perfection of an appeal necessarily includes the filing of a *complete* (not a defective) memorandum of appeal *within* the ten (10) day reglementary period. Petitioner conveniently disregards that the NLRC Rules of Procedure requires the appeal to be accompanied by a Certificate of Non-Forum Shopping.[5] Thus, petitioner's filing of a memorandum of appeal without the requisite certificate did not stop the running of the period to perfect an appeal. In short, the Order of Execution of the Labor Arbiter became final and executory.

Our ruling in *Accessories Specialist, Inc. v. Alabanza*[6] emphasizes the nature of an appeal:

> Furthermore, we would like to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Thus, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. Perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.

In the case at bar, the judgment against petitioner became final and executory on March 26, 2000. However, to this day, respondents are prevented from enjoying fruits of the final

---

[5] *See* Rule VI, Section 4 of the NLRC Rules of Procedure.

[6] G.R. No. 168985, July 23, 2008, 559 SCRA 550, 562-563, citing *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805 (2002).

judgment in their favor because of petitioner's frivolous appeal against an order of execution.

To lend some semblance of merit to its appeal and to further delay the execution of judgment against it, petitioner insists that the Labor Arbiter's order of execution is null and void for increasing the judgment award in the original decision. Petitioner likewise avers that nothing appears in the dispositive portion of the Labor Arbiter's decision that respondents ought to be reinstated as regular employees.

Petitioner's contention splits hairs. Indeed, an order of execution must conform to the decision sought to be enforced.[7] The Labor Arbiter's order of execution does ostensibly appear to increase the original judgment award if, as what petitioner has done, only the dispositive portions of the lower tribunals' decisions are laid out. However, we point out that the Labor Arbiter's decision specifically declared "that the [respondents] were never the employees of Peerless Integrated Services, Inc., as they were all the time employees of [petitioner]."

We need not belabor the point. It is quite apparent from the respective decisions of the Labor Arbiter, the NLRC, and the CA that respondents were found to be regular employees of petitioner. Article 279, in relation to Article 280 of the Labor Code, confirms the nature of employment of respondents regardless of petitioner's unschooled opinion. The articles read:

ART. 279. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

ART. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless

[7] *Banquerigo v. Court of Appeals*, G.R. No. 164633, August 7, 2006, 498 SCRA 169.

of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

Thus, the lower tribunals all affirmed the order of reinstatement of respondents and their corresponding entitlement to the payment of salaries and other benefits received by petitioner's regular employees.

Finally, on the increase in the computation of the monetary award to respondents, the decision of the Labor Arbiter specified that for purposes of putting up a bond should petitioner appeal, the backwages were computed only for a certain period. Otherwise, the *actual backwages to be paid to respondents* are computed from the date of dismissal until the finality of the decision. In addition, because petitioner continues to refuse and accord regular status to respondents and to pay them their corresponding wages even after the lapse of two (2) years from the finality of the Labor Arbiter's decision, the Labor Arbiter correctly included that in its order of execution. Thus, the Labor Arbiter's order of execution simply covered the correct computation of wages and other payments enjoyed by petitioner's regular employees.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The decision of the Court of Appeals in CA-G.R. SP. No. 85829 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 176487. August 25, 2009]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **FAR EAST ENTERPRISES, INC., ARSOL MANAGEMENT CORPORATION,[*] MARIA CHRISTINA C. BERNASCONI, JORGE C. BERNASCONI, RENE C. BERNASCONI, REGINA B. TUASON, CHRISTIAN C. BERNASCONI, MARTIN C. BERNASCONI, JAIME C. BERNASCONI and CHRISTINA MARIE C. BERNASCONI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; REPUBLIC ACT NO. 8974 (AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES); EXPROPRIATION; REQUIREMENTS FOR AUTHORIZING IMMEDIATE ENTRY IN EXPROPRIATION PROCEEDINGS INVOLVING REAL PROPERTY.— Under [Republic Act No. 8974], the requirements for authorizing immediate entry in expropriation proceedings involving real property are: (1) the filing of a complaint for expropriation sufficient in form and substance; (2) due notice to the defendant; (3) payment of an amount equivalent to 100% of the value of the property based on the current relevant zonal valuation of the BIR including payment of the value of the improvements and/or structures if any, or if no such valuation is available

[*] Though named as respondent by petitioner, Arsol Management Corporation said it is not a party to be directly affected by the issue resolved in this case.The Hon. Antonio de Sagun, Presiding Judge, Regional Trial Court, Branch 14, Nasugbu, Batangas was removed from the title of the action, he being a nominal party in this case.

and in cases of utmost urgency, the payment of the proffered value of the property to be seized; and (4) presentation to the court of a certificate of availability of funds from the proper officials.

2. ID.; ID.; ID.; ID.; UPON COMPLIANCE THEREWITH, WRIT OF POSSESSION SHALL ISSUE AS A MATTER OF RIGHT.— Upon compliance with the requirements, a complainant in an expropriation case is entitled to a writ of possession as a matter of right, and it becomes the ministerial duty of the trial court to forthwith issue the writ of possession. No hearing is required, and the court exercises neither its discretion nor its judgment in determining the amount of the provisional value of the properties to be expropriated, as the legislature has fixed the amount under Section 4 of Republic Act No. 8974.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; DETERMINATION OF JUST COMPENSATION; A FUNCTION ADDRESSED BY THE COURTS OF JUSTICE AND MAY NOT BE USURPED BY ANY OTHER BRANCH OR OFFICIAL OF THE GOVERNMENT.— We agree with petitioner that the courts have judicial discretion to determine the classification of lands, because such classification is one of the relevant standards for the assessment of the value of lands, subject of expropriation proceedings. It is one factor that the courts consider in determining just compensation. The determination of just compensation is a function addressed by the courts of justice and may not be usurped by any other branch or official of the government. However, we would like to make it clear that Section 5 of Republic Act No. 8974 lists the relevant standards that are to be considered in determining just compensation for and not classification of lands, as petitioner would like us to believe.

4. POLITICAL LAW; PUBLIC CORPORATIONS; LOCAL GOVERNMENT; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE OF 1991) EMPOWERS THE LOCAL GOVERNMENT UNITS TO RECLASSIFY AGRICULTURAL LANDS THROUGH AN ORDINANCE.— This Court recognizes the power of a local government to reclassify and convert lands through local ordinance, especially if said ordinance is approved by the HLURB. In *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals,* we acknowledged the power of local

government units to adopt zoning ordinances. Discretion is vested in the appropriate government agencies to determine the suitability of a land for residential, commercial, industrial or other purposes. It is also a settled rule that an ordinance enjoys the presumption of validity. Having the power to classify lands, the local government unit may consider factors that are just, reasonable and legal, for it is within the local government unit's power to determine these. However, if they abuse their authority in the performance of this duty, the courts, if prompted, can step in. Section 20 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, empowers the local government units to reclassify agricultural lands: x x x

5. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; MATTERS OF CLASSIFICATION OF LANDS ARE WITHIN THE COMPETENCE OF THE ADMINISTRATIVE AGENCIES CONCERNED, NOT WITH THE COURTS; EXPLAINED.— In the case before us, the lands in question had long been (almost 20 years) reclassified as residential before the instant case was filed. All those years, no one questioned the ordinance reclassifying the lands. If petitioner would like to have the reclassification of the lands involved changed to agricultural, the just and reasonable way of doing it is to go to the municipal council — not the courts – that enacted the ordinance and to ask that the lands be reclassified again as agricultural. Technical matters such as zoning classifications and building certifications should be primarily resolved first by the administrative agency whose expertise relates therein. The jurisprudential trend is for courts to refrain from resolving a controversy involving matters that demand the special competence of administrative agencies, "even if the question[s] involved [are] also judicial in character." In this manner, we give the respect due to these agencies (the municipal council and the Human Settlement Regulatory Commission [now HLURB]), which unquestionably have primary jurisdiction to rule on matters of classification of lands.

6. ID.; EVIDENCE; PRESUMPTIONS; REGULARITY OF PERFORMANCE OF OFFICIAL DUTY; APPLICABLE TO CASE AT BAR.— Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed. Thus, in the absence of evidence to the contrary, there is a presumption that public officers performed

their official duties regularly and legally and in compliance with applicable laws, in good faith, and in the exercise of sound judgment. This presumption applies to this case. If after going to the local government unit or government agencies that made the classification of the lands and the implementing agency fails to obtain the redress they seek (proper classification), despite evidence clearly showing erroneous classification, it is only then that it can go to the court to ask for intervention. In the case at bar, the trial court and the Court of Appeals based their classification of the lands concerned, not only on the tax declarations, but more importantly on the certification issued by the Office of the Municipal Planning and Development Coordinator/Zoning Administrator of the Municipality of Nasugbu, Batangas that said lands had been (re)classified as residential pursuant to Municipal Zoning Ordinance No. 3 dated 3 May 1982 as approved under Resolution No. 123, series of 1983 dated 4 May 1983 by the Human Settlement Regulatory Commission (now HLURB). The tax declarations adduced and the certification show that the lands concerned are classified as residential. There is no discrepancy between the two as regards classification. Even if there is any inconsistency, what prevails is the determination for zoning purposes.

7. ID.; ID.; CREDIBILITY; FACTUAL FINDING OF THE TRIAL COURT AND AFFIRMED BY THE APPELLATE COURT THAT THE CLASSIFICATION OF THE LANDS CONCERNED IS RESIDENTIAL IS RESPECTED BY THE SUPREME COURT.— Under the facts obtaining, this Court agrees with both lower courts that the classification of the lands concerned is residential. No other certification from the municipal council has been presented to show that a new zoning ordinance has been passed by it changing the present classification of the lands, subject of the expropriation case. Even if we consider the allegations of petitioner that said lands are actually used for agriculture, and that the lands adjoining the same are all classified as agricultural, the same will not necessarily change said classification to agricultural.

8. POLITICAL LAW; PUBLIC CORPORATIONS; LOCAL GOVERNMENT; RECLASSIFICATION OF LANDS; USE OF LAND FOR AGRICULTURAL PURPOSES WILL NOT CAUSE THE REVERSION OF THE CLASSIFICATION OF THE LANDS

TO AGRICULTURAL; CASE AT BAR.— Even assuming that the lands are still used for agricultural purposes, this will not cause the reversion of the classification of the lands to agricultural. In *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*, we ruled that the failure of the landowner to complete the housing project did not have the effect of reverting the property to its former classification. In *De Guzman v. Court of Appeals*, we held that the continuous tillage of the land and the non-commencement of the construction of the market complex did not strip the land of its classification as commercial. Furthermore, even assuming that all the adjoining lands are still classified as agricultural, this does not mean that lands involved cannot be classified differently, as in this case. In the certification issued by the Office of the Municipal Planning and Development Coordinator/Zoning Administrator of the Municipality of Nasugbu, Batangas, the parcels of land reclassified, including those of Far East and the Bernasconis which petitioner seeks to expropriate, were individually listed.

9. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 8974 (AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRUSTRACTURE PROJECTS AND FOR OTHER PURPOSES); EXPROPRIATION; 100% OF THE VALUE OF THE PROPERTY BASED ON THE CURRENT RELEVANT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE DISTINGUISHED FROM JUST COMPENSATION.— Inasmuch as what is involved in this case is the payment of the amount equivalent to 100% of the value of the property based on the current relevant zonal valuation of the BIR, we must distinguish the same from just compensation. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, we ruled: To clarify, the payment of the provisional value as a prerequisite to the issuance of a writ of possession differs from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. As the appellate court explained: The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are

dismissed. It is not a final determination of just compensation and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of just compensation. Just compensation, on the other hand, is the final determination of the fair market value of the property. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market values, has also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality. As the preliminary or provisional determination of the value of the property equivalent to 100% of the value of the property based on the current relevant zonal valuation of the BIR, said amount serves a double purpose of pre-payment if the property is fully expropriated, and of indemnity for damages if the proceedings are dismissed. Said provisional value must be paid to the owner of the land before a writ of possession may be issued. The issuance of a certificate of availability of funds will not suffice for the purpose of issuance of a writ of possession. After payment of the provisional amount, the court may now proceed to determine the amount of just compensation. Petitioner can now present its evidence relative to the properties' fair market value as provided in Section 5 of Republic Act No. 8974.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Henry Y. Tuason for Far East Enterprises, Inc., *et al.*

De Castro and Cagampang Law Offices for Arsol Management Corp.

D E C I S I O N

CHICO-NAZARIO,[**] ***J.*:**

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision[1] of the Court of Appeals dated 9 November 2006 in CA-G.R. SP No. 72425 which dismissed petitioner Republic of the Philippines' Petition for *Certiorari*, and its Resolution[2] dated 5 February 2007 denying petitioner's motion for reconsideration. The Court of Appeals held that the Regional Trial Court of Nasugbu, Batangas, Branch 14, in Civil Case No. 674, did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated 17 June 2002 ordering petitioner to make an additional payment of ₱425.00 per square meter for the subject properties of respondents Far East and the Bernasconis before the issuance of an Order to take possession of the subject properties, and a writ of possession.

On 23 November 2001, the Republic of the Philippines, represented by the Secretary of the Department of Public Works and Highways (DPWH), filed a Complaint[3] for Eminent Domain before the Regional Trial Court of Nasugbu, Batangas against Far East Enterprises, Inc. (Far East), Arsol Management Corporation (Arsol), Maria Christina C. Bernasconi, Jorge C. Bernasconi, Rene C. Bernasconi, Regina B. Tuason, Christian C. Bernasconi, Martin C. Bernasconi, Jaime C. Bernasconi and Christina Marie C. Bernasconi (Bernasconis).

[**] Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Rodrigo V. Cosico and Edgardo F. Sundiam, concurring; CA *rollo*, pp. 249-270.

[2] *Id*. at 351-357.

[3] Records, Vol. 1, pp. 1-46.

The complaint alleged, *inter alia*, that:

5. Defendants are the declared owners of parcels of land situated at Barangay Balaytigue, Nasugbu, Batangas as shown in the Tax Declarations attached as Annexes "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", and "N", and certificates of title attached as annexes "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z" and "AA" and more particularly described below together with the affected areas sought to be expropriated and the corresponding zonal values, to wit:

xxx xxx xxx

6. To enable the plaintiff to construct the Ternate-Nasugbu Tali Batangas Road, a public purpose authorized by law to be undertaken by plaintiff, it is both necessary and urgent for plaintiff to acquire portions of the above parcels of land consisting of a total area of 29, 786 sq. m., more or less, shown in the attached sketch plan marked as Annex "CC" and made and (sic) integral part hereof.

7. The portion of above-described parcels of land sought to be expropriated have not been applied to nor expropriated for any public use and are selected by plaintiff as the site of the right-of-way in connection with the construction of the Ternate-Nasugbu Tali Batangas in a manner compatible with the greatest public good and the least public injury.

8. Plaintiff has negotiated with defendants for the acquisition of portions of the properties for the public purpose as above-stated at a price prescribed by law, but failed to reach an agreement with them notwithstanding the negotiations.

9. Under Section 7 of the Executive Order No. 1035 dated June 25, 1985, plaintiff represented by the DPWH is authorized to institute expropriation proceedings through the Office of the Solicitor General.

10. Pursuant to Section 4 of Republic Act No. 8974[4] in relation to Section 12 of the Implementing Rules and Regulations thereof, plaintiff shall have the right to take or enter upon the possession of the real properties involves upon the issue of this Honorable Court of a Writ of Possession in favor of the plaintiff.

---

[4] An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects and For Other Purposes.

xxx xxx xxx

11. Plaintiff is willing to deposit the total amount of ₱2.233M representing the zonal valuation of the affected portions of the subject parcels of land as stated in paragraphs 5 and 6 hereof and which for purposes of the issuance of the corresponding writ if possession, is required to be deposited by plaintiff with the authorized government depository, subject to the orders and final disposition of this Honorable Court.[5]

The properties subjects of this case are all located in Barangay Balaytigue, Nasugbu, Batangas. The particulars of the parcels of land are as follows:

Owner	OCT/TCT No.	Lot/Block No.	Tax Declaration No.	Area Affected in Square Meters
Far East	T-60966	Block 7[6]	014-01029	1,704
Far East	T-15189	Lot 339	014-01102	2,988
Far East	T-60540	Lot 536	014-01106	2,346
Far East	T-57762	Lot 535	014-01105	3,051
Far East	TP-1835	Lot 51	014-01313	2,317
Bernasconis	T-54825	Lot 549	014-01119	2,053
Bernasconis	T-54825	Lot 550	014-01120	190
Arsol	T-50152	Lot 534	014-00182	1,432
Arsol	T-50168	Lot 254	014-0098	1,356
Arsol	T-50158	Lot 53	014-0097	2,960
Arsol	T-51059	Lot 190	014-0088	2,398
Arsol	T-50160	Lot 191	014-0087	4,484
Arsol	T-50170	Lot 256	014-00175	457
Arsol	T-51064	Lot 250	014-00109	1,898

[5] Records, Vol. 1, pp. 3, 5-6, 8-9.

[6] Part of Lots 263 and 340. See description of TCT No. T-60966.

Arsol filed its Answer with Counterclaim[7] dated 7 January 2002. It prayed that the prayer of petitioner (plaintiff therein) for a writ of possession be denied unless full payment of just compensation would be made after trial on the merits. It likewise asked that petitioner, after trial, be ordered to pay just compensation plus interest and penalties due for a property (Lot 272) located along the Nasugbu-Ternate Road in Natipunan, Nasugbu, Batangas, which was taken from it by the petitioner and used in a previous road project without payment of just compensation.

Respondent Far East filed its Answer[8] dated 11 January 2002 which raised the following affirmative special defenses:

10.2 That answering defendant manifests that on or about March 2001, during the meeting held at its office, plaintiff made an offer to purchase the properties, of the answering defendant, subject matter of this case, at ₱200.00 per square meter. x x x.

10.2.1 That during the said meeting, answering defendant bargained for a higher price but Atty. Lamberto Aguilar, Legal Office of Department of Public Works and Highway (DPWH, for brevity), suggested that answering defendant accept the said amount of compensation at ₱75.00 per square meter because he claims that the actual use of the real estate properties, although classified as residential by the Municipal Assessor of Nasugbu, is agricultural;

10.2.2 That in compliance with the suggestion of plaintiff to put into writing our counter-offer, answering defendant wrote the former informing it of its desired amount and requesting for a copy of the revised parcellary survey plan showing the area to be affected after reduction in width of the right of way from 30 meters to 20 meters intended by the DPWH.

10.2.3 That after learning of its rights as landowner under Administrative Order No. 50 and Republic Act (RA, for brevity) No. 8974, answering defendant in a letter dated July 16, 2001, retracted the previous amount offered to plaintiff in its letter dated

---

[7] Records, Vol. 1, pp. 71-76-B.

[8] *Id*. at 82-121-A.

April 6, 2001 and, instead offered the said properties on a negotiated sale at the amount of at least ₱600.00 per square meter.

x x x x x x x x x.

10.2.4 That Plaintiff never replied to answering defendant's letter under date of April 6, 2001. However, instead of commenting to the price we offered by way of negotiated sale on the July 16, 2001 letter, and acting in bad faith as well by not observing due process as evidenced by failure of the DPWH to provide the requested revised parcellary plan necessary for the defendant to make an informed final decision, plaintiff chose instead to endorse its complaint to the OSG for filing in court and, true to the statement made by Atty. Aguilar, fixed the amount of compensation at the amount of ₱75.00 per square meter. x x x.

10.3 That plaintiff misleads the Honorable Court in stating that the zonal valuation of the subject properties is ₱75.00 per square meter as the said amount corresponds only to agricultural lands, not to residential lands owned by answering defendant and subject of this complaint, as determined in the schedule of BIR zonal valuation attached as Annex "BB" in its complaint;

x x x x x x x x x

10.4 That the subject properties except for one (1) property, are parts and parcels of Talibeach Subdivision, a residential subdivision, in line with the approved subdivision plans and/or by the said subdivision's Deed of Restriction, xerox copies of which are attached as annexes "4" to "4-1";

10.4.1 That, in addition, the properties are located in the same general area of other residential subdivisions such as Peninsula de Punta Fuego, and Maya-Maya Subdivisions as well as approximately 3 kilometers from two other residential subdivisions currently being developed as sold, specifically, Terrazas de Punta Fuego and Kawayan Cove Subdivision;

10.4.2 That Per Proclamation 1801 and Zoning Ordinance No. 03 of the Municipality of Nasugbu under date of April 1982, as approved by the Human Settlements Regulatory Commission under Resolution No. 123 under date of May 4, 1983, the area is declared as a Residential, Tourism and tourism potential area and therefore, may not even moreso be considered, classified as agricultural as

self-servingly claimed by the DPWH Legal Officer, Atty. Aguilar. x x x.

10.5 That as previously stated, the amount of ₱75.00 per square meter corresponds to agricultural lands located at Brgy. Balaytigue, Nasugbu, Batangas and not to residential lands such as those of answering defendant subject of the complaint, as determined in Annex "BB" in the complaint;

x x x x x x x x x

10.6 That similarly situated developed lots in the area are sold at the range of ₱4,000.00 to 9,000.00 per square meter more or less. x x x.

10.7 All in all answering defendant is not objecting to the expropriation of its properties but it must be paid justly in respect to not only the final compensation but also in respect to the initial compensation to be deposited in full with the court, in conformity with R.A. No. 8974 & A.O. No. 50 x x x.[9]

Respondent Far East prayed that, after due notice and hearing, the complaint be given due course by ordering petitioner to comply with the mandate of Section 4 (a) of Republic Act No. 8974 by depositing in its name the initial amount of ₱7,433,600.00 or ₱600.00 per square meter for the total area of 12,406 sq.m. of its properties to be used in the construction of the Ternate-Nasugbu Tali Batangas Road. It also asked that said amount be released to it and that the just compensation for its lands be fixed.

In their Joint Answer[10] dated 11 January 2002, the Bernasconis admitted they were the lawful and registered owners of parcels of land – Lots Nos. 549 and 550 – covered by Transfer Certificates of Title (TCTs) No. T-54825, containing a total area of 2,243 sq.m., being expropriated by petitioner. They denied that petitioner made an offer to purchase the properties, subject matter of the case. They further adopted all the claims and defenses that were interposed by Far East and were applicable

[9] *Id*. at 83-87.

[10] *Id*. at 77-81.

to their properties. Thus, they prayed that the complaint be given due course and petitioner be ordered to comply with Section 4(a) of Republic Act No. 8974 by depositing in their names the initial amount of ₱ 1,345,800.00 or ₱600.00 per square meter for the 2,243 sq.m. of their property being expropriated. They asked that said amount be released to them, and that the just compensation for their properties be fixed.

Petitioner filed separate replies to the Answers of Arsol and Far East/the Bernasconis.[11] Far East and the Bernasconis submitted their respective rejoinders to the reply filed by petitioner.[12]

On 7 February 2002, respondent Arsol filed a Motion to Release Deposit, praying that the amount that may properly accrue for its lands sought to be expropriated be released as partial payment, to be taken from the funds deposited by petitioner for the benefit of all the defendants.[13]

In its Order dated 8 February 2002, the trial court ordered petitioner to comply and manifest its compliance with the guidelines of Section 12 of the Implementing Rules and Regulations of Republic Act No. 8974, within ten days from receipt thereof, before it would issue an order for petitioner to take possession of the affected properties, so it may commence the implementation of the project mentioned in the complaint.[14]

On 15 March 2002, petitioner filed its Compliance and Motion for Issuance of Order and Writ of Possession.[15] It stated that DPWH Region IV certified that the amount of two million two hundred twenty-two thousand five hundred fifty pesos (₱2,222,550.00) had been allotted and made available to cover payment of properties sought to be expropriated as follows:

---

[11] *Id*. at 122-125, 126-128.

[12] *Id*. at 136-140, 141-142.

[13] *Id*. at 130-132.

[14] *Id*.at 133.

[15] *Id*. at 154-189.

1.	Arsol Management Corporation 14,985 sq.m. @ ₱75.00/sq.m.	₱1,123,875.00
2.	Maria Christina Bernasconi, *et al*. 2,243 sq.m. @ ₱75.00/sq.m.	₱ 168,225.00
3.	Far East Enterprises 12,406 sq.m. @ ₱75.00/sq.m.	₱ 930,450.00
		₱ 2,222,550.00

It informed the trial court that DPWH Regional Director Nestor V. Agustin sent separate letters to the defendants tendering the price equivalent of 100% of the zonal valuation declared by the Bureau of Internal Revenue (BIR) for their respective properties to be expropriated. Far East and the Bernasconis disagreed with the price offered by petitioner. In view thereof, petitioner was constrained to deposit with the trial court the total amount of ₱2,222,550.00 in three Land Bank checks in the names of the defendants, for its proper disposition.

In their respective comments on petitioner's compliance, both Far East and the Bernasconis claimed that petitioner intentionally and wantonly disregarded and misled the trial court by stating that their properties were classified as agricultural to justify the deposit it made. The documents it submitted stated, however, that the properties sought to be expropriated were classified as residential with a zonal valuation of ₱600.00 per square meter. They prayed that the issuance of the writ of possession be deferred until petitioner had deposited with the trial court the correct amounts of ₱1,345,800.00 (for the Bernasconis) and ₱7,443,600.00 (for Far East), and that the previous amounts (₱168,225.00 for the Bernasconis and ₱930,450.00 for Far East) deposited be withdrawn by them under protest without prejudice to the ruling of the trial court on the correct amount of zonal valuation of residential lands in Balaytigue, Nasugbu, Batangas.[16]

In an Order dated 2 April 2002, the trial court ordered petitioner to correct its zonal valuation with respect to Far East and the Bernasconis and to make the corresponding deposit therefor. It added that the motion for the issuance of an order and a writ

[16] *Id*. at 191-198, 199-208.

of possession filed by petitioner shall be acted upon after the correct deposit was made. It found that the amounts deposited as regards Far East and the Bernasconis were not sufficient because these were based on a zonal valuation of ₱75.00 per square meter. It said that the deposit should be based on ₱500.00 per square meter, because the subject lands were residential lands. As to Arsol, the trial court found the deposit of petitioner at ₱75.00 per square meter was correct and directed Arsol to claim the check for ₱1,123,875.00 from the Clerk of Court, under a proper receipt.[17] On the same day, Arsol received the check in the amount of ₱1,123,875.00 representing the initial payment of just compensation for its lands which were subject of the expropriation proceedings.[18]

Far East and the Bernasconis filed a Joint Motion to Release Deposits.[19] The trial court granted the same per its Order dated 15 April 2002 ordering the release to Far East and the Bernasconis the amounts of ₱930,450.00 and ₱168,225.00, respectively, without prejudice to the final determination of just compensation for the affected properties.[20] On 17 April 2002, Far East and the Bernasconis received the checks corresponding to said amounts.[21]

Petitioner filed its Motion for Reconsideration dated 17 April 2002, arguing that the trial court erred in ordering it to correct the zonal valuation of Far East and the Bernasconis' properties at ₱500.00 per square meter instead of ₱75.00 per square meter. It prayed that the trial court reconsider its Order dated 2 April 2002 and a new one be issued declaring that the deposit made by it was sufficient compliance with Section 4 of Republic Act No. 8974 and Section 8 of its Implementing Rules and Regulations. It further asked that an order be issued for the conduct of an

---

[17] *Id*. at 210-211.

[18] *Id*. at 209.

[19] *Id*. at 212-214.

[20] *Id*. at 217.

[21] *Id.* at 223 and 227.

ocular inspection of the subject properties of Far East and the Bernasconis to determine their actual classifications.[22] Far East and the Bernasconis filed their Joint Opposition to/Comment on the Motion for Reconsideration.[23] Arsol likewise filed its Comment, arguing that petitioner must deposit the additional amount to obtain the writ of possession.[24]

In a Resolution dated 26 April 2002, the trial court granted petitioner's motion for reconsideration. The trial court found the deposit (at ₱75.00 per square meter) made by petitioner sufficient and substantial compliance with Section 4 of Republic Act No. 8974 and Section 8 of its Implementing Rules and Regulations, and that Far East and the Bernasconis had already received the checks as deposits for their properties under expropriation. It ordered the petitioner to take possession of the affected properties and to start the implementation of the road project. It likewise ordered the issuance of a writ of possession commanding the proper officer to place petitioner in possession of the affected portions of said properties.[25]

Far East and the Bernasconis filed their Joint Motion for Reconsideration dated 2 May 2002 praying that the Order dated 26 April 2002 be reconsidered, and that the court order petitioner to deposit the balance of ₱425.00 per square meter in order to comply with the required deposit of the zonal value of ₱500.00 per square meter, as correctly ordered by respondent court in its Order dated 2 April 2002.[26]

Petitioner filed its Opposition to Defendants' Joint Motion for Reconsideration,[27] to which Far East and the Bernasconis filed a Reply dated 14 June 2002.[28]

---

[22] *Id*. at 228-232.

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

[24] *Id*. at 246-247.

[25] *Id*. at 237-238.

[26] *Id*. at 239-243.

[27] *Id*. at 251-256.

[28] *Id*. at 260-268.

The trial court issued a Resolution[29] dated 17 June 2002, the relevant portions of which read:

After a re-assessment of the respective arguments of both parties, the Court finds merit in the joint motion for reconsideration.

For one, the definition of agricultural land is clear and leaves nothing for any other interpretation. The plaintiff has not shown any other definition of agricultural land, different from the above definition. The fact, as claimed by the plaintiff, that the lands of the movants are idle, raw and undeveloped, with no houses thereon, does not unmake the same as residential because they were already classified as such long before this case was filed. The fact that the subject properties may be suitable for agricultural uses does not make it agricultural because they were classified as residential per plaintiff's Annexes "A" to "G" of the Complaint. The very tax declarations of the movants' properties (Annexes "A" to "G", Complaint) show that subject properties are indeed residential and not agricultural.

In this connection, tax declarations do not prove ownership of the property. It is only an evidence of possession. It is the titles of the properties that show their ownership (Annexes "O" to "T" of the Complaint). The Court realizes its lack of discretion to substitute its judgment for the authority of the Municipality of Nasugbu, Batangas, on land reclassification, on the mere premise that the properties of the movants and of Arsol adjoin each other.

RA 8974 gives no discretion to the Court to determine the classification of the expropriated properties.

Plaintiff cannot question the very contents of its documents which are parts and parcels of its complaint. It is a cardinal rule in adjective law that pleadings are binding on the pleader.

In fine, the Court is fully convinced to give weight to the contents of plaintiff's Exhs. "A" to "G" and "BB", Complaint. Therefore, the deposit of ₱75.00 per square meter made by plaintiff as regards movants' properties is insufficient because the zonal valuation of the same is fixed at ₱500.00 per square meter.

WHEREFORE, foregoing premises considered, the order of April 26, 2002 is reconsidered and set aside. Plaintiff is ordered to make

---

[29] *Id*. at 270-274.

the additional deposit of ₱425.00 per square meter for the properties of the movants before the order to possess and writ of possession issue.

Respondents Far East and the Bernasconis filed a Joint Motion for Compliance dated 21 June 2002 asking the trial court to order petitioner to comply with the Resolution dated 17 June 2002 by depositing the additional amount of ₱425.00 per square meter.[30]

In its Manifestation and Urgent Motion for Issuance of Writ of Possession dated 10 July 2002, petitioner informed the trial court that it would elevate the Order requiring it to deposit the additional ₱425.00 per square meter to a higher court. It also said that in the interest of expediting the implementation of the project the completion of which was of utmost urgency, it had already made in protest a deposit of the additional amount of ₱425.00 per square meter as specified in the trial court's Resolution dated 17 June 2002. As proof thereof, it said it attached the Certificate as to Availability of Funds wherein the total amount of ₱6,225,825.00 (₱953,275.00 in favor of the Bernasconis and ₱5,272,550.00 in favor of Far East) had been allotted for the purpose. Thus, it prayed that a writ of possession be immediately issued.[31]

The trial court found that petitioner did not attach the Certificate as to Availability of Funds in its Manifestation and Urgent Motion dated 10 July 2002. Thus, in its Order dated 23 July 2002, the trial court ordered petitioner to submit said certification within ten days from receipt of its Order.[32] In their Joint Comment on and Opposition to petitioner's manifestation and motion dated 26 July 2002, Far East and the Bernasconis prayed that the writ of possession be issued to petitioner only after payment of the balance of the zonal values of their properties had been made.[33]

---

[30] *Id*. at 275-276.

[31] *Id*. at 284-286.

[32] *Id*. at 288.

[33] Id. at 289-292.

Petitioner filed its Compliance dated 12 August 2002 with the Order dated 23 July 2002 attaching therewith the Certificate as to Availability of Funds in the amount of ₱6,225,825.00. It also apologized for its failure to attach said certificate in its Manifestation and Urgent Motion dated 10 July 2002.

In an Order dated 20 August 2002, the trial court ordered petitioner to pay the amounts of ₱953,775.00 and ₱5,272,550.00 to the Bernasconis and Far East, respectively, or to deposit said amounts in court for payment to respondents within ten days from receipt, after which a writ of possession shall be issued.[34]

On 28 August 2002, petitioner filed a Petition for *Certiorari* with the Court of Appeals seeking the reversal of the trial court's Resolution dated 17 June 2002 requiring it to make the additional deposit of ₱425.00 per square meter. It further asked the appellate court to require the trial court to conduct an ocular inspection of the expropriated properties to determine their actual use and to allow it to present its evidence of the classification of said lands.[35] The appeal was docketed as CA-G.R. SP No. 72425.

While CA-G.R. SP No. 72425 was pending before the Court of Appeals, petitioner filed its Motion for Reconsideration of the Order of the trial court dated 20 August 2002, arguing that it sufficiently complied with the law when it issued the certificate of availability of funds. It further argued that the trial court's directive to pay the zonal valuation based on the residential classification of the properties would render moot the issue before the Court of Appeals.[36] Far East and the Bernasconis filed a Joint Comment on/Opposition to the motion.[37]

---

[34] *Id*. at 303.

[35] CA *rollo*, pp. 1-31.

[36] Records, Vol. 2, pp. 468-474.

[37] *Id*. at 475-478.

In its Resolution dated 28 November 2002, the trial court reconsidered its Resolution dated 20 August 2002 and granted petitioner's motion for reconsideration. It ordered that a writ of possession be issued and that petitioner be placed in possession of the properties subject of the expropriation case.[38] Far East and the Bernasconis filed a Joint Motion for Reconsideration[39] of said resolution, which the trial court denied in an Order dated 12 September 2003.[40]

Far East and the Bernasconis filed a Joint Petition for *Certiorari* before the Court of Appeals praying that the Order of the trial court dated 12 September 2003 be set aside.[41] The petition was docketed as CA-G.R. SP No. 80278.

Far East and the Bernasconis then filed a Joint Motion for Clarification and Suspension of Proceedings dated 16 February 2004.[42] In an Order dated 11 August 2004, the trial court granted the motion and suspended the proceedings of the case pending resolution of CA-G.R. SP No. 72425 and CA-G.R. SP No. 80278 before the Court of Appeals.[43]

On 28 February 2005, the Court of Appeals, in CA-G.R. SP No. 80278, denied the petition for *certiorari* filed by Far East and the Bernasconis. Their Joint Motion for Reconsideration[44] was likewise denied in a Resolution dated 31 August 2005.[45] Far East and the Bernasconis appealed to this Court *via* a Joint Petition for *Certiorari*.[46] The case was docketed as G.R.

---

[38] *Id*. at 525.

[39] *Id*. at 528-532.

[40] *Id*. at 587-588.

[41] *Id*. at 592-615.

[42] Records, Vol. 3, pp. 815-817.

[43] *Id*. at 855.

[44] *Id*. at 900-904.

[45] *Id*. at 912.

[46] *Id*. at 917-941.

No. 170178. This Court dismissed the petition for being the wrong mode of appeal.[47] Far East and the Bernasconis moved to reconsider the dismissal, but we denied their motion with finality stating that even if the petition were to be treated as a petition for review on *certiorari* under Rule 45, the same should nevertheless be denied for being filed out of time.[48]

On 9 November 2006, the Court of Appeals in CA-G.R. SP No. 72425 rendered its decision dismissing, for lack of merit, the petition filed by petitioner DPWH.[49] The appellate court found that the trial court did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in ordering petitioner to make the additional payment of ₱425.00 per square meter for the subject properties of Far East and the Bernasconis before the issuance of the order to take possession, and the writ of possession. The pertinent portions of the decision read:

> Petitioner submitted to respondent court the Land Bank checks payable to private respondents, as well as to Arsol, and a certification as to availability of funds. However, private respondents Far East and the Bernasconis disagreed with the amount of petitioner's deposit and prayed in their Joint Motion for Reconsideration of the Resolution dated 26 April 2002 that petitioner be ordered to deposit the balance of Php425.00 per square meter in order to comply with the zonal value of Php500.00 per square meter, as contained in the Order dated 02 April 2002. They argued that their land is residential and that the zonal value of ₱500.00 per square meter should be paid to them, instead of the zonal value of ₱75.00 per square meter for agricultural lands. This Joint Motion of private respondents was granted by respondent court in the Resolution dated 17 June 2002. The said Resolution is now being assailed by petitioner.
>
> We sustain the ruling of respondent court in the assailed Resolution. However, to be more precise, petitioner should make the additional initial payment (not deposit) of Php425.00 per square

---

[47] Records, Vol. 4, p. 1137.

[48] *Id.* at 1146.

[49] CA *rollo*, pp. 249-269.

meter for the properties of private respondents before the order to take possession and writ of possession can be issued.

Petitioner itself attached to its Complaint as Annex "BB" a certified photocopy of the BIR's Schedule of Zonal Values of Real Properties in the Municipality of Nasugbu, Batangas. The zonal valuation of properties in Brgy. Balaytigue were classified as follows:

BRGY. BALAYTIGUE

ALL LOTS[50]	RR	500.00	600.00
	A	75.00	80.00
	CR	1,500.00	1,700.00
	GP		200.00

Further, petitioner also appended to its Complaint as Annexes "A" to "G" the Tax Declarations of private respondent Far East and Maria Christina C. Bernasconi showing that the properties sought to be expropriated are classified as "Residential." Petitioner's very own attachments to its Complaint show that private respondents' properties are residential and not agricultural.

Thus, based on Section 4 of R.A. No. 8974 and Section 8 of the Implementing Rules and Regulations of R.A. No. 8974, petitioner should have paid immediately to private respondents the amount equivalent to the sum of 100% of the value of the property based on the BIR zonal valuation of private respondents' residential lots in Barangay Balaytigue, Nasugbu, Batangas in the amount of Php500.00 per square meter, and not Php75.00 per square meter which is the BIR current zonal valuation for agricultural lots in said *barangay*. R.A. No. 8974 and its Implementing Rules and Regulations are clear as to the amount of payment which petitioner, through DPWH, the implementing agency, has to make, even as early as the filing of petitioner's Complaint. No amount of verbiage on petitioner's part can alter the plain and unequivocal provisions of the law and the implementing rules. Thus, respondent court did not act with grave abuse of discretion when it relied upon private respondents' tax declarations (Complaint's Annexes "A" to "G"), and the BIR zonal valuation of real properties in Nasugbu,

---

[50] RR-Regular Residential; A-Agricultural; CR-Commercial Regular; GP-General Purpose.

Batangas (Complaint's Annex "BB"); found the amount of Php75.00 per square meter insufficient as regards private respondents' subject residential properties, the zonal valuation of which is Php500.00 per square meter; and ordered petitioner to make the additional payment of Php425.00 per square meter before the order to take possession and writ of possession can be issued in petitioner's favor. As held in *Republic v. Gingoyon* [G.R. No. 166429, 19 December 2005, 478 SCRA 474, 520], R.A. No. 8974 provides, as the relevant standard for initial compensation, the market value of the property as stated in the tax declaration or the current relevant zonal valuation of the BIR, whichever is higher.

Rep. Act No. 8974 represents a significant change from previous expropriation laws such as Rule 67, or even Section 19 of the Local Government Code. In both cases, the private owner does not receive compensation prior to the deprivation of property. On the other hand, Rep. Act No. 8974 mandates immediate payment of the initial just compensation prior to the issuance of the writ of possession in favor of the Government. Rep. Act No. 8974 is plainly clear in imposing the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determinations of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act No. 8974, the private owner sees immediate monetary recompense with the same degree of speed as the taking of his/her property.

While eminent domain lies as one of the inherent powers of the State, there is no requirement that it undertake a prolonged procedure, or that the payment of the private owner be protracted as far as practicable. In fact, the expedited procedure of payment, as highlighted under Rep. Act No. 8974, is inherently more fair, especially to the layperson who would be hard-pressed to fully comprehend the social value of expropriation in the first place. Immediate payment placates to some degree whatever ill-will that arises from expropriation, as well as satisfies the demand of basic fairness.

It is therefore erroneous for petitioner to contend that respondent court abdicated its authority in determining just compensation. The compensations to private respondents based on the BIR zonal valuation of the properties sought to be expropriated at Php500.00 per square meter is merely the immediate payment of the initial just compensation prior to the issuance of the writ of possession in order to effectuate the transfer of possession in favor of petitioner.

The issuance of the writ of possession does not write *finis to* the expropriation proceedings. Expropriation is not completed until payment to the property owner of just compensation. To effectuate transfer of ownership, it is necessary of the Government to pay the property owner the final just compensation.

Indeed, the determination of just compensation in expropriate proceedings is a judicial function. Section 5 of R.A. No. 8974 enumerates certain relevant standards which respondent court may consider, in order to facilitate the determination of just compensation.

xxx xxx xxx

Thus, it is at this stage of the expropriation proceedings where the judicial function of determining just compensation is to be exercised by respondent court. It is also at this point when petitioner's evidence regarding the use of the subject properties, value declared by the owners, current selling price, ocular findings, *etc*. will into play.[51]

Petitioner filed its Motion for Reconsideration dated 4 December 2006.[52] On 5 February 2007, the Court of Appeals denied the same.[53]

Hence, this petition for review.

Petitioner raises the following grounds in support of the petition:

---

[51] *Rollo,* pp. 57-61.

[52] CA *rollo,* pp. 271-285.

[53] *Id*. at 351-357.

I

IN RULING THAT PETITIONER SHOULD IMMEDIATELY PAY THE BIR ZONAL VALUATION OF THE PROPERTY BEFORE TAKING POSSESSION, THE COURT OF APPEALS FAILED TO RESOLVE THE *LIS MOTA* OF THE CASE, THAT IS, WHICH FACTORS SHOULD CONTROL IN DETERMINING THE CLASSIFICATION OF THE PROPERTY FOR PURPOSES OF PAYMENT OF THE BIR ZONAL VALUATION; COROLLARY THERETO, THE HONORABLE COURT'S RELIANCE IN *REPUBLIC VS. GINGOYON (*"*GINGOYON*"), IS NOT CONTROLLING IN THIS CASE, BECAUSE THE CLASSIFICATION OF THE PROPERTY SOUGHT TO BE EXPROPRIATED IS NOT IN AN ISSUE IN *GINGOYON*, AS IT IS IN THIS PETITION.

II

THE COURT *A QUO* GRAVELY ERRED IN REFUSING TO APPLY THE STANDARDS SET IN R.A. NO. 8974 IN DETERMINING THE CLASSIFICATION OF THE PROPERTIES SUBJECT OF EXPROPRIATION.

A. TAX DECLARATIONS AND THE MUNICIPAL ZONING ORDINANCE ARE NOT CONTROLLING BUT ARE MERE FACTORS AMONG SEVERAL OTHER FACTORS IN DETERMINING THE CLASSIFICATION OF THE EXPROPRIATED PROPERTY.

B. THE CLASSIFICATION OF THE SURROUNDING PROPERTIES AND THE ACTUAL USE OF THE PROPERTY SOUGHT TO BE EXPROPRIATED AT THE TIME OF THE TAKING, PARTICULARLY IN THIS CASE WHERE THE LAND IS RAW, UNCULTIVATED, AGRICULTURAL PROPERTY, SHOULD BE CONSIDERED IN DETERMINING THE CLASSIFICATION OF THE PROPERTY FOR PURPOSES OF PAYMENT OF THE BIR ZONAL VALUATION;

C. ACCORDINGLY, IN CASE OF DOUBT AS TO THE CLASSIFICATION OF THE PROPERTY, THE COURT SHOULD MAKE A JUDICIAL DETERMINATION OF THE CLASSIFICATION OF THE PROPERTY FOR PURPOSES OF PAYMENT OF THE BIR ZONAL VALUATION;

III

COROLLARY THERETO, AND IN ACCORDANCE WITH THE RULE ON MULTIPLE ADMISSIBILITY OF EVIDENCE, THE FACT THAT PETITIONER INTRODUCED TAX DECLARATIONS OF THE EXPROPRIATED PROPERTIES SOLELY AS PROOF OF OWNERSHIP OF THE EXPROPRIATED PROPERTY DOES NOT PRECLUDE PETITIONER FROM QUESTIONING RESPONDENTS' UNILATERAL STATEMENT IN THEIR TAX DECLARATIONS THAT THE PROPERTIES ARE RESIDENTIAL.

In paying a property owner 100% of the value of a property based on the current relevant zonal valuation of the BIR for the purpose of an issuance of a writ of possession, under which classification of the expropriated property should petitioner, as the implementing agency, be required to make such payment? This, according to petitioner, is the issue in this petition.

Section 4 of Republic Act No. 8974 (An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes) provides the guidelines for expropriation proceedings. Said section reads:

SECTION 4. Guidelines for Expropriation Proceedings. — Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

(b) In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of filing of the expropriation case, to come up with a zonal valuation for said area; and

(c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court. (Underscoring supplied)

Under said law, the requirements for authorizing immediate entry in expropriation proceedings involving real property are: (1) the filing of a complaint for expropriation sufficient in form and substance; (2) due notice to the defendant; (3) payment of an amount equivalent to 100% of the value of the property based on the current relevant zonal valuation of the BIR including payment of the value of the improvements and/or structures if any, or if no such valuation is available and in cases of utmost urgency, the payment of the proffered value of the property to be seized; and (4) presentation to the court of a certificate of availability of funds from the proper officials.[54]

Upon compliance with the requirements, a complainant in an expropriation case is entitled to a writ of possession as a matter of right, and it becomes the ministerial duty of the trial

---

[54] *Capitol Steel Corporation v. PHIVIDEC Industrial Authority,* G.R. No. 169453, 6 December 2006, 510 SCRA 590, 602.

court to forthwith issue the writ of possession. No hearing is required, and the court exercises neither its discretion nor its judgment in determining the amount of the provisional value of the properties to be expropriated, as the legislature has fixed the amount under Section 4 of Republic Act No. 8974.[55]

In the instant case, petitioner does not dispute that the provisional value to be paid before a writ of possession can be issued is 100% of the value of the property based on the current relevant zonal valuation by the BIR. What it questions is the **classification** of the properties sought to be expropriated, which will then be used in determining the 100% value of the property based on the current relevant zonal valuation of the BIR.

Petitioner contends that the subject properties are agricultural for the following reasons: (1) the BIR Zonal Valuation classifies properties in Barangay Balaytigue, Nasugbu, Batangas as Residential, Agricultural, Commercial and Industrial; (2) the properties involved are actually used for agricultural purposes (raw, undeveloped with no houses); and (3) all the adjoining properties are classified as agricultural. On the other hand, respondents Far East and the Bernasconis assert that their properties are residential pursuant to Municipal Ordinance No. 3 enacted by the *Sangguniang Bayan* of Nasugbu, Batangas on 3 May 1982, and that said reclassification was reflected in their corresponding tax declarations for the properties.

Petitioner argues that in cases where there is a dispute on the classification of the property, the trial court is under obligation to judicially determine the classification of the property prior to requiring the payment of the amount based on the BIR zonal value. It should be allowed to present evidence of the proper classification of the properties. Petitioner adds that nothing in Republic Act No. 8974 compels it or the Court to classify the property based on tax declarations, for the latter has judicial discretion to ascertain the classification and nature of the property based on the standards set under Section 5 of Republic Act

---

[55] *Id*.

No. 8974. Petitioner states that the expropriation court is not bound by a property owner's statement in the tax declaration that his property is residential or by a municipal zoning ordinance that classifies the property as such, when there exists controverting evidence to the contrary. Thus, petitioner faults both the trial court and the appellate court for ruling that the lands involved are residential, notwithstanding petitioner's claim that the there is evidence to show that the same are agricultural.

It is clear from the foregoing that petitioner is questioning the classification of the lands involved.

We agree with petitioner that the courts have judicial discretion to determine the classification of lands, because such classification is one of the relevant standards for the assessment of the value of lands, subject of expropriation proceedings. It is one factor that the courts consider in determining just compensation. The determination of just compensation is a function addressed by the courts of justice and may not be usurped by any other branch or official of the government.[56] However, we would like to make it clear that Section 5 of Republic Act No. 8974 lists the relevant standards that are to be considered in determining just compensation for and not classification of lands, as petitioner would like us to believe.

Section 5 of Republic Act No. 8974 enumerates the standards that assist in the determination of just compensation:

SEC. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. – In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

---

[56] *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108, 122.

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

The more important query to be resolved is: Are the courts, in the first instance, the proper venue in which to resolve any dispute involving the classification of lands?

We do not think so.

By questioning the classification of the lands involved, petitioner is, in effect, questioning the propriety, wisdom and legality of the act of the Municipal Council of Nasugbu, Batangas of reclassifying the subject lands as Residential. Per certification of the Office of the Municipal Planning and Development Coordinator/Zoning Administrator of the Municipality of Nasugbu, Batangas, the lands of Far East and the Bernasconis sought to be expropriated were classified as Residential, pursuant to Municipal Zoning Ordinance No. 3 dated 3 May 1982, as approved under Resolution No. 123, series of 1983 dated 4 May 1983 by the Human Settlement Regulatory Commission (now HLURB[57]).

This Court recognizes the power of a local government to reclassify and convert lands through local ordinance, especially if said ordinance is approved by the HLURB.[58] In *Pasong*

---

[57] Housing Land Use and Regulatory Board.

[58] *Sta. Rosa Realty Development Corporation v. Amante,* G.R. Nos. 112526 and 118838, 453 SCRA 432, 459.

Bayabas Farmers Association, Inc. v. Court Appeals,[59] we acknowledged the power of local government units to adopt zoning ordinances. Discretion is vested in the appropriate government agencies to determine the suitability of a land for residential, commercial, industrial or other purposes.[60] It is also a settled rule that an ordinance enjoys the presumption of validity.[61] Having the power to classify lands, the local government unit may consider factors that are just, reasonable and legal, for it is within the local government unit's power to determine these. However, if they abuse their authority in the performance of this duty, the courts, if prompted, can step in.

Section 20 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, empowers the local government units to reclassify agricultural lands:

> Sec. 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 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 third class municipalities, ten percent (10%); and

---

[59] 473 Phil. 64, 95 (2004).

[60] *De Guzman v. Court of Appeals,* G.R. No. 156965, 12 October 2006, 504 SCRA 238, 250.

[61] *Social Justice Society v. Atienza, Jr.,* G.R. No. 156052, 13 February 2008, 545 SCRA 92, 115.

(3) For fourth to sixth class municipalities, five percent (5%); *Provided further*, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act 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.

xxx xxx xxx

(c) The local government units shall in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted though 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.

xxx xxx xxx

(e) Nothing in this section shall be construed as repealing, amending or modifying in any manner the provisions of R.A. No. 6657.

In the case before us, the lands in question had long been (almost 20 years) reclassified as residential before the instant case was filed. All those years, no one questioned the ordinance reclassifying the lands. If petitioner would like to have the reclassification of the lands involved changed to agricultural, the just and reasonable way of doing it is to go to the municipal council — not the courts – that enacted the ordinance and to ask that the lands be reclassified again as agricultural. Technical matters such as zoning classifications and building certifications should be primarily resolved first by the administrative agency whose expertise relates therein.[62] The jurisprudential trend is for courts to refrain from resolving a controversy involving matters that demand the special competence of administrative agencies, "even if the question[s] involved [are] also judicial in character."[63] In this manner, we give the

---

[62] *Sadang v. Court of Appeals*, G.R. No. 140138, 11 October 2006, 504 SCRA 137, 145-146.

[63] *Department of Agrarian Reform v. Cuenca*, 482 Phil. 208, 226 (2004).

respect due to these agencies (the municipal council and the Human Settlement Regulatory Commission [now HLURB]), which unquestionably have primary jurisdiction to rule on matters of classification of lands.

In *Solmayor v. Arroyo*,[64] we declared:

> Well settled is the principle that by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. Accordingly, since specialized government agencies tasked to determine the classification of parcels of land, such as the Bureau of Soils and the HLURB, among other agencies, have already certified that the subject land is residential/commercial, the Court must accord such conclusions great respect, if not finality, in the absence of evidence to the contrary.[65]

Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed. Thus, in the absence of evidence to the contrary, there is a presumption that public officers performed their official duties regularly and legally and in compliance with applicable laws, in good faith, and in the exercise of sound judgment.[66] This presumption applies to this case.

If after going to the local government unit or government agencies that made the classification of the lands and the implementing agency fails to obtain the redress they seek (proper classification), despite evidence clearly showing erroneous classification, it is only then that it can go to the court to ask for intervention.

---

[64] G.R. No. 153817, 31 March 2006, 486 SCRA 326.

[65] *Id*. at 347.

[66] *United BF Homeowners' Associations, Inc. v. The (Municipal) City Mayor, Parañaque City,* G.R. 141010, 7 February 2007, 515 SCRA 1, 12.

In the case at bar, the trial court and the Court of Appeals based their classification of the lands concerned, not only on the tax declarations, but more importantly on the certification issued by the Office of the Municipal Planning and Development Coordinator/Zoning Administrator of the Municipality of Nasugbu, Batangas that said lands had been (re)classified as residential pursuant to Municipal Zoning Ordinance No. 3 dated 3 May 1982 as approved under Resolution No. 123, series of 1983 dated 4 May 1983 by the Human Settlement Regulatory Commission (now HLURB). The tax declarations adduced and the certification show that the lands concerned are classified as residential. There is no discrepancy between the two as regards classification. Even if there is any inconsistency, what prevails is the determination for zoning purposes.[67]

There is no question that a local government unit can determine the suitability of a land for residential, commercial, industrial of for other purposes. It can do this through an ordinance passed by the *Sanggunian* for the purpose.[68] Moreover, under Section 447 of Republic Act No. 7160, the *Sangguniang Bayan* or the Municipal Council, as the legislative body of the municipality, has the power to enact ordinances for the general welfare of the municipality and its inhabitants. Among the functions of the *Sangguniang Bayan* enumerated under Section 447 of Republic Act No. 7160 are:

> (2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:
>
> xxx xxx xxx
>
> (vii) Adopt a comprehensive land use plan for the municipality: *Provided*, That the formulation,

---

[67] *Junio v. Garilao*, G.R. 147146, 29 July 2005, 465 SCRA 173, 189.

[68] Section 20, Local Government Code.

> adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;
>
> (viii) Reclassify land within the jurisdiction of the municipality subject to the pertinent provision of this Code; x x x.

Under the facts obtaining, this Court agrees with both lower courts that the classification of the lands concerned is residential. No other certification from the municipal council has been presented to show that a new zoning ordinance has been passed by it changing the present classification of the lands, subject of the expropriation case. Even if we consider the allegations of petitioner that said lands are actually used for agriculture, and that the lands adjoining the same are all classified as agricultural, the same will not necessarily change said classification to agricultural.

Even assuming that the lands are still used for agricultural purposes, this will not cause the reversion of the classification of the lands to agricultural. In *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*,[69] we ruled that the failure of the landowner to complete the housing project did not have the effect of reverting the property to its former classification. In *De Guzman v. Court of Appeals*,[70] we held that the continuous tillage of the land and the non-commencement of the construction of the market complex did not strip the land of its classification as commercial. Furthermore, even assuming that all the adjoining lands are still classified as agricultural, this does not mean that lands involved cannot be classified differently, as in this case. In the certification issued by the Office of the Municipal Planning and Development Coordinator/ Zoning Administrator of the Municipality of Nasugbu, Batangas, the parcels of land reclassified, including those of Far East and the Bernasconis which petitioner seeks to expropriate, were individually listed.

---

[69] *Supra* note 59 at 96.

[70] *Supra* note 60 at 251.

We note that petitioner, in its Complaint, classified the lands of Far East and the Bernasconis as Residential/Agricultural, while the properties of Arsol were classified as Agricultural.[71] Petitioner uniformly pegged the zonal valuation of all the lands sought to be expropriated at ₱75.00 per square meter. The classification it made for the lands of Far East and the Bernasconis was residential/agricultural, but the zonal valuation was for agricultural lands. From the tax declarations[72] it attached to the complaint, it is clear that the lands of Far East and the Bernasconis were classified as Residential. Why not use then the zonal valuation for residential, which was ₱500.00 per square meter? As to the lands of Arsol, they were classified as agricultural in the tax declarations, so petitioners used the zonal valuation for agricultural lands, which was ₱75.00 per square meter. From the foregoing, it can be gathered that from the very inception of this case, petitioner, though knowing that the lands of Far East and the Bernasconis were classified as residential, still used the zonal valuation for agricultural lands (₱75.00 per square meter). Petitioner knew that the lands of Far East and the Bernasconis were classified as residential, and this was why it indicated in its complaint the classification "Residential/ Agricultural." It cannot simply do away with the classification made in the tax declaration. It also used the said classification ("Residential/Agricultural") to justify the zonal value it indicated in the complaint. Thus, petitioner classified the lands of Far East and the Bernasconis in its own way, contrary to the documents it had. What further militates against petitioner's claim that the lands of Far East and the Bernasconis are agricultural is the certification of the Office of the Municipal Planning and Development Coordinator/Zoning Administrator of the Municipality of Nasugbu, Batangas that the said lands have been classified as residential by Municipal Zoning Ordinance No. 3 dated 3 May 1982 as approved under Resolution No. 123, series of 1983 dated 4 May 1983 by the Human Settlement Regulatory Commission (now HLURB).

---

[71] Table, Records, Vol. 1, p. 4.

[72] Annexes "A" to "N"; *id*. at 15-28.

Inasmuch as what is involved in this case is the payment of the amount equivalent to 100% of the value of the property based on the current relevant zonal valuation of the BIR, we must distinguish the same from just compensation. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*,[73] we ruled:

> To clarify, the payment of the provisional value as a prerequisite to the issuance of a writ of possession differs from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. As the appellate court explained:
>
> > The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is not a final determination of just compensation and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of just compensation.
> >
> > Just compensation, on the other hand, is the final determination of the fair market value of the property. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market values, has also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality.

As the preliminary or provisional determination of the value of the property equivalent to 100% of the value of the property based on the current relevant zonal valuation of the BIR, said

---

[73] *Supra* note 54 at 602-603.

amount serves a double purpose of pre-payment if the property is fully expropriated, and of indemnity for damages if the proceedings are dismissed. Said provisional value must be paid to the owner of the land before a writ of possession may be issued. The issuance of a certificate of availability of funds will not suffice for the purpose of issuance of a writ of possession.

After payment of the provisional amount, the court may now proceed to determine the amount of just compensation. Petitioner can now present its evidence relative to the properties' fair market value as provided in Section 5 of Republic Act No. 8974.[74]

WHEREFORE, premises considered, the decision of the Court of Appeals dated 9 November 2006 in CA-G.R. SP No. 72425 is hereby *AFFIRMED*. No costs.

SO ORDERED.

Puno,[***] *C.J., Carpio Morales,*[****] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[74] *Republic v. Cancio,* G.R. No. 170147, 30 January 2009.

[***] Chief Justice Reynato S. Puno was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 13 February 2009.

[****] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 179941. August 25, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LITO MACABARE *y* LOPEZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; SUFFICIENT TO CONVICT THE ACCUSED IF IT SHOWS A SERIES OF CIRCUMSTANCES DULY PROVED AND CONSISTENT WITH EACH OTHER.— To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Circumstantial evidence on record will be sufficient to convict the accused if it shows a series of circumstances duly proved and consistent with each other. Each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence. The circumstances must be proved, and not themselves presumed.

2. ID.; ID.; ID.; ID.; PROVEN IN CASE AT BAR.— The appellate court, in affirming Macabare's conviction, relied on the following circumstantial evidence: *First*, Macabare was assigned a *kubol* inside Cell No. 2. This served as his quarters. *Second*, he was the lone occupant assigned to the *kubol*. *Third*, when the inspection team reached Macabare's *kubol* inside Cell No. 2, SJO2 Sarino spotted a Coleman cooler. He discovered a plastic pack wrapped in a towel which was on top of the cooler. *Fourth*, the plastic pack contained white crystalline granules which later tested positive for *shabu*. And *last*, Macabare was not able to explain how the plastic pack containing the *shabu* ended up in his *kubol*. These circumstances were duly proved at the trial and are consistent with a finding of guilt. This set of circumstances sufficiently leads one to conclude that Macabare indeed owned the contraband.

3. ID.; ID.; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF OWNERSHIP; NOT OVERCOME IN CASE AT BAR.— The defense failed to disprove Macabare's ownership of the contraband. They were unable to rebut the finding of possession by Macabare of the *shabu* found in his *kubol*. Such possession gave rise to a disputable presumption under Sec. 3(j), Rule 131 of the Rules of Court. x x x Constructive possession can also be inferred from the circumstancial evidence presented. The discussion found in *People v. Tira* clearly explains the concept: x x x This crime is *mala prohibita*, and as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another. Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation. In Macabare's case, the defense was not able to present evidence refuting the showing of *animus possidendi* over the *shabu* found in his *kubol*. Macabare's insistence that someone else owned the *shabu* is unpersuasive and uncorroborated. It is a mere denial which by itself is insufficient to overcome this presumption.

The presumption of ownership, thus, lies against Macabare. Moreover, it is well-established that the defense of alibi or denial, in the absence of convincing evidence, is invariably viewed with disfavor by the courts for it can be easily concocted, especially in cases involving the Dangerous Drugs Act.

4. ID.; ID.; ID.; ID.; PRESUMPTION OF REGULARITY; CONSTITUTIONAL PRESUMPTION OF INNOCENCE ASSUMES PRIMACY OVER THE PRESUMPTION OF REGULARITY; INAPPLICABLE TO CASE AT BAR; EXPLAINED.— Macabare claims also that the rebuttable presumption that official duty has been regularly performed cannot by itself prevail over the presumption of innocence that an accused enjoys. This claim is valid to a point. Indeed, the constitutional presumption of innocence assumes primacy over the presumption of regularity. We cannot, however, apply this principle to the instant case. The circumstantial evidence imputing *animus posidendi* to Macabare over the prohibited substance found in his *kubol* coupled with the presumption of regularity in the performance of official functions constitutes proof of guilt of Macabare beyond a reasonable doubt. More so, the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive in falsely imputing a serious crime to Macabare.

5. ID.; ID.; CREDIBILITY OF WITNESSES; POSITIVE DECLARATIONS PREVAIL OVER BARE DENIALS.— The positive and categorical testimony of SJO2 Sarino satisfactorily proves Macabare's guilt of illegal possession of *shabu*. We agree with the CA when it ruled that Macabare's mere denial cannot outweigh circumstantial evidence clearly establishing his participation in the crime charged. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused. The evidence for the prosecution was found by both the trial and appellate courts to be sufficient and credible while Macabare's defense of denial was weak, self-serving, speculative, and uncorroborated. An accused can only be exonerated if the prosecution fails to meet the quantum of proof required to overcome the constitutional presumption of innocence. We find that the prosecution has met this quantum of proof in the instant case.

6. ID.; APPEALS.; FACTUAL FINDINGS OF FACT OF TRIAL COURT WHICH ARE AFFIRMED BY THE COURT OF APPEALS ARE ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL.— All told, we sustain the findings of both the RTC and the CA. The trial court's determination on the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. We defer to its findings since, simply put, they can easily detect whether a witness is telling the truth or not.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the June 26, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00661 entitled *People of the Philippines v. Lito Macabare y Lopez*, which affirmed the Decision of Branch 35 of the Regional Trial Court (RTC) in Manila in Criminal Case No. 01-191383 finding accused-appellant Lito Macabare guilty of violation of Section 16 of Republic Act No. (RA) 6425 or *The Dangerous Drugs Act of 1972*.

The Facts

The Information filed against Macabare reads:

That on or about January 18, 2001, in the City of Manila, Philippines, the said accused, without being authorized by law to possess or use [any] regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) transparent plastic bag containing FOUR HUNDRED TEN POINT SIX (410.6) grams of white crystalline

substance known as "shabu" containing methamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof.

Contrary to law.[1]

Upon his arraignment, Macabare gave a not guilty plea. Trial ensued and the prosecution presented Senior Jail Officer II (SJO2) Arnel V. Sarino and Forensic Chemist Emilia Andeo-Rosales as witnesses. The defense presented Macabare as lone witness.

Version According to the Prosecution

Macabare, a detention prisoner charged with kidnapping, had been at the Manila City Jail since 1995. He was assigned to Cell No. 2 which sheltered 200 inmates. The cell was further divided into 30 cubicles or *kubol*s. Each *kubol* had its own sliding door and improvised locks.[2]

On January 18, 2001, between 11 and 12 o'clock in the evening, Inspector Alvin Gavan received a confidential report that *shabu* had been smuggled into the Manila City Jail and hidden in Cell No. 2. A team was thus sent to inspect all the *kubol*s in the said cell. All the inmates were ordered to line up outside while the inspection was being conducted. SJO2 Sarino reached Macabare's *kubol*. He was the lone occupant. A Coleman cooler was found in the *kubol* and it had a folded towel on top. When SJO2 Sarino spread out the towel he found a plastic bag inside which contained a white crystalline substance. The team suspected the substance to be *shabu* and then brought Macabare to the office for further investigation.[3]

City Jail Warden Macumrang Depantar sent the suspected *shabu* to the National Bureau of Investigation laboratory through his authorized personnel. The seized white crystalline substance

---

[1] CA *rollo,* p, 49.

[2] *Rollo,* pp. 4-5.

[3] *Id.* at 5.

was later confirmed to be *shabu* or methylamphetamine hydrochloride.[4]

Version of the Defense

Macabare denied ownership or knowledge of the confiscated *shabu*. He testified that he was strolling outside his *kubol* close to midnight on January 18, 2001 when some jail personnel came and instructed all the inmates of Cell No. 2 to get out of bed and go outside. A short while later, SJO2 Sarino discovered a packet of *shabu* near Macabare's chair. Macabare was, thus, forcibly brought to the office for investigation. He denied owning the contraband and averred that a lot of inmates slept at his *kubol* at will.[5]

The Ruling of the Trial Court

On November 16, 2001, the trial court rendered judgment against Macabare. It found that the prosecution offered sufficient circumstantial evidence to sustain a finding of guilt beyond reasonable doubt. The trial court noted that Macabare's unconfirmed defense of alibi was weak and could not outweigh the positive probative value of the prosecution's evidence. The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is rendered pronouncing accused LITO MACABARE *y* LOPEZ guilty beyond reasonable doubt of possession of 410.60 grams of methylamphetamine hydrochloride without license or prescription therefor, and sentencing said accused to *reclusion perpetua* and to pay a fine of ₱5,000,000.00 plus the costs.
>
> xxx xxx xxx
>
> SO ORDERED.

Macabare appealed the RTC Decision to this Court. We, however, transferred his appeal to the CA pursuant to *People v. Mateo*.[6]

---

[4] CA *rollo*, p. 50.

[5] *Id*.

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

Before the CA, Macabare argued that it was error on the trial court's part to have found him guilty on the basis of mere circumstantial evidence.

The Ruling of the CA

On June 26, 2007, the CA affirmed the RTC Decision with a modification on Macabare's pecuniary liability. It ruled that the circumstances provided by the prosecution satisfied the requirements found in the Rules on Evidence and proved the elements of the offense of possession of illegal drugs. Moreover, the appellate court agreed with the RTC's finding that credence should be given to the straightforward and consistent testimonies of the prosecution witnesses rather than Macabare's bare denial. It likewise observed that the police officers who testified were not shown to have been moved by some improper motive against Macabare. The fine imposed on Macabare was reduced considering that he was a detention prisoner and the quantity of the *shabu* confiscated from him.

The CA disposed of the case as follows:

> WHEREFORE, in view of the foregoing premises, We resolve to DISMISS the appeal and AFFIRM the Decision dated November 16, 2001 of the RTC in Manila with the modification that the fine imposed is reduced from ₱5,000.000.00 to ₱500,000.00.
>
> IT IS SO ORDERED.[7]

On July 18, 2007, Macabare filed a Notice of Appeal notifying the CA that he was appealing his conviction before this Court.

On January 23, 2008, this Court required the parties to submit supplemental briefs if they so desired. The People, through the Office of the Solicitor General (OSG), manifested its willingness to submit the case on the basis of the records already submitted. Macabare, on the other hand, raised and reiterated his arguments for his acquittal in his Supplemental Brief.[8]

---

[7] CA *rollo*, p. 53. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman.

[8] *Rollo*, p. 22.

The Issues

I

WHETHER THE SET OF CIRCUMSTANTIAL EVIDENCE ESTABLISHED BY THE PROSECUTION IS INSUFFICIENT TO PRODUCE A CONVICTION, BEYOND REASONABLE DOUBT, THAT THE DRUGS FOUND IN THE *KUBOL* OF ACCUSED-APPELLANT WERE HIS;

II

WHETHER THE ACCUSED-APPELLANT'S PRESUMPTION OF INNOCENCE SHOULD PREVAIL OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS BY PUBLIC OFFICERS.

In his appeal, Macabare disputes the finding that the 410.6 grams of *shabu* found in Cell No. 2 belonged to him. He explains that the arrangement in each cell is such that his cubicle or *kubol* had many occupants. Other inmates, especially old-timers, slept in the *kubol* with him. He argues that it was possible then for the Coleman cooler to have been placed inside his *kubol* by some inmates who were frightened by the surprise inspection by the jail officers. He emphasizes that the prosecution failed to establish that the Coleman cooler was even his. The evidence of the prosecution, he claims, was, therefore, weak and did not overcome the presumption of innocence he enjoys.

The OSG, on the other hand, stresses that all the circumstances shown by the prosecution are enough to convict Macabare. In contrast, the OSG asserts, Macabare was not able to adequately explain the presence of the *shabu* in his *kubol*. Such failure showed that the defense was not able to overturn the disputable presumption that things which a person possesses or over which he exercises acts of ownership are owned by him. The OSG also contends that Macabare's defenses of frame-up and alibi are unsubstantiated by clear and convincing evidence.

The Court's Ruling

We affirm Macabare's conviction.

Circumstantial Evidence

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Circumstantial evidence on record will be sufficient to convict the accused if it shows a series of circumstances duly proved and consistent with each other. Each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.[9] The circumstances must be proved, and not themselves presumed.[10]

The appellate court, in affirming Macabare's conviction, relied on the following circumstantial evidence: *First*, Macabare was assigned a *kubol* inside Cell No. 2. This served as his quarters. *Second*, he was the lone occupant assigned to the *kubol*. *Third*, when the inspection team reached Macabare's *kubol* inside Cell No. 2, SJO2 Sarino spotted a Coleman cooler. He discovered a plastic pack wrapped in a towel which was on top of the cooler. *Fourth*, the plastic pack contained white crystalline granules which later tested positive for *shabu*. And *last*, Macabare was not able to explain how the plastic pack containing the *shabu* ended up in his *kubol*. These circumstances were duly proved at the trial and are consistent with a finding of guilt. This set of circumstances sufficiently leads one to conclude that Macabare indeed owned the contraband. Moreover, the prosecution was able to show Macabare's liability under the concepts of disputable presumption of ownership and constructive possession.

The defense failed to disprove Macabare's ownership of the contraband. They were unable to rebut the finding of possession by Macabare of the *shabu* found in his *kubol*. Such possession gave rise to a disputable presumption under Sec. 3(j), Rule 131 of the Rules of Court, which states:

---

[9] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 318.

[10] *Id.*; citing Francisco, *EVIDENCE* 605.

Sec. 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him

Constructive possession can also be inferred from the circumstancial evidence presented. The discussion found in *People v. Tira*[11] clearly explains the concept:

x x x This crime is *mala prohibita*, and as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.

---

[11] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 151.

In Macabare's case, the defense was not able to present evidence refuting the showing of *animus possidendi* over the *shabu* found in his *kubol*. Macabare's insistence that someone else owned the *shabu* is unpersuasive and uncorroborated. It is a mere denial which by itself is insufficient to overcome this presumption.[12] The presumption of ownership, thus, lies against Macabare. Moreover, it is well-established that the defense of alibi or denial, in the absence of convincing evidence, is invariably viewed with disfavor by the courts for it can be easily concocted, especially in cases involving the Dangerous Drugs Act.[13]

Presumption of Regularity

Macabare claims also that the rebuttable presumption that official duty has been regularly performed cannot by itself prevail over the presumption of innocence that an accused enjoys. This claim is valid to a point. Indeed, the constitutional presumption of innocence assumes primacy over the presumption of regularity.[14] We cannot, however, apply this principle to the instant case. The circumstantial evidence imputing *animus posidendi* to Macabare over the prohibited substance found in his *kubol* coupled with the presumption of regularity in the performance of official functions constitutes proof of guilt of Macabare beyond a reasonable doubt. More so, the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive[15] in falsely imputing a serious crime to Macabare.[16]

---

[12] *People v. Hindoy*, G.R. No. 132662, May 10, 2001, 357 SCRA 692, 706.

[13] *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471, 485.

[14] *People v. Timtiman*, G.R. No. 101663, November 4, 1992, 215 SCRA 364, 374.

[15] See *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 454.

[16] See *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 753.

Macabare was charged with a serious offense and yet he did not bother to present any motive for the jail officers to falsely accuse him. According to him, he has no idea why the jail officers would be singling him out as the owner of over 400 grams of *shabu*.[17] He also could not explain the presence of a packet of *shabu* found near his bed. He did not question the prosecution's assertion that he was the sole inmate assigned to the *kubol* where the shabu was found; although he claimed that there were also other people, more or less 20 different inmates, who would sleep there.[18] He simply denied ownership of the *shabu* and the cooler and towel found with it without adducing evidence to fortify his claim that other inmates had access to his *kubol* and could have placed the stash of *shabu* near his bed to avoid getting caught. Macabare, indeed, has not presented a strong defense to the crime charged.

SJO2 Sarino, on the other hand, gave a straightforward and detailed testimony on the discovery of the *shabu* in Macabare's cubicle:

Prosecutor Senados

Q: Now, [after] you were constituted as the team to conduct search on cell no. 2, do you recall if there were preparations that you made before you implement your duty?

A: There [were], sir.

Q: What were these preparations?

A: We first prepared the sketch of the said cell and then we were [each] positioned in [a] strategic place [for entry]. [We] also brought with us flashlight just in case there will be unexpected brown out, sir.

Q: Now, Mr. witness, since you said you were assigned at the said strategic place, where were you designated?

A: I was placed at the back door of cell no. 2, sir.

---

[17] TSN, September 27, 2001, p. 10.

[18] *Id.* at 9.

Q: Now, after the preparations were made, what happened?

A: We went to the said cell, sir.

Q: What happened when you entered cell no. 2?

A: Immediately, we asked the inmates therein to fall in line, sir.

Q: And after… after they were made to fall in line, what happened?

A: We conducted [the inspection] [at] their respective "*kubol*," sir.

Q: Do you recall how many cubicles you [were] able to search Mr. witness?

A: I was able to search five (5) *kubols*, sir.

Q: And what did you find inside these five (5) *kubols* that you searched?

A: In one of the [kubols] occupied by the inmate [I] was able to find *shabu*, sir.

Q: How would you describe the shabu that you discovered inside the *kubol*?

A: When I was conducting search on the *kubol*, incidentally, I pulled this [Coleman], sir.

Q: Where was it placed?

A: Inside that *kubol*, sir.

Q: So, now, what happened after you pulled out that cooler?

A: I saw a towel inside, sir.

Q: And where was the towel placed?

A: [When] I folded this towel, this towel was folded this way placed on top of the [Coleman] and what I did [was] to feel it, sir.

Q: Now, when you felt the towel, what happened?

A: I opened it and then I found suspected *shabu*, sir.

Q: And this suspected *shabu*, where was this placed?

A: Inside the folded towel, sir.

Q: Now, was it contained in some form of container or was it just wrapped by the said towel?

A: It is contained in a transparent plastic bag which was [sealed], sir.

Q: Now, Mr. witness, is that [cooler] that you are showing us the same cooler that you found inside the *kubol*?

A: Yes sir.

Q: And is that towel that you are showing us the same towel that you found on top of that cooler?

A: Yes, sir.

xxx xxx xxx

Q: By the way, do you recall who opened that or who was the occupant of that *kubol* from where you found the *shabu* you mentioned?

A: After we [found] this, we immediately inquired who [the] occupant of that *kubol* [was] and then an inmate by the name of Lito Macabare *y* Lopez admitted it, sir.

Q: Now this Lito Macabare, is he present this morning?

A: Yes, sir.

Q: If you are asked to identify him, will you be able to do so?

A: Yes, sir.

xxx xxx xxx

(at this juncture, the witness stepped down from the witness stand, approached a certain person inside the courtroom and tapped his shoulder and mentioned the name Lito Macabare)

xxx xxx xxx

Q: Now, after that Mr. witness, what did you do, if any?

A: We invited him to our office, sir.

Q: When you say your office, you are referring to the intelligence branch?

A: Yes, sir, I.I.B.

Q: Now, Mr. witness, what happened after you invited him to your office?

A: We [had] him undergo investigation, sir.

Q: How, Mr. witness?

A: We asked him if he is the owner of the *shabu* that was confiscated, sir.

Q: Now, how about the owner of the *kubol*, did you also ask him?

A: Yes, sir.

Q: What were his answers to your queries?

A: He is the one, sir.

Q: So, Mr. witness, this shabu that you said you found inside the kubol of Mr. Macabare, [if that] is shown to you again or the plastic containing the *shabu*, if that is shown to you again, can you still identify it?

A: Yes, sir.

Q: What would be your basis in identifying it?

A: We placed the markings, sir.

Q: Who exactly placed the markings?

A: I myself placed the markings, sir.

Q: And what were the markings that you placed on it?

A: Letters "L.M.L." [which] stand for "Lito Macabare *y* Lopez," sir.

Q: Mr. witness, I'm showing you a [transparent] plastic containing brownish crystalline substance, will you please examine this and tell us if that is the one that you were mentioning[?]

A: This is the one, sir.

xxx xxx xxx

Prosecutor Senados

We would like to manifest, Your Honor, that the [transparent] plastic identified by the witness has the markings, "LML," Your Honor.

Q: What else happened at the IIB office Mr. witness?

A: We forwarded that item to the NBI for laboratory examination, sir.[19]

The positive and categorical testimony of SJO2 Sarino satisfactorily proves Macabare's guilt of illegal possession of *shabu*. We agree with the CA when it ruled that Macabare's mere denial cannot outweigh circumstantial evidence clearly establishing his participation in the crime charged. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused.[20] The evidence for the prosecution was found by both the trial and appellate courts to be sufficient and credible while Macabare's defense of denial was weak, self-serving, speculative, and uncorroborated. An accused can only be exonerated if the prosecution fails to meet the quantum of proof required to overcome the constitutional presumption of innocence.[21] We find that the prosecution has met this quantum of proof in the instant case.

All told, we sustain the findings of both the RTC and the CA. The trial court's determination on the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. We defer to its findings since, simply put, they can easily detect whether a witness is telling the truth or not.[22]

As to the fine imposed on Macabare, the appellate court, citing *People v. Lee*,[23] reduced it from PhP 5 million to PhP 500,000 in view of the quantity of the *shabu* (410.6 grams)

---

[19] TSN, September 18, 2001, pp. 4-8.

[20] *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 390.

[21] *Su Zhi Shan v. People*, G.R. No. 169933, March 9, 2007, 518 SCRA 48, 65.

[22] *Mateo*, *supra* note 20, at 394.

[23] G.R. No. 140919, March 20, 2001, 354 SCRA 745, 754-755.

involved. We affirm the CA's modification of the fine imposed as it is within the range prescribed by RA 6425, as amended.[24]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00661 finding accused-appellant Lito Macabare guilty beyond reasonable doubt of violating Sec. 16 of RA 6425 is *AFFIRMED*.

SO ORDERED.

Chico-Nazario (Acting Chairperson),[*] *Carpio Morales,*[**] *Nachura,* and *Peralta, JJ.,* concur.

---

[24] *Lee, id.* Secs. 16 and 17 of RA 6425, as amended, pertinently provide:

Sec. 16. *Possession or Use of Regulated Drugs.*—The penalty of *reclusion perpetua* to death and a **fine** ranging from **five hundred thousand pesos [Php 500,000]** to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

> Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*.—The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
>
> x x x x x x x x x
>
> 3. **200 grams or more of *shabu* or methylamphetamine hydrochloride**. (Emphasis supplied.)

[*] As per Special Order No. 678 dated August 3, 2009.

[**] Additional member as per Special Order No. 679 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 181972. August 25, 2009]

PHILIPPINE HOTELIERS, INC., DUSIT HOTEL NIKKO-MANILA, *petitioner, vs.* **NATIONAL UNION OF WORKERS IN HOTEL, RESTAURANT, AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF)-DUSIT HOTEL NIKKO CHAPTER,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; CONDITIONS OF EMPLOYMENT; WAGES; SECTION 13 OF WAGE ORDER NO.9 ON CREDIBILITY IS IRRELEVANT AND INAPPLICABLE IN CASE AT BAR.— The Union harps on the fact that its CBA with Dusit Hotel does not contain any provision on creditability, thus, Dusit Hotel cannot credit the salary increases as compliance with the ECOLA required to be paid under WO No. 9. The reliance of the Union on Section 13 of WO No. 9 in this case is misplaced. Dusit Hotel is not contending creditability of the hotel employees' salary increases as compliance with the ECOLA mandated by WO No. 9. Creditability means that Dusit Hotel would have been allowed to pay its employees the salary increases **in place** of the ECOLA required by WO No. 9. This, however, is not what Dusit Hotel is after. The position of Dusit Hotel is merely that the salary increases should be taken into account in determining the employees' entitlement to ECOLA. The retroactive increases could raise the hotel employees' daily salary rates above ₱290.00, consequently, placing said employees **beyond** the coverage of WO No. 9. Evidently, Section 13 of WO No. 9 on creditability is irrelevant and inapplicable herein.

2. ID.; ID.; ID.; ID.; IN DETERMINING ENTITLEMENT OF THE HOTEL EMPLOYEES TO EMERGENCY COST OF LIVING ALLOWANCE (ECOLA) UNDER WAGE ORDER NO. 9, THEIR INCREASED SALARIES BY 1 JANUARY 2001 AND 1 JANUARY 2002 SHALL BE MADE THE BASES; CASE AT BAR.— The Court agrees with Dusit Hotel that the increased

salaries of the employees should be used as bases for determining whether they were entitled to ECOLA under WO No. 9. The very fact that the NLRC decreed that the salary increases of the Dusit Hotel employees shall be retroactive to 1 January 2001 and 1 January 2002, means that said employees were already supposed to receive the said salary increases beginning on these dates. The increased salaries were the rightful salaries of the hotel employees by 1 January 2001, then again by 1 January 2002. Although belatedly paid, the hotel employees still received their salary increases. It is only fair and just, therefore, that in determining entitlement of the hotel employees to ECOLA, their increased salaries by 1 January 2001 and 1 January 2002 shall be made the bases. There is no logic in recognizing the salary increases for one purpose (*i.e.*, to recover the unpaid amounts thereof) but not for the other (*i.e.*, to determine entitlement to ECOLA). For the Court to rule otherwise would be to sanction unjust enrichment on the part of the hotel employees, who would be receiving increases in their salaries, which would place them beyond the coverage of Section 1 of WO No. 9, yet still be paid ECOLA under the very same provision. The NLRC, in its Decision dated 9 October 2002, directed Dusit Hotel to increase the salaries of its employees by ₱500.00 per month, retroactive to **1 January 2001**. After applying the said salary increase, only **82 hotel employees** would have had daily salary rates falling within the range of ₱250.00 to ₱290.00. Thus, upon the effectivity of WO No. 9 on **5 November 2001**, only the said 82 employees were entitled to receive the first tranch of ECOLA, equivalent to ₱15.00 per day. The NLRC Decision dated 9 October 2002 also ordered Dusit Hotel to effect a second round of increase in its employees' salaries, equivalent to ₱550.00 per month, retroactive to **1 January 2002**. As a result of this increase, the daily salary rates of all hotel employees were already above ₱290.00. Consequently, by 1 January 2002, **no more** hotel employee was qualified to receive ECOLA.

3. ID.; ID.; ID.; SERVICE CHARGES; HOTEL EMPLOYEES' RIGHT TO THEIR SHARES IN THE SERVICE CHARGES IS DISTINCT AND SEPARATE FROM THEIR RIGHT TO ECOLA; BASIS.— Given that 82 hotel employees were entitled to receive the first tranch of ECOLA from 5 November 2001 to 31 December 2001, the Court must address the assertion of Dusit Hotel that the receipt by said hotel employees of their shares

in the service charges already constituted substantial compliance with the prescribed payment of ECOLA under WO No. 9. The Court rules in the negative. It must be noted that the hotel employees have a right to their share in the service charges collected by Dusit Hotel, pursuant to Article 96 of the Labor Code of 1991, to wit: Article 96. *Service charges.* – All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated in their wages. Since Dusit Hotel is explicitly mandated by the afore-quoted statutory provision to pay its employees and management their respective shares in the service charges collected, the hotel cannot claim that payment thereof to its 82 employees constitute substantial compliance with the payment of ECOLA under WO No. 9. Undoubtedly, the hotel employees' right to their shares in the service charges collected by Dusit Hotel is distinct and separate from their right to ECOLA; gratification by the hotel of one does not result in the satisfaction of the other.

4. ID.; ID.; REPUBLIC ACT NO. 6727, AS AMENDED; NO BASIS TO HOLD DUSIT HOTEL LIABLE FOR DOUBLE INDEMNITY IN CASE AT BAR; EXPLAINED.— The Court, however, finds no basis to hold Dusit Hotel liable for double indemnity. Under Section 2(m) of DOLE Department Order No. 10, Series of 1998, the Notice of Inspection Result "shall specify the violations discovered, if any, together with the officer's recommendation and computation of the unpaid benefits due each worker **with an advice** that the employer shall be liable for double indemnity in case of refusal or failure to correct the violation within five calendar days from receipt of notice." A careful review of the Notice of Inspection Result dated 29 May 2002, issued herein by the DOLE-NCR to Dusit Hotel, reveals that the said Notice did not contain such an advice. Although the Notice directed Dusit Hotel to correct its noted violations within five days from receipt thereof, it was not sufficiently apprised that failure to do so within the given period would already result in its liability for double indemnity. The lack of advice deprived Dusit Hotel of the opportunity to decide and act accordingly within the five-day period, as to avoid the penalty of double indemnity. By 22 October 2002, the DOLE-NCR, through Dir. Maraan, already issued its Order directing Dusit

Hotel to pay 144 of its employees the total amount of ₱1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; **plus the penalty of double indemnity,** pursuant to Section 12 of Republic Act No. 6727, as amended by Republic Act No. 8188.

5. ID.; CONSTRUCTION IN FAVOR OF LABOR; MANAGEMENT RIGHTS; ENTITLED TO RESPECT AND ENFORCEMENT IN THE INTEREST OF SIMPLE FAIR PLAY.— Although the Court is mindful of the fact that labor embraces individuals with a weaker and unlettered position as against capital, it is equally mindful of the protection that the law accords to capital. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play.

APPEARANCES OF COUNSEL

P.R. Cruz Law Offices for petitioner.
Solon R. Garcia for respondent.

D E C I S I O N

CHICO-NAZARIO,[*] *J.*:

Before this Court is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, assailing the Decision[1] dated 10 September 2007 of the Court of Appeals in CA-G.R. SP No. 92798 granting the ₱30.00-per-day Emergency Cost of Living Allowance (ECOLA), under Wage Order (WO) No.

---

[*] Per Special Order No. 681, dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Sesinando E. Villon with Associate Justices Martin S. Villarama, Jr. and Noel G. Tijam, concurring. *Rollo*, pp. 72-82.

NCR-09 (WO No. 9), to 144 employees of petitioner Dusit Hotel Nikko (Dusit Hotel)[2] and imposing upon the latter the penalty of double indemnity under Republic Act No. 6727, as amended by Republic Act No. 8188. Likewise assailed herein is the Resolution[3] dated 4 March 2008 of the appellate court in the same case denying the Motion for Reconsideration of Dusit Hotel.

The antecedent facts of the case are as follows:

WO No. 9, approved by the Regional Tripartite Wages and Productivity Board (RTWPB) of the National Capital Region (NCR), took effect on 5 November 2001. It grants ₱30.00 ECOLA to particular employees and workers of all private sectors, identified as follows in Section 1 thereof:

> Section 1. Upon the effectivity of this Wage Order, all private sector workers and employees in the National Capital Region receiving daily wage rates of TWO HUNDRED FIFTY PESOS (₱250.00) up to TWO HUNDRED NINETY PESOS (₱290.00) shall receive an emergency cost of living allowance in the amount of THIRTY PESOS (₱30.00) per day payable in two tranches as follows:
>
> | Amount of ECOLA | Effectivity |
> |---|---|
> | ₱15.00 | 5 November 2001 |
> | ₱15.00 | 1 February 2002 |

On 20 March 2002, respondent National Union of Workers in Hotel, Restaurant and Allied Industries-Dusit Hotel Nikko Chapter (Union), through its President, Reynaldo C. Rasing (Rasing), sent a letter[4] to Director Alex Maraan (Dir. Maraan) of the Department of Labor and Employment-National Capital Region (DOLE-NCR), reporting the non-compliance of Dusit Hotel with WO No. 9, while there was an on-going compulsory arbitration before the National Labor Relations Commission

---

[2] Owned by petitioner Philippine Hoteliers, Inc. (PHI). Any reference in the Decision to Dusit Hotel, must also be deemed applicable to PHI.

[3] *Rollo,* pp. 84-90.

[4] *Id.* at 92.

(NLRC) due to a bargaining deadlock between the Union and Dusit Hotel; and requesting immediate assistance on this matter. On 24 May 2002, Rasing sent Dir. Maraan another letter following-up his previous request for assistance.

Acting on Rasing's letters, the DOLE-NCR sent Labor Standards Officer Estrellita Natividad (LSO Natividad) to conduct an inspection of Dusit Hotel premises on 24 April 2002. LSO Natividad's Inspection Results Report[5] dated 2 May 2002 stated:

> Based on interviews/affidavits of employees, they are receiving more than ₱290.00 average daily rate which is exempted in the compliance of Wage Order NCR-09;
>
> **Remarks**: There is an ongoing negotiation under Case # NCMB-NCR-NS-12-369-01 & NCMB-NCR-NS-01-019-02 now forwarded to the NLRC office for the compulsory arbitration.
>
> **NOTE:** Payrolls to follow later upon request including position paper of [Dusit Hotel].

By virtue of Rasing's request[6] for another inspection, LSO Natividad conducted a second inspection of Dusit Hotel premises on 29 May 2002. In her Inspection Results Report[7] dated 29 May 2002, LSO Natividad noted:

> *Non-presentation of records/payrolls
>
> *Based on submitted payrolls & list of union members by NUWHRAIN-DUSIT HOTEL NIKKO Chapter, there are one hundred forty-four (144) affected in the implementation of Wage Order No. NCR-09-> ECOLA covering the periods from Nov.5/01 to present.

Accordingly, the DOLE-NCR issued a Notice of Inspection Result directing Dusit Hotel to effect restitution and/or correction of the noted violations within five days from receipt of the Notice, and to submit any question on the findings of the labor inspector within the same period, otherwise, an order of

---

[5] *Rollo,* p. 94.

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

[7] *Rollo,* p. 181.

compliance would be issued. The Notice of Inspection Result was duly received by Dusit Hotel Assistant Personnel Manager Rogelio Santos.[8]

In the meantime, the NLRC rendered a Decision[9] dated 9 October 2002 in NLRC-NCR-CC No. 000215-02 – the compulsory arbitration involving the Collective Bargaining Agreement (CBA) deadlock between Dusit Hotel and the Union – granting the hotel employees the following wage increases, in accord with the CBA:

Effective January 1, 2001- ₱500.00/month

Effective January 1, 2002- ₱550.00/month

Effective January 1, 2003- ₱600.00/month

On 22 October 2002, based on the results of the second inspection of Dusit Hotel premises, DOLE-NCR, through Dir. Maraan, issued the Order[10] directing Dusit Hotel to pay 144 of its employees the total amount of ₱1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; plus, the penalty of double indemnity, pursuant to Section 12 of Republic Act No. 6727,[11] as amended by Republic Act No. 8188,[12] which provides:

> Sec. 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (₱25,000) nor more than One hundred thousand pesos (₱100,000) or imprisonment of not less than two (2) years nor more than four (4) years or both such find and imprisonment at the discretion of the court: Provided, That any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.

---

[8] *Id.* at 94.

[9] *Id.* at 103-149.

[10] *Id.* at 97-102.

[11] Wage Rationalization Act.

[12] Double Indemnity Act.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: Provided, That payment of indemnity shall not absolve the employer from the criminal liability under this Act.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers including but not limited to the president, vice president, chief executive officer, general manager, managing director or partner. (Emphasis ours.)

Dusit Hotel filed a Motion for Reconsideration[13] of the DOLE-NCR Order dated 22 October 2002, arguing that the NLRC Decision dated 9 October 2002, resolving the bargaining deadlock between Dusit Hotel and the Union, and awarding salary increases under the CBA to hotel employees retroactive to 1 January 2001, already rendered the DOLE-NCR Order moot and academic. With the increase in the salaries of the hotel employees ordered by the NLRC Decision of 9 October 2002, along with the hotel employees' share in the service charges, the 144 hotel employees, covered by the DOLE-NCR Order of 22 October 2002, would already be receiving salaries beyond the coverage of WO No. 9.

Acting on the Motion for Reconsideration of Dusit Hotel, DOLE-NCR issued a Resolution[14] on 27 December 2002, setting aside its earlier Order dated 22 October 2002 for being moot and academic, in consideration of the NLRC Decision dated 9 October 2002; and dismissing the complaint of the Union against Dusit Hotel, for non-compliance with WO No. 9, for lack of merit.

The Union appealed[15] the 27 December 2002 Resolution before the DOLE Secretary maintaining that the wage increases

---

[13] *Id.* at 150-167.

[14] *Id.* at 183-185.

[15] *Id.* at 186-199.

granted by the NLRC Decision of 9 October 2002 should not be deemed as compliance by Dusit Hotel with WO No. 9.

The DOLE, through Acting Secretary Manuel G. Imson, issued an Order[16] dated 22 July 2004 granting the appeal of the Union. The DOLE Secretary reasoned that the NLRC Decision dated 9 October 2002 categorically declared that the wage increase under the CBA finalized between Dusit Hotel and the Union shall not be credited as compliance with WOs No. 8 and No. 9. Furthermore, Section 1 of Rule IV of the Rules Implementing WO No. 9, which provides that wage increases granted by an employer in an organized establishment within three months prior to the effectivity of said Wage Order shall be credited as compliance with the ECOLA prescribed therein, applies only when an agreement to this effect has been forged between the parties or a provision in the CBA allowing such crediting exists. Hence, the DOLE Secretary held:

> WHEREFORE, premises considered, the appeal is hereby GRANTED. The Resolution dated December 27, 2002 issued by the Regional Director is SET ASIDE and his Order dated October 22, 2002 is hereby REINSTATED. Dusit Hotel Nikko Manila is hereby ordered to pay its One Hundred Forty Four (144) employees the aggregate amount of One Million Two Hundred Eighteen Thousand Two Hundred Forty Pesos (Php1,218,240.00) representing their Emergency Cost Of Living Allowance (ECOLA) under Wage Order No. NCR-09 and the penalty of double indemnity under Republic Act. No. 8188, as amended.[17]

Expectedly, Dusit Hotel sought reconsideration[18] of the 22 July 2004 Order of the DOLE Secretary. In an Order[19] dated 16 December 2004, the DOLE Secretary granted the Motion for Reconsideration of Dusit Hotel and reversed his Order dated 22 July 2004. The DOLE Secretary, in reversing his earlier Order, admitted that he had disregarded therein that the wage

---

[16] *Id.* at 202-206.

[17] *Id.* at 205-206.

[18] *Id.* at 207-227.

[19] *Id.* at 412-421.

increase granted by the NLRC in the latter's Decision dated 9 October 2002 retroacted to 1 January 2001. The said wage increase, taken together with the hotel employees' share in the service charges of Dusit Hotel, already constituted compliance with the WO No. 9. According to the DOLE Secretary:

> To stress, the overriding consideration of Wage Order NCR-09 is quite simple, to provide workers with immediate relief through the grant of Emergency Cost of Living Allowance to enable them to cope with the increases in the cost of living. Conformably with the evident intent of the subject Wage Order as expressed in its preamble, this Office finds that the substantial share in the service charge being received by the employees of appellee (Dusit Hotel) more than compensates for the Emergency Cost of Living Allowance of ₱30.00 given under Wage Order NCR-09.[20]

It was then the turn of the Union to file a Motion for Reconsideration,[21] but it was denied by the DOLE Secretary in an Order[22] dated 13 October 2005. The DOLE Secretary found that it would be unjust on the part of Dusit Hotel if the hotel employees were to enjoy salary increases retroactive to 1 January 2001, pursuant to the NLRC Decision dated 9 October 2002, and yet said salary increases would be disregarded in determining compliance by the hotel with WO No. 9.

The Union appealed the Orders dated 16 December 2004 and 13 October 2005 of the DOLE Secretary with the Court of Appeals *via* a Petition for Review[23] under Rule 43 of the Rules of Court. On 10 September 2007, the Court of Appeals promulgated its Decision[24] ruling in favor of the Union. Referring to Section 13 of WO No. 9, the Court of Appeals declared that wage increases/allowances granted by the employer shall not

---

[20] *Id.* at 415.

[21] *Id.* at 422-439.

[22] *Id.* at 442-443.

[23] *Id.* at 444-474.

[24] *Id.* at 72-82.

be credited as compliance with the prescribed increase in the same Wage Order, unless so provided in the law or the CBA itself; and there was no such provision in the case at bar. The appellate court also found that Dusit Hotel failed to substantiate its position that receipt by its employees of shares in the service charges collected by the hotel was to be deemed substantial compliance by said hotel with the payment of ECOLA required by WO No. 9. The Court of Appeals adjudged that Dusit Hotel should be liable for double indemnity for its failure to comply with WO No. 9 within five days from receipt of notice. The appellate court stressed that ECOLA is among the laborers' financial gratifications under the law, and is distinct and separate from benefits derived from negotiation or agreement with their employer. In the end, the Court of Appeals disposed:

> WHEREFORE, finding the existence of grave abuse of discretion in the issuance of the assailed Orders dated December 16, 2004 and October 13, 2005, the same are hereby REVERSED AND SET ASIDE and the Order dated July 22, 2004 of the respondent DOLE Acting Secretary in OS-LS-0630-2003-0105 is REINSTATED.[25]

The Motion for Reconsideration[26] of Dusit Hotel was denied for lack of merit by the Court of Appeals in its Resolution[27] dated 4 March 2008.

Hence, Dusit Hotel sought recourse from this Court by filing the instant Petition,[28] at the crux of which is the sole issue of whether the 144 hotel employees were still entitled to ECOLA granted by WO No. 9 despite the increases in their salaries, retroactive to 1 January 2001, ordered by NLRC in the latter's Decision dated 9 October 2002.

Section 1 of WO No. 9 very plainly stated that only private sector workers and employees in the NCR receiving **daily wage**

---

[25] *Id.* at 81.

[26] CA *rollo*, pp. 487-516.

[27] *Id.* at 578-584.

[28] *Rollo*, pp. 26-67.

rates of ₱250.00 to ₱290.00 shall be entitled to ECOLA. Necessarily, private sector workers and employees receiving daily wages of more than ₱290.00 were no longer entitled to ECOLA. The ECOLA was to be implemented in two tranches: ₱15.00/day beginning 5 November 2001; and the full amount of ₱30.00/day beginning 1 February 2002.

WO No. 9 took effect on **5 November 2001**. The Decision rendered by the NLRC on **9 October 2002** ordered Dusit Hotel to grant its employees salary increases **retroactive to 1 January 2001 and 1 January 2002**. In determining which of its employees were entitled to ECOLA, Dusit Hotel used as bases the daily salaries of its employees, **inclusive** of the retroactive salary increases. The Union protested and insisted that the bases for the determination of entitlement to ECOLA should be the hotel employees' daily salaries, **exclusive** of the retroactive salary increases. According to the Union, Dusit Hotel cannot credit the salary increases as compliance with WO No. 9.

Much of the confusion in this case arises from the insistence of the Union to apply Section 13 of WO No. 9, which states:

> Section 13. Wage increases/allowances granted by an employer in an organized establishment with three (3) months prior to the effectivity of this Order shall be credited as compliance with the prescribed increase set forth herein, **provided the corresponding bargaining agreement provision allowing creditability exists.** In the absence of such an agreement or provision in the CBA, any increase granted by the employer shall not be credited as compliance with the increase prescribed in this Order.
>
> In unorganized establishments, wage increases/allowances granted by the employer within three (3) months prior to the effectivity of this Order shall be credited as compliance therewith.
>
> In case the increases given are less than the prescribed adjustment, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases and those resulting from the regularization or promotion of employees. (Emphasis ours.)

The Union harps on the fact that its CBA with Dusit Hotel does not contain any provision on creditability, thus, Dusit Hotel cannot credit the salary increases as compliance with the ECOLA required to be paid under WO No. 9.

The reliance of the Union on Section 13 of WO No. 9 in this case is misplaced. Dusit Hotel is not contending creditability of the hotel employees' salary increases as compliance with the ECOLA mandated by WO No. 9. Creditability means that Dusit Hotel would have been allowed to pay its employees the salary increases **in place** of the ECOLA required by WO No. 9. This, however, is not what Dusit Hotel is after. The position of Dusit Hotel is merely that the salary increases should be taken into account in determining the employees' entitlement to ECOLA. The retroactive increases could raise the hotel employees' daily salary rates above ₱290.00, consequently, placing said employees **beyond** the coverage of WO No. 9. Evidently, Section 13 of WO No. 9 on creditability is irrelevant and inapplicable herein.

The Court agrees with Dusit Hotel that the increased salaries of the employees should be used as bases for determining whether they were entitled to ECOLA under WO No. 9. The very fact that the NLRC decreed that the salary increases of the Dusit Hotel employees shall be retroactive to 1 January 2001 and 1 January 2002, means that said employees were already supposed to receive the said salary increases beginning on these dates. The increased salaries were the rightful salaries of the hotel employees by 1 January 2001, then again by 1 January 2002. Although belatedly paid, the hotel employees still received their salary increases.

It is only fair and just, therefore, that in determining entitlement of the hotel employees to ECOLA, their increased salaries by 1 January 2001 and 1 January 2002 shall be made the bases. There is no logic in recognizing the salary increases for one purpose (*i.e.*, to recover the unpaid amounts thereof) but not for the other (*i.e.*, to determine entitlement to ECOLA). For the Court to rule otherwise would be to sanction unjust enrichment

on the part of the hotel employees, who would be receiving increases in their salaries, which would place them beyond the coverage of Section 1 of WO No. 9, yet still be paid ECOLA under the very same provision.

The NLRC, in its Decision dated 9 October 2002, directed Dusit Hotel to increase the salaries of its employees by ₱500.00 per month, retroactive to **1 January 2001**. After applying the said salary increase, only **82 hotel employees**[29] would have had daily salary rates falling within the range of ₱250.00 to ₱290.00. Thus, upon the effectivity of WO No. 9 on **5 November 2001**, only the said 82 employees were entitled to receive the first tranch of ECOLA, equivalent to ₱15.00 per day.

The NLRC Decision dated 9 October 2002 also ordered Dusit Hotel to effect a second round of increase in its employees' salaries, equivalent to ₱550.00 per month, retroactive to **1 January 2002**. As a result of this increase, the daily salary rates of all hotel employees were already above ₱290.00. Consequently, by 1 January 2002, **no more** hotel employee was qualified to receive ECOLA.

Given that 82 hotel employees were entitled to receive the first tranch of ECOLA from 5 November 2001 to 31 December 2001, the Court must address the assertion of Dusit Hotel that the receipt by said hotel employees of their shares in the service charges already constituted substantial compliance with the prescribed payment of ECOLA under WO No. 9.

The Court rules in the negative.

It must be noted that the hotel employees have a right to their share in the service charges collected by Dusit Hotel, pursuant to Article 96 of the Labor Code of 1991, to wit:

> Article 96. *Service charges.* – All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of employees

---

[29] *Id.* at 923-925.

shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated in their wages.

Since Dusit Hotel is explicitly mandated by the afore-quoted statutory provision to pay its employees and management their respective shares in the service charges collected, the hotel cannot claim that payment thereof to its 82 employees constitute substantial compliance with the payment of ECOLA under WO No. 9. Undoubtedly, the hotel employees' right to their shares in the service charges collected by Dusit Hotel is distinct and separate from their right to ECOLA; gratification by the hotel of one does not result in the satisfaction of the other.

The Court, however, finds no basis to hold Dusit Hotel liable for double indemnity. Under Section 2(m) of DOLE Department Order No. 10, Series of 1998,[30] the Notice of Inspection Result "shall specify the violations discovered, if any, together with the officer's recommendation and computation of the unpaid benefits due each worker **with an advice** that the employer shall be liable for double indemnity in case of refusal or failure to correct the violation within five calendar days from receipt of notice." A careful review of the Notice of Inspection Result dated 29 May 2002, issued herein by the DOLE-NCR to Dusit Hotel, reveals that the said Notice did not contain such an advice. Although the Notice directed Dusit Hotel to correct its noted violations within five days from receipt thereof, it was not sufficiently apprised that failure to do so within the given period would already result in its liability for double indemnity. The lack of advice deprived Dusit Hotel of the opportunity to decide and act accordingly within the five-day period, as to avoid the penalty of double indemnity. By 22 October 2002, the DOLE-NCR, through Dir. Maraan, already issued its Order directing Dusit Hotel to pay 144 of its employees the total amount of ₱1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; **plus the penalty of double indemnity,** pursuant

[30] Guidelines on the Imposition of Double Indemnity for Non-Compliance with the Prescribed Increases or Adjustments in Wage Rates.

to Section 12 of Republic Act No. 6727, as amended by Republic Act No. 8188.[31]

Although the Court is mindful of the fact that labor embraces individuals with a weaker and unlettered position as against capital, it is equally mindful of the protection that the law accords to capital. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play.[32]

In sum, the Court holds that the retroactive salary increases should be taken into account in the determination of which hotel employees were entitled to ECOLA under WO No. 9. After applying the salary increases retroactive to 1 January 2001, 82 hotel employees still had daily salary rates between ₱250.00 and ₱290.00, thus, entitling them to receive the first tranch of ECOLA, equivalent to ₱15.00 per day, beginning 5 November 2001, the date of effectivity of WO No. 9, until 31 December 2001. Following the second round of salary increases retroactive to 1 January 2002, all the hotel employees were already receiving daily salary rates above ₱290.00, hence, leaving no one qualified to receive ECOLA. Receipt by the 82 hotel employees of their shares from the service charges collected by Dusit Hotel shall not be deemed payment of their ECOLA from 5 November 2001 to 31 December 2001.

---

[31] Constitutes the compliance order, defined under Section 2(n) of DOLE Department Order No. 10 as "the order issued by the regional director, after due notice and hearing conducted by himself or a duly authorized hearing officer finding that a violation has been committed and directing the employer to pay the amount due each worker within ten (10) calendar days from receipt thereof."

[32] *Sosito v. Aguinaldo Development Corporation,* 240 Phil. 373, 377 (1987); *Rapid Manpower Consultants, Inc. v. National Labor Relations Commission,* G.R. No. 88683, 18 October 1990, 190 SCRA 747, 752.

WHEREFORE, premises considered, the Decision dated 10 September 2007 and the Resolution dated 4 March 2008 of the Court of Appeals in CA-G.R. SP No. 92798 are hereby *AFFIRMED WITH THE FOLLOWING MODIFICATIONS:* (1) Dusit Hotel Nikko is *ORDERED* to pay its 82 employees – who, after applying the salary increases for 1 January 2001, had daily salaries of ₱250.00 to ₱290.00 – the first tranch of Emergency Cost of Living Allowance, equivalent to ₱15.00 per day, from 5 November 2001 to 31 December 2001, within ten (10) days from finality of this Decision; and (2) the penalty for double indemnity is *DELETED*. No costs.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182792. August 25, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEPITO NEVERIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; ELEMENT OF FORCE BECOMES IMMATERIAL AND ABSENCE OF CONSENT IS PRESUMED IF THE VICTIM IS DEMENTED; CASE AT BAR.— Under Article 266-A of the Revised Penal Code, as amended, if the victim is demented,

---

[*] Per Special Order No. 679, dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

the element of force becomes immaterial and absence of consent is presumed. Thus, only sexual intercourse must be proved in order to convict an accused. For this reason, if the mental age of a woman above 12 years old is that of a child below 12 years old, even if she voluntarily submits herself to the bestial desires of the accused, or even if the circumstances of force or intimidation are absent, the accused would still be liable for rape. If the victim, however, is above 12 years old and has normal psychological faculty at the time of the crime, sexual intercourse and the attendant circumstance of force, violence, intimidation, or threat must be proved. In this case, the Information alleged that AAA is mentally retarded. It, however, contained also an allegation that sexual intercourse was committed against AAA through force and intimidation and without her consent. The trial court convicted Pepito after finding that sexual congress through force and intimidation had been sufficiently established. It did not consider the mental condition of AAA because it was no longer necessary. As correctly ruled by the CA, AAA's mental retardation was inconsequential because the conviction of the accused was based on the use of force and intimidation. The CA held: In reality, the absence of competent evidence on the victim's mental retardation is inconsequential because it did not negate the finding of guilt. Contrary to the accused's argument, her mental retardation had no bearing on the worthiness of the evidence of rape. We find to be correct the [Office of the Solicitor General]'s submission that the mental retardation was a "non-issue," for the conviction of the accused was based on the use of force and intimidation. Indeed, threatening the victim with a knife is sufficient to coerce the victim and constitutes an element of rape.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE VICTIM'S STRAIGHT FORWARD TESTIMONY IS CONSISTENT WITH THE PHYSICAL FINDING OF PENETRATION, THERE IS SUFFICIENT BASIS FOR CONCLUDING THAT SEXUAL INTERCOURSE DID TAKE PLACE.— We also affirm the findings of the RTC and the CA that the sexual molestation was committed through force and intimidation. The fact of sexual congress was established by the testimony of AAA and corroborated by the medico-legal findings of lacerations on her hymen. When the victim's

straightforward testimony is consistent with the physical finding of penetration, there is sufficient basis for concluding that sexual intercourse did take place.

3. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; FORCE OR INTIMIDATION; ESTABLISHED IN CASE AT BAR.— As to the attendant circumstance of force, this was likewise sufficiently established. Force or intimidation necessary in rape is relative, for it largely depends on the circumstances of the rape as well as the size, age, strength, and relation of the parties. Notably, however, the act of holding a knife by itself is strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring a woman to submission. And the victim does not even need to prove resistance. To appreciate force or intimidation, it is enough to show that such force or intimidation was sufficient to consummate the bestial desires of the malefactor against the victim. Such was determined in this case.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; TERRITORIAL JURISDICTION OF THE COURT IS DETERMINED BY THE FACTS ALLEGED IN THE COMPLAINT OR INFORMATION; CASE AT BAR.— For the court to acquire jurisdiction over a criminal case, the offense or any of its essential elements should have taken place within the territorial jurisdiction of the court. This territorial jurisdiction of the court is determined by the facts alleged in the complaint or information. In this case, the October 17, 2001 Informations clearly indicated that the acts of rape were committed in *Barangay* Sagurong, Pili, Camarines Sur. During trial, prosecution evidence showed that the molestations happened in AAA's house. And as testified by AAA's mother, their house was situated in Sagurong, Pili, Camarines Sur. Thus, AAA's inability to state her address in her testimony was trivial. Understandably, this failure was due only to her mental deficiency.

5. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER IN CASE AT BAR.— As to the damages, we find that an award of exemplary damages in the amount of Php 30,000 is warranted, following *People v. Sia*. Exemplary damages are awarded when the crime is attended

by an aggravating circumstance; or as in this case, as a public example, in order to protect hapless individuals from molestation.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the November 23, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01374 entitled *People of the Philippines v. Pepito Neverio*, which held accused-appellant Pepito Neverio guilty of two counts of rape. The CA Decision affirmed the September 30, 2004 Decision[2] in Criminal Cases Nos. P-3182 and P-3183 of the Regional Trial Court (RTC), Branch 32 in Pili, Camarines Sur.

The Facts

AAA[3] is a mentally deficient lass, who resides with her family in *Barangay* Sagurong, Pili, Camarines Sur. Because of her mental condition, she was not able to go to school for most part of her life. Nonetheless, she learned to cook for the family and clean their house.[4]

---

[1] *Rollo*, pp. 3-21. Penned by Associate Justice Lucas P. Bersamin (now a member of this Court) and concurred in by Associate Justices Portia Aliño Hormachuelos and Arturo G. Tayag.

[2] CA *rollo*, pp. 21-22. Penned by Judge Nilo Malanyaon.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, to protect her privacy.

[4] *Rollo*, p. 5.

In the morning of June 29, 2001, AAA, then 20 years old, was alone in their home cooking. Her father was farming, while her mother was at the *poblacion*[5] of Pili. Her siblings, too, were somewhere else—somewhere in school and others were tending a neighborhood store away from their residence.[6]

Suddenly, Pepito, AAA's cousin, entered the kitchen by lifting the bamboo barrier with a bolo. Pepito then poked a fan knife to AAA's neck, placed the bolo on the table, and dragged AAA to her brother's room. He pushed AAA on the bed and went on top of her. Still poking the knife against AAA's neck, he removed her shorts and panty; then he also removed his pants. He then began to insert his penis inside AAA's vagina. AAA shouted in pain, but Pepito covered her mouth and continued removing and inserting his penis inside her vagina. When Pepito was done, he put on his pants and threatened to kill AAA should she share with anyone what had happened. Fearing for her life, AAA kept mum about the incident.[7]

On July 27, 2001, Pepito committed the same abuse against AAA. At around five o'clock in the afternoon, while AAA was alone in their home, Pepito again entered AAA's house through the kitchen. He poked his knife against AAA's neck, dragged her to the nearby room, and pushed her on the bed. AAA fought back but did not succeed in getting out of the room. Pepito then brought AAA back to the bed. Still pointing the knife against AAA, Pepito removed her lower garments, and thereafter removed his shorts and brief. He then proceeded to insert his penis inside AAA's vagina. Satiated, he stood up and got dressed. Before he left, he again warned AAA not to tell anyone what had happened; otherwise, he would kill her.[8]

---

[5] Literally "town" in Spanish. *Poblacion* is commonly used for the central *barangay* or *barangay*s of a Philippine city or municipality. Common features of the *poblacion* include a town plaza, church, market, school, and town hall. It is sometimes shortened to "pob."

[6] *Rollo*, p. 5.

[7] *Id*.

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

On August 1, 2001, AAA's mother arrived from Naga City. She saw AAA crying under the bamboo grove. She asked why AAA was crying and AAA finally revealed what Pepito had done to her. She then sought the assistance of law enforcement authorities in investigating and in filing the appropriate charge against Pepito.[9]

On August 28, 2001, the National Bureau of Investigation medico-legal expert Jane Perpetua-Fajardo conducted a physical examination on AAA. She noted that her hymen had one healed laceration. She further stated that AAA's injury was probably caused by sexual intercourse and that the healed laceration was compatible with the time that the alleged incidents of rape happened.[10]

On October 17, 2001, two Informations were filed against Pepito. Except for the date and time of the commission of the crime, both Informations contained the same allegations, thus:

> That on or about 10:00 A.M. on June 29, 2001 in Barangay Sagurong, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of the Honorable Court, the above named accused, with lewd designs and grave abuse of confidence being a cousin of the private complainant, did then and there willfully, unlawfully and feloniously, with the use of force and intimidation succeed in having carnal knowledge, with [AAA], a 20 years old mental retardate against her will and without her consent, to her damage and prejudice in such amount as may be awarded by the Honorable Court.[11]

The other information averred the commission of the crime of rape against AAA on July 27, 2001 at 5:00 p.m.[12]

During trial, Pepito did not present any evidence but instead filed a Demurrer to Evidence with Leave of Court. On February 24, 2004, the trial court denied the Demurrer to Evidence. Despite

---

[9] *Id.* at 6.

[10] *Id*.

[11] CA *rollo*, p. 9.

[12] *Id.* at 11.

the said denial, the defense still chose not to present any evidence. Thereafter, instead of filing a memorandum, the defense adopted its Demurrer to Evidence as its memorandum.[13]

On September 30, 2004, the RTC rendered a Decision, the dispositive part of which reads:

> Wherefore, in view of the foregoing considerations, judgment is hereby rendered in Crim. Cases No. P-3182 and P-3183, finding the accused, Pepito Neverio, a.k.a. "Totoy", GUILTY in both cases, of the crime of rape, defined and penalized under Art. 266-A, R.A. 8353, and accordingly sentences him [to suffer] the penalty of *RECLUSION PERPETUA* for each RAPE, to indemnify the offended party, [AAA], the sum of [PhP] 50,000.00 as indemnity for each rape, plus the sum of [PhP] 50,000.00 for each rape, as moral damages, and to pay the costs, with all the accessories of the penalty; he is credited in full for his preventive detention had he agreed to abide with the rules for convicted prisoners, otherwise, for 4/5 of the same.
>
> SO ORDERED.[14]

The case was appealed to the CA.

The Ruling of the CA

Aware that Pepito did not present any evidence to support his cause, the CA, in its November 23, 2007 Decision, carefully reviewed the evidence of the prosecution. It re-assessed the testimony of AAA and was convinced of its credibility. It found that despite AAA's mental retardation, her testimony was "direct, natural and unvarnished."[15] It noted further that the physical evidence fully supports the allegations of AAA.

Finding that the prosecution successfully proved its charges against Pepito, the CA affirmed the September 30, 2004 Decision of the RTC.

Hence, we have this appeal.

---

[13] *Id.* at 51.

[14] *Id.* at 22.

[15] *Rollo*, p. 17.

The Issues

In a Resolution dated July 30, 2008, this Court required the parties to submit supplemental briefs if they so desired. On September 30, 2008, Pepito, through counsel, signified that he was no longer filing a supplemental brief. Thus, the following issues raised in Pepito's Brief dated August 30, 2006 are now deemed adopted in this present appeal:

I.

The Court *a quo*, gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape.

II.

The Court *a quo*, gravely erred in failing to appreciate the arguments of the defense in the Motion to Dismiss with Demurrer to Evidence.[16]

The Ruling of the Court

The appeal is without merit.

In his Brief, Pepito argues that the prosecution failed to prove two elements of the crime as alleged in the Information—AAA's mental retardation and the use of force and intimidation in committing the sexual act. He claims that medical findings confirming AAA's mental retardation should have been presented; however, none was given in this case. Also, he maintains that it was incredible for him to have managed to hold a knife against AAA with one hand, while at the same time undressing and later having sex with her with only one hand free. We, however, hold that his arguments deserve scant consideration.

Under Article 266-A of the Revised Penal Code, as amended, if the victim is demented, the element of force becomes immaterial and absence of consent is presumed. Thus, only sexual intercourse must be proved in order to convict an accused. For this reason, if the mental age of a woman above 12 years old is that of a child below 12 years old, even if she voluntarily

[16] CA *rollo*, p. 51.

submits herself to the bestial desires of the accused, or even if the circumstances of force or intimidation are absent, the accused would still be liable for rape.[17] If the victim, however, is above 12 years old and has normal psychological faculty at the time of the crime, sexual intercourse and the attendant circumstance of force, violence, intimidation, or threat must be proved.

In this case, the Information alleged that AAA is mentally retarded. It, however, contained also an allegation that sexual intercourse was committed against AAA through force and intimidation and without her consent. The trial court convicted Pepito after finding that sexual congress through force and intimidation had been sufficiently established. It did not consider the mental condition of AAA because it was no longer necessary. As correctly ruled by the CA, AAA's mental retardation was inconsequential because the conviction of the accused was based on the use of force and intimidation. The CA held:

> In reality, the absence of competent evidence on the victim's mental retardation is inconsequential because it did not negate the finding of guilt. Contrary to the accused's argument, her mental retardation had no bearing on the worthiness of the evidence of rape. We find to be correct the [Office of the Solicitor General]'s submission that the mental retardation was a "non-issue," for the conviction of the accused was based on the use of force and intimidation. Indeed, threatening the victim with a knife is sufficient to coerce the victim and constitutes an element of rape.[18]

We also affirm the findings of the RTC and the CA that the sexual molestation was committed through force and intimidation. The fact of sexual congress was established by the testimony of AAA and corroborated by the medico-legal findings of lacerations on her hymen. When the victim's straightforward testimony is consistent with the physical finding of penetration,

---

[17] *People v. Lopez*, G.R. Nos. 135671-72, November 29, 2000, 346 SCRA 469, 476.

[18] *Rollo*, p. 19.

there is sufficient basis for concluding that sexual intercourse did take place.[19]

As to the attendant circumstance of force, this was likewise sufficiently established. Force or intimidation necessary in rape is relative, for it largely depends on the circumstances of the rape as well as the size, age, strength, and relation of the parties.[20] Notably, however, the act of holding a knife by itself is strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring a woman to submission.[21] And the victim does not even need to prove resistance.[22] To appreciate force or intimidation, it is enough to show that such force or intimidation was sufficient to consummate the bestial desires of the malefactor against the victim. Such was determined in this case.

In Pepito's Motion to Dismiss with Demurrer to Evidence, he faults AAA for her failure to state the place where the alleged crime happened. He maintains that the identification of the place where the crime was committed was necessary for vesting the court with jurisdiction over the case. This argument is without merit.

For the court to acquire jurisdiction over a criminal case, the offense or any of its essential elements should have taken place within the territorial jurisdiction of the court.[23] This territorial

---

[19] *People v. Malibiran*, G.R. No. 173471, March 17, 2009; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448.

[20] *People v. Murillo*, G.R. Nos. 128851-56, February 19, 2001, 352 SCRA 105, 118.

[21] *People v. Galido*, G.R. Nos. 148689-92, March 30, 2004, 425 SCRA 502, 515; *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404; *People v. Dela Peña*, G.R. No. 128372, March 12, 2001, 354 SCRA 186, 194.

[22] *People v. David*, G.R. Nos. 121731-33, November 12, 2003, 415 SCRA 666, 681; *People v. Moreno*, G.R. No. 140033, January 25, 2002, 374 SCRA 667.

[23] *People v. Macasaet*, G.R. No. 156747, February 23, 2005, 452 SCRA 255, 271; citing *Uy v. Court of Appeals*, G.R. No. 119000, July 28, 1997, 276 SCRA 367.

jurisdiction of the court is determined by the facts alleged in the complaint or information.[24] In this case, the October 17, 2001 Informations clearly indicated that the acts of rape were committed in *Barangay* Sagurong, Pili, Camarines Sur. During trial, prosecution evidence showed that the molestations happened in AAA's house. And as testified by AAA's mother, their house was situated in Sagurong, Pili, Camarines Sur. Thus, AAA's inability to state her address in her testimony was trivial. Understandably, this failure was due only to her mental deficiency.

As to the damages, we find that an award of exemplary damages in the amount of Php 30,000 is warranted, following *People v. Sia*.[25] Exemplary damages are awarded when the crime is attended by an aggravating circumstance;[26] or as in this case, as a public example,[27] in order to protect hapless individuals from molestation.

WHEREFORE, the Court *AFFIRMS* the CA's November 23, 2007 Decision in CA-G.R. CR-H.C. No. 01374 with *MODIFICATION*. As modified, the dispositive portion of the affirmed September 30, 2004 RTC Decision shall read:

> Wherefore, in view of the foregoing considerations, judgment is hereby rendered in Crim. Case Nos. P-3182 and P-3183, finding the accused, Pepito Neverio, *a.k.a.* "Totoy," GUILTY in both cases, of the crime of rape, defined and penalized under Art. 266-A, RA 8353, and accordingly sentences him to suffer the penalty of *RECLUSION PERPETUA* for each RAPE. He is likewise ordered to pay the offended party, for each rape, the sum of Php 50,000 as civil indemnity, Php 50,000 as moral damages, Php 30,000 as exemplary damages, and to pay the costs, with all the accessories of the penalty; he is credited

---

[24] *Fullero v. People*, G.R. No. 170583, September 12, 2007, 533 SCRA 97, 123.

[25] G.R. No. 174059, February 27, 2009.

[26] CIVIL CODE, Art. 2230.

[27] *People v. Tabio*, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 169.

in full for his preventive detention had he agreed to abide with the rules for convicted prisoners, otherwise, for 4/5 of the same.

SO ORDERED.

Chico-Nazario (Acting Chairperson),[*] *Corona,*[**] *Carpio Morales,*[***] and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183526. August 25, 2009]

VIOLETA R. LALICAN, *petitioner, vs.* **THE INSULAR LIFE ASSURANCE COMPANY LIMITED, AS REPRESENTED BY THE PRESIDENT VICENTE R. AVILON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM THE REGIONAL TRIAL COURTS; NOTICE OF APPEAL FILED OUT OF TIME; CASE AT BAR.— [T]he RTC Decision dated 30 August 2007, assailed in this Petition, had long become final and executory. Violeta filed a Motion for Reconsideration thereof, but the RTC denied the same in an Order dated 8 November 2007. The records of the case reveal that Violeta received a copy of the 8 November 2007 Order on **3 December 2007**. Thus, Violeta had **15 days** from said date of receipt, or until **18 December 2007**, to file a Notice of Appeal. Violeta filed a Notice of Appeal only on **20 May 2008**, more than **five months** after receipt of the RTC Order dated 8 November 2007 denying her Motion for Reconsideration.

---

[*] As per Special Order No. 678 dated August 3, 2009.

[**] Additional member as per August 17, 2009 raffle.

[***] Additional member as per Special Order No. 679 dated August 3, 2009.

2. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; A CLIENT IS BOUND BY HIS COUNSEL'S MISTAKES AND NEGLIGENCE; CASE AT BAR.— [T]he failure of her former counsel to file a Notice of Appeal within the reglementary period binds Violeta, which failure the latter cannot now disown on the basis of her bare allegation and self-serving pronouncement that the former was ill. A client is bound by his counsel's mistakes and negligence.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY AND UNALTERABILITY; EXCEPTIONS.— A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has become final. When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court, which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions to the doctrine of immutability and unalterability are the correction of clerical errors, the so-called *nunc pro tunc* entries, which cause no prejudice to any party, and void judgments. The instant case does not fall under any of these exceptions.

4. MERCANTILE LAW; INSURANCE; LIFE INSURANCE; INSURABLE INTEREST; ELUCIDATED; INAPPLICABLE TO CASE AT BAR.— Violeta makes it appear that her present Petition involves a question of law, particularly, whether Eulogio had an existing insurable interest in his own life until the day of his death. An insurable interest is one of the most basic and essential requirements in an insurance contract. In general, an insurable interest is that interest which a person is deemed to have in the subject matter insured, where he has a relation or connection with or concern in it, such that the person will derive pecuniary benefit or advantage from the preservation of the subject matter insured and will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against. The existence of an insurable interest gives a person the legal right to insure the

subject matter of the policy of insurance. Section 10 of the Insurance Code indeed provides that every person has an insurable interest in his own life. Section 19 of the same code also states that an interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs. Upon more extensive study of the Petition, it becomes evident that the matter of insurable interest is entirely irrelevant in the case at bar. It is actually beyond question that while Eulogio was still alive, he had an insurable interest in his own life, which he did insure under Policy No. 9011992. The real point of contention herein is whether Eulogio was able to reinstate the lapsed insurance policy on his life before his death on 17 September 1998.

5. ID.; ID.; ID.; CONTRACT OF INSURANCE; UPON THE EXPIRATION OF THE 31-DAY GRACE PERIOD FOR PAYMENT OF THE PREMIUM, WITHOUT ANY PAYMENT HAVING BEEN MADE, THE POLICY CONTRACT HAD LAPSED AND BECOME VOID; CASE AT BAR.— [T]he Court must correct the erroneous declaration of the RTC in its 30 August 2007 Decision that Policy No. 9011992 lapsed because of Eulogio's non-payment of the premiums which became due on **24 April 1998** and **24 July 1998**. Policy No. 9011992 had lapsed and become void earlier, on **24 February 1998,** upon the expiration of the 31-day grace period for payment of the premium, which fell due on **24 January 1998**, without any payment having been made.

6. ID.; ID.; ID.; ID.; ID.; REINSTATEMENT OF THE POLICY; CONDITIONS THEREFOR NOT COMPLIED WITH IN CASE AT BAR.— To reinstate a policy means to restore the same to premium-paying status after it has been permitted to lapse. Both the Policy Contract and the Application for Reinstatement provide for specific conditions for the reinstatement of a lapsed policy. In the instant case, Eulogio's death rendered impossible full compliance with the conditions for reinstatement of Policy No. 9011992. True, Eulogio, before his death, managed to file his Application for Reinstatement and deposit the amount for payment of his overdue premiums and interests thereon with Malaluan; but Policy No. 9011992 could only be considered reinstated **after** the Application for Reinstatement had been processed and approved by Insular Life **during** Eulogio's lifetime and good health. Relevant herein is the following pronouncement

of the Court in *Andres v. The Crown Life Insurance Company*, citing *McGuire v. The Manufacturer's Life Insurance Co.* "The stipulation in a life insurance policy giving the insured the privilege to reinstate it upon written application **does not give the insured absolute right** to such reinstatement by the mere filing of an application. The **insurer has the right to deny the reinstatement** if it is not satisfied as to the insurability of the insured and if the latter does not pay all overdue premium and all other indebtedness to the insurer. **After the death of the insured the insurance Company cannot be compelled to entertain an application for reinstatement** of the policy because the conditions precedent to reinstatement can no longer be determined and satisfied." It does not matter that when he died, Eulogio's Application for Reinstatement and deposits for the overdue premiums and interests were already with Malaluan. Insular Life, through the Policy Contract, expressly limits the power or authority of its insurance agents, thus: Our agents have **no authority** to make or modify this contract, to extend the time limit for payment of premiums, to waive any lapsation, forfeiture or any of our rights or requirements, such powers being limited to our president, vice-president or persons authorized by the Board of Trustees and only in writing. Malaluan did not have the authority to approve Eulogio's Application for Reinstatement. Malaluan still had to turn over to Insular Life Eulogio's Application for Reinstatement and accompanying deposits, for processing and approval by the latter.

7. ID.; ID.; ID.; ID.; INTERPRETATION; TERMS OF THE CONTRACT MUST BE CONSTRUED ACCORDING TO THE SENSE AND MEANING OF THE TERMS.— The Court agrees with the RTC that the conditions for reinstatement under the Policy Contract and Application for Reinstatement were written in clear and simple language, which could not admit of any meaning or interpretation other than those that they so obviously embody. A construction in favor of the insured is not called for, as there is no ambiguity in the said provisions in the first place. The words thereof are clear, unequivocal, and simple enough so as to preclude any mistake in the appreciation of the same. Violeta did not adduce any evidence that Eulogio might have failed to fully understand the import and meaning of the provisions of his Policy Contract and/or Application for

Reinstatement, both of which he voluntarily signed. While it is a cardinal principle of insurance law that a policy or contract of insurance is to be construed liberally in favor of the insured and strictly as against the insurer company, yet, contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms, which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense.

APPEARANCES OF COUNSEL

Feliciano V. Buenaventura for petitioner.
Law Firm of Tanjuatco & Partners for respondent.

D E C I S I O N

CHICO-NAZARIO,[*] *J.*:

Challenged in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated 30 August 2007 and the Orders dated 10 April 2008[3] and 3 July 2008[4] of the Regional Trial Court (RTC) of Gapan City, Branch 34, in Civil Case No. 2177. In its assailed Decision, the RTC dismissed the claim for death benefits filed by petitioner Violeta R. Lalican (Violeta) against respondent Insular Life Assurance Company Limited (Insular Life); while in its questioned Orders dated 10 April 2008 and 3 July 2008, respectively, the RTC declared the

[**] Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] *Rollo*, pp. 22-35.

[2] Penned by Judge Celso O. Baguio; *rollo*, pp. 7-15.

[3] *Rollo*, pp. 16-17.

[4] *Id.* at 18-19. The date of promulgation of the assailed second Order was erroneously stated in the Petition as 9 July 2008.

finality of the aforesaid Decision and denied petitioner's Notice of Appeal.

The factual and procedural antecedents of the case, as culled from the records, are as follows:

Violeta is the widow of the deceased Eulogio C. Lalican (Eulogio).

During his lifetime, Eulogio applied for an insurance policy with Insular Life. On 24 April 1997, Insular Life, through Josephine Malaluan (Malaluan), its agent in Gapan City, issued in favor of Eulogio Policy No. 9011992,[5] which contained a 20-Year Endowment Variable Income Package Flexi Plan worth ₱500,000.00,[6] with two riders valued at ₱500,000.00 each.[7] Thus, the value of the policy amounted to ₱1,500,000.00. Violeta was named as the primary beneficiary.

Under the terms of Policy No. 9011992, Eulogio was to pay the premiums on a quarterly basis in the amount of ₱8,062.00, payable every 24 April, 24 July, 24 October and 24 January of each year, until the end of the 20-year period of the policy. According to the Policy Contract, there was a grace period of 31 days for the payment of each premium subsequent to the first. If any premium was not paid on or before the due date, the policy would be in default, and if the premium remained unpaid until the end of the grace period, the policy would automatically lapse and become void.[8]

---

[5] Records, Folder 1, p. 57.

[6] An **endowment policy** is one under the terms of which the insurer binds himself to pay a fixed sum to the insured if the latter survives for a specified period (maturity date stated in the policy), or, if he dies within such period, to some other person indicated. (De Leon, *THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED* [2002 ed.], p. 438). Under Section 180 of the Insurance Code, endowment contracts shall be considered life insurance contracts for purposes of said code.

[7] A **rider** is a printed or typed stipulation contained on a slip of paper attached to the policy and forming an integral part thereof. (De Leon, *THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED* [2002 ed.], p. 186).

[8] Records, Folder 1, p. 44.

Eulogio paid the premiums due on 24 July 1997 and 24 October 1997. However, he failed to pay the premium due on 24 January 1998, even after the lapse of the grace period of 31 days. Policy No. 9011992, therefore, lapsed and became void.

Eulogio submitted to the Cabanatuan District Office of Insular Life, through Malaluan, on 26 May 1998, an Application for Reinstatement[9] of Policy No. 9011992, together with the amount of ₱8,062.00 to pay for the premium due on 24 January 1998. In a letter[10] dated 17 July 1998, Insular Life notified Eulogio that his Application for Reinstatement could not be fully processed because, although he already deposited ₱8,062.00 as payment for the 24 January 1998 premium, he left unpaid the overdue interest thereon amounting to ₱322.48. Thus, Insular Life instructed Eulogio to pay the amount of interest and to file another application for reinstatement. Eulogio was likewise advised by Malaluan to pay the premiums that subsequently became due on 24 April 1998 and 24 July 1998, plus interest.

On 17 September 1998, Eulogio went to Malaluan's house and submitted a second Application for Reinstatement[11] of Policy No. 9011992, including the amount of ₱17,500.00, representing payments for the overdue interest on the premium for 24 January 1998, and the premiums which became due on 24 April 1998 and 24 July 1998. As Malaluan was away on a business errand, her husband received Eulogio's second Application for Reinstatement and issued a receipt for the amount Eulogio deposited.

A while later, on the same day, 17 September 1998, Eulogio died of cardio-respiratory arrest secondary to electrocution.

Without knowing of Eulogio's death, Malaluan forwarded to the Insular Life Regional Office in the City of San Fernando, on 18 September 1998, Eulogio's second Application for Reinstatement of Policy No. 9011992 and ₱17,500.00 deposit. However, Insular Life no longer acted upon Eulogio's second

[9] *Id.* at 58.
[10] *Id.* at 60.
[11] *Id.* at 59.

Application for Reinstatement, as the former was informed on 21 September 1998 that Eulogio had already passed away.

On 28 September 1998, Violeta filed with Insular Life a claim for payment of the full proceeds of Policy No. 9011992.

In a letter[12] dated 14 January 1999, Insular Life informed Violeta that her claim could not be granted since, at the time of Eulogio's death, Policy No. 9011992 had already lapsed, and Eulogio failed to reinstate the same. According to the Application for Reinstatement, the policy would only be considered reinstated upon approval of the application by Insular Life during the applicant's "lifetime and good health," and whatever amount the applicant paid in connection thereto was considered to be a deposit only until approval of said application. Enclosed with the 14 January 1999 letter of Insular Life to Violeta was DBP Check No. 0000309734, for the amount of ₱25,417.00, drawn in Violeta's favor, representing the full refund of the payments made by Eulogio on Policy No. 9011992.

On 12 February 1998, Violeta requested a reconsideration of the disallowance of her claim. In a letter[13] dated 10 March 1999, Insular Life stated that it could not find any reason to reconsider its decision rejecting Violeta's claim. Insular Life again tendered to Violeta the above-mentioned check in the amount of ₱25,417.00.

Violeta returned the letter dated 10 March 1999 and the check enclosed therein to the Cabanatuan District Office of Insular Life. Violeta's counsel subsequently sent a letter[14] dated 8 July 1999 to Insular Life, demanding payment of the full proceeds of Policy No. 9011992. On 11 August 1999, Insular Life responded to the said demand letter by agreeing to conduct a re-evaluation of Violeta's claim.

---

[12] *Id.* at 61-63.

[13] *Id.* at 67-68.

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

Without waiting for the result of the re-evaluation by Insular Life, Violeta filed with the RTC, on 11 October 1999, a Complaint for Death Claim Benefit,[15] which was docketed as Civil Case No. 2177. Violeta alleged that Insular Life engaged in unfair claim settlement practice and deliberately failed to act with reasonable promptness on her insurance claim. Violeta prayed that Insular Life be ordered to pay her death claim benefits on Policy No. 9011992, in the amount of ₱1,500,000.00, plus interests, attorney's fees, and cost of suit.

Insular Life filed with the RTC an Answer with Counterclaim,[16] asserting that Violeta's Complaint had no legal or factual bases. Insular Life maintained that Policy No. 9011992, on which Violeta sought to recover, was rendered void by the non-payment of the 24 January 1998 premium and non-compliance with the requirements for the reinstatement of the same. By way of counterclaim, Insular Life prayed that Violeta be ordered to pay attorney's fees and expenses of litigation incurred by the former.

Violeta, in her Reply and Answer to Counterclaim, asserted that the requirements for the reinstatement of Policy No. 9011992 had been complied with and the defenses put up by Insular Life were purely invented and illusory.

After trial, the RTC rendered, on 30 August 2007, a Decision in favor of Insular Life.

The RTC found that Policy No. 9011992 had indeed lapsed and Eulogio needed to have the same reinstated:

> [The] arguments [of Insular Life] are not without basis. When the premiums for April 24 and July 24, 1998 were not paid by [Eulogio] even after the lapse of the 31-day grace period, his insurance policy necessarily lapsed. This is clear from the terms and conditions of the contract between [Insular Life] and [Eulogio] which are written in [the] Policy provisions of Policy No. 9011992 x x x.[17]

---

[15] *Rollo*, pp. 42-46.

[16] *Id.* at 82-88.

[17] *Id.* at 73.

The RTC, taking into account the clear provisions of the Policy Contract between Eulogio and Insular Life and the Application for Reinstatement Eulogio subsequently signed and submitted to Insular Life, held that Eulogio was not able to fully comply with the requirements for the reinstatement of Policy No. 9011992:

> The well-settled rule is that a contract has the force of law between the parties. In the instant case, the terms of the insurance contract between [Eulogio] and [Insular Life] were spelled out in the policy provisions of Insurance Policy No. 9011992. There is likewise no dispute that said insurance contract is by nature a contract of adhesion[,] which is defined as "*one in which one of the contracting parties imposes a ready-made form of contract which the other party may accept or reject but cannot modify." (Polotan, Sr. vs. CA, 296 SCRA 247).*
>
> xxx xxx xxx
>
> The New Lexicon Webster's Dictionary defines ambiguity as the "quality of having more than one meaning" and "an idea, statement or expression capable of being understood in more than one sense." In ***Nacu vs. Court of Appeals*, 231 SCRA 237 (1994)**, the Supreme Court stated that[:]
>
> > "Any ambiguity in a contract, whose terms are susceptible of different interpretations as a result thereby, must be read and construed against the party who drafted it on the assumption that it could have been avoided by the exercise of a little care."
>
> **In the instant case, the dispute arises from the afore-quoted provisions written on the face of the second application for reinstatement. Examining the said provisions, the court finds the same clearly written in terms that are simple enough to admit of only one interpretation. They are clearly not ambiguous, equivocal or uncertain that would need further construction. The same are written on the very face of the application just above the space where [Eulogio] signed his name. It is inconceivable that he signed it without reading and understanding its import.**
>
> Similarly, the provisions of the policy provisions (sic) earlier mentioned are written in simple and clear layman's language, rendering it free from any ambiguity that would require a legal interpretation or construction. Thus, the court believes that [Eulogio] was well

aware that when he filed the said application for reinstatement, his lapsed policy was not automatically reinstated and that its approval was subject to certain conditions. **Nowhere in the policy or in the application for reinstatement was it ever mentioned that the payment of premiums would have the effect of an automatic and immediate renewal of the lapsed policy. Instead, what was clearly stated in the application for reinstatement is that pending approval thereof, the premiums paid would be treated as a "deposit only and shall not bind the company until this application is finally approved during my/our" lifetime and good health[.]"**

Again, the court finds nothing in the aforesaid provisions that would even suggest an ambiguity either in the words used or in the manner they were written. [Violeta] did not present any proof that [Eulogio] was not conversant with the English language. Hence, his having personally signed the application for reinstatement[,] which consisted only of one page, could only mean that he has read its contents and that he understood them. x x x

Therefore, consistent with the above Supreme Court ruling and finding no ambiguity both in the policy provisions of Policy No. 9011992 and in the application for reinstatement subject of this case, the court finds no merit in [Violeta's] contention that the policy provision stating that [the lapsed policy of Eulogio] should be reinstated during his lifetime is ambiguous and should be construed in his favor. It is true that [Eulogio] submitted his application for reinstatement, together with his premium and interest payments, to [Insular Life] through its agent Josephine Malaluan in the morning of September 17, 1998. Unfortunately, he died in the afternoon of that same day. It was only on the following day, September 18, 1998 that Ms. Malaluan brought the said document to [the regional office of Insular Life] in San Fernando, Pampanga for approval. **As correctly pointed out by [Insular Life] there was no more application to approve because the applicant was already dead and no insurance company would issue an insurance policy to a dead person.**[18] (Emphases ours.)

The RTC, in the end, explained that:

While the court truly empathizes with the [Violeta] for the loss of her husband, it cannot express the same by interpreting the insurance agreement in her favor where there is no need for such interpretation.

---

[18] *Id.* at 74-76.

It is conceded that [Eulogio's] payment of overdue premiums and interest was received by [Insular Life] through its agent Ms. Malaluan. It is also true that [the] application for reinstatement was filed by [Eulogio] a day before his death. **However, there is nothing that would justify a conclusion that such receipt amounted to an automatic reinstatement of the policy that has already lapsed. The evidence suggests clearly that no such automatic renewal was contemplated in the contract between [Eulogio] and [Insular Life]. Neither was it shown that Ms. Malaluan was the officer authorized to approve the application for reinstatement and that her receipt of the documents submitted by [Eulogio] amounted to its approval.**[19] (Emphasis ours.)

The *fallo* of the RTC Decision thus reads:

WHEREFORE, all the foregoing premises considered and finding that [Violeta] has failed to establish by preponderance of evidence her cause of action against the defendant, let this case be, as it is hereby **DISMISSED**.[20]

On 14 September 2007, Violeta filed a Motion for Reconsideration[21] of the afore-mentioned RTC Decision. Insular Life opposed[22] the said motion, averring that the arguments raised therein were merely a rehash of the issues already considered and addressed by the RTC. In an Order[23] dated 8 November 2007, the RTC denied Violeta's Motion for Reconsideration, finding no cogent and compelling reason to disturb its earlier findings. Per the Registry Return Receipt on record, the 8 November 2007 Order of the RTC was received by Violeta on 3 December 2007.

In the interim, on 22 November 2007, Violeta filed with the RTC a Reply[24] to the Motion for Reconsideration, wherein she reiterated the prayer in her Motion for Reconsideration for the

---

[19] *Id.* at 76.

[20] *Id.*

[21] Records, Folder 2, pp. 388-392.

[22] *Id.* at 394-400.

[23] *Id.* at 401-402.

[24] *Id.* at 403-405.

setting aside of the Decision dated 30 August 2007. Despite already receiving on 3 December 2007, a copy of the RTC Order dated 8 November 2007, which denied her Motion for Reconsideration, Violeta still filed with the RTC, on 26 February 2008, a Reply Extended Discussion elaborating on the arguments she had previously made in her Motion for Reconsideration and Reply.

On 10 April 2008, the RTC issued an Order,[25] declaring that the Decision dated 30 August 2007 in Civil Case No. 2177 had already attained finality in view of Violeta's failure to file the appropriate notice of appeal within the reglementary period. Thus, any further discussions on the issues raised by Violeta in her Reply and Reply Extended Discussion would be moot and academic.

Violeta filed with the RTC, on 20 May 2008, a Notice of Appeal with Motion,[26] praying that the Order dated 10 April 2008 be set aside and that she be allowed to file an appeal with the Court of Appeals.

In an Order[27] dated 3 July 2008, the RTC denied Violeta's Notice of Appeal with Motion given that the Decision dated 30 August 2007 had long since attained finality.

Violeta directly elevated her case to this Court *via* the instant Petition for Review on *Certiorari*, raising the following issues for consideration:

1. Whether or not the Decision of the court *a quo* dated August 30, 2007, can still be reviewed despite having allegedly attained finality and despite the fact that the mode of appeal that has been availed of by Violeta is erroneous?

2. Whether or not the Regional Trial Court in its original jurisdiction has decided the case on a question of law not in accord with law and applicable decisions of the Supreme Court?

---

[25] *Rollo*, pp. 16-17.

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

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

Violeta insists that her former counsel committed an honest mistake in filing a Reply, instead of a Notice of Appeal of the RTC Decision dated 30 August 2007; and in the computation of the reglementary period for appealing the said judgment. Violeta claims that her former counsel suffered from poor health, which rapidly deteriorated from the first week of July 2008 until the latter's death just shortly after the filing of the instant Petition on 8 August 2008. In light of these circumstances, Violeta entreats this Court to admit and give due course to her appeal even if the same was filed out of time.

Violeta further posits that the Court should address the question of law arising in this case involving the interpretation of the second sentence of Section 19 of the Insurance Code, which provides:

> Section. 19. x x x [I]nterest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs.

On the basis thereof, Violeta argues that Eulogio still had insurable interest in his own life when he reinstated Policy No. 9011992 just before he passed away on 17 September 1998. The RTC should have construed the provisions of the Policy Contract and Application for Reinstatement in favor of the insured Eulogio and against the insurer Insular Life, and considered the special circumstances of the case, to rule that Eulogio had complied with the requisites for the reinstatement of Policy No. 9011992 prior to his death, and that Violeta is entitled to claim the proceeds of said policy as the primary beneficiary thereof.

The Petition lacks merit.

At the outset, the Court notes that the elevation of the case to us *via* the instant Petition for Review on *Certiorari* is not justified. Rule 41, Section 1 of the Rules of Court,[28] provides

---

[28] As amended by A.M. No. 07-7-12, effective 4 December 2007.

that no appeal may be taken from an order disallowing or dismissing an appeal. In such a case, the aggrieved party may file a Petition for *Certiorari* under Rule 65 of the Rules of Court.[29]

Furthermore, the RTC Decision dated 30 August 2007, assailed in this Petition, had long become final and executory. Violeta filed a Motion for Reconsideration thereof, but the RTC denied the same in an Order dated 8 November 2007. The records of the case reveal that Violeta received a copy of the 8 November 2007 Order on **3 December 2007**. Thus, Violeta had **15 days**[30] from said date of receipt, or until **18 December 2007**, to file a Notice of Appeal. Violeta filed a Notice of Appeal only on **20 May 2008**, more than **five months** after receipt of the RTC Order dated 8 November 2007 denying her Motion for Reconsideration.

Violeta's claim that her former counsel's failure to file the proper remedy within the reglementary period was an honest mistake, attributable to the latter's deteriorating health, is unpersuasive.

Violeta merely made a general averment of her former counsel's poor health, lacking relevant details and supporting evidence. By Violeta's own admission, her former counsel's health rapidly deteriorated only by the **first week of July 2008**. The events pertinent to Violeta's Notice of Appeal took place months before July 2008, *i.e.*, a copy of the RTC Order dated 8 November 2007, denying Violeta's Motion for Reconsideration

---

[29] Section 1(c), Rule 41 of the Rules of Court, as amended, provides:

SECTION 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x x x x x x

(c) An order disallowing or dismissing an appeal;

[30] *Neypes v. Court of Appeals*, G.R. No. 141524, 14 September 2005, 469 SCRA 633, 639.

of the Decision dated 30 August 2007, was received on **3 December 2007**; and Violeta's Notice of Appeal was filed on **20 May 2008**. There is utter lack of proof to show that Violeta's former counsel was already suffering from ill health during these times; or that the illness of Violeta's former counsel would have affected his judgment and competence as a lawyer.

Moreover, the failure of her former counsel to file a Notice of Appeal within the reglementary period binds Violeta, which failure the latter cannot now disown on the basis of her bare allegation and self-serving pronouncement that the former was ill. A client is bound by his counsel's mistakes and negligence.[31]

The Court, therefore, finds no reversible error on the part of the RTC in denying Violeta's Notice of Appeal for being filed beyond the reglementary period. Without an appeal having been timely filed, the RTC Decision dated 30 August 2007 in Civil Case No. 2177 already became final and executory.

A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has become final.[32] When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court, which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[33]

The only recognized exceptions to the doctrine of immutability and unalterability are the correction of clerical errors, the so-called *nunc pro tunc* entries, which cause no prejudice to any party,

---

[31] *Casolita, Sr. v. Court of Appeals*, 341 Phil. 251, 259 (1997).

[32] *Social Security System v. Isip*, G.R. No. 165417, 3 April 2007, 520 SCRA 310, 314-315.

[33] *Id.* at 315.

and void judgments.[34] The instant case does not fall under any of these exceptions.

Even if the Court ignores the procedural lapses committed herein, and proceeds to resolve the substantive issues raised, the Petition must still fail.

Violeta makes it appear that her present Petition involves a question of law, particularly, whether Eulogio had an existing insurable interest in his own life until the day of his death.

An insurable interest is one of the most basic and essential requirements in an insurance contract. In general, an insurable interest is that interest which a person is deemed to have in the subject matter insured, where he has a relation or connection with or concern in it, such that the person will derive pecuniary benefit or advantage from the preservation of the subject matter insured and will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against.[35] The existence of an insurable interest gives a person the legal right to insure the subject matter of the policy of insurance.[36] Section 10 of the Insurance Code indeed provides that every person has an insurable interest in his own life.[37] Section 19 of the same code also states that an interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs.[38]

---

[34] *Id.*

[35] See 44 C.J.S. 870, cited in De Leon, *THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED* (2002 ed.), p. 85.

[36] De Leon, *THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED (2002 ED.),* P. 86.

[37] Sec. 10. Every person has an insurable interest in the life and health:

(a) Of **himself**, of his spouse and of his children; (Emphasis ours.)

[38] Sec. 19. An interest in property insured must exist when the insurance takes effect, and when the loss occurs, but not exist in the meantime; **and interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs**. (Emphasis ours.)

Upon more extensive study of the Petition, it becomes evident that the matter of insurable interest is entirely irrelevant in the case at bar. It is actually beyond question that while Eulogio was still alive, he had an insurable interest in his own life, which he did insure under Policy No. 9011992. The real point of contention herein is whether Eulogio was able to reinstate the lapsed insurance policy on his life before his death on 17 September 1998.

The Court rules in the negative.

Before proceeding, the Court must correct the erroneous declaration of the RTC in its 30 August 2007 Decision that Policy No. 9011992 lapsed because of Eulogio's non-payment of the premiums which became due on **24 April 1998** and **24 July 1998**. Policy No. 9011992 had lapsed and become void earlier, on **24 February 1998,** upon the expiration of the 31-day grace period for payment of the premium, which fell due on **24 January 1998**, without any payment having been made.

That Policy No. 9011992 had already lapsed is a fact beyond dispute. Eulogio's filing of his first Application for Reinstatement with Insular Life, through Malaluan, on **26 May 1998**, constitutes an admission that Policy No. 9011992 had lapsed by then. Insular Life did not act on Eulogio's first Application for Reinstatement, since the amount Eulogio simultaneously deposited was sufficient to cover only the ₱8,062.00 overdue premium for 24 January 1998, but not the ₱322.48 overdue interests thereon. On 17 September 1998, Eulogio submitted a second Application for Reinstatement to Insular Life, again through Malaluan, depositing at the same time ₱17,500.00, to cover payment for the overdue interest on the premium for 24 January 1998, and the premiums that had also become due on 24 April 1998 and 24 July 1998. On the very same day, Eulogio passed away.

To reinstate a policy means to restore the same to premium-paying status after it has been permitted to lapse.[39] Both the

---

[39] De Leon, *THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED* (2002 ed.), p. 538.

Policy Contract and the Application for Reinstatement provide for specific conditions for the reinstatement of a lapsed policy.

The Policy Contract between Eulogio and Insular Life identified the following conditions for reinstatement should the policy lapse:

10. REINSTATEMENT

You may reinstate this policy at any time within three years after it lapsed if the following conditions are met: (1) the policy has not been surrendered for its cash value or the period of extension as a term insurance has not expired; (2) evidence of insurability satisfactory to [Insular Life] is furnished; (3) overdue premiums are paid with compound interest at a rate not exceeding that which would have been applicable to said premium and indebtedness in the policy years prior to reinstatement; and (4) indebtedness which existed at the time of lapsation is paid or renewed.[40]

Additional conditions for reinstatement of a lapsed policy were stated in the Application for Reinstatement which Eulogio signed and submitted, to wit:

I/We agree that said Policy shall **not be considered reinstated until this application is approved by the Company during my/our lifetime and good health and until all other Company requirements for the reinstatement of said Policy are fully satisfied**.

I/We further agree that **any payment made or to be made in connection with this application shall be considered as deposit only and shall not bind the Company until this application is finally approved by the Company during my/our lifetime and good health**. If this application is disapproved, I/We also agree to accept the refund of all payments made in connection herewith, without interest, and to surrender the receipts for such payment.[41] (Emphases ours.)

In the instant case, Eulogio's death rendered impossible full compliance with the conditions for reinstatement of Policy No. 9011992. True, Eulogio, before his death, managed to file his Application for Reinstatement and deposit the amount for

---

[40] Records, Folder 1, pp. 45-46.

[41] *Id.* at 58.

payment of his overdue premiums and interests thereon with Malaluan; but Policy No. 9011992 could only be considered reinstated **after** the Application for Reinstatement had been processed and approved by Insular Life **during** Eulogio's lifetime and good health.

Relevant herein is the following pronouncement of the Court in *Andres v. The Crown Life Insurance Company*,[42] citing *McGuire v. The Manufacturer's Life Insurance Co.*:[43]

"The stipulation in a life insurance policy giving the insured the privilege to reinstate it upon written application **does not give the insured absolute right** to such reinstatement by the mere filing of an application. The **insurer has the right to deny the reinstatement** if it is not satisfied as to the insurability of the insured and if the latter does not pay all overdue premium and all other indebtedness to the insurer. **After the death of the insured the insurance Company cannot be compelled to entertain an application for reinstatement** of the policy because the conditions precedent to reinstatement can no longer be determined and satisfied." (Emphases ours.)

It does not matter that when he died, Eulogio's Application for Reinstatement and deposits for the overdue premiums and interests were already with Malaluan. Insular Life, through the Policy Contract, expressly limits the power or authority of its insurance agents, thus:

Our agents have **no authority** to make or modify this contract, to extend the time limit for payment of premiums, to waive any lapsation, forfeiture or any of our rights or requirements, such powers being limited to our president, vice-president or persons authorized by the Board of Trustees and only in writing.[44] (Emphasis ours.)

Malaluan did not have the authority to approve Eulogio's Application for Reinstatement. Malaluan still had to turn over to Insular Life Eulogio's Application for Reinstatement and accompanying deposits, for processing and approval by the latter.

---

[42] 102 Phil. 919, 925 (1958).

[43] 87 Phil. 370, 373 (1950).

[44] Records, Folder 1, p. 44.

The Court agrees with the RTC that the conditions for reinstatement under the Policy Contract and Application for Reinstatement were written in clear and simple language, which could not admit of any meaning or interpretation other than those that they so obviously embody. A construction in favor of the insured is not called for, as there is no ambiguity in the said provisions in the first place. The words thereof are clear, unequivocal, and simple enough so as to preclude any mistake in the appreciation of the same.

Violeta did not adduce any evidence that Eulogio might have failed to fully understand the import and meaning of the provisions of his Policy Contract and/or Application for Reinstatement, both of which he voluntarily signed. While it is a cardinal principle of insurance law that a policy or contract of insurance is to be construed liberally in favor of the insured and strictly as against the insurer company, yet, contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms, which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense.[45]

Eulogio's death, just hours after filing his Application for Reinstatement and depositing his payment for overdue premiums and interests with Malaluan, does not constitute a special circumstance that can persuade this Court to already consider Policy No. 9011992 reinstated. Said circumstance cannot override the clear and express provisions of the Policy Contract and Application for Reinstatement, and operate to remove the prerogative of Insular Life thereunder to approve or disapprove the Application for Reinstatement. Even though the Court commiserates with Violeta, as the tragic and fateful turn of events leaves her practically empty-handed, the Court cannot arbitrarily burden Insular Life with the payment of proceeds on a lapsed insurance policy. Justice and fairness must equally

---

[45] *Pacific Banking Corporation v. Court of Appeals*, G.R. No. L-41014, 28 November 1988, 168 SCRA 1, 13.

apply to all parties to a case. Courts are not permitted to make contracts for the parties. The function and duty of the courts consist simply in enforcing and carrying out the contracts actually made.[46]

Policy No. 9011992 remained lapsed and void, not having been reinstated in accordance with the Policy Contract and Application for Reinstatement before Eulogio's death. Violeta, therefore, cannot claim any death benefits from Insular Life on the basis of Policy No. 9011992; but she is entitled to receive the full refund of the payments made by Eulogio thereon.

WHEREFORE, premises considered, the Court *DENIES* the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. The Court *AFFIRMS* the Orders dated 10 April 2008 and 3 July 2008 of the RTC of Gapan City, Branch 34, in Civil Case No. 2177, denying petitioner Violeta R. Lalican's Notice of Appeal, on the ground that the Decision dated 30 August 2007 subject thereof, was already final and executory. No costs.

SO ORDERED.

Carpio Morales,[**] *Velasco, Jr., Nachura,* and *Peralta, JJ.,* concur.

---

[46] *Union Manufacturing Co., Inc. v. Phil. Guaranty Co., Inc.,* 150-C Phil. 69, 73 (1972).

[**] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

THIRD DIVISION

[G.R. No. 185004. August 25, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARMANDO FERASOL,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; REVIEW OF RAPE CASES; GUIDING PRINCIPLES.— In the review of rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense. Ultimately, in a prosecution for rape, the complainant's credibility becomes the single most important issue.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; CHILD WITNESS; MINOR INCONSISTENCIES IN THE TESTIMONY TEND TO BUTTRESS, RATHER THAN IMPAIR, THE WITNESS' CREDIBILITY AS THEY ERASE ANY SUSPICION OF A REHEARSED TESTIMONY; EXPLAINED.— In connection with the minor inconsistencies in AAA's testimony which appellant harps on, we completely agree with the following disquisition of the appellate court: It bears emphasis that AAA was only 11 years old at the time she testified before the trial court. She was only 9 years old when [appellant] started raping her. A child witness could not be expected to give a precise response to every question posed to her. Her failure to give an answer to the point as to be free of any minor inconsistencies is understandable and does not make her a witness less worthy of belief. It is not unnatural for a rape victim, especially one who is of tender age, to make discrepant statements. But, so long as the testimony is consistent on material points, slightly conflicting statements will not undermine the witness' credibility

> or the veracity of her testimony. They in fact tend to buttress, rather than impair, her credibility as they erase any suspicion of a rehearsed testimony. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal. x x x Although AAA's testimony is not perfect in details, it bore the earmarks of truth. We find that she was unwavering and consistent. She never hesitated in testifying that it was her uncle who raped her. She may have confused certain minor details such as whether she was left alone in the house or had other companions, whether her aunt Maribel Ferasol went to the market or to the *poblacion* as testified by BBB, whether she attended school on the day of the rape incident or not, but she was consistent in her statements identifying [appellant] as the rapist. But the said variances focused more on her account of the events immediately prior to and following the rape than her narration of the commission of the crime itself. After all, AAA was but a little girl of nine (9) when her ordeal began and eleven (11) when she took the witness stand. It should be understandable that the young victim would more likely wish to forget rather than to remember the sordid details of the outrage that claimed her innocence.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00344 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 26,

---

[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring; *rollo,* pp. 4-24.

[2] Penned by Judge Roberto L. Ayco, CA *rollo,* pp. 40-64.

Surallah, South Cotabato finding appellant Armando Ferasol guilty of Statutory Rape under Article 266-A of the Revised Penal Code.

The facts as summarized by the CA:

In an Information dated February 9, 2002, [appellant] was charged with the crime of Rape (Statutory) allegedly committed against AAA, *viz.*:

> "That on or about the 31st day of August, 2001, in the morning thereof, in the house of the above-named [appellant] located at xxx, xxx, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant] did then and there willfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of AAA,[3] nine (9) years old and his niece, against the will and consent of the said victim."
>
> CONTRARY TO LAW.

Upon his arraignment on May 28, 2002, [appellant] pleaded "Not Guilty" to the crime charged. x x x.

Version of the Prosecution

xxx xxx xxx

> On August 8, 2001, around 8 o'clock in the morning, [nine]-year old AAA was sweeping the yard of their home in xxx, xxx, South Cotabato. AAA was left all alone. Her mother, BBB, departed for xxx proper early that morning, together with her aunt, Maribel Ferasol, wife of appellant Armando Ferasol. Her father, BBB had earlier left for their farm. AAA's older brother, DDD, went out of the house early, roaming the neighborhood, while her older sister, EEE, stayed with another aunt in xxx.
>
> Appellant Armando Ferasol, AAA's uncle, whose house was located just 10 meters away from AAA's house, called AAA to come over to his house. Unsuspecting, AAA heeded her uncle's command. After AAA entered appellant's house,

---

[3] The real name of the victim is withheld as per Republic Act (R.A.) No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

appellant removed her short pants. Immediately, appellant inserted his penis inside the young girl's vagina. After consummating the sexual intercourse, appellant sent AAA back home. He threatened her that he would kill her parents, her brother and sister as well as herself if she told anyone regarding the incident. Fearful for their lives, AAA at first kept appellant's abuse to herself.

Appellant had earlier been abusing AAA, who was already in her fourth grade, since she was in Grade 3. The child, however, did not tell anyone regarding appellant's repeated sexual assaults.

BBB went back to their house around 1 o'clock in the afternoon of the same day. Around 4:30 in that afternoon, BBB saw AAA arrive from school, looking weak and clutching at her groin. The following day, September 1, 2001, AAA's teacher, Mrs. Luz Puyonan, sent a note to BBB, informing her that she would like to talk to her on September 3, 2001. On September 3, 2001, Mrs. Luz Puyonan told BBB that she had a suspicion that AAA had been sexually abused. She advised BBB to see a doctor who could examine AAA. Forthwith, BBB brought AAA to Dr. Evelyn Diosana, the Municipal Health Officer of xxx. In the course of her examination, AAA revealed to Dr. Diosana that appellant had been abusing her. x x x.

Version of the Defense

Invoking the defense of denial and alibi, [appellant] testified that on August 31, 2001, he was at Sitio Lubo, Barangay Ned, Lake Sebu, South Cotabato, which is an eight-hour ride away from his place. He needed money to pay for the hospital expenses of his daughter who had a boil growing in her heart. [Appellant] went to Sition Lubo on August 28, 2001 to borrow money from his friend Rafael Haudar. He stayed there for several days helping Rafael Haudar in drying around fifty (50) sacks of corn. On August 31, 2001, after completely drying Rafael Haudar's corn, they sold them to a certain Rogelio for ₱15,000.00. From the proceeds, Rafael Haudar loaned [appellant] ₱4,000.00. Immediately on the next day, September 1, 2001, [appellant] went home.

Rafael Haudar, himself, corroborated [appellant's] claim. He attested that [appellant] stayed in his place in Sitio Lubo from August 28 to

September 1, 2001. He also testified that [appellant] helped him in drying his corn and [appellant] borrowed from him ₱4,000.00.[4]

After trial, the RTC found appellant guilty as charged and disposed, as follows:

WHEREFORE, considering the above premises, the court finds the appellant Armando Ferasol, **GUILTY** of the crime of Statutory Rape.

Following then the above-quoted provision of the law, the court hereby imposes against the appellant the extreme penalty of DEATH.

The [appellant] is likewise ordered to pay his victim, AAA, the amounts of PH50,000.00 as moral damages; PH50,000.00 as exemplary damages and PH30,000.00 as restitution for the payment of attorney's fees.

The Clerk of Court of this court then is hereby directed to immediately forward the record of this case to the Court of Appeals, Cagayan de Oro City for the automatic review by said appellate court of this decision/judgment.

SO ORDERED.[5]

As previously adverted to, the CA, on appeal, affirmed the RTC's decision with modification:

WHEREFORE, the Decision of the Regional Trial Court, Branch 26, 11th Judicial Region, Surallah, South Cotabato, in Criminal Case No. 3008-N, is hereby **AFFIRMED with MODIFICATIONS**. [Appellant] Armando Ferasol is **SENTENCED** to suffer the penalty of *reclusion perpetua* with no possibility of parole for the crime of rape committed against AAA. He is also hereby **ORDERED** to indemnify AAA the amounts of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity. Furthermore, the award of ₱50,000.00 as exemplary damages and ₱30,000.00 as attorney's fees are **DELETED** for lack of factual and legal basis. With costs.[6]

Appellant filed a notice of appeal and is now before us insisting on his innocence and beseeching the reversal of the lower courts' finding of guilt.

---

[4] *Rollo,* pp. 5-8. (Citations omitted.)

[5] CA *rollo*, pp. 63-64.

[6] *Rollo,* p. 24.

We abide by the identical conclusion of the lower courts that appellant raped AAA.

In the review of rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[7] Ultimately, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[8]

A perusal of AAA's testimony leads us to the inevitable conclusion that appellant indeed raped her. AAA's testimony, although interspersed with minor lapses, did not waiver even on cross-examination:

Q: You said earlier that you were called by your Papang Armando for (sic) to enter their house. Did you actually enter their house?
A: Yes, sir.

Q: Once inside, what happened next, AAA?
A: He let me enter their room and he used me.

Q: When you said "he used me," what do you mean by that?
A: He removed my shorts and he entered his penis into my vagina.

---

[7] *People v. Brondial*, G.R. No. 135517, October 18, 2000, 343 SCRA 600; *People v. Baygar*, G.R. No. 132238, November 17, 1999, 318 SCRA 358; *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188; *People v. Auxtero*, G.R. No. 118314, April 15, 1998, 289 SCRA 75; *People v. Balmoria*, G.R. Nos. 120620-21, March 20, 1998, 287 SCRA 687; *People v. Barrientos*, G.R. No. 119835, January 28, 1998, 285 SCRA 221; *People v. Gallo*, G.R. No. 124736, January 22, 1998, 284 SCRA 590.

[8] *People v. Abellano*, G.R. No. 169061, June 8, 2007, 524 SCRA 388.

Q: For how long did he insert his penis into your vagina?
A: For not so long.

Q: Was that the first time that your Papang Armando Ferasol inserted his penis into your vagina?
A: No, sir, that was not the first time.

Q: Why?
A: Because he has been using me since I was in Grade III.

Q: Why, as of August 31, 2001, in what grade were you?
A: I was in Grade IV.

Q: After he used you, and what happened next, AAA?
A: He sent me home and threatened me not to tell it.

Q: And what was the threat you are particularly referring to.
A: He threatened to kill me including my parents, my brothers and sisters.

Q: Because of the threat, AAA, what did you feel?
A: I was afraid.

Q: And because you were afraid, did you actually comply with the threat of your Papang Armando Ferasol not to tell it to anybody?
A: At first I did not tell it anybody, but when I and my mother went to Dr. Diosana, I told the truth to Dr. Diosana.

Q: The truth about what?
A: That I was used by Armando Ferasol.

Q: And when was that when you were brought to Dr. Diosana and when you told the truth?
A: That was on September 2, 2001.

Q: [Who were you with] when you told the truth to Dr. Diosana?
A: I was with my mother.

xxx xxx xxx

Q: When you were sent home by your Uncle Armando, you went straight to your house?

A: Yes, sir.

Q: You continued your work, sweeping in your yard?
A: Yes, sir.

Q: You continued your house chores as if nothing happened?
A: Yes, sir.

Q: In fact, when your mother arrived from xxx, you acted as if nothing happened?
A: Yes, sir.

Q: **Because, actually, there is *nothing* that happened? (sic)**
A: **There was. (sic)**[9]

In connection with the minor inconsistencies in AAA's testimony which appellant harps on, we completely agree with the following disquisition of the appellate court:

It bears emphasis that AAA was only 11 years old at the time she testified before the trial court. She was only 9 years old when [appellant] started raping her. A child witness could not be expected to give a precise response to every question posed to her. Her failure to give an answer to the point as to be free of any minor inconsistencies is understandable and does not make her a witness less worthy of belief. It is not unnatural for a rape victim, especially one who is of tender age, to make discrepant statements. But, so long as the testimony is consistent on material points, slightly conflicting statements will not undermine the witness' credibility or the veracity of her testimony. They in fact tend to buttress, rather than impair, her credibility as they erase any suspicion of a rehearsed testimony. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.

x x x. Although AAA's testimony is not perfect in details, it bore the earmarks of truth. We find that she was unwavering and consistent. She never hesitated in testifying that it was her uncle who raped her. She may have confused certain minor details such as whether she was left alone in the house or had other companions, whether

[9] *Rollo,* pp. 15-16.

her aunt Maribel Ferasol went to the market or to the *poblacion* as testified by BBB, whether she attended school on the day of the rape incident or not, but she was consistent in her statements identifying [appellant] as the rapist. But the said variances focused more on her account of the events immediately prior to and following the rape than her narration of the commission of the crime itself. After all, AAA was but a little girl of nine (9) when her ordeal began and eleven (11) when she took the witness stand. It should be understandable that the young victim would more likely wish to forget rather than to remember the sordid details of the outrage that claimed her innocence.[10]

However, as regards the civil liability of appellant, we increase the appellate court's award of civil indemnity to ₱75,000.00. We likewise increase the grant of moral damages to ₱75,000.00, without need of proof, and additionally award ₱30,000.00 as exemplary damages.

WHEREFORE, the decision of the Regional Trial Court in Criminal Case No. 3008-N and the decision of the Court of Appeals in CA-G.R. CR HC No. 00344 are *AFFIRMED* with *MODIFICATION***.** Appellant Armando Ferasol is *SENTENCED* to suffer the penalty of *reclusion perpetua* with no possibility of parole and to pay the victim, AAA, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and the further sum of ₱30,000.00 as exemplary damages plus costs.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[10] *Rollo,* pp. 17-18.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

EN BANC

[G.R. No. 186224. August 25, 2009]

CONSTANCIO D. PACANAN, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS and FRANCISCO M. LANGI, SR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; ELECTION PROTEST; APPEALS; PERFECTION OF APPEALS; CASE AT BAR. — x x x [T]he appeal from the trial court decision to the Comelec is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the trial court that rendered the decision. With the promulgation of A.M. No. 07-4-15-SC, the perfection of the appeal no longer depends solely on the full payment of the appeal fee to the Comelec. In the instant case, when petitioner filed his Notice of Appeal and paid the appeal fee of ₱3,015.00 to the RTC on January 10, 2008, his appeal was deemed perfected. However, Comelec Resolution No. 8486 also provides that if the appellant had already paid the amount of ₱1,000.00 before the trial court that rendered the decision, and his appeal was given due course by the court, said appellant is required to pay the Comelec appeal fee of ₱3,200.00 to the Comelec's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Comelec, within a period of fifteen (15) days from the time of the filing of the Notice of Appeal with the lower court. However, if no payment is made within the prescribed period, the appeal shall be dismissed xxx Thus, when petitioner's appeal was perfected on January 10, 2008, within five (5) days from promulgation, his non-payment or insufficient payment of the appeal fee to the Comelec Cash Division should not have resulted in the outright dismissal of his appeal. The Comelec Rules provide in Section 9 (a), Rule 22, that for failure to pay the correct appeal fee, the appeal *may* be dismissed upon motion of either party or at the instance of the Comelec. Likewise, Section 18, Rule 40 thereof also prescribes that **if the fees are not paid, the Comelec may refuse to take action on the appeal until the said fees are paid** and

may dismiss the action or the proceeding. Here, petitioner paid ₱1,200.00 to the Comelec on February 14, 2008. Unfortunately, the Comelec First Division dismissed the appeal on March 17, 2008 due to petitioner's failure to pay the correct appeal fee within the five-day reglementary period. In denying petitioner's motion for reconsideration, the Comelec *En Banc*, in the Resolution dated January 21, 2009, declared that the Comelec did not acquire jurisdiction over the appeal because of the non-payment of the appeal fee on time.

2. ID.; COMMISSION ON ELECTIONS (COMELEC); RULES OF PROCEDURE; RESOLUTION NO. 8486; PROMULGATED TO CLARIFY THE IMPLEMENTATION OF THE COMELEC RULES ON PAYMENT OF FILING FEES; LIBERAL CONSTRUCTION THEREOF, MANDATED; RATIONALE.— x x x [D]uring the pendency of petitioner's Motion for Reconsideration dated March 27, 2008, the Comelec promulgated Resolution No. 8486 to clarify the implementation of the Comelec Rules regarding the payment of filing fees. Thus, applying the mandated liberal construction of election laws, the Comelec should have initially directed the petitioner to pay the correct appeal fee with the Comelec Cash Division, and should not have dismissed outright petitioner's appeal. This would have been more in consonance with the intent of the said resolution which sought to clarify the rules on compliance with the required appeal fees. In *Barroso v. Ampig, Jr.*, we ruled, thus: xxx An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain by all means within its command who is the real candidate elected by the people. Moreover, the Comelec Rules of Procedure are subject to a liberal construction. This liberality is for the purpose of promoting the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest,

peaceful and credible elections and for achieving just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Comelec.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for petitioner.

The Solicitor General for public respondent.

Sibayan Lumbos & Associates Law Office for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for *certiorari* which seeks to set aside 1) the Order[1] dated March 17, 2008 of the Commission on Elections (Comelec) First Division and 2) the Resolution[2] dated January 21, 2009 of the Comelec *En Banc* dismissing petitioner Constancio D. Pacanan, Jr.'s appeal from the Decision[3] of the Regional Trial Court (RTC), Branch 27, Catbalogan, Samar, in Election Case No. 07-1, which declared private respondent Francisco M. Langi, Sr. as the winning Mayor of Motiong, Samar.

In the Order of March 17, 2008, the Comelec First Division dismissed the appeal for failure to pay the correct appeal fee as prescribed by the Comelec Rules of Procedure within the five-day reglementary period.

In the assailed Resolution dated January 21, 2009, the Comelec *En Banc* denied petitioner's motion for reconsideration, declaring that the Comelec did not acquire jurisdiction over the appeal because of the non-payment of the appeal fee on time, and

---

[1] *Rollo*, p. 32.

[2] *Id*. at 34-42.

[3] *Id*. at 43-128.

that the Comelec First Division was correct in dismissing the said appeal.

The antecedent facts are as follows:

Petitioner Constancio D. Pacanan, Jr. and private respondent Francisco M. Langi, Sr. were candidates for mayor in the municipality of Motiong, Samar during the May 14, 2007 elections. After the canvassing of votes, the Municipal Board of Canvassers (MBC) of Motiong, Samar proclaimed petitioner as the duly elected mayor, having garnered a total of 3,069 votes against private respondent's 3,066 votes.

Thereafter, private respondent filed with the RTC a Protest[4] dated May 25, 2007 which was docketed as Election Case No. 07-1, contesting the results of the elections in ten (10) of the forty-nine (49) precincts in Motiong, Samar, and alleging acts of violence and intimidation and other election irregularities in the appreciation of the votes by the MBC. Thereafter, petitioner filed his Verified Answer with Counter-Protest[5] dated June 4, 2007, asserting that private respondent's allegations of threat and intimidation, fraud and other irregularities in the conduct of elections were mere allegations unsupported by any documentary evidence. Petitioner also disputed the election results with respect to seven (7) precincts.

On January 7, 2008, the RTC rendered a decision[6] in Election Case 07-1, which declared private respondent as the winner in the May 14, 2007 mayoralty race for Motiong, Samar with a plurality of six (6) votes, *viz:*

> Wherefore, in view of the foregoing Protestant Francisco M. Langi, Sr. having obtained the over all total votes of 3,074 and the Protestee's 3,068 total and final votes is declared the winner in the Mayoralty contest in Motiong, Samar with a plurality of (6) votes. Therefore the proclamation on May 17, 2007 is hereby annulled and declared Francisco Langi, Sr. *y* Maceren as the duly elected Mayor of Motiong,

---

[4] *Id*. at 129-139.

[5] *Id*. at 140-149.

[6] *Supra* note 3.

Samar. The winner is awarded the amount of ₱ 32,510 as actual damages and no evidence aliunde for damages for the court to award.
x x x

On January 10, 2008, petitioner filed a notice of appeal and paid ₱3,000.00 appeal fee per Official Receipt No. 6822663 before the RTC, Branch 27, Catbalogan, Samar. He also appealed the RTC decision dated January 7, 2008 to the Comelec which docketed the case as EAC No. A-13-2008. Out of the ₱3,000.00 appeal fee required by Section 3, Rule 40 of the Comelec Rules of Procedure, petitioner only paid the amount of ₱1,000.00 (plus ₱200.00 to cover the legal research/bailiff fees) to the Cash Division of the Comelec, per Official Receipt No. 0510287. The said payment was made on February 14, 2008.[7]

On March 17, 2008, the Comelec First Division issued an Order[8] dismissing the appeal, *viz.*:

Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of ₱3,000.00 within the period to file the notice of appeal, and Section 9 (a), Rule 22 of the same Rules which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) **RESOLVED** as it hereby **RESOLVES** to **DISMISS** the instant case for Protestee-Appellant's failure to pay the correct appeal fee as prescribed by the Comelec Rules of Procedure within the five-(5)-day reglementary period.

SO ORDERED.

On March 28, 2008, petitioner filed a Motion for Reconsideration[9] which the Comelec *En Banc* denied in the Resolution[10] dated January 21, 2009, declaring that the appeal was not perfected on time for non-payment of the complete

---

[7] Footnote 3 of the Order dated March 17, 2008 of the Comelec First Division, *supra* note 1.

[8] *Supra* note 1.

[9] *Rollo*, pp. 150-164.

[10] *Supra* note 2.

amount of appeal fee and for late payment as well. The Comelec *En Banc* held that the Comelec did not acquire jurisdiction over the appeal because of the non-payment of the appeal fee on time. Thus, the Comelec First Division correctly dismissed the appeal.

Hence, the instant petition for *certiorari* raising the following grounds:

> The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the correct appeal fee was not paid on time.
>
> The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in failing to consider that assuming that the correct appeal fee was not paid on time, the alleged non-payment of the correct appeal fee is not in anyway attributable to herein petitioner.
>
> The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in failing to consider that assuming that the correct appeal fee was not paid on time, there are highly justifiable and compelling reasons to resolve the subject case on the merits in the interest of justice and public interest.

Petitioner further claims that he paid a total of ₱4,215.00 for his appeal, as follows:

a. To RTC on January 10, 2008 ----------	₱3,000.00
	10.00
	5.00
TOTAL	₱3,015.00
b. To Comelec on February 14, 2008 ---	₱1,000.00
	50.00
	150.00
TOTAL	₱1,200.00

Petitioner submits that it is incumbent upon the RTC to transmit to the Comelec the entire ₱3,000.00 appeal fee that he paid on January 10, 2008. Petitioner also advances another interpretation of the Comelec Rules that the RTC is under obligation to remit to the Comelec the ₱2,000.00 representing the excess amount

of the ₱1,000.00 appeal fee. Thus, petitioner claims that he must be deemed to have complied, in full or at least substantially, with the Comelec Rules on the payment of appeal fees.

Petitioner maintains that the alleged non-payment of the correct appeal fee is not due to his own fault or negligence. He claims that the laws on appeals in election protest cases are not yet well-established, thus, he must not be made to suffer for an oversight made in good faith. The Resolution No. 8486 of July 15, 2008 adopted by the Comelec to clarify the rules on compliance with the required appeal fees in election cases should not be applied retroactively to the subject election protest.

Lastly, petitioner invokes liberality in the application of the election law. He asserts that the popular will of the people expressed in the election of public officers should not be defeated by reason of sheer technicalities. Petitioner argues that the true will of the people of Motiong in the May 14, 2007 elections should be determined by ordering the Comelec to give due course to his appeal and to resolve the same on the merits.

In his Comment, respondent Langi, Sr. states that the petition was just a mere rehash of the Motion for Reconsideration that petitioner filed with the Comelec *En Banc*. Respondent maintains that for the Comelec to exercise its authority to administer proceedings, grant leniency, issue orders, and pass judgment on issues presented, it must first be shown that it has acquired the requisite jurisdiction over the subject matter pursuant to the initiatory acts and procedural compliance set as conditions precedent.

Respondent also argues that the negligence and mistakes of petitioner's counsel bind petitioner. He then reiterates the cases where this Court held that the non-payment or insufficiency of payment of filing fees is a valid ground for the dismissal of the appeal and that the subsequent full payment thereof does not cure the jurisdictional defect.

We grant the petition.

Section 3, Rule 22 (Appeals from Decisions of Courts in Election Protest Cases) of the Comelec Rules of Procedure mandates that the notice of appeal must be filed within five (5) days after promulgation of the decision, thus:

SEC. 3. Notice of Appeal. – Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

Moreover, Sections 3 and 4, Rule 40 of the Comelec rules require the payment of appeal fees in appealed election protest cases, the amended amount of which was set at ₱3,200.00 in Comelec Minute Resolution No. 02-0130,[11] to wit:

SEC. 3. Appeal Fees. – The appellant in election cases shall pay an appeal fee as follows:

(a) For election cases appealed from Regional Trial Courts……..₱3,000.00 (per appellant)
(b) For election cases appealed from courts of limited jurisdiction.....₱3,000.00 (per appellant)

SEC. 4. Where and When to Pay. – The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal.

Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC[12] also provide the procedure for instituting an appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

SEC. 8. Appeal. – An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

---

[11] Effective on September 18, 2002 which prescribes ₱3,000.00 as appeal fee plus ₱150.00 for bailiff's fee and ₱50.00 for legal research fee.

[12] Entitled "Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and *Barangay* Officials," promulgated on April 24, 2007, and became effective on May 15, 2007.

SEC. 9. Appeal fee. – The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

A reading of the foregoing provisions reveals that two different tribunals (the trial court that rendered the decision and the Comelec) require the payment of two different appeal fees for the perfection of appeals of election cases. This requirement in the payment of appeal fees had caused much confusion, which the Comelec addressed through the issuance of Comelec Resolution No. 8486.[13] Thus, to provide clarity and to erase any ambiguity in the implementation of the procedural rules on the payment of appeal fees for the perfection of appeals of election cases, the resolution provides:

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective *barangay* officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure in instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

Section 8. Appeal. – *An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.*

Section 9. Appeal Fee. – *The appellant in an election contest shall pay to the court that rendered the decision an appeal*

[13] Entitled "In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases Involving *Barangay* and Municipal Elective Positions from the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts," promulgated on July 15, 2008.

fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

WHEREAS, payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at ₱3,200.00 in COMELEC Minute Resolution No. 02-0130 made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal fees for the perfection of appeals of cases brought before it from the Courts of General and Limited Jurisdictions.

WHEREAS, there is a need to clarify the rules on compliance with the requireed appeal fees for the proper and judicious exercise of the Commission's appellate jurisdiction over election protest cases.

WHEREFORE, in view of the foregoing, the Commission hereby **RESOLVES** to **DIRECT** as follows:

1. That if the appellant had already paid the amount of ₱1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Cases Before the Courts Involving Elective Municipal and *Barangay* Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the Comelec appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

> **Sec. 9. Grounds for Dismissal of Appeal.** The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the correct appeal fee; xxx

2. That if the appellant failed to pay the ₱1,000.00 – appeal fee with the lower court within the five (5) day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforestated Section 9(a) of Rule 22 of the Comelec Rules of Procedure.

The Education and Information Department is directed to cause the publication of this resolution in two (2) newspapers of general circulation.

This resolution shall take effect on the seventh day following its publication.

SO ORDERED.

Our ruling in the very recent case of *Aguilar v. Comelec*,[14] quoted hereunder, squarely applies to the instant case:

Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC provide for the following procedure in the appeal to the COMELEC of trial court decisions in election protests involving elective municipal and *barangay* officials:

SEC. 8. *Appeal.* – An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

SEC. 9. *Appeal fee.* – The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

Section 8 was derived from Article IX-C, Section 2(2) of the Constitution and Rule 40, Section 3, par. 1 and Rule 41, Section 2(a) of the Rules of Court. Section 9 was taken from Rule 141, Sections 7(1) and 8(f) of the Rules of Court.

---

[14] G.R. No. 185140, June 30, 2009.

It should be noted from the afore-quoted sections of the Rule that the appeal fee of ₱1,000.00 is paid not to the COMELEC but to the trial court that rendered the decision. **Thus, the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee perfect the appeal, consonant with Sections 10 and 11 of the same Rule.** Upon the perfection of the appeal, the records have to be transmitted to the Electoral Contests Adjudication Department of the COMELEC within 15 days. The trial court may only exercise its residual jurisdiction to resolve pending incidents if the records have not yet been transmitted and before the expiration of the period to appeal.

With the promulgation of A.M. No. 07-4-15-SC, the previous rule that the appeal is perfected only upon the full payment of the appeal fee, now pegged at ₱3,200.00, to the COMELEC Cash Division within the period to appeal, as stated in the COMELEC Rules of Procedure, as amended, no longer applies.

It thus became necessary for the COMELEC to clarify the procedural rules on the payment of appeal fees. For this purpose, the COMELEC issued on July 15, 2008, Resolution No. 8486, which the Court takes judicial notice of. The resolution pertinently reads:

xxx xxx xxx

The foregoing resolution is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. **The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC** Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, **does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal. Following, Rule 22, Section 9 (a) of the COMELEC Rules, the appeal *may* be dismissed.** And pursuant to Rule 40, Section 18 of the same rules, **if the fees are not paid, the COMELEC *may* refuse to take action thereon until they are paid and *may* dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the discretion to dismiss the appeal or not.**

Accordingly, in the instant case, the COMELEC First Division, may dismiss petitioner's appeal, as it in fact did, for petitioner's failure to pay the ₱3,200.00 appeal fee.

Be that as it may, the Court finds that the COMELEC First Division gravely abused its discretion in issuing the order dismissing petitioner's appeal. The Court notes that the notice of appeal and the ₱1,000.00 appeal fee were, respectively, filed and paid with the MTC of Kapatagan, Lanao del Norte on April 21, 2008. On that date, the petitioner's appeal was deemed perfected. COMELEC issued Resolution No. 8486 clarifying the rule on the payment of appeal fees only on July 15, 2008, or almost three months after the appeal was perfected. Yet, on July 31, 2008, or barely two weeks after the issuance of Resolution No. 8486, the COMELEC First Division dismissed petitioner's appeal for non-payment to the COMELEC Cash Division of the additional ₱3,200.00 appeal fee.

Considering that petitioner filed his appeal months before the clarificatory resolution on appeal fees, petitioner's appeal should not be unjustly prejudiced by COMELEC Resolution No. 8486. Fairness and prudence dictate that the COMELEC First Division should have first directed petitioner to pay the additional appeal fee in accordance with the clarificatory resolution, and if the latter should refuse to comply, then, and only then, dismiss the appeal. Instead, the COMELEC First Division hastily dismissed the appeal on the strength of the recently promulgated clarificatory resolution – which had taken effect only a few days earlier. This unseemly haste is an invitation to outrage.

The COMELEC First Division should have been more cautious in dismissing petitioner's appeal on the mere technicality of non-payment of the additional ₱3,200.00 appeal fee given the public interest involved in election cases. This is especially true in this case where only one vote separates the contending parties. The Court stresses once more that election law and rules are to be interpreted and applied in a liberal manner so as to give effect, not to frustrate, the will of the electorate.

WHEREFORE, premises considered, the petition for *certiorari* is **GRANTED**. The July 31, September 4 and October 6, 2008 Orders and the October 16, 2008 Entry of Judgment issued by the COMELEC First Division in EAC (BRGY) No. 211-2008 are **ANNULLED** and **SET ASIDE**. The case is **REMANDED** to the COMELEC First Division for disposition in accordance with this Decision.

SO ORDERED. **(Emphasis supplied)**

From the foregoing discussion, it is clear that the appeal from the trial court decision to the Comelec is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the trial court that rendered the decision. With the promulgation of A.M. No. 07-4-15-SC, the perfection of the appeal no longer depends solely on the full payment of the appeal fee to the Comelec.

In the instant case, when petitioner filed his Notice of Appeal and paid the appeal fee of ₱3,015.00 to the RTC on January 10, 2008, his appeal was deemed perfected. However, Comelec Resolution No. 8486 also provides that if the appellant had already paid the amount of ₱1,000.00 before the trial court that rendered the decision, and his appeal was given due course by the court, said appellant is required to pay the Comelec appeal fee of ₱3,200.00 to the Comelec's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Comelec, within a period of fifteen (15) days from the time of the filing of the Notice of Appeal with the lower court. However, if no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9 (a), Rule 22 of the Comelec Rules of Procedure, which provides:

> SEC. 9. Grounds for Dismissal of Appeal. – The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:
>
> (a) Failure of the appellant to pay the correct appeal fee; xxx

Thus, when petitioner's appeal was perfected on January 10, 2008, within five (5) days from promulgation, his non-payment or insufficient payment of the appeal fee to the Comelec Cash Division should not have resulted in the outright dismissal of his appeal. The Comelec Rules provide in Section 9 (a), Rule 22, that for failure to pay the correct appeal fee, the appeal *may* be dismissed upon motion of either party or at the instance of the Comelec. Likewise, Section 18, Rule 40[15] thereof also prescribes that **if the**

[15] Rule 40, Sec. 18 of the Comelec Rules of Procedure provides:

> Sec. 18. Non-payment of Prescribed Fees. – If the fees above prescribed are not paid, Commission may refuse to take action thereon until they are paid and may dismiss the action or the proceeding.

fees are not paid, the Comelec may refuse to take action on the appeal until the said fees are paid and may dismiss the action or the proceeding.

Here, petitioner paid ₱1,200.00 to the Comelec on February 14, 2008. Unfortunately, the Comelec First Division dismissed the appeal on March 17, 2008 due to petitioner's failure to pay the correct appeal fee within the five-day reglementary period. In denying petitioner's motion for reconsideration, the Comelec *En Banc*, in the Resolution dated January 21, 2009, declared that the Comelec did not acquire jurisdiction over the appeal because of the non-payment of the appeal fee on time.

However, during the pendency of petitioner's Motion for Reconsideration dated March 27, 2008, the Comelec promulgated Resolution No. 8486 to clarify the implementation of the Comelec Rules regarding the payment of filing fees. Thus, applying the mandated liberal construction of election laws,[16] the Comelec should have initially directed the petitioner to pay the correct appeal fee with the Comelec Cash Division, and should not have dismissed outright petitioner's appeal. This would have been more in consonance with the intent of the said resolution which sought to clarify the rules on compliance with the required appeal fees.

In *Barroso v. Ampig, Jr.*,[17] we ruled, thus:

xxx An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the

---

[16] Section 3, Rule 1, Comelec Rules of Procedure which reads:

SEC. 3. *Construction*. – These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

[17] G.R. No. 138218, March 17, 2000, 328 SCRA 530, 541-542; citing *Pahilan v. Tabalba*, G.R. No. 110170, February 21, 1994, 230 SCRA 205, 212-213.

canvass of votes, which was the basis of proclamation of the winning candidate. An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain by all means within its command who is the real candidate elected by the people.

Moreover, the Comelec Rules of Procedure are subject to a liberal construction. This liberality is for the purpose of promoting the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and for achieving just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Comelec. Thus we have declared:

> It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action.

WHEREFORE, the petition is granted. The Order dated March 17, 2008 of the Comelec First Division and the Resolution dated January 21, 2009 of the Comelec *En Banc* in EAC No. A-13-2008 are *ANNULLED* and *SET ASIDE*. Accordingly, let the case be *REMANDED* to the Comelec First Division for further proceedings, in accordance with the rules and with this disposition. The Regional Trial Court, Branch 27 of

Catbalogan, Samar is *DIRECTED* to refund to petitioner Constancio D. Pacanan, Jr., the amount of Two Thousand Pesos (₱2,000.00) as the excess of the appeal fee per Official Receipt No. 6822663 paid on January 10, 2008.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Nachura, J., no part.

Ynares-Santiago, J., on official leave.

THIRD DIVISION

[G.R. No. 186420. August 25, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SAMUEL ANOD,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; UNCONTROLLABLE FEAR, NOT A CASE OF.— Under Article 12 of the Revised Penal Code, a person is exempt from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such person does not act with freedom. However, we held that for such a defense to prosper, the duress, force, fear, or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. In this case, as correctly held by the CA, based on the evidence on record, appellant had the chance to escape Lumbayan's threat or engage Lumbayan in combat, as appellant was also holding a knife at

the time. Thus, appellant's allegation of fear or duress is untenable. We have held that in order for the circumstance of uncontrollable fear may apply, it is necessary that the compulsion be of such a character as to leave no opportunity for escape or self-defense in equal combat. Therefore, under the circumstances, appellant's alleged fear, arising from the threat of Lumbayan, would not suffice to exempt him from incurring criminal liability.

2. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— [T]he killing of the victim was attended by treachery. Treachery exists when the offender commits a crime against persons, employing means, methods or forms in the execution thereof which tend, directly and specifically, to ensure its execution, without risk to himself arising from any defense or retaliatory act which the victim might make. Here, appellant tied Costan while the latter was lying down before he and Lumbayan stabbed the latter to death; thus, ensuring the execution of the crime without risk to themselves. Obviously, Costan could not flee for his life or retaliate. This aggravating circumstance qualifies the crime to murder.

3. ID.; MURDER; AWARD OF DAMAGES TO THE HEIRS OF THE VICTIM.— As to damages, we held in *People of the Philippines v. Judito Molina and John Doe, and Joselito Tagudar*, that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. x x x Based on the foregoing disquisitions and the current applicable jurisprudence, we hereby reduce the civil indemnity awarded herein to ₱50,000.00. We affirm all the other awards made by the CA.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— We apply the cardinal rule that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded with great respect, if not conclusive effect, more so when affirmed by the CA. The exception is when it is established that the

trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances that, if considered, would change the outcome of the case. We have reviewed the records of the RTC and the CA and we find no reason to deviate from the lower courts' findings and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the crime of murder.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is an Appeal,[1] assailing the Court of Appeals (CA) Decision[2] dated August 27, 2008 which affirmed with modification the Decision[3] dated July 3, 2001 of the Regional Trial Court (RTC) of Bislig, Surigao del Sur, Branch 29, finding appellant Samuel Anod (appellant) and his co-accused Lionel Lumbayan (Lumbayan) guilty beyond reasonable doubt of the crime of Murder committed against Erlando Costan (Costan).

The Facts

Appellant and Lumbayan were charged with the crime of Murder in an Information dated June 23, 1997 which reads:

That on or about 10:30 o'clock (sic) in the evening, more or less, of May 16, 1997, at Purok 1, [B]arangay Borbonan, [M]unicipality of Bislig, [P]rovince of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant] conspiring, confederating and mutually helping one another for a common purpose, with intent to kill, treachery and evident

[1] *Rollo*, pp. 16-17.

[2] Particularly docketed as CA-G.R. CR-H.C. No. 00195, penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring; *id.* at 4-15.

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

premeditation, did then and there willfully, unlawfully and feloniously attack, assault[,] stab and hack one Erlando Costan with the use of a pointed bolo, thereby inflicting upon the latter multiple stab and hack wounds which cause[d] his instantaneous death, to the damage and prejudice of the heirs of the said Costan.

CONTRARY TO LAW: In violation of Article 248 of the Revised Penal Code.[4]

During the arraignment on November 12, 1997, appellant and Lumbayan entered pleas of "not guilty" to the crime charged. Thereafter, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

Before midnight of May 16, 1997, the victim, Costan, was stabbed and hacked to death in his house situated in *Barangay* Borbonan,[5] Bislig, Surigao del Sur (Borbonan). His body was found by Miguel Platil. The following day, May 17, 1997, appellant and Lumbayan surrendered to Andromeda Perater, *Barangay* Chairperson of Borbonan (*Barangay* Chairperson), before whom they admitted the killing of Costan. On May 18, 1997, appellant and Lumbayan were brought to the police station. The *Barangay* Chairperson testified before the RTC that appellant narrated and admitted to her that he and Lumbayan killed Costan. This narration of facts was entered in the *Barangay* Logbook, duly signed by appellant and Lumbayan, and authenticated by two (2) other witnesses.

Version of the Defense

Appellant averred that at around 7 p.m. of May 16, 1997, he and Lumbayan were having a drinking spree in the store of one Dodoy Advincula in Borbonan where they were joined by a certain Angges. An hour later, appellant asked his companions to go home. On their way home and upon reaching a dark place, Lumbayan suddenly stabbed Angges. He then invited appellant to sleep at the house of Lumbayan's aunt. Subsequently,

---

[4] *Id.* at 7.

[5] Also referred to as *barangay* Borboanan in other documents.

however, Lumbayan told appellant that they would spend the night at Costan's house.

Upon reaching Costan's house, Lumbayan called for the victim. Costan opened the door for them and immediately thereafter, Lumbayan poked a knife at Costan and ordered appellant to tie the victim while the latter was lying down. He then ordered appellant to stab Costan. Out of fear of being stabbed by Lumbayan who, at the time, was poking a knife at appellant's breast, appellant stabbed Costan once at the back. Thereafter, appellant and Lumbayan went to the house of Lumbayan's aunt. They surrendered to the *Barangay* Chairperson allegedly upon the prodding of appellant. On the other hand, Lumbayan denied all the charges, claiming that he and appellant slept early on the night of the incident at his aunt's house. The following day, they were fetched and brought to the house of the *Barangay* Chairperson.

The RTC's Ruling

On July 3, 2001, the RTC found appellant and Lumbayan guilty beyond reasonable doubt of the crime of Murder and sentenced them to suffer the penalty of *reclusion perpetua* and to pay the widow of Costan in the amount of ₱50,000.00 as damages.

Only appellant interposed an appeal[6] assailing the RTC Decision. Accordingly, the case was elevated to this Court on automatic review. However, in our Resolution[7] dated September 6, 2004, and pursuant to our ruling in *People v. Mateo*, the case was transferred to the CA.

The CA's Ruling

In its Decision dated August 27, 2008, the CA affirmed the factual findings of the RTC with modification, imposing upon appellant the penalty of *reclusion perpetua* without eligibility for parole and ordering him to pay the heirs of Costan the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages,

---

[6] *Id.* at 17.

[7] *Id.* at 87.

₱25,000.00 as exemplary damages, and ₱25,000.00 as actual damages.

Aggrieved, appellant appealed. In their respective Manifestations filed before this Court, appellant, as represented by the Public Attorney's Office, and the Office of the Solicitor General (OSG) opted to adopt their respective Briefs filed before the CA as their Supplemental Briefs.

Hence, this Appeal with the following assignment of errors:

I.

ASSUMING WITHOUT ADMITTING THAT APPELLANT'S CULPABILITY WAS PROVEN BEYOND REASONABLE DOUBT, THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE EXEMPTING CIRCUMSTANCES OF IRRESISTIBLE FORCE AND UNCONTROLLABLE FEAR.

II.

THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING TREACHERY AND EVIDENT PREMEDITATION AS QUALIFYING CIRCUMSTANCES.[8]

Appellant argues that he blindly obeyed Lumbayan and stabbed Costan, an act that was against his will and done under the compulsion of an irresistible force and uncontrollable fear for his life. Moreover, appellant contends that the qualifying circumstances of evident premeditation and treachery were not proven beyond reasonable doubt. Except for the testimony of the *Barangay* Chairperson which did not prove these qualifying circumstances, no other witness was presented to corroborate the same.[9]

On the other hand, the OSG opines that the force supposedly exerted upon appellant was not sufficient to exempt him from criminal liability. Apart from initially refusing Lumbayan's order, as appellant alleged, he did not offer any protest or objection to the said order. Appellant could have easily evaded Lumbayan, or he could have defended himself in equal combat as he himself

---

[8] *Rollo*, p. 8.

[9] CA *rollo*, pp. 25-35.

was armed with a knife. The OSG claims that, while it may be conceded that evident premeditation was not adequately proven, treachery was, however, duly established. Thus, the crime committed was murder.[10]

Our Ruling

We dismiss the appeal.

Appellant failed to sufficiently show that the CA committed any reversible error in its assailed Decision. Under Article 12 of the Revised Penal Code, a person is exempt from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such person does not act with freedom. However, we held that for such a defense to prosper, the duress, force, fear, or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. In this case, as correctly held by the CA, based on the evidence on record, appellant had the chance to escape Lumbayan's threat or engage Lumbayan in combat, as appellant was also holding a knife at the time. Thus, appellant's allegation of fear or duress is untenable. We have held that in order for the circumstance of uncontrollable fear may apply, it is necessary that the compulsion be of such a character as to leave no opportunity for escape or self-defense in equal combat.[11] Therefore, under the circumstances, appellant's alleged fear, arising from the threat of Lumbayan, would not suffice to exempt him from incurring criminal liability.

Indubitably, the killing of the victim was attended by treachery. Treachery exists when the offender commits a crime against persons, employing means, methods or forms in the execution thereof which tend, directly and specifically, to ensure its execution, without risk to himself arising from any defense or retaliatory act which the victim might make. Here, appellant

---

[10] *Id.* at 55-76.

[11] *People v. Morales*, G.R. No. 148518, April 15, 2004, 427 SCRA 765, 782-783.

tied Costan while the latter was lying down before he and Lumbayan stabbed the latter to death; thus, ensuring the execution of the crime without risk to themselves. Obviously, Costan could not flee for his life or retaliate. This aggravating circumstance qualifies the crime to murder.[12]

We apply the cardinal rule that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded with great respect, if not conclusive effect, more so when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances that, if considered, would change the outcome of the case. We have reviewed the records of the RTC and the CA and we find no reason to deviate from the lower courts' findings and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the crime of murder.[13]

As to damages, we held in *People of the Philippines v. Judito Molina and John Doe, and Joselito Tagudar*,[14] that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. In this regard, however, we reduce the award made by the CA, from ₱75,000.00 to ₱50,000.00.

It is worth stressing that, at the outset, the appellant, together with Lumbayan, was sentenced by the RTC to suffer the penalty of *reclusion perpetua*. Thus, the CA's reliance on our ruling in *People v. dela Cruz*[15] was misplaced. In *dela Cruz*, this

---

[12] *People v. Ramos*, G.R. No. 135204, April 14, 2004, 427 SCRA 299, 309.

[13] *Casitas v. People*, G.R. No. 152358, February 5, 2004, 422 SCRA 242, 248.

[14] G.R. No. 184173, March 13, 2009.

[15] G.R. No. 171272, June 7, 2007, 523 SCRA 433, 452.

Court cited our ruling in *People v. Tubongbanua*,[16] wherein we held that the civil indemnity imposed should be ₱75,000.00. However, the instant case does not share the same factual milieu as *dela Cruz* and *Tubongbanua*. In the said cases, at the outset, the accused were sentenced to suffer the penalty of death. However, in view of the enactment of Republic Act No. 9346 or the Act Prohibiting the Imposition of the Death Penalty on June 24, 2006, the penalty meted to the accused was reduced to *reclusion perpetua*. This jurisprudential trend was followed in the recent case of *People of the Philippines v. Generoso Rolida y Moreno, etc.*,[17] where this Court also increased the civil indemnity from ₱50,000.00 to ₱75,000.00. Based on the foregoing disquisitions and the current applicable jurisprudence, we hereby reduce the civil indemnity awarded herein to ₱50,000.00.[18] We affirm all the other awards made by the CA.

WHEREFORE, the appealed Decision dated August 27, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00195, finding appellant Samuel Anod guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED* with *MODIFICATION* in that the award of civil indemnity of ₱75,000.00 is reduced to ₱50,000.00. In all other respects, the assailed Decision is *AFFIRMED*.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson),*[**] *Velasco, Jr.,* and *Peralta, JJ.,* concur.

---

[16] G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[17] G.R. No. 178322, March 4, 2009.

[18] *People v. Manuel Delpino*, G.R. No. 171453, June 18, 2009; *People v. Bienvenido Mara y Bolaqueña alias "Loloy,"* G.R. No. 184050, May 8, 2009.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

THIRD DIVISION

[G.R. No. 186496. August 25, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANTE GRAGASIN *y* PAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; PRINCIPLES IN REVIEWING RAPE CASES.— In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; IN STATUTORY RAPE, SEXUAL INTERCOURSE IS THE ONLY CIRCUMSTANCE THAT NEEDS TO BE PROVEN.— In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent. If the woman is under 12 years of age, such as in the case of AAA, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape, but because the absence of free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. The prosecution clearly established that AAA was barely nine years old on 23 September 2001 at the time accused-appellant allegedly had carnal knowledge of her. This was evidenced by AAA's birth certificate, which showed that she was born on 11 October 1992. Considering she was barely nine years old at that time, no proof of involuntariness on her part is necessary. AAA, being a minor at the time the act was committed against her, is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant of rape, the only circumstance that needs to be proven is the fact of sexual intercourse.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— At the heart of almost all rape cases is the issue of credibility of the witnesses, to be resolved primarily by the trial court, which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying. The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge, who has the unique and unmatched opportunity to observe the witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case. In giving more credence to the version of the [victim] the trial court observed that the victim was direct, unequivocal, convincing and consistent in answering the questions propounded to her. Indeed, the records disclose that AAA was categorical and straightforward in narrating the sordid details of her horrid experience as accused-appellant ravished her even at such tender age x x x Not only did AAA identify accused-appellant as her rapist; she also recounted the rape in detail, particularly how the sexual intercourse took place. A rape victim, who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness. Moreover, when the offended party is a young and immature girl, as in this case, where the victim was barely 9 years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.

4. ID.; ID.; DEFENSE; DENIAL AND ALIBI CANNOT PREVAIL OVER AFFIRMATIVE TESTIMONY OF A WITNESS.— Accused-appellant denies raping the victim and claims he was

asleep at the time the incident allegedly took place. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime. By his own testimony, accused-appellant testified that at the time the crime was supposed to have been committed, he was sleeping in his quarters, in the kitchen of AAA's grandmother. Clearly, there was no physical impossibility for him to be present at the scene of the crime at the time of the commission thereof. This is, undeniably, evidence of his presence at the *locus criminis*. Accused-appellant's denial in this case, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. His denial and alibi cannot prevail over the affirmative testimony of AAA, a minor less than 12 years old, who narrated how accused-appellant inserted his penis into her vagina.

5. CRIMINAL LAW; RAPE; ABSENCE OF HYMENAL LACERATION DOES NOT DISPROVE RAPE.— With respect to the absence of hymenal lacerations on AAA's genitalia, it is well settled that medical findings of injuries in the victim's genitalia are not essential to convict accused-appellant of rape. Hymenal lacerations are not an element of rape. What is essential is that there was penetration, however slight, of the *labia minora*, which circumstance was proven beyond doubt in this case by the testimony of AAA.

6. ID.; ID.; ABSENCE OF SPERMATOZOA IN THE VICTIM'S VAGINA DOES NOT NEGATE RAPE.— Accused-appellant's contention that there can be no consummated rape, considering the absence of spermatozoa in the victim's vagina, is of no merit. The absence of spermatozoa does not negate the conclusion that it was his penis that was inserted into the victim's vagina. Jurisprudence is replete with examples where, despite the absence of spermatozoa, the accused was still found guilty of consummated rape.

7. ID.; ID.; TESTIMONY OF AN EXPERT WITNESS THEREOF IS NOT INDISPENSABLE FOR A CONVICTION FOR RAPE.— In prosecutions for rape, the testimony of an expert witness is not indispensable for a conviction for rape. Such is not an

element of rape. By declaring that the accused-appellant inserted his penis into her vagina, the victim AAA said all that was necessary to prove rape. However, Dr. Logan's testimony in fact bolstered AAA's credibility when he explained that there were contusions in the *labia majora* and *labia minora* of private complainant's vagina, which could have been caused by a blunt object, including a penis. The medical findings and testimony of Dr. Logan corroborated the testimony of the victim and her mother.

8. ID.; ID.; INACTION OF THE VICTIM'S PARENTS IMMEDIATELY AFTER THE COMMISSION OF RAPE IS IMMATERIAL.— [T]he defense insists that the inaction of private complainant's parents immediately after they allegedly saw him naked on the bed was behaviour contrary to human experience, as no parent would react in such a way when confronted with the situation of seeing a naked man in a room where their minor daughter was. The defense also harps on the fact that there is nothing in the testimony that will show that the victim cried or shouted for help. This Court finds the same to be without merit, considering that different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

9. ID.; ID.; AWARD OF DAMAGES.— On the award of damages, civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. Moral damages are automatically awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award. Exemplary damages are awarded under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. There being no aggravating circumstance that can be considered, the award of exemplary damages would have to be deleted. Pursuant to prevailing jurisprudence, the amount of ₱75,000.00 as civil indemnity must be modified to ₱50,000.00, and moral damages reduced from ₱75,000.00 to ₱50,000.00. In *People v. Sambrano*, the Court decreed that the award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages is only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves

simple rape. Hence, the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages are in order.

CARPIO MORALES, *J., concurring and dissenting opinion:*

1. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; SHOULD BE AWARDED IN RAPE CASES WHERE THE VICTIM IS A MINOR WITHOUT NEED FOR ANY OTHER CIRCUMSTANCE TO CONCUR WITH MINORITY, IN ORDER TO DETER INDIVIDUALS WITH PERVERSE TENDENCIES FROM SEXUALLY ABUSING YOUNG CHILDREN.— Consistent with the Court's latest pronouncements in *People v. Sia*, *People v. Wasit*, and *People v. Cruz*, all unanimously decided, I subscribe to the view that exemplary damages should be awarded in rape cases where the victim is a minor without need for any other circumstance to concur with minority, in order to deter individuals with perverse tendencies from sexually abusing young children.

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.*:

Before this Court is a Petition for Review under Rule 45 of the Revised Rules of Court of the Decision[1] dated 07 August 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02652, entitled

---

[*] Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Edgardo F. Sundiam and Arturo G. Tayag, concurring; *rollo*, pp. 2-18.

People of the Philippines v. Dante Gragasin y Par, affirming the Decision[2] rendered by the Regional Trial Court (RTC), Branch 29, Bayombong, Nueva Vizcaya, in Criminal Case No. 4083, finding accused-appellant Dante Gragasin guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, imposing the penalty of *reclusion perpetua* and ordering accused-appellant to pay the offended party ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages and costs of the suit.

On 23 September 2001, a dastardly act allegedly perpetrated by accused-appellant was committed against private complainant (AAA).[3]

On 10 December 2001, upon AAA's sworn statement dated 26 September 2001, accused-appellant was charged before the RTC of Bayombong, Nueva Vizcaya, with the crime of Rape defined and penalized under Article 266-A, Section I, paragraph (a) of Republic Act No. 8353 in relation to Republic Act No. 7659 in an Information which reads:

CRIMINAL CASE NO. 4083

That on September 23, 2001 in the evening, at Barangay XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, 9 years old, against the latter's will and consent, to her own damage and prejudice.[4]

When arraigned on 4 April 2002 before Branch 29 of said court, the Information was read to accused-appellant in a dialect

---

[2] Penned by Acting Presiding Judge Jose Godofredo M. Naui; records, pp. 45-52.

[3] Private complainant is referred to as AAA. In view of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Section 29 of Republic Act No. 7610, otherwise known as the Anti-violence Against Women and Their Children Act of 2004.

[4] Records, p. 1.

known to, and understood by, him. With the assistance of his counsel, accused-appellant pleaded NOT GUILTY.[5] Thereafter, trial commenced on 17 September 2002.

The prosecution offered three witnesses, namely: private complainant AAA, who was a nine-year-old girl at the time of the commission of the crime; BBB,[6] the victim's mother; and Dr. Napoleon Logan, Municipal Health Officer of Bagabag, Nueva Vizcaya, who personally examined AAA. The following documentary exhibits were also proffered in evidence: (a) AAA's birth certificate; (b) joint affidavit of AAA's parents; and (c) Certification of Medico-Genital Examination issued by Dr. Logan.

The prosecution first presented BBB, the mother of the victim AAA.

Under oath, she swore that AAA was born on 11 October 1992 and presented the birth certificate of AAA to evidence such fact. She narrated that at around 9:00 o'clock in the evening of 23 September 2001, AAA sought permission from her so she could go to her grandmother's house to see the dress AAA was going to wear during the fiesta. BBB's house was about 50 meters away from her grandmother's house. After some time and AAA had not returned home, BBB followed her daughter to the house of her mother-in-law and saw her daughter in the kitchen "jumping and putting on her short pants." BBB then saw accused-appellant, a helper in said house, lying on his bed totally naked and pretending to be asleep. By that time, AAA had already run out of the house. Thereafter, BBB went out to ask the help of a councilwoman in XXX and Omar Saturno, a policeman from XXX, and asked them to go check on the appearance of accused-appellant who was totally naked, and the appearance of AAA. Saturno tried but failed to contact the police station. Afterwards, they proceeded to BBB's house where BBB asked her daughter AAA what happened to her.

---

[5] Records, p. 14.

[6] The real name of the mother's victim is withheld per Republic Act No. 7610, Republic Act No. 9262, and *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

In the presence of the councilwoman and the policeman, AAA narrated that she was raped by accused-appellant. Because they could not reach the police station as it was nighttime already, the policeman advised them to wait until the next morning to have accused-appellant summoned by the *barangay* officials. BBB and her husband CCC controlled their urge to confront and kill the accused, and decided to leave him alone so he would not escape.

The next witness presented by the prosecution was the victim AAA, who testified that she was an elementary student who knew accused-appellant because he had been a helper for quite some time already in her grandmother's house where he also slept. At around 9:00 o'clock in the evening of 23 September 2001, she went to her grandmother's house to see if the dress her grandmother was sewing for her was already done. When she reached her grandmother's house, the latter was not there and it was only accused-appellant in the house. As she was turning on the lights in the sala of her grandmother's house, accused-appellant grabbed her hand, and took her to the kitchen which doubled as his bedroom. There, accused-appellant took off his clothes, and laid her down on his bed. He removed her shorts and underwear, began kissing her, lay on top of her and inserted his penis into her vagina. She resisted by pushing him off the bed. When accused-appellant fell off the bed, she tried to run away, but he caught up with her and pulled her again to his room. At that moment, her grandmother arrived and turned on the lights, allowing her to hurriedly put on her clothes and dash out of the house. At home that same night, she revealed to her mother what accused-appellant had done to her.

The final witness presented by the prosecution was Dr. Napoleon Logan, Municipal Health Officer of XXX, XXX, as expert witness. Dr. Logan testified that he examined AAA on 24 September 2001, with the following findings:

Genital Examination:

Pubic hair, no growth, *labia majora* and *labia minora* coaptible, fourchette, lax; vestibular mucosa, intact; Contussion noted at both

labia majora, hymenal orifice 1.2 cm in diameter, no lacerations noted. Vaginal wall and rugosities cannot be reached by examining finger.

Laboratory Examination:

Microscopic Examination of Vaginal discharge. Negative for Spermatozoa.[7]

The medical examination revealed that while AAA did not suffer any hymenal lacerations, she sustained contusions at the left and right labia majora. Dr. Napoleon Logan further testified that the contusion at the left and right majora could have been caused by a blunt object such as a human penis.

After the prosecution rested its case, accused-appellant filed a motion to file and admit demurrer to evidence, averring that the prosecution failed to prove his guilt beyond reasonable doubt and attacking the testimonies of AAA and her mother as being seriously flawed and inconsistent. Opposing the demurrer to evidence, the prosecution claimed that it had proven accused-appellant's guilt beyond reasonable doubt, and that minor inconsistencies of a minor witness testifying in court must be liberally construed in the child's favor, as a child was prone to be misled and intimidated by the loud and menacing questions of the adverse party's counsel.

On 22 July 2005, the RTC ruled against the demurrer to evidence and proceeded to hear the defense.

The defense presented accused-appellant Dante Gragasin as its sole witness, who denied the accusations against him and interposed the defense of alibi.

He testified that on 23 September 2001, at around 7:00 o'clock in the evening, he was in the house of his employer drinking with several others. They broke up after 8:00 o'clock in the evening of the same date, and accused-appellant went to sleep in his quarters in the kitchen of the house. He woke up at about 7:00 o'clock of the following day and did some laundry. He later worked in the farm until 1:00 o'clock in the afternoon.

---

[7] Records, p. 6.

Soon after, policemen arrived and invited him to the police station, where he was informed of a complaint filed by AAA.

On cross examination, accused-appellant admitted he saw AAA that evening but only saw her outside the house of her grandmother along the path to the house. They exchanged a few words and learned that she was looking for her grandmother.

Evaluating the testimonial and documentary evidence adduced by the parties during trial, the court *a quo* gave more weight to the prosecution's version and convicted accused-appellant of the crime of Rape, disposing as follows:

> WHEREFORE, finding the accused Dante Gragasin *y* Par guilty beyond reasonable doubt as principal of the crime of Rape as defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code as amended by RA 8353, the court hereby sentences the said accused to suffer the penalty of *reclusion perpetua* and to pay the offended party ₱50,000.00 as indemnity and ₱50,000.00 as moral damages, and the costs of this suit.[8]

In giving full weight and credit to AAA's testimony, the trial court applied the doctrine that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Neither was there any showing of a sinister motive on the part of AAA or her family to testify as they did. Although there was no testimony that AAA cried at any time after the alleged incident, it does not mean that nothing happened to her. It bears stressing that, on direct testimony, AAA testified that she, in fact, fell ill for a day after the incident. The workings of the human mind when placed under emotional stress are unpredictable, and people react differently.

---

[8] Records, pp. 124-131.

On intermediate appellate review, the Court of Appeals affirmed the findings of the RTC, but modified the penalty and award of damages in this wise:

> IN LIGHT OF ALL THE FOREGOING, the appeal is hereby DENIED. The decision of the Regional Trial Court is hereby AFFIRMED WITH MODIFICATION. Accused-appellant Dante Gragasin *y* Par is sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim AAA (to be identified through the Information in this case), the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.[9]

Hence, this appeal where accused-appellant prays for his acquittal.

On 13 April 2009, the Court required the parties to submit their respective supplemental briefs, if they so desired.[10] For expediency, the defense and prosecution opted to adopt their briefs submitted to the Court of Appeals.[11] The case was thereafter deemed submitted for decision.

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

ASSUMING *ARGUENDO* THAT THE ACCUSED COMMITTED A CRIME, THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING HIM OF CONSUMMATED RAPE DESPITE THE FACT THAT THE ELEMENT OF SEXUAL INTERCOURSE WAS NOT PROVEN BEYOND REASONABLE DOUBT.

---

[9] *Rollo,* p. 18.

[10] *Id.* at 25.

[11] *Id.* at 31; 34-35.

III.

THE TRIAL COURT GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE DEFENSE WHICH IS MORE CREDIBLE THAN THAT OF THE PROSECUTION'S.

The assignment of errors may be narrowed down to the sole issue of whether or not accused-appellant's guilt was proven beyond reasonable doubt.

The appeal fails.

Appealing his conviction, accused-appellant anchors his innocence on denial and alibi. He argues that the testimonies of the prosecution witnesses were inconsistent with human experience, thus, not credible to sustain conviction. If accused-appellant inserted his penis into AAA's vagina, there would have been even the slightest tear on her hymen. Assuming *arguendo* that a crime was committed, accused-appellant should only be convicted of attempted rape for the failure of the prosecution to prove beyond any shadow of doubt the fact of penetration or even a mere touching by the penis of the labia.

The defense also attempted to cast doubt on AAA's and BBB's credibility as witnesses. First, the defense claims that AAA failed to shout for help or make any sound to alert other persons nearby while she was allegedly being raped. Second, what militates against the prosecution's cause is the inaction of AAA's parents immediately after they saw accused-appellant naked on the bed, an odd behavior for the parents of a child whom they believed to have been sexually violated.

Finally, the defense argues that the fact that accused-appellant proceeded to do his chores the day after the alleged incident is evidence of his innocence, since the natural reaction of a person who has committed a wrong is to flee from the person he has wronged.

On the other hand, the Office of the Solicitor General (OSG) supports accused-appellant's conviction, on the basis of the documentary and testimonial evidence presented by the prosecution.

Rape is a serious offense with grave consequences, both for the accused-appellant and private complainant; hence, the review of a judgment of conviction for rape must be done with utmost care.

In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[12]

In line with these principles and considering the gravity of the offense charged and severity of the penalty that may be imposed, this Court has meticulously evaluated the entire case records and transcript of stenographic notes, and finds no reason to deviate from the appellate court's findings of accused-appellant's guilt.

Under Article 266-A[1] of the Revised Penal Code, as amended by Republic Act No. 8353, rape is committed by a man who has carnal knowledge of a woman under any of the following circumstances:

(a) Through force, threat or intimidation;

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

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

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

---

[12] *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 108-109.

A perusal of the Information reveals that accused-appellant was charged with rape committed under the first and fourth circumstances:

a) Through force, threat or intimidation;

x x x x x x x x x

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

In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.[13] If the woman is under 12 years of age, such as in the case of AAA, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape, but because the absence of free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.[14]

The prosecution clearly established that AAA was barely nine years old on 23 September 2001 at the time accused-appellant allegedly had carnal knowledge of her. This was evidenced by AAA's birth certificate, which showed that she was born on 11 October 1992.[15] Considering she was barely nine years old at that time, no proof of involuntariness on her part is necessary. AAA, being a minor at the time the act was committed against her, is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant of rape, the only circumstance that needs to be proven is the fact of sexual intercourse.

Prosecutions for rape almost always involve sharply contrasting and irreconcilable declarations of the victim and the accused.

---

[13] *People v. Igat*, 353 Phil. 294, 302 (1998).

[14] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 665.

[15] Exhibit "A"; records, p. 74.

At the heart of almost all rape cases is the issue of credibility of the witnesses, to be resolved primarily by the trial court, which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying. The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge, who has the unique and unmatched opportunity to observe the witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.

In giving more credence to the version of the defense, the trial court observed that the victim was direct, unequivocal, convincing and consistent in answering the questions propounded to her. Indeed, the records disclose that AAA was categorical and straightforward in narrating the sordid details of her horrid experience as accused-appellant ravished her even at such tender age:

Q. What happened?

A. He pulled my hand and he brought me to the kitchen.

Q. How long after you arrived in your grandmother's house if Dante pulled you towards the kitchen?

A. For a while.

Q. When he brought you to the kitchen, what happened next?

A. He laid me down on the bed.

Q. Is there a bed in the kitchen?

A. That is his room.

Q. After he laid you down on the bed, what did he do next if any?

A. He removed my short pants and panty.

Q. After removing your clothing, what happened next?

A. He began to kiss me.

Q. What else did he do?

A. He inserted his penis in my vagina.

Q. While he was doing these things to you, what was your reaction?

A. I pushed him on the bed.

Q. When you were able to push him from the bed, what transpired next?

A. He fell and I ran.

Q. Were you able to run away from him?

A. He pulled me again and my grandmother arrived.

Q. What did you do when your grandmother arrived?

A. I ran to our house.

Q. Now, if you can see the accused again, would you be able to identify him?

A. Yes, sir.

Q. To whom did you first reveal the incident?

A. My mother.

Q. When did you reveal the incident?

A. September 23, 2001.

Q. It was also at that night after the incident, is that what you are saying?

A. Yes, sir.

Q. How do you feel about Dante Gragasin now?

A. I am very angry.

Q. How does this affect your schooling?

A. I got sick.

Q. For how long did you get sick?

A. One day, sir.

xxx xxx xxx

Q. When the accused Dante Gragasin first approached you, AAA, was he reeking with liquor?

A. Yes, sir.[16]

Not only did AAA identify accused-appellant as her rapist; she also recounted the rape in detail, particularly how the sexual intercourse took place.

A rape victim, who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[17] Moreover, when the offended party is a young and immature girl, as in this case, where the victim was barely 9 years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.

Accused-appellant denies raping the victim and claims he was asleep at the time the incident allegedly took place. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[18] By his own testimony, accused-appellant testified that at the time the crime was supposed to have been committed, he was sleeping in his quarters, in the kitchen of AAA's grandmother. Clearly,

---

[16] TSN, pp. 21-27.

[17] *People v. Lou*, 464 Phil. 413, 425 (2004).

[18] *People v. Gonzales*, *supra* note 12 at 116.

there was no physical impossibility for him to be present at the scene of the crime at the time of the commission thereof. This is, undeniably, evidence of his presence at the *locus criminis*.

Accused-appellant's denial in this case, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. His denial and alibi cannot prevail over the affirmative testimony of AAA, a minor less than 12 years old, who narrated how accused-appellant inserted his penis into her vagina.

With respect to the absence of hymenal lacerations on AAA's genitalia, it is well settled that medical findings of injuries in the victim's genitalia are not essential to convict accused-appellant of rape. Hymenal lacerations are not an element of rape.[19] What is essential is that there was penetration, however slight, of the labia minora, which circumstance was proven beyond doubt in this case by the testimony of AAA.[20]

In *People v. Palicte*,[21] the accused therein claimed that no rape was committed on the 11-year-old victim, because there was no deep penetration of her vagina as the hymen was still intact, but this Court held:

> The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. According to Dr. Jose Ladrido, Jr., who has been in medico-legal cases since 1963 and has examined many rape victims, if the victim is a child, as in the case of Edievien, rape can be done without penetration. Without penetration the male organ is only within the lips of the female organ, and there is interlabia or sexual intercourse

---

[19] *People v. Resurreccion*, G.R.No. 185389, 7 July 2009.

[20] *People v. Codilan*, G.R. No. 177144, 23 July 2008, 559 SCRA 623, 634.

[21] G.R. No. 101088, 27 January 1994, 229 SCRA 543, 547-548, cited in *People v. Gabris*, 328 Phil. 184, 198 (1996).

with little, none, or full penetration, although he admitted that it was also possible that there was no rape since the hymen was intact.

In the case before us, Edievien repeatedly testified that the accused inserted his penis into her vagina for half an hour, as a consequence of which she suffered pain. This, at least, could be nothing but the result of penile penetration sufficient to constitute rape. Being a virgin, as found by the examining physician, her hymenal resistance could be strong as to prevent full penetration. But just the same, penetration there was, which caused the pain. For, rape is committed even with the slightest penetration of the woman's sex organ. Mere entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina, as in this case of Edievien, is sufficient to warrant conviction for consummated rape.

Accused-appellant's contention that there can be no consummated rape, considering the absence of spermatozoa in the victim's vagina, is of no merit. The absence of spermatozoa does not negate the conclusion that it was his penis that was inserted into the victim's vagina.[22] Jurisprudence is replete with examples where, despite the absence of spermatozoa, the accused was still found guilty of consummated rape. *People v. Dones*[23] held that the important consideration in rape cases is not the emission of semen, but the penetration of the female genitalia by the male organ. In *People v. Bato*,[24] this Court affirmed that the presence or absence of spermatozoa is immaterial in a prosecution for rape, the important consideration not being the emission of semen, but the unlawful penetration of the female genitalia by the male organ. Similarly, this Court stressed in *People v. Arivan*[25] that the absence of spermatozoa in the private

---

[22] *People v. Cañada*, G.R. No. 112176, 6 February 1996, 253 SCRA 277, 284.

[23] 325 Phil. 173 (1996).

[24] 382 Phil. 558, 566 (2000), citing *People v. Juntilla*, 373 Phil. 351, 366 (1999); *People v. Sacapaño*, 372 Phil. 543, 555 (1999); *People v. Manuel*, 358 Phil. 664, 672 (1998).

[25] G.R. No. 176065, 22 April 2008, 552 SCRA 448, 469.

complainant's sex organ does not disprove rape. It could be that the victim washed or urinated prior to her examination, which may well explain the absence of spermatozoa.

In prosecutions for rape, the testimony of an expert witness is not indispensable for a conviction for rape. Such is not an element of rape. By declaring that the accused-appellant inserted his penis into her vagina, the victim AAA said all that was necessary to prove rape. However, Dr. Logan's testimony in fact bolstered AAA's credibility when he explained that there were contusions in the *labia majora* and *labia minora* of private complainant's vagina, which could have been caused by a blunt object, including a penis. The medical findings and testimony of Dr. Logan corroborated the testimony of the victim and her mother.

As correctly found by the trial court, this fact confirmed the testimony of AAA that accused inserted his penis into her vagina, and that she was indeed raped by him. While accused-appellant was inserting his sexual organ into the genital organ of AAA, she was able to push him and escape. Thus, this explains why there was no full penetration of his penis into her vagina.

Following a long line of jurisprudence, full penetration of the female genital organ is not indispensable.[26] It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Any penetration of the female organ by the male organ, however slight, is sufficient.[27] Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape.[28]

---

[26] *People v. Castro*, G.R. No. 172874, 17 December 2008, 574 SCRA 244, 254.

[27] *People v. Aure*, G.R. No. 180451, 17 October 2008, 569 SCRA 836, 866.

[28] *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 542.

The allegation of force and intimidation becomes immaterial in the instant case, because sexual intercourse with a minor below 12 years old constitutes statutory rape.

Additionally, the defense insists that the inaction of private complainant's parents immediately after they allegedly saw him naked on the bed was behaviour contrary to human experience, as no parent would react in such a way when confronted with the situation of seeing a naked man in a room where their minor daughter was. The defense also harps on the fact that there is nothing in the testimony that will show that the victim cried or shouted for help. This Court finds the same to be without merit, considering that different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

In sum, the prosecution was able to discharge its burden of proving accused-appellant's guilt. Accused-appellant is guilty beyond reasonable doubt of statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code.

Under the second paragraph of Article 266-B, in relation to Article 266-A(1)(d) of the Revised Penal Code, carnal knowledge of a woman under 12 years of age is punishable by *reclusion perpetua*.

On the award of damages, civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape.[29] Moral damages are automatically awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[30] Exemplary damages are awarded under Article 2230 of the Civil Code if there is an aggravating circumstance, whether

---

[29] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[30] *People v. Sabardan*, G.R. No.132135, 21 May 2004, 429 SCRA 9, 28-29.

ordinary or qualifying. There being no aggravating circumstance that can be considered, the award of exemplary damages would have to be deleted.

Pursuant to prevailing jurisprudence, the amount of ₱75,000.00 as civil indemnity must be modified to ₱50,000.00, and moral damages reduced from ₱75,000.00 to ₱50,000.00.[31] In *People v. Sambrano*,[32] the Court decreed that the award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages is only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves simple rape. Hence, the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages are in order.

WHEREFORE, premises considered, the decision of the Court of Appeals, finding accused-appellant Dante Gragasin *y* Par *GUILTY* beyond reasonable doubt of the crime of RAPE, is hereby *AFFIRMED with MODIFICATION* as to the award of damages; ₱50.000.00 as civil indemnity and ₱50,000.00 as moral damages; exemplary damages are deleted. No cost.

SO ORDERED.

Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

Carpio Morales,[**] *J.,* see concurring and dissenting opinion.

---

[31] *People v. Corpuz*, G.R. No. 178536, 30 January 2009.

[32] 446 Phil. 145, 162 (2003).

[*] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

CONCURRING and DISSENTING OPINION

CARPIO MORALES, *J.*:

I concur in the Decision, but disagree with the deletion of the award of exemplary damages.

Emphatic on AAA's minority in sustaining appellant's conviction, the majority paradoxically overlooks the same in deleting the award of exemplary damages. Consistent with the Court's latest pronouncements in *People v. Sia*,[1] *People v. Wasit*,[2] and *People v. Cruz*,[3] all unanimously decided, I subscribe to the view that exemplary damages should be awarded in rape cases where the victim is a minor without need for any other circumstance to concur with minority, in order to deter individuals with perverse tendencies from sexually abusing young children. The application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages – to set a public example or correction for the public good.

I, therefore, vote to AFFIRM the appellate court's award of exemplary damages.

---

[1] G.R. No. 174059, February 27, 2009.

[2] G.R. No. 182454, July 23, 2009.

[3] G.R. No. 186129, August 4, 2009.

SECOND DIVISION

[A.M. No. P-08-2571. August 27, 2009]
(formerly OCA I.P.I. No. 07-2651-P)

SIMEON GUARIÑO, RESTITUTO GUARIÑO, ARNOLD CARAGUIAN, LIZARDO SARMIENTO, and PRESING SARMIENTO, *petitioners, vs.* **CESAR F. RAGSAC, SHERIFF IV, and TEOTIMO D. CRUZ, BRANCH CLERK OF COURT, both of RTC, Br. 75, San Mateo, Rizal,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; COURT PERSONNEL; SHERIFFS; GRAVE ABUSE OF AUTHORITY IN IMPLEMENTING A WRIT OF EXECUTION.— The Court Administrator accordingly recommended that respondent Sheriff be found guilty of grave abuse of authority and fined ₱5,000, with a stern warning that a repetition of the same or similar act shall be dealt with more severely. x x x This Court finds well-taken the evaluation by the Court Administrator. Respondent Sheriff's explanation that he merely implemented the Writ of Execution fails. For the Writ, after incorporating the dispositive portion of the decision in the ejectment case x x x merely commanded him to execute the decision "pursuant to the [R]ules of Court and to likewise return th[e] Writ . . . as provided under Rule 39, Sec. 14 of the 1997 Rules of Civil Procedure." The above-quoted dispositive portion of the decision is self-explanatory, and since there is no order in the Writ for the demolition of the improvements on the land subject of the case, respondent Sheriff's failure to observe the procedure in Section 10 (d), Rule 39 of the Rules of Court x x x constitutes grave abuse of authority.

D E C I S I O N

CARPIO MORALES, *J.*:

For consideration is the complaint of herein petitioners Simeon Guariño, *et al.* lodged before the Office of the Court Administrator

against Sheriff Cesar F. Ragsac (Ragsac) and Branch Clerk of Court Timoteo D. Cruz of Branch 75 of the Regional Trial Court (RTC) of San Mateo, Rizal, for grave abuse of authority in connection with the implementation of a Writ of Execution of a January 23, 2003 Decision of the said court in an ejectment case resulting in the demolition, without an order for the purpose, of the houses of petitioners erected on the land subject of that case.

In his Comment on the Complaint, respondent Sheriff claimed that he merely implemented the Writ of Execution. As for respondent Branch Clerk, he claimed that he merely issued the Writ of Execution pursuant to the court's order.[1]

Upon evaluation of the Complaint and respondents' respective Comments, the Court Administrator, noting that respondent Sheriff caused the demolition of petitioners' properties without an order for the purpose, observed:

> Before the removal of an improvement must take place, there must be a special order, hearing and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides:
>
> > (d) Removal of improvements on property subject of execution. – When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.
>
> The above-stated rule is clear and needs no interpretation. If demolition is necessary, there must be a hearing on the motion filed and with due notices to the parties for the issuance of a special order of demolition.
>
> Respondent [Sheriff's] ignorance of the foregoing rule as to his functions is inexcusable. The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns

[1] *Rollo*, p. 103.

upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

In the present administrative complaint, **respondent sheriff immediately caused the demolition of the complainants' property and destroyed their plants without an order of demolition** from the court. Clearly his actuations amounted to grave abuse of authority.
xxx

xxx xxx xxx

Anent the charge against the respondent clerk of court Teotimo D. Cruz, we find the instant administrative complaint unmeritorious. Complainants failed to present substantial evidence to support their charge against him. On the other hand, the respondent clerk of court was able to show that he issued the subject writ pursuant to the Order of the Court dated January 23, 2004 in compliance with his duties as such.

The manner in which the respondent acted with dispatch in complying with his duty of issuing the subject writ precluded a notion that he is guilty of grave abuse of authority.[2] (Emphasis and underscoring supplied)

The Court Administrator accordingly recommended that respondent Sheriff be found guilty of grave abuse of authority and fined ₱5,000, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[3]

With respect to the complaint against respondent Branch Clerk of Court, the Court Administrator recommended its dismissal for lack of merit.[4]

This Court finds well-taken the evaluation by the Court Administrator.

---

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

[3] *Id.* at 148.

[4] *Ibid.*

Respondent Sheriff's explanation that he merely implemented the Writ of Execution fails. For the Writ, after incorporating the dispositive portion of the decision in the ejectment case reading:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff ANITA T. DIAZ, and against defendants Simeon Guarino, Resty Guarino, (sic) Felizardo Sarmiento and Arnold Caraguian ordering:
>
> 1. The defendants or any other persons acting in their behalf, to vacate the premises in question identified as Lot 3054-A now covered by TCT No. 129103 registered in the name of the herein plaintiff;
>
> 2. The defendants to surrender its possession to plaintiff;
>
> 3. Defendants to pay the sum of ₱200.00 per month as reasonable compensation for the use of property respectively occupied by them, commencing from the year of 1993 until they finally vacate the same;
>
> 4. Defendants to pay ₱50,000 as attorney's fees;
>
> 5. Defendants to pay the cost,[5]

merely commanded him to execute the decision "pursuant to the [R]ules of Court and to likewise return th[e] Writ . . . as provided under Rule 39, Sec. 14 of the 1997 Rules of Civil Procedure." The above-quoted dispositive portion of the decision is self-explanatory, and since there is no order in the Writ for the demolition of the improvements on the land subject of the case, respondent Sheriff's failure to observe the procedure in Section 10 (d), Rule 39 of the Rules of Court which reads:

> SEC. 10. *Execution of judgments for specific act.*
>
> xxx xxx xxx
>
> (d) *Removal of improvements on property subject of execution.* – When the property subject of the execution contains improvements

[5] *Id.* at 15.

constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except **upon special order of the court**, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court, (Emphasis and underscoring supplied)

constitutes grave abuse of authority.[6]

It appearing that this is respondent Sheriff's first offense of grave abuse of authority (oppression), it is, under Rule IV, Section 52 (A) (14) of the Uniform Rules on Administrative Cases in the Civil Service, punishable by suspension for six months and one day to one year.[7]

Respecting the complaint against respondent Branch Clerk of Court, the Court finds the recommendation for its dismissal well-taken.

WHEREFORE, respondent Sheriff Cesar F. Ragsac is found *GUILTY* of grave abuse of authority (oppression) and is *SUSPENDED* for six months and one day. He is *STERNLY WARNED* that a repetition of the same or similar act will be dealt with more severely.

The case against respondent Branch Clerk of Court Teotimo D. Cruz is *DISMISSED* for lack of merit.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

---

[6] *Vide Torres v. Sicat, Jr.*, 438 Phil. 109, 116-117 (2002).

[7] *Vide* Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (A) (14); *Hao v. Andres*, A.M. No. P-07-2384, June 18, 2008, 555 SCRA 8, 25.

SECOND DIVISION

[A.M. No. RTJ-08-2124. August 27, 2009]
(Formerly A.M. OCA IPI No. 07-2631-RTJ)

JUDGE RIZALINA T. CAPCO-UMALI, RTC, Br. 212, Mandaluyong City, *complainant, vs.* **JUDGE PAULITA B. ACOSTA-VILLARANTE, RTC, Br. 211, Mandaluyong City,** *respondent*.

[A.M. No. RTJ-08-2125. August 27, 2009]
(Formerly A.M. OCA IPI No. 07-2632-RTJ)

JUDGE PAULITA B. ACOSTA-VILLARANTE, RTC, Br. 211, Mandaluyong City, *complainant, vs.* **JUDGE RIZALINA T. CAPCO-UMALI, RTC, Br. 212, Mandaluyong City,** *respondent*.

SYLLABUS

LEGAL ETHICS; JUDGES; FAILURE TO OBSERVE PROPER DECORUM BY FIGHTING WITHIN THE COURT PREMISES.— Courts are looked upon by the people with high respect. Misbehavior by judges and employees necessarily diminishes their dignity. Any fighting or misunderstanding is a disgraceful occurrence reflecting adversely on the good image of the Judiciary. By fighting within the court premises, respondent judges failed to observe the proper decorum expected of members of the Judiciary. More detestable is the fact that their squabble arose out of a mere allowance coming from the local government. Under Rule 140, as amended by A.M. No. 01-8-10-SC (September 11, 2001), a violation of the Code of Judicial Conduct is classified as a serious charge only if it amounts to gross misconduct. Since, as correctly found by the OCA, the same does not constitute gross misconduct, it should be considered only as a violation of Supreme Court rules, directives and circulars, which is classified as a *less serious charge*, in which case, any of the following sanctions may be imposed: (1) suspension from office without salary and other benefits for not less than one

nor more than three months; or (2) a fine of more than ₱10,000 but not exceeding ₱20,000. The Court finds, however, that Judges Capco-Umali and Acosta-Villarante should each be fined ₱11,000.

APPEARANCES OF COUNSEL

Nole P. Panganiban for Retired Judge Paulita B. Acosta-Villarante.

D E C I S I O N

CARPIO MORALES, *J.*:

By Complaint-Affidavit of April 25, 2007[1] filed with the Office of the Court Administrator (OCA), Judge Rizalina Capco-Umali (Judge Capco-Umali) charged Judge Paulita Acosta-Villarante[2] (Judge Acosta-Villarante) with violation of the New Code of Judicial Conduct for the Philippine Judiciary[3] (New Code of Judicial Conduct), Canon 2, Section 2[4] and Canon 4, Sections 1 and 2.[5]

The facts which spawned the filing of Judge Capco-Umali's complaint are not disputed.

---

[1] *Rollo*, A.M. No. RTJ-08-2124, pp. 1-5.

[2] Compulsorily retired from the service on October 2, 2007.

[3] A.M. No. 03-05-01-SC (April 27, 2004) which took effect on June 1, 2004.

[4] SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

[5] SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2 As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Judge Acosta-Villarante wrote a Memorandum of March 27, 2007[6] addressed to Executive Judge Maria Cancino-Erum of the Regional Trial Court (RTC) of Mandaluyong City. The Memorandum, copies of which were furnished the Offices of the Chief Justice and the Associate Justices of the Supreme Court, the Judicial and Bar Council, Representative Benhur Abalos, Mayor Neptali Gonzales II, the City Prosecutor of Mandaluyong, the Clerk of Court of Mandaluyong RTCs, and the other judges of Mandaluyong City, reads:

> This refers to that unfortunate incident which occurred during the first meeting of RTC Judges ever [*sic*] held on March 23, 2007 (Friday) under your executive judgeship where the newly appointed vice executive Judge Rizalina Capco-Umali marred the event by conduct very unbecoming of a judge by uttering unsavory remarks and epithets or words of the same import designed to humiliate the undersigned in the presence of fellow judges and assistant clerk of court Atty. Leynard Dumlao, coupled with her attempt to inflict physical harm to the undersigned which you, as the newly appointed executive Judge, miserably failed to control and dominate and opted to take a passive stance.
>
> The conduct of the newly appointed vice executive judge does not speak well of her being a judge who is expected to conduct herself in a way that is consistent with the dignity of the judicial office.
>
> While the meeting of the judges is an ideal forum for the exchange of ideals and information, and to promote camaraderie among judges in the interest of public service, there is no assurance that the uncalled for incident on March 23, 2007 will not be repeated.
>
> It is therefore moved that the holding of monthly meeting of judges be suspended. (Underscoring supplied)

On account of the underlined statements of Judge Acosta-Villarante in her above-quoted Memorandum, Judge Capco-Umali filed a complaint for libel docketed as I.S. No. 07-7732-D,[7] before the Office of the City Prosecutor of Mandaluyong City.

---

[6] *Rollo*, A.M. No. RTJ-08-2124, p. 6.

[7] *Id.* at 9-26.

Judge Acosta-Villarante countered by also filing an Administrative Complaint of April 26, 2007 charging Judge Capco-Umali with violation of Canon 4, Sections 1 and 2[8] of the New Code of Judicial Conduct, and a complaint for Grave Oral Defamation and Grave Threats, docketed as I.S. No. 07-71846-E,[9] before the Office of the City Prosecutor, Mandaluyong City.

By 1st Indorsement of August 1, 2007,[10] the administrative complaints were referred to the OCA.

The details of Judge Capco-Umali's complaint are contained in her Complaint-Affidavit for Libel as follows:

After having been designated by the Supreme Court a[s] the new Executive Judge and Vice-Executive Judge, Regional Trial Court, Mandaluyong City, Judge Maria A. Cancino-Erum and the Vice Executive Judge (*complainant*) together with Executive Judge Ofelia Colo of the Metropolitant [*sic*] Trial Court Br. 59 agreed to pay a courtesy call/visit to May[o]r Neptali "Boyet" Gonzales II, City Mayor of Mandaluyong City. The visit took place at noontime of March 15, 2007 (Thursday). After briefing the Mayor [about] the purpose of our visit, he warmly and graciously entertained us. Until the conversation was shifted to the topic of local allowance. Such being the topic, Judge Maria A. Cancino-Erum showed to the Mayor the payroll for the month of April 2007 for early approval considering that most judges would take their vacation. Perusing intently the payroll Mayor Gonzales noticed the disparity in figures (amount) as to the allowance received by each Judges. He noticed that respondent Villarante was receiving additional three thousand pesos (₱3,000) on top of her regular allowance as Executive Judge; and additional five thousand pesos (Php5,000) on top of her allowance as Acting Judge of Br. 209. He also noticed that I [Judge Capco-Umali] and Executive Judge Maria A. Cancino-Erum received additional two thousand pesos (₱2,000) each on top of our regular allowances. Asking us as to why and as to where those additional allowances

[8] *Supra* note 5.

[9] *Rollo*, A.M. No. RTJ-08-2124, pp. 170-174.

[10] *Id.* at 200.

come from, complainant told the mayor that TERRE, the one preparing the payroll told us (I and Executive Judge Erum)[about the ₱2,000 allowance.]

xxx xxx xxx

Executive Judge Maria A. Cancino-Erum for her part informed the Mayor, thus: "*Sabi po ni Judge Villarante nirequest daw niya po iyon sa inyo* approved *n'yo, at pinirmahan niya ang* payroll. *Tinanggap naman po naming* [*sic*] *nitong* February."

But as regards the additional ₱3,000 (as Executive Judge) and ₱5,000 (as Acting Judge) of Judge Villarante, we told the Mayor that we have no knowledge as to how they come about…

"*Wala akong alam na* request, *wala akong inaprove, at lalong wala akong pangdagdag. Walang pondo. Iyon ngang mga tao ko, hindi ko maincreasan. E, kayo mga judges kayo, syempre pirma na lang ako pag prisinta sa akin an[g] payroll*."

The Mayor summoned LOIDA, her staff and directed the latter to retrieve the previous payrolls including the 2006 payrolls. He also said that "*ang laki naman ng increase ng Executive Judge, lalo na ang sa Acting, hindi naman ganyan yan ah. Pero* in case *na naaprove ko yan, ibibigay na natin yan sa bagong Executive Judge at iyong dating Executive Judge, balik sa dati niyang tinatanggap*."

xxx xxx xxx

Come, March 23, 2007 (Friday) Monthly Judges Meeting hosted by the newly designated Executive Judge Maria A. Cancino-Erum. The meeting was going smoothly until the topic of local allowance had been touched. Reporting to the body what transpired during the courtesy call at the Mayor's Office on March 15, 2007, when the matter of giving to the new executive judge the increased allowances of Executive Judge Paulita B. Acosta-Villarante and that the latter would revert back [*sic*] to the authorized amount for Executive Judges was discussed, respondent Villarante was angered and blurted out addressing the new Executive Judge, thus:

"*Kayo, simula ng maupo sa pwesto, wala ng ginawa kundi kutkutin at maghanap ng evidencia para ako masira,*

nagsusumbong, nagmamanman. Wala naman pakialaman sa allowance kanya kanya yan dapat.[”]

Having personal knowledge of the conversation that transpired at the Mayor’s Office on March 15, 2007, and much aware that respondent’s accusations were baseless, complainant felt obliged to come to the rescue of the embattled Judge Maria A. Cancino-Erum and to refute respondent’s misplaced tirade by stating matter of fact the truth and what I saw and heard.

For his part, Judge Carlos A. Valenzuela who admitted his presence during the courtesy call confirmed the truthfulness of complainant’s report and also confirmed the transfer of Executive Judge’s allowance to the new Executive Judge thus: “*Totoo ang sinabi ni Judge Umali nandoon ako, ililipat nga allowance sa bagong Executive Judge at ang dating Executive Judge will receive former amount*.”

While complainant is still enlightening her fellow Judges of the real facts that transpired at the Mayor’s Office, the respondent kept talking too and even shouting at the top [of] her voice towards complainant visibly irked by complainant’s revelation on the matter. Respondent even called complainant a liar ***(sinungaling)*** repeatedly[;] when complainant demanded from respondent her basis for saying that complainant is a liar, respondent was not able to answer it but continued calling her ***“sinungaling”.*** Even telling her to stop talking because her (*complainant*) voice is so sharp to her ear (“*nakakahiwa boses mo*”). Respondent continued verbally attacking complainant with words connoting malicious imputations of being an incorrigible liar and of being in cahoots with Judge Maria A. Cancino-Erum in peddling lies [that] the complainant got upset by the verbal aggression made by Judge Villarante that she told the latter, thus: ***“Matanda ka na, halos malapit ka na sa kamatayan gumagawa ka pa ng ganyan, madadamay pa kami.”*** Judge Villarante fought back: “*Bog, sana mangyari sa iyo, bog*!”.

Complainant welcomed the challenge, thus: “*handa akong mamatay kahit anong oras dahil wala akong ginagawang masama*”.

At said instance complainant once more prompted Judge Villarante as to her authority or basis in the increase in the payroll, and Judge Villarante answered: “*May nag-oofer nga*!”.

More heated exchanges ensued because Judge Villarante kept o[n] saying *sinungaling* to the complainant.

Thereafter, cooler heads intervened. Judge Edwin Sorongon… brought respondent out of the room while Atty. Leynard Dumlao [was] pacifying the complainant.[11] (Emphasis partly in the original and partly supplied; underscoring supplied; italics in the original)

By Comment of May 28, 2007,[12] Judge Acosta-Villarante denied that she wrote the Memorandum to maliciously impute a crime, vice or defect on Judge Capco-Umali as she merely requested for the suspension of the holding of the monthly meeting of judges to avoid a repetition of the incident and to afford the parties an opportunity to "cool off."

In causing the circulation of the Memorandum, Judge Acosta-Villarante explained that she had an "obligation to bring to the attention of concerned officials the personal demeanor of another member that would put the Judiciary in constant public scrutiny and disrespect." Her version of the incident goes:

After taking up the first agenda of the meeting x x x, the agenda on allowances of Judges was called to be taken up.

Whereupon, Complainant requested to take the floor and manifested as follows:

Judge P.A. Villarante:

"mga kapwa kong Hukom, bago natin talakayin ang agenda ng allowances, maari bang ipaabot ko sa kaalaman ng lahat na may tumawag ng aking kaalaman at pansin na mayroon di-umanong Hukom ng RTC na nagpahiwatig sa Tanggapan ng City Mayor na di-umano hindi ko hini-hearing o dinidinig ang mga asunto ng RTC, Br. 209, na sakup ng aking designasyon bilang Acting Presiding Judge, na may kaugnayan sa ating pag-uusapan na allowances. Pinatunayan ko na hindi tutoo at pawang kasinungalingan ang bintang sa pamamagitan ng "Minutes of Court Hearings" at "Certification" ng Branch Clerk of Court ng RTC, Br. 209. Mga kasama sa Judiciary, nakikiusap ako na iwasan natin ang nakakasirang bagay na hindi totoo x x x"[.]

---

[11] *Id.* at 17-20.

[12] *Id.* at 28-34.

> *"x x x Ugnay sa representation sa pagtaas ng allowance ng Judges sa local Government ay napagbigyan naman. Pakiusap ko, huwag naman siraan ang kapwa x x x," at iba pa.*

On the matter, a Judge in the group made a comment – to wit:

> *"x x x upang maiwasan ang hindi pagkakaunawaan ng isa't isa sa atin, hinihiling ko sa bawa't isa sa atin na kung ano ang tinatanggap ng sino man sa atin, huwag ng questionin x x x" at iba pa.*

at that juncture Judge Capco-Umali stood up and in a mode of anger pointing a finger against herein Complainant, she repeatedly said in a loud voice:

> *"Matanda ka na…! Mamamatay ka na!..." at iba pa na may kahalintulad.*

On the impropriety of the unruly and disrespect behavior and conduct of Judge Capco-Umali in the presence of fellow-judges and others, a Judge tried to say something in an effort to appease her unruliness, but she kept on unkindly berating herein Complainant who was then speechless out of her shock on her unexpected behavior.

Regaining a bit of composure and wit, Complainant appealed to the respondent in this manner:

> *"x x x Judge Umali magpakatao at makinig ka naman para makapagunawaan tayo, nakakahiya na ito x x x"*

to which she became more angry and shouted –

> *"x x x Judge ako! Judge ako x x x!".*

as she was pounding her breast continuously with her fist; because of the shock and fright generated by the unruly behavior of respondent, complainant did not clearly comprehend the rest of her berating statements made against her in the process.

When respondent Judge Umali already appeared to be more uncontrollable in her decorum, complainant then in fear took steps to get out of the place with Judge Sorongon then tending her on her shoulder assisted her in haste towards the exit door; and when about to step out of the exit door, complainant turning her face on the then commotion at her back she saw Respondent Judge Umali still berating

her and in the act of catching her at the back but on the then timely intervention of Atty. Leynard Dumlao who then was close at complainant's back, prevented respondent to reach her who then hastily moved to the safety of her courtroom still with the assistance of Judge Sorongon, thus complainant got out of the wrath of respondent Judge Umali.[13] (Italics and underscoring in the original)

In her May 22, 2007 Comment,[14] Judge Capco-Umali, **admitting** having uttered the remarks *"matanda ka na, halos malapit ka na sa kamatayan gumagawa ka pa ng ganyan, madadamay pa kami"* to Judge Acosta-Villarante, explained that it was "due to exasperation" as Judge Acosta-Villarante called her "an incorrigible liar" or "*sinungaling*." Also **admitting** having uttered *"Judge ako! Judge ako!,"* she explained that it was to remind Judge Acosta-Villarante that she deserved respect and courtesy, for while she was speaking on the topic of allowances, Judge Acosta-Villarante kept interrupting her by "making interjections and unnecessary comments."

In her June 8, 2007 Reply,[15] Judge Acosta- Villarante, **admitting** calling Judge Capco-Umali "*sinungaling*," explained that she was only "constrained" by the situation, adding that Judge Capco-Umali is a "pathological liar."

In its March 5, 2008 Report and Recommendation,[16] the OCA made the following evaluation:

xxx xxx xxx

The **admissions** made by the concerned Judges anent the allegations they hurled against each other provide for the strongest evidence to **establish their individual liability.**

Time and again, the Court has constantly reminded Judges that as magistrates of the law, they must comport themselves at all times in such a manner that their conduct, official or otherwise, can bear

---

[13] *Rollo*, A.M. No. RTJ-08-2125, pp. 6-9.

[14] *Id.* at 24-38.

[15] *Id.* at 57-67.

[16] *Rollo*, A.M. No. RTJ-08-2124, pp. 384-393.

the most searching scrutiny of the public that looks up to them as epitome of integrity and justice. They must be the first to abide by the law and weave an example for others to follow. They must studiously avoid even the slightest infraction of the law (*Alumbres vs. Caoibes, A.M. No. RTJ-99-1431, January 23, 2002*). The actions of the respondent Judges fell short of this exacting ethical standard demanded from the members of the Judiciary.

Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary (A.M. [No.] 03-05-01-SC, [effective] 01 June 2004) enunciates the rule that *"[J]udges shall avoid impropriety and the appearance of impropriety in all of their activities."*

Judge Capco-Umali failed to live up to the standard of propriety entrenched in the aforequoted code of conduct. While, she might have been provoked by Judge Acosta-Villarante's referral to her as a liar, **she should have maintained her composure instead of shouting back at a fellow judge.** She should have exercised self-restraint instead of reacting in such a very inappropriate manner considering that she is in the presence of fellow Judges and other employees of RTC, Mandaluyong City. She should have put more consideration and effort on preserving the solemnity of the said meeting, and on giving those who are present the courtesy and respect they deserved. It was held in *Quiroz vs. Orfila (272 SCRA 324 [1997])* that "[f]ighting between court employees during office hours is disgraceful behavior reflecting adversely on the good image of the judiciary. It displays a cavalier attitude towards the seriousness and dignity with which court business should be treated. Shouting at one another in the workplace and during office hours is arrant discourtesy and disrespect not only towards co-workers, but to the court as well. The behavior of the parties was totally unbecoming members of the judicial service."

Judge Capco-Umali, however, does not bear this responsibility alone**. Judge Acosta-Villarante** should also be required to answer for her failure to observe the basic norm of propriety demanded from a judge in relation with the aforementioned 23 March 2007 incident. At the outset, it was Judge Acosta-Villarante's unseemly behavior, calling Judge Capco-Umali "*sinungaling*" in front of their fellow Judges that initiated the altercation between the two Judges. **Judge Acosta-Villarante should have been more cautious in choosing the words** to address the already volatile situation with Judge Capco-Umali.

Judge Acosta-Villarante also repeated the uncalled for conduct when she wrote the memorandum dated 27 March 2007 and caused its circulation. If indeed the memorandum was produced strictly to allow the parties to cool off and avoid a repetition of the incident, on this ground alone, there was no need to mention the alleged misbehavior of Judge Capco-Umali during the meeting. **The memorandum was thus written as a medium for retaliation against Judge Capco-Umali.**

Judge Acosta-Villarante cannot also use as justification in writing and circulating of the memorandum the claim that "she has an obligation to bring to the attention of concerned officials the personal demeanor of another member that would put the Judiciary in constant public scrutiny and disrespect" pursuant to her oath of office. As a Judge, respondent Acosta-Villarante is aware that there are proper avenues for ventilation of grievance against anyone in government service…. Moreover, the termination of the conflict between her and Judge Capco-Umali (through the suggestion of giving the parties opportunity for "cooling off") is clearly not what she is up to for what she did only worsened the situation (with the filing of several complaints and counter-complaints).

An act complained of anchored on a violation of Code of Judicial Conduct, may only constitute a serious charge under Section 8 of Rule 140 of the Rules of Court if the same amounts to gross misconduct. The respective acts for which the herein respondents have been charged do not amount to gross misconduct. Thus, **the charges against them cannot be considered serious**. Nevertheless, respondents should be held **administratively liable for violation of Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary**. Under Section 11(B) in relation to Section 9 (A) of Rule 140, as amended by A.M. No. 01-8-10-SC, violation of Supreme Court rules constitutes a **less serious charge**. Respondents, therefore, may be sanctioned with: [1] suspension from office without salary and other benefits for not less than (1) nor more than three (3) months; or [2] a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In the case of Judge Capco-Umali, however, the imposable penalty should be **tempered** because it is clear from the record that she was dragged into the tiff by an act of provocation.[17] (Italics in the original; emphasis and underscoring supplied)

---

[17] *Id.* at 390-393.

Thus, for violating Section 1, Canon 4 of the New Code of Judicial Conduct which is a less serious charge under Section 11(B) in relation to Section 9 (A) of Rule 140, as amended by A.M. No. 01-8-10-SC, the OCA recommended that Judges Capco-Umali and Acosta-Villarante be fined in the amount of ₱11,000 and ₱16,000, respectively.

The Court finds the evaluation of the complaints by the OCA well-taken.

Courts are looked upon by the people with high respect. Misbehavior by judges and employees necessarily diminishes their dignity. Any fighting or misunderstanding is a disgraceful occurrence reflecting adversely on the good image of the Judiciary.[18] By fighting within the court premises, respondent judges failed to observe the proper decorum expected of members of the Judiciary. More detestable is the fact that their squabble arose out of a mere allowance coming from the local government.

Under Rule 140, as amended by A.M. No. 01-8-10-SC[19] (September 11, 2001), a violation of the Code of Judicial Conduct is classified as a serious charge only if it amounts to gross misconduct. Since, as correctly found by the OCA, the same does not constitute gross misconduct, it should be considered only as a violation of Supreme Court rules, directives and circulars, which is classified as a *less serious charge*, in which case, any of the following sanctions may be imposed: (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

---

[18] *Re: Fighting Incident Between Two (2) SC Drivers, Namely, Messrs. Edilberto L. Idulsa and Ross C. Romero*, A.M No. 2008-24-SC, July 14, 2009; *Nacionales v. Madlangbayan*, A.M. No. P-06-2171, June 15, 2006, 490 SCRA 538, 545.

[19] Took effect on October 1, 2001.

The Court finds, however, that Judges Capco-Umali and Acosta-Villarante should each be fined ₱11,000.

WHEREFORE, the Court finds Judges Rizalina T. Capco-Umali and Paulita B. Acosta-Villarante *GUILTY* of violation of Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary, for which they are each *FINED* in the amount of Eleven Thousand (₱11,000) Pesos.

In view of the retirement of Judge Paulita B. Acosta-Villarante, the Fiscal Management and Budget Office, Office of the Court Administrator is ordered to *DEDUCT* the amount of Eleven Thousand Pesos (₱11,000) from her retirement benefits.

Judge Rizalina T. Capco-Umali, who is still in the service, is *STERNLY WARNED* that a repetition of similar acts will be dealt with more severely. The same stern warning applies to retired Judge Paulita B. Acosta-Villarante in her capacity as a member of the Bar.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 157374. August 27, 2009]

HEIRS OF CAYETANO PANGAN and CONSUELO PANGAN,* *petitioners, vs.* **SPOUSES ROGELIO PERRERAS and PRISCILLA PERRERAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; ESSENTIAL ELEMENTS OF A PERFECTED CONTRACT, PRESENT.— Article 1318 of the Civil Code declares that no contract exists unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation established. Since the object of the parties' agreement involves properties co-owned by Consuelo and her children, the petitioners-heirs insist that their approval of the sale initiated by their mother, Consuelo, was essential to its perfection. Accordingly, their refusal amounted to the absence of the required element of consent. That a thing is sold without the consent of all the co-owners does not invalidate the sale or render it void. Article 493 of the Civil Code recognizes the absolute right of a co-owner to freely dispose of his *pro indiviso* share as well as the fruits and other benefits arising from that share, independently of the other co-owners. Thus, when Consuelo agreed to sell to the respondents the subject properties, what she in fact sold was her undivided interest that, as quantified by the RTC, consisted of one-half interest, representing her conjugal share, and one-sixth interest, representing her hereditary share. x x x [W]e find nothing in the parties' agreement or even conduct – save Consuelo's self-serving testimony – that would indicate or from which we can infer that Consuelo's consent depended on her children's approval of the sale. The explicit terms of the June 8, 1989 receipt provide no occasion for any reading that the agreement is subject to the petitioners-heirs' favorable consent to the sale.

* Deceased

The presence of Consuelo's consent and, corollarily, the existence of a perfected contract between the parties are further evidenced by the payment and receipt of ₱20,000.00, an earnest money by the contracting parties' common usage. x x x As we have pointed out, the terms of the parties' agreement are clear and explicit; indeed, all the essential elements of a perfected contract are present in this case. While the respondents required that the occupants vacate the subject properties prior to the payment of the second installment, the stipulation does not affect the perfection of the contract, but only its execution.

2. ID.; ID.; CHARACTERIZATION OF THE CONTRACT CONSIDERED IRRELEVANT IN CASE AT BAR.— The question of characterization of the contract involved here would necessarily call for a thorough analysis of the parties' agreement as embodied in the June 2, 1989 receipt, their contemporaneous acts, and the circumstances surrounding the contract's perfection and execution. **Unfortunately, the lower courts' factual findings provide insufficient detail for the purpose.** A stipulation reserving ownership in the vendor until full payment of the price is, under case law, typical in a contract to sell. In this case, the vendor made no reservation on the ownership of the subject properties. From this perspective, the parties' agreement may be considered a *contract of sale*. On the other hand, jurisprudence has similarly established that the need to execute a deed of absolute sale upon completion of payment of the price generally indicates that it is a contract to sell, as it implies the reservation of title in the vendor until the vendee has completed the payment of the price. When the respondents instituted the action for specific performance before the RTC, they prayed that Consuelo be ordered to execute a Deed of Absolute Sale; this act may be taken to conclude that the parties only entered into a *contract to sell*. Admittedly, the given facts, as found by the lower courts, and in the absence of additional details, can be interpreted to support two conflicting conclusions. The failure of the lower courts to pry into these matters may understandably be explained by the issues raised before them, which did not require the additional details. Thus, they found the question of the contract's characterization immaterial in their discussion of the facts and the law of the case. x x x [W]e do not find the question of characterization significant to fully pass upon the question of default due to

the respondents' breach; ultimately, the breach was cured and the contract revived by the respondents' payment a day after the due date.

3. ID.; ID.; RIGHT OF THE VENDOR TO RESCIND THE CONTRACT DUE TO NONPAYMENT OF THE PRICE MAY BE DEFEATED IN VIEW OF THE MACEDA LAW.— In cases of breach due to nonpayment, the vendor may avail of the remedy of *rescission* in a contract *of sale*. Nevertheless, the defaulting vendee may defeat the vendor's right to rescind the contract of sale if he pays the amount due before he receives a demand for rescission, either judicially or by a notarial act, from the vendor. This right is provided under Article 1592 of the Civil Code x x x **Nonpayment of the purchase price in contracts *to sell***, however, does not constitute a breach; rather, nonpayment is a condition that prevents the obligation from acquiring obligatory force and **results in its *cancellation***. x x x As in the rescission of a contract of sale for nonpayment of the price, the defaulting vendee in a contract to sell may defeat the vendor's right to cancel by invoking the rights granted to him under Republic Act No. 6552 or the Realty Installment Buyer Protection Act (also known as the *Maceda Law*); this law provides for a 60-day grace period within which the defaulting vendee (who has paid less than two years of installments) may still pay the installments due. Only after the lapse of the grace period with continued nonpayment of the amounts due can the actual cancellation of the contract take place. x x x Significantly, the Court has consistently held that the Maceda Law covers not only sales on installments of real estate, but also financing of such acquisition; its Section 3 is comprehensive enough to include both contracts of sale and contracts to sell, provided that the terms on payment of the price require at least two installments. The contract entered into by the parties herein can very well fall under the Maceda Law. Based on the above discussion, we conclude that the respondents' payment on June 15, 1989 of the installment due on June 14, 1989 effectively defeated the petitioners-heirs' right to have the contract rescinded or cancelled. Whether the parties' agreement is characterized as one *of sale* or *to sell* is not relevant in light of the respondents' payment within the grace period provided under Article 1592 of the Civil Code and Section 4 of the Maceda Law. The petitioners-heirs' obligation to accept the payment

of the price and to convey Consuelo's conjugal and hereditary shares in the subject properties subsists.

APPEARANCES OF COUNSEL

Law Office of Dante S. David for petitioners.
Ricardo C. Pilares, Jr. for respondents.

D E C I S I O N

BRION, *J.*:

The heirs[1] of spouses Cayetano and Consuelo Pangan (*petitioners-heirs*) seek the reversal of the Court of Appeals' (*CA*) decision[2] of June 26, 2002, as well its resolution of February 20, 2003, in CA-G.R. CV Case No. 56590 through the present petition for review on *certiorari*.[3] The CA decision affirmed the Regional Trial Court's (*RTC*) ruling[4] which granted the complaint for specific performance filed by spouses Rogelio and Priscilla Perreras (*respondents*) against the petitioners-heirs, and dismissed the complaint for consignation instituted by Consuelo Pangan (*Consuelo*) against the respondents.

THE FACTUAL ANTECEDENTS

The spouses Pangan were the owners of the lot and two-door apartment (*subject properties*) located at 1142 Casañas St., Sampaloc, Manila.[5] On June 2, 1989, Consuelo agreed to

---

[1] Victor, Ludinila, Hermelina, Virgilio, and Editha, all surnamed Pangan; *rollo*, p. 33.

[2] Penned by Associate Justice Elvi John S. Asuncion (separated from the service), with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Edgardo F. Sundiam (deceased), concurring, *id.*, pp. 21-25.

[3] Under Rule 45 of the Rules of Court; *id.*, pp. 10-18.

[4] In Civil Case Nos. 89-50258 and 89-50259, penned by Judge Ed Vincent S. Albano on January 27, 1997, *id.*, pp. 33-49.

[5] The land is covered by TCT No. 16098 and registered in the name of spouses Cayetano and Consuelo Pangan.

sell to the respondents the subject properties for the price of ₱540,000.00. On the same day, Consuelo received ₱20,000.00 from the respondents as earnest money, evidenced by a receipt (*June 2, 1989 receipt*)[6] that also included the terms of the parties' agreement.

Three days later, or on June 5, 1989, the parties agreed to increase the purchase price from ₱540,000.00 to ₱580,000.00.

In compliance with the agreement, the respondents issued two Far East Bank and Trust Company checks payable to Consuelo in the amounts of ₱200,000.00 and ₱250,000.00 *on June 15, 1989*. Consuelo, however, refused to accept the checks. She justified her refusal by saying that her children (the petitioners-heirs) – co-owners of the subject properties – did not want to sell the subject properties. For the same reason, Consuelo offered to return the ₱20,000.00 earnest money she received from the respondents, but the latter rejected it. Thus, Consuelo filed a complaint for consignation against the respondents on September 5, 1989, docketed as Civil Case No. 89-50258, before the RTC of Manila, Branch 28.

The respondents, who insisted on enforcing the agreement, in turn instituted an action for specific performance against Consuelo before the same court on September 26, 1989. This case was docketed as Civil Case No. 89-50259. They sought to compel Consuelo and the petitioners-heirs (who were

---

[6] *Rollo,* p. 6. The receipt stated:

> Received from Mrs. Prisicilla Perreras of #35 Nicanor Roxas St., Sta. Mesa Heights, Q.C. the amount of Twenty Thousand Pesos (₱20,000.00) as EARNEST MONEY for the house and lot located at 1140-1142 Casañas St., Sampaloc, Manila.
>
> The total purchased [*sic*] price is Five Hundred Forty Thousand Pesos (₱540,000.00).
>
> **Two Hundred Fifty Thousand Pesos (₱250,000.00) to be given on or before June 14/89.**
>
> The total balance of Two Hundred Seventy Thousand Pesos (₱270,000.00) to be given once the tenants vacated [*sic*] the premises. [Emphasis in the original.]

subsequently impleaded as co-defendants) to execute a Deed of Absolute Sale over the subject properties.

In her Answer, Consuelo claimed that she was justified in backing out from the agreement on the ground that the sale was subject to the consent of the petitioners-heirs who became co-owners of the property upon the death of her husband, Cayetano. Since the petitioners-heirs disapproved of the sale, Consuelo claimed that the contract became ineffective for lack of the requisite consent. She nevertheless expressed her willingness to return the ₱20,000.00 earnest money she received from the respondents.

The RTC ruled in the respondents' favor; it upheld the existence of a perfected contract of sale, at least insofar as the sale involved Consuelo's conjugal and hereditary shares in the subject properties. The trial court found that Consuelo's receipt of the ₱20,000.00 earnest money was an "eloquent manifestation of the perfection of the contract." Moreover, nothing in the June 2, 1989 receipt showed that the agreement was conditioned on the consent of the petitioners-heirs. Even so, the RTC declared that the sale is valid and can be enforced against Consuelo; as a co-owner, she had full-ownership of the part pertaining to her share which she can alienate, assign, or mortgage. The petitioners-heirs, however, could not be compelled to transfer and deliver their shares in the subject properties, as they were not parties to the agreement between Consuelo and the respondents. Thus, the trial court ordered Consuelo to convey one-half (representing Consuelo's conjugal share) plus one-sixth (representing Consuelo's hereditary share) of the subject properties, and to pay ₱10,000.00 as attorney's fees to the respondents. Corollarily, it dismissed Consuelo's consignation complaint.

Consuelo and the petitioners-heirs appealed the RTC decision to the CA claiming that the trial court erred in not finding that the agreement was subject to a suspensive condition – the consent of the petitioners-heirs to the agreement. The CA, however, resolved to dismiss the appeal and, therefore, affirmed the RTC decision. As the RTC did, the CA found that the

payment and receipt of earnest money was the operative act that gave rise to a perfected contract, and that there was nothing in the parties' agreement that would indicate that it was subject to a suspensive condition. It declared:

> Nowhere in the agreement of the parties, as contained in the June 2, 1989 receipt issued by [Consuelo] xxx, indicates that [Consuelo] reserved titled on [sic] the property, nor does it contain any provision subjecting the sale to a positive suspensive condition.

Unconvinced by the correctness of both the RTC and the CA rulings, the petitioners-heirs filed the present appeal by *certiorari* alleging reversible errors committed by the appellate court.

THE PETITION

The petitioners-heirs primarily contest the finding that there was a perfected contract executed by the parties. They allege that other than the finding that Consuelo received ₱20,000.00 from the respondents as earnest money, no other evidence supported the conclusion that there was a perfected contract between the parties; they insist that Consuelo specifically informed the respondents that the sale still required the petitioners-heirs' consent as co-owners. The refusal of the petitioners-heirs to sell the subject properties purportedly amounted to the absence of the requisite element of consent.

Even assuming that the agreement amounted to a perfected contract, the petitioners-heirs posed the question of the agreement's proper characterization – whether it is a *contract of sale* or a *contract to sell*. The petitioners-heirs posit that the agreement involves a contract to sell, and the respondents' ***belated*** payment of part of the purchase price, *i.e.*, one day after the June 14, 1989 due date, amounted to the non-fulfillment of a positive suspensive condition that prevented the contract from acquiring obligatory force. In support of this contention, the petitioners-heirs cite the Court's ruling in the case of *Adelfa Rivera, et al. v. Fidela del Rosario, et al.*:[7]

---

[7] G.R. No. 144934, January 15, 2004, 419 SCRA 626.

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; while in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. **In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force.**

[Rivera], however, failed to complete payment of the second installment. The non-fulfillment of the condition rendered the contract to sell ineffective and without force and effect. [Emphasis in the original.]

From these contentions, we simplify the basic issues for resolution to three questions:

1. **Was there a perfected contract between the parties?**
2. **What is the nature of the contract between them? and**
3. **What is the effect of the respondents' belated payment on their contract?**

THE COURT'S RULING

There was a perfected contract between the parties since all the essential requisites of a contract were present

Article 1318 of the Civil Code declares that no contract exists unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation established. Since the object of the parties' agreement involves properties co-owned by Consuelo and her children, the petitioners-heirs insist that their approval of the sale initiated by their mother, Consuelo, was essential to its perfection. Accordingly, their refusal amounted to the absence of the required element of consent.

That a thing is sold without the consent of all the co-owners does not invalidate the sale or render it void. Article 493 of the Civil Code[8] recognizes the absolute right of a co-owner to freely dispose of his *pro indiviso* share as well as the fruits and other benefits arising from that share, independently of the other co-owners. Thus, when Consuelo agreed to sell to the respondents the subject properties, what she in fact sold was her undivided interest that, as quantified by the RTC, consisted of one-half interest, representing her conjugal share, and one-sixth interest, representing her hereditary share.

The petitioners-heirs nevertheless argue that Consuelo's consent was predicated on their consent to the sale, and that their disapproval resulted in the withdrawal of Consuelo's consent. Yet, we find nothing in the parties' agreement or even conduct – save Consuelo's self-serving testimony – that would indicate or from which we can infer that Consuelo's consent depended on her children's approval of the sale. The explicit terms of the June 8, 1989 receipt[9] provide no occasion for any reading that the agreement is subject to the petitioners-heirs' favorable consent to the sale.

The presence of Consuelo's consent and, corollarily, the existence of a perfected contract between the parties are further evidenced by the payment and receipt of ₱20,000.00, an earnest money by the contracting parties' common usage. The law on sales, specifically Article 1482 of the Civil Code, provides that ***whenever earnest money is given in a contract of sale, it shall be considered as part of the price and proof of the***

---

[8] The full text of Article 493 of the Civil Code reads:

> Each co-owner shall have full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

[9] *Supra* note 6.

perfection of the contract. Although the presumption is not conclusive, as the parties may treat the earnest money differently, there is nothing alleged in the present case that would give rise to a contrary presumption. In cases where the Court reached a conclusion contrary to the presumption declared in Article 1482, we found that the money initially paid was given *to guarantee that the buyer would not back out from the sale*, considering that *the parties to the sale have yet to arrive at a definite agreement as to its terms – that is, a situation where the contract has not yet been perfected*.[10] These situations do not obtain in the present case, as neither of the parties claimed that the ₱20,000.00 was given merely as guarantee by the respondents, as vendees, that they would not back out from the sale. As we have pointed out, the terms of the parties' agreement are clear and explicit; indeed, all the essential elements of a perfected contract are present in this case. While the respondents required that the occupants vacate the subject properties prior to the payment of the second installment, the stipulation does not affect the perfection of the contract, but only its execution.

In sum, the case contains no element, factual or legal, that negates the existence of a perfected contract between the parties.

The characterization of the contract can be considered irrelevant in this case in light of Article 1592 and the Maceda Law, and the petitioners-heirs' payment

The petitioners-heirs posit that the proper characterization of the contract entered into by the parties is significant in order to determine the effect of the respondents' breach of the contract (which purportedly consisted of a one-day delay in the payment

[10] See *Manila Metal Container Corporation v. Tolentino*, G.R. No. 166862, December 20, 2006, 511 SCRA 444; *San Miguel Properties Phil., Inc. v. Huang*, G.R. No. 137290, July 31, 2000, 336 SCRA 737, citing *Spouses Doromal v. CA*, 66 SCRA 575 (1975).

of part of the purchase price) and the remedies to which they, as the non-defaulting party, are entitled.

The question of characterization of the contract involved here would necessarily call for a thorough analysis of the parties' agreement as embodied in the June 2, 1989 receipt, their contemporaneous acts, and the circumstances surrounding the contract's perfection and execution. **Unfortunately, the lower courts' factual findings provide insufficient detail for the purpose.** A stipulation reserving ownership in the vendor until full payment of the price is, under case law, typical in a contract to sell.[11] In this case, the vendor made no reservation on the ownership of the subject properties. From this perspective, the parties' agreement may be considered a *contract of sale*. On the other hand, jurisprudence has similarly established that the need to execute a deed of absolute sale upon completion of payment of the price generally indicates that it is a contract to sell, as it implies the reservation of title in the vendor until the vendee has completed the payment of the price. When the respondents instituted the action for specific performance before the RTC, they prayed that Consuelo be ordered to execute a Deed of Absolute Sale; this act may be taken to conclude that the parties only entered into a *contract to sell*.

Admittedly, the given facts, as found by the lower courts, and in the absence of additional details, can be interpreted to support two conflicting conclusions. The failure of the lower courts to pry into these matters may understandably be explained by the issues raised before them, which did not require the additional details. Thus, they found the question of the contract's characterization immaterial in their discussion of the facts and the law of the case. Besides, the petitioners-heirs raised the question of the contract's characterization and the effect of the breach *for the first time* through the present Rule 45 petition.

---

[11] See *Cordero v. F.S. Management and Development Corporation, Inc.*, G.R. No. 167213, October 31, 2006, 506 SCRA 451; *Ramos v. Santiago*, G.R. No. 145330, October 14, 2005, 473 SCRA 79; *Rayos v. CA*, G.R. No. 135528, July 14, 2004, 434 SCRA 365.

Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by the reviewing court, as they cannot be raised for the first time at the appellate review stage. Basic considerations of fairness and due process require this rule.[12]

At any rate, we do not find the question of characterization significant to fully pass upon the question of default due to the respondents' breach; ultimately, the breach was cured and the contract revived by the respondents' payment a day after the due date.

In cases of breach due to nonpayment, the vendor may avail of the remedy of *rescission* in a contract *of sale*. Nevertheless, the defaulting vendee may defeat the vendor's right to rescind the contract of sale if he pays the amount due before he receives a demand for rescission, either judicially or by a notarial act, from the vendor. This right is provided under Article 1592 of the Civil Code:

> Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, **the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act.** After the demand, the court may not grant him a new term. [Emphasis supplied.]

Nonpayment of the purchase price in contracts *to sell*, however, does not constitute a breach; rather, nonpayment is a condition that prevents the obligation from acquiring obligatory force and **results in its *cancellation***. We stated in *Ong v. CA*[13] that:

> **In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual**

---

[12] *Pag-Asa Steel Works, Inc. v. CA*, G.R. No. 166647, March 31, 2006, 486 SCRA 475.

[13] G.R. No. 97347, July 6, 1999, 310 SCRA 1.

or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring obligatory force. The non-fulfillment of the condition of full payment rendered the contract to sell ineffective and without force and effect. [Emphasis supplied.]

As in the rescission of a contract of sale for nonpayment of the price, the defaulting vendee in a contract to sell may defeat the vendor's right to cancel by invoking the rights granted to him under Republic Act No. 6552 or the Realty Installment Buyer Protection Act (also known as the *Maceda Law*); this law provides for a 60-day grace period within which the defaulting vendee (who has paid less than two years of installments) may still pay the installments due. Only after the lapse of the grace period with continued nonpayment of the amounts due can the actual cancellation of the contract take place. The pertinent provisions of the Maceda Law provide:

xxx xxx xxx

Section 2. It is hereby declared a public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions.

Sec. 3. **In all transactions or contracts involving the sale or financing of real estate on installment payments**, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

xxx xxx xxx

Section 4. **In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than 60 days from the date the installment became due.** If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from the receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act. [Emphasis supplied.]

Significantly, the Court has consistently held that the Maceda Law covers not only sales on installments of real estate, but also financing of such acquisition; its Section 3 is comprehensive enough to include both contracts of sale and contracts to sell, provided that the terms on payment of the price require at least two installments. The contract entered into by the parties herein can very well fall under the Maceda Law.

Based on the above discussion, we conclude that the respondents' payment on June 15, 1989 of the installment due on June 14, 1989 effectively defeated the petitioners-heirs' right to have the contract rescinded or cancelled. Whether the parties' agreement is characterized as one *of sale* or *to sell* is not relevant in light of the respondents' payment within the grace period provided under Article 1592 of the Civil Code and Section 4 of the Maceda Law. The petitioners-heirs' obligation to accept the payment of the price and to convey Consuelo's conjugal and hereditary shares in the subject properties subsists.

WHEREFORE, we *DENY* the petitioners-heirs' petition for review on *certiorari*, and *AFFIRM* the decision of the Court of Appeals dated June 24, 2002 and its resolution dated February 20, 2003 in CA-G.R. CV Case No. 56590. Costs against the petitioners-heirs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164789. August 27, 2009]

CHRISTIAN GENERAL ASSEMBLY, INC., *petitioner, vs.* **SPS. AVELINO C. IGNACIO and PRISCILLA T. IGNACIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODY; HOUSING AND LAND USE REGULATORY BOARD (HLURB); DEVELOPMENT OF ITS JURISDICTION.— [T]he determination of whether the CGA's cause of action falls under the jurisdiction of the HLURB necessitates a closer examination of the laws defining the HLURB's jurisdiction and authority. PD No. 957, enacted on July 12, 1976, was intended to closely supervise and regulate the real estate subdivision and condominium businesses in order to curb the growing number of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators. x x x Section 3 of PD No. 957 granted the National Housing Authority (*NHA*) the "exclusive jurisdiction to regulate the real estate trade and business." Thereafter, PD No. 1344 was issued on April 2, 1978 to expand the jurisdiction of the NHA x x x Executive Order No. 648 (*EO 648*), dated February 7, 1981, transferred the regulatory and quasi-judicial functions of the NHA to the Human Settlements Regulatory Commission (*HSRC*). Section 8 of EO 648 provides: SECTION 8. *Transfer of Functions.*– The regulatory functions of the National Housing Authority pursuant to Presidential Decree Nos. 957, 1216, 1344 and other related laws are hereby transferred to the Commission [Human Settlements Regulatory Commission]. x x x. Among these regulatory functions are: 1) Regulation of the real estate trade and business; x x x 11) Hear and decide cases of unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers, or salesmen; and cases of specific performance. Pursuant to Executive Order No. 90 dated December 17, 1986, the HSRC was renamed as the HLURB.

2. ID.; ID.; ID.; RATIONALE FOR HLURB'S EXTENSIVE QUASI-JUDICIAL POWERS.— The surge in the real estate business in the country brought with it an increasing number of cases between subdivision owners/developers and lot buyers on the issue of the extent of the HLURB's exclusive jurisdiction. In the cases that reached us, we have consistently ruled that the HLURB has exclusive jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in. We explained the HLURB's exclusive jurisdiction at length in *Sps. Osea v. Ambrosio*, where we said: Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. Presidential Decree (P.D.) No. 1344, "EMPOWERING THE NATIONAL HOUSING AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957," clarifies and spells out the quasi-judicial dimensions of the grant of jurisdiction to the HLURB x x x The extent to which the HLURB has been vested with quasi-judicial authority must also be determined by referring to the terms of P.D. No. 957, "THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE." x x x **The provisions of PD 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse.** The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts.

3. ID.; ID.; ID.; ID.; NOT ALL CASES INVOLVING SUBDIVISION LOTS FALL UNDER HLURB'S JURISDICTION.— The expansive grant of jurisdiction to the HLURB does not mean, however, that

all cases involving subdivision lots automatically fall under its jurisdiction. As we said in *Roxas v. Court of Appeals:* In our view, the mere relationship between the parties, *i.e.*, that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the decisive element is the nature of the action as enumerated in Section 1 of P.D. 1344. x x x [W]e held in *Pilar Development Corporation v. Villar* and *Suntay v. Gocolay* that the HLURB has no jurisdiction over cases *filed by* subdivision or condominium owners or developers *against* subdivision lot or condominium unit buyers or owners. The rationale behind this can be found in the wordings of Sec. 1, PD No. 1344, which expressly qualifies that the cases cognizable by the HLURB are those instituted by subdivision or condomium buyers or owners against the project developer or owner. This is also in keeping with the policy of the law, which is to curb unscrupulous practices in the real estate trade and business. Thus, in the cases of *Fajardo Jr. v. Freedom to Build, Inc.*, and *Cadimas v. Carrion,* we upheld the RTC's jurisdiction even if the subject matter was a subdivision lot since it was the subdivision developer who filed the action against the buyer for violation of the contract to sell. The only instance that HLURB may take cognizance of a case filed by the developer is when said case is instituted as a compulsory counterclaim to a pending case filed against it by the buyer or owner of a subdivision lot or condominium unit. This was what happened in *Francel Realty Corporation v. Sycip,* where the HLURB took cognizance of the developer's claim against the buyer in order to forestall splitting of causes of action. Obviously, where it is not clear from the allegations in the complaint that the property involved is a subdivision lot, as in *Javellana v. Hon. Presiding Judge, RTC, Branch 30, Manila*, the case falls under the jurisdiction of the regular courts and not the HLURB. Similarly, in *Spouses Dela Cruz v. Court of Appeals*, we held that the RTC had jurisdiction over a case where the conflict involved a subdivision lot buyer and a party who owned a number of subdivision lots but was not himself the subdivision developer.

4. ID.; ID.; ID.; ID.; CLAIMS FOR REFUND FILED BY THE BUYER AGAINST THE PROJECT OWNER/DEVELOPER FALL WITHIN THE HLURB'S JURISDICTION.— [T]he main thrust of the CGA complaint is clear – to compel the respondents to refund the

payments already made for the subject property because the respondents were selling a property that they apparently did not own. In other words, **CGA claims that since the respondents cannot comply with their obligations under the contract, *i.e.*, to deliver the property free from all liens and encumbrances, CGA is entitled to rescind the contract and get a refund of the payments already made. This cause of action clearly falls under the actions contemplated by Paragraph (b), Section 1 of PD No. 1344**, x x x We view CGA's contention – that the CA erred in applying Article 1191 of the Civil Code as basis for the contract's rescission – to be a negligible point. Regardless of whether the rescission of contract is based on Article 1191 or 1381 of the Civil Code, the fact remains that what CGA principally wants is a refund of all payments it already made to the respondents. This intent, amply articulated in its complaint, places its action within the ambit of the HLURB's exclusive jurisdiction and outside the reach of the regular courts. Accordingly, CGA has to file its complaint before the HLURB, the body with the proper jurisdiction.

APPEARANCES OF COUNSEL

Pantaleon Law Office for petitioner.

D E C I S I O N

BRION, *J.*:

We resolve in this Rule 45 petition the legal issue of whether an action to rescind a contract to sell a subdivision lot that the buyer found to be under litigation falls under the exclusive jurisdiction of the Housing and Land Use Regulatory Board (*HLURB*).

In this petition,[1] Christian General Assembly, Inc. (*CGA*) prays that we set aside the decision[2] issued by the Court of Appeals

---

[1] Dated September 11, 2004; *rollo*, pp. 9-31.

[2] Dated October 20, 2003, penned by Associate Justice Elvi John S. Asuncion (separated from the service) and concurred in by Associate Justice

(*CA*) in CA–G.R. SP No. 75717 that dismissed its complaint for rescission filed with the Regional Trial Court (*RTC*) of Bulacan for lack of jurisdiction, as well as the CA resolution[3] that denied its motion for reconsideration.

FACTUAL ANTECEDENTS

The present controversy traces its roots to the case filed by CGA against the Spouses Avelino and Priscilla Ignacio (*respondents*) for rescission of their Contract to Sell before the RTC, Branch 14, Malolos, Bulacan. The facts, drawn from the records and outlined below, are not in dispute.

On April 30, 1998, CGA entered into a Contract to Sell a subdivision lot[4] (*subject property*) with the respondents – the registered owners and developers of a housing subdivision known as *Villa Priscilla Subdivision* located in Barangay Cutcut, Pulilan, Bulacan. Under the Contract to Sell, CGA would pay ₱2,373,000.00 for the subject property on installment basis; they were to pay a down payment of ₱1,186,500, with the balance payable within three years on equal monthly amortization payments of ₱46,593.85, inclusive of interest at 24% per annum, starting June 1998.

On August 5, 2000, the parties mutually agreed to amend the Contract to Sell to extend the payment period from three to five years, calculated from the date of purchase and based on the increased total consideration of ₱2,706,600, with equal monthly installments of ₱37,615.00, inclusive of interest at 24% per annum, starting September 2000.

According to CGA, it religiously paid the monthly installments until its administrative pastor discovered that the title covering the subject property suffered from fatal flaws and defects.

Renato C. Dacudao (retired) and Associate Justice Lucas P. Bersamin (now a member of this Court); *id.*, pp. 33-38.

[3] Dated July 27, 2004; *id.*, p. 40.

[4] Designated as Lot 1, Block 4 of Villa Priscilla Subdivision and containing an area of 791 square meters.

CGA learned that the subject property was actually part of two consolidated lots (Lots 2-F and 2-G Bsd-04-000829 [OLT]) that the respondents had acquired from Nicanor Adriano (*Adriano*) and Ceferino Sison (*Sison*), respectively. Adriano and Sison were former tenant-beneficiaries of Purificacion S. Imperial (*Imperial*) whose property in Cutcut, Pulilan, Bulacan[5] had been placed under Presidential Decree (*PD*) No. 27's Operation Land Transfer.[6] According to CGA, Imperial applied for the retention of five hectares of her land under Republic Act No. 6657,[7] which the Department of Agrarian Reform (*DAR*) granted in its October 2, 1997 order (*DAR Order*). The DAR Order authorized Imperial to retain the farm lots previously awarded to the tenant-beneficiaries, including Lot 2-F previously awarded to Adriano, and Lot 2-G Bsd-04-000829 awarded to Sison. On appeal, the Office of the President[8] and the CA[9] upheld the DAR Order. Through the Court's Resolution dated January 19, 2005 in G.R. No. 165650, we affirmed the DAR Order by denying the petition for review of the appellate decision.

Understandably aggrieved after discovering these circumstances, CGA filed a complaint against the respondents before the RTC on April 30, 2002.[10] CGA claimed that the respondents fraudulently concealed the fact that the subject property was part of a property under litigation; thus, the Contract to Sell was a rescissible contract under Article 1381 of the Civil Code. CGA asked the trial court to rescind the contract; order the respondents to return the amounts already paid; and

---

[5] Originally covered by TCT No. 240878, with an area of 119,431 square meters.

[6] Decreeing the emancipation of tenants from the bondage of the soil, transferring to them the ownership of the land they till and providing the instruments and mechanism therefor.

[7] Comprehensive Agrarian Reform Law of 1988.

[8] In O.P. Case No. 02-I-340.

[9] In CA GR SP No. 80031.

[10] *Rollo*, pp. 41-49.

award actual, moral and exemplary damages, attorney's fees and litigation expenses.

Instead of filing an answer, the respondents filed a motion to dismiss asserting that the RTC had no jurisdiction over the case.[11] Citing PD No. 957[12] and PD No. 1344, the respondents claimed that the case falls within the exclusive jurisdiction of the HLURB since it involved the sale of a subdivision lot. CGA opposed the motion to dismiss, claiming that the action is for rescission of contract, not specific performance, and is not among the actions within the exclusive jurisdiction of the HLURB, as specified by PD No. 957 and PD No. 1344.

On October 15, 2002, the RTC issued an order denying the respondents' motion to dismiss. The RTC held that the action for rescission of contract and damages due to the respondents' fraudulent misrepresentation that they are the rightful owners of the subject property, free from all liens and encumbrances, is outside the HLURB's jurisdiction.

The respondents countered by filing a petition for *certiorari* with the CA. In its October 20, 2003 decision, the CA found merit in the respondents' position and set the RTC order aside; the CA ruled that the HLURB had exclusive jurisdiction over the subject matter of the complaint since it involved a contract to sell a subdivision lot based on the provisions of PD No. 957 and PD No. 1344.

Contending that the CA committed reversible error, the CGA now comes before the Court asking us to overturn the CA decision and resolution.

THE PETITION

In its petition, CGA argues that the CA erred -

(1) in applying Article 1191 of the Civil Code for breach of reciprocal obligation, while the petitioner's action is

---

[11] *Id.*, pp. 50-51.

[12] The Subdivision and Condominium Buyers' Protective Decree.

for the rescission of a rescissible contract under Article 1381 of the same Code, which is cognizable by the regular court; and

(2) in holding that the HLURB has exclusive jurisdiction over the petitioner's action by applying *Antipolo Realty Corp. v. National Housing Corporation*[13] and other cited cases.

In essence, the main issue we are asked to resolve is which of the two – the regular court or the HLURB – has exclusive jurisdiction over CGA's action for rescission and damages.

According to CGA, the exclusive jurisdiction of the HLURB, as set forth in PD No. 1344 and PD No. 957, is limited to cases involving specific performance and does not cover actions for rescission.

Taking the opposing view, respondents insist that since CGA's case involves the sale of a subdivision lot, it falls under the HLURB's exclusive jurisdiction.

THE COURT'S RULING

We find no merit in the petition and consequently affirm the CA decision.

Development of the HLURB's jurisdiction

The nature of an action and the jurisdiction of a tribunal are determined by the material allegations of the complaint and the law governing at the time the action was commenced. The jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law, not by the parties' consent or by their waiver in favor of a court that would otherwise have no jurisdiction over the subject matter or the nature of an action.[14] Thus, the determination of whether the CGA's cause

---

[13] G.R. No. 50444, August 31, 1987, 153 SCRA 399.

[14] *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156.

of action falls under the jurisdiction of the HLURB necessitates a closer examination of the laws defining the HLURB's jurisdiction and authority.

PD No. 957, enacted on July 12, 1976, was intended to closely supervise and regulate the real estate subdivision and condominium businesses in order to curb the growing number of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators. As one of its "whereas clauses" states:

> WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;

Section 3 of PD No. 957 granted the National Housing Authority (*NHA*) the "exclusive jurisdiction to regulate the real estate trade and business." Thereafter, PD No. 1344 was issued on April 2, 1978 to expand the jurisdiction of the NHA to include the following:

> SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

Executive Order No. 648 (*EO 648*), dated February 7, 1981, transferred the regulatory and quasi-judicial functions of the

NHA to the Human Settlements Regulatory Commission (*HSRC*). Section 8 of EO 648 provides:

> SECTION 8. *Transfer of Functions*. – The regulatory functions of the National Housing Authority pursuant to Presidential Decree Nos. 957, 1216, 1344 and other related laws are hereby transferred to the Commission [Human Settlements Regulatory Commission]. x x x. Among these regulatory functions are: 1) Regulation of the real estate trade and business; x x x 11) Hear and decide cases of unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers, or salesmen; and cases of specific performance.

Pursuant to Executive Order No. 90 dated December 17, 1986, the HSRC was renamed as the HLURB.

Rationale for HLURB's extensive quasi-judicial powers

The surge in the real estate business in the country brought with it an increasing number of cases between subdivision owners/developers and lot buyers on the issue of the extent of the HLURB's exclusive jurisdiction. In the cases that reached us, we have consistently ruled that the HLURB has exclusive jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in.[15]

We explained the HLURB's exclusive jurisdiction at length in *Sps. Osea v. Ambrosio*,[16] where we said:

> Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. Presidential Decree (P.D.) No. 1344, "EMPOWERING THE NATIONAL HOUSING

---

[15] *Arranza v. B.F. Homes*, G.R. No. 131683, June 19, 2000, 333 SCRA 799.

[16] G.R. No. 162774, April 7, 2006, 486 SCRA 599.

AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957," clarifies and spells out the quasi-judicial dimensions of the grant of jurisdiction to the HLURB in the following specific terms:

> SEC. 1. In the exercise of its functions to regulate the real estate trade and business and **in addition to its powers provided for in Presidential Decree No. 957**, the National Housing Authority shall have **exclusive jurisdiction** to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman.

The extent to which the HLURB has been vested with quasi-judicial authority must also be determined by referring to the terms of P.D. No. 957, "THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE." Section 3 of this statute provides:

> x x x National Housing Authority [now HLURB]. – **The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business** in accordance with the provisions of this Decree.

The need for the scope of the regulatory authority thus lodged in the HLURB is indicated in the second, third and fourth preambular paragraphs of PD 957 which provide:

> WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers;

> WHEREAS, reports of alarming magnitude also show cases of **swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators**, **such as failure to deliver** titles to the buyers or **titles free from liens and encumbrances**, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;
>
> xxx xxx xxx
>
> WHEREAS, this state of affairs has rendered it imperative that the real estate subdivision and condominium businesses be closely supervised and regulated, and that penalties be imposed on fraudulent practices and manipulations committed in connection therewith.

The provisions of PD 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts.

As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*:

> The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise.
>
> In the Solid Homes case for example the Court affirmed the competence of the Housing and Land Use Regulatory Board to award damages although this is an essentially judicial power

> exercisable ordinarily only by the courts of justice. This departure from the traditional allocation of governmental powers is justified by expediency, or the need of the government to respond swiftly and competently to the pressing problems of the modern world. [Emphasis supplied.]

Another case – *Antipolo Realty Corporation v. NHA*[17] – explained the grant of the HLURB's expansive quasi-judicial powers. We said:

> In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well nigh indispensable. Thus, in 1984, the Court noted that 'between the power lodged in an administrative body and a court, the unmistakable trend has been to refer it to the former.'
>
> xxx xxx xxx
>
> In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly on the provisions of the statute creating or empowering such agency. In the exercise of such powers, the agency concerned must commonly interpret and apply contracts and determine the rights of private parties under such contracts, One thrust of the multiplication of administrative agencies is that **the interpretation of contracts and the determination of private rights thereunder is no longer a uniquely judicial function, exercisable only by our regular courts.** [Emphasis supplied.]

Subdivision cases under the RTC's jurisdiction

The expansive grant of jurisdiction to the HLURB does not mean, however, that all cases involving subdivision lots automatically fall under its jurisdiction. As we said in *Roxas v. Court of Appeals*:[18]

---

[17] G.R. No. 50444, August 31, 1987, 153 SCRA 399.

[18] G.R. No. 138955, October 29, 2002, 391 SCRA 351.

In our view, the mere relationship between the parties, *i.e.*, that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the decisive element is the nature of the action as enumerated in Section 1 of P.D. 1344. On this matter, we have consistently held that the concerned administrative agency, the National Housing Authority (NHA) before and now the HLURB, has jurisdiction over complaints aimed at compelling the subdivision developer to comply with its contractual and statutory obligations.

xxx xxx xxx

Note particularly pars. (b) and (c) as worded, where the HLURB's jurisdiction concerns cases commenced by subdivision lot or condominium unit buyers. As to par. (a), concerning "unsound real estate practices," **it would appear that the logical complainant would be the buyers and customers against the sellers (subdivision owners and developers or condominium builders and realtors), and not *vice versa***. [Emphasis supplied.]

Pursuant to *Roxas*, we held in *Pilar Development Corporation v. Villar*[19] and *Suntay v. Gocolay*[20] that the HLURB has no jurisdiction over cases *filed by* subdivision or condominium owners or developers *against* subdivision lot or condominium unit buyers or owners. The rationale behind this can be found in the wordings of Sec. 1, PD No. 1344, which expressly qualifies that the cases cognizable by the HLURB are those instituted by subdivision or condomium buyers or owners against the project developer or owner. This is also in keeping with the policy of the law, which is to curb unscrupulous practices in the real estate trade and business.[21]

---

[19] G.R. No. 158840, October 27, 2006, 505 SCRA 617.

[20] G.R. No. 144892, September 23, 2005, 470 SCRA 627; see also *Que v. Court of Appeals*, 393 Phil. 922 (2000).

[21] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, September 8, 2005, 469 SCRA 424.

Thus, in the cases of *Fajardo Jr. v. Freedom to Build, Inc.*,[22] and *Cadimas v. Carrion*,[23] we upheld the RTC's jurisdiction even if the subject matter was a subdivision lot since it was the subdivision developer who filed the action against the buyer for violation of the contract to sell.

The only instance that HLURB may take cognizance of a case filed by the developer is when said case is instituted as a compulsory counterclaim to a pending case filed against it by the buyer or owner of a subdivision lot or condominium unit. This was what happened in *Francel Realty Corporation v. Sycip*,[24] where the HLURB took cognizance of the developer's claim against the buyer in order to forestall splitting of causes of action.

Obviously, where it is not clear from the allegations in the complaint that the property involved is a subdivision lot, as in *Javellana v. Hon. Presiding Judge, RTC, Branch 30, Manila*,[25] the case falls under the jurisdiction of the regular courts and not the HLURB. Similarly, in *Spouses Dela Cruz v. Court of Appeals*,[26] we held that the RTC had jurisdiction over a case where the conflict involved a subdivision lot buyer and a party who owned a number of subdivision lots but was not himself the subdivision developer.

The Present Case

In the present case, CGA is unquestionably the buyer of a subdivision lot from the respondents, who sold the property in their capacities as owner and developer. As CGA stated in its complaint:

---

[22] G.R. No. 134692, August 1, 2000, 337 SCRA 115.

[23] G.R. No. 180394, September 29, 2008.

[24] 21.

[25] G.R. No. 139067, November 23, 2004, 443 SCRA 497.

[26] G.R. No. 151298, November 17, 2004, 442 SCRA 492.

2.01 **Defendants are the registered owners and developers of a housing subdivision presently known as Villa Priscilla Subdivision** located at Brgy. Cutcut, Pulilan, Bulacan;

2.02 On or about April 30, 1998, **the plaintiff** thru its Administrative Pastor **bought from defendants** on installment basis a parcel of land designated at **Lot 1, Block 4 of the said Villa Priscilla Subdivision** xxx

xxx xxx xxx

2.04 At the time of the execution of the second Contract to Sell (Annex "B"), Lot 1, Block 4 of the Villa Priscilla Subdivision was already covered by Transfer Certificate of Title No. T-127776 of the Registry of Deeds of Quezon City in the name of Iluminada T. Soneja, married to Asterio Soneja (defendant Priscilla T. Ignacio's sister and brother-in-law) and the defendants as co-owners, but the latter represented themselves to be the real and absolute owners thereof, as in fact it was annotated in the title that they were empowered to sell the same. Copy of TCT No. T-127776 is hereto attached and made part hereof as Annex "C".

2.05 Plaintiff has been religiously paying the agreed monthly installments until its Administrative Pastor discovered recently that while apparently clean on its face, the title covering the subject lot actually suffers from fatal flaws and defects as it is part of the property involved in litigation even before the original Contract to Sell (Annex "A"), which defendants deliberately and fraudulently concealed from the plaintiff;

2.06 As shown in the technical description of TCT No. T-127776 (Annex "C"), it covers a portion of consolidated Lots 2-F and 2-G Bsd-04-000829 (OLT), which were respectively acquired by defendants from Nicanor Adriano and Ceferino Sison, former tenants-beneficiaries of Purificacion S. Imperial, whose property at Cutcut, Pulilan, Bulacan originally covered by TCT No. 240878 containing an area of 119,431 square meters was placed under Operation Land Transfer under P.D. No. 27;

2.07 Said Purificacion S. Imperial applied for retention of five (5) hectares of her property at Cutcut, Pulilan, Bulacan under Rep, Act No. 6657 and the same was granted by the Department of Agrarian Reform (DAR) to cover in whole or in part farm lots previously awarded to tenants-beneficiaries, including *inter alia* Nicanor Adriano's Lot 2-F and Ceferino Sison's Lot 2-G Bsd-04-000829 (OLT).

x x x x x x x x x

2.08 Said order of October 2, 1997 was affirmed and declared final and executory, and the case was considered closed, as in fact there was already an Implementing Order dated November 10, 1997.

x x x x x x x x x

3.03 As may thus be seen, **the defendants deliberately and fraudulently concealed from the plaintiff that fact that the parcel of land sold to the latter under the Contract to Sell (Annexes "A" and "B") is part of the property already under litigation and in fact part of the five-hectare retention awarded to the original owner, Purificacion S. Imperial.**

x x x x x x x x x

3.05 **Plaintiff is by law entitled to the rescission of the Contracts to Sell (Annexes "A" and "B") by restitution of what has already been paid to date for the subject property in the total amount of ₱2,515,899.20,** thus formal demand therefor was made on the defendants thru a letter dated April 5, 2002, which they received but refused to acknowledge receipt. Copy of said letter is hereto attached and made part hereof as Annex "J". [27] [Emphasis supplied.]

From these allegations, the main thrust of the CGA complaint is clear – to compel the respondents to refund the payments already made for the subject property because the respondents were selling a property that they apparently did not own. In other words, **CGA claims that since the respondents cannot comply with their obligations under the contract, *i.e.*, to deliver the property free from all liens and encumbrances, CGA is entitled to rescind the contract and get a refund of the payments already made. This cause of action clearly falls under the actions contemplated by Paragraph (b), Section 1 of PD No. 1344**, which reads:

SEC. 1. In the exercise of its functions to regulate the real estate trade and business and **in addition to its powers provided for in Presidential Decree No. 957**, the National Housing Authority shall

---

[27] *Supra* note 10.

have **exclusive jurisdiction** to hear and decide cases of the following nature:

xxx xxx xxx

B. **Claims involving refund** and any other claims **filed by subdivision lot** or condominium unit **buyer against the project owner, developer**, dealer, broker or salesman; and

We view CGA's contention – that the CA erred in applying Article 1191 of the Civil Code as basis for the contract's rescission – to be a negligible point. Regardless of whether the rescission of contract is based on Article 1191 or 1381 of the Civil Code, the fact remains that what CGA principally wants is a refund of all payments it already made to the respondents. This intent, amply articulated in its complaint, places its action within the ambit of the HLURB's exclusive jurisdiction and outside the reach of the regular courts. Accordingly, CGA has to file its complaint before the HLURB, the body with the proper jurisdiction.

WHEREFORE, premises considered, we *DENY* the petition and *AFFIRM* the October 20, 2003 Decision of the Court of Appeals in CA G.R. SP No. 75717 dismissing for lack of jurisdiction the CGA complaint filed with the RTC, Branch 14 of Malolos, Bulacan.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170137. August 27, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RANDY MAGBANUA *alias* "BOYUNG" and WILSON MAGBANUA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES CANNOT DESTROY THEIR CREDIBILITY.— Contrary to accused-appellants' assertion, there is no real inconsistency between the testimonies of SPO1 Javier and PO2 Cordero. While SPO1 Javier testified that aside from the *marijuana*, they also found a weighing scale inside the car, there is nothing on record that SPO1 Javier categorically stated that the same was found simultaneously with the *marijuana*. The testimonies of SPO1 Javier and PO2 Cordero were consistent in that they saw the weighing scale when it was brought inside their office. We find of little significance the fact that SPO1 Javier was not the one who placed his initials on the confiscated *marijuana*. PO2 Cordero explained that he was the one who placed his and SPO1 Javier's initials on the *marijuana* because he was the one tasked as the investigating officer even though SPO1 Javier was with him at the time the *marijuana* was discovered at the backseat of the car. At any rate, during trial, SPO1 Javier easily identified the *marijuana* which had their initials affixed by PO2 Cordero. x x x The alleged inconsistencies in the testimonies of the two (2) police officers pointed out by the accused-appellants are not material but relate only to minor matters. What is essential in a conviction for violation of Section 8, Article II of R.A. No. 6425, as amended, is that the possession of the prohibited drug must be duly established. As long as the testimonies of the witnesses corroborate each other on material points, the minor inconsistencies therein cannot destroy their credibility. Such minor inconsistencies may even serve to strengthen their credibility as they negate any suspicion that their testimonies are fabricated or rehearsed. Even the most candid of witnesses commit mistakes and make confused and inconsistent statements.

2. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF THE WITNESSES PREVAIL OVER SELF-SERVING AND UNCORROBORATED DENIAL.— [C]ourts give full faith and credit to police officers for they are presumed to have performed their duties in a regular manner. Courts cannot simply set aside their testimonies where there is no showing that the search conducted on the accused-appellants was clearly violative of their constitutional rights or the said search was a mere ploy to extort on the part of the police officers. While on this subject, we declare accused-appellants' insinuation of mulcting on the part of Major Ocampo and Major Maniti to be unfounded. As pointed out by the RTC, the confiscation of Uehara's jewelry and watch was properly documented by Confiscation Receipts. The same were later on released to and received by Uehara's counsel. Accused-appellants failed to show any motive why the arresting police officers would falsely impute a serious crime against them. Without such proof and with the presumption that official duty was performed regularly, the findings of the trial court on the credibility of witnesses shall prevail over accused-appellants' self-serving and uncorroborated denial.

3. CRIMINAL LAW; REPUBLIC ACT NO. 6425; ELEMENTS OF ILLEGAL POSSESSION OF PROHIBITED DRUG, PROVEN.— The evidence for the prosecution proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a prohibited drug, namely, (a) the accused-appellants were in possession of an item or an object identified to be a prohibited or a regulated drug, (b) such possession was not authorized by law, and (c) the accused-appellants freely and consciously possessed said drug. x x x Under [Section 8, Article II of R.A. No. 6425], the mere possession of any prohibited drug consummates the crime. The charge of illegal possession of *marijuana* was proven beyond reasonable doubt as it was found at the back seat of the car with accused-appellants, without legal authority. The four (4) bricks of dried suspected *marijuana* found in the accused-appellants' possession, upon laboratory examination, were positively identified as *marijuana*, a prohibited drug.

4. ID.; ID.; FAILURE TO ISSUE A RECEIPT WILL NOT RENDER THE ITEMS SEIZED/CONFISCATED INADMISSIBLE AS EVIDENCE.— As long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the

apprehending officer/team, the failure to issue a receipt will not render the items seized/confiscated inadmissible as evidence. As held by the Court in *People v. Alvin Pringas*, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. Here, the integrity and the evidentiary value of the items involved were safeguarded. The seized drugs were immediately marked for proper identification. Thereafter, they were forwarded to the Crime Laboratory for examination.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— Well-settled is the rule that prosecutions involving the possession of illegal drugs depend largely on the credibility of the police officer. This Court has access only to the cold and impersonal records of the proceedings. Thus, the Court relies heavily on the rule that the weighing of evidence, particularly when there are conflicts in the testimonies of witnesses, is best left to the trial court which had the unique opportunity to observe their demeanor, conduct, and manner while testifying. Hence, its factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the September 28, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01063,

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Danilo B. Pine (ret.) and Vicente E. Veloso, concurring; *rollo*, pp. 3-13.

affirming the February 7, 2003 Decision[2] of the Regional Trial Court of Angeles City, Branch 59 (RTC) in Criminal Case No. 99-1569, convicting accused-appellants Randy Magbanua (Randy) and Wilson Magbanua (Wilson) for violation of Section 8, Article II of Republic Act (R.A.) No. 6425; sentencing them to *reclusion perpetua*, and ordering each of them to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

In an Information[3] dated December 8, 1999, accused-appellants were charged with illegal possession of four bricks of *marijuana* as follows:

> That on or about the 26th day of November 1999 in front of KC 1, Mac-Arthur Hi-way, Brgy. Dau, Municipality of Mabalacat, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, RANDY P. MAGBANUA and WILSON P. MAGBANUA, conspiring, confederating together and mutually helping one another, without any authority of law, did then and there willfully, unlawfully and feloniously have in their possession, custody and control four (4) bricks of marijuana fruiting tops weighing THREE KILOS (3 kilos) and NINE HUNDRED TEN AND TWO HUNDRED SEVENTY-SIX TEN THOUSANDTHS (910.0276) of a gram, a prohibited drug.

Upon arraignment, accused-appellants pleaded not guilty and trial ensued thereafter.

On February 7, 2003, the RTC rendered a judgment of conviction.

> xxx [O]n November 26, 1999 at around 11:50 o'clock in the morning, SPO1 Alberto M. Javier, Jr., upon instruction of P/S Insp. Jorge Bustos, was conducting traffic in front of KC 1, MacArthur Highway, Dau, Mabalacat, Pampanga with the assistance of PO2 Noel D. Cordero. The driver of a white Toyota Corolla car bearing plate no. ULR-467, which came from the north direction and heading south, disregarded SPO1 Javier's signal for the driver to stop to give way to the pedestrians crossing the street. Said driver sped away at 20 to 30 kph. Whereupon, PO2 Cordero, flagged down the driver. Upon being

---

[2] CA *rollo*, pp. 24-47.

[3] Records, volume I, p. 2.

accosted, the driver rolled down his window. PO2 Cordero, who was then assisted by SPO1 Javier, asked for the driver's license. When the window was opened, the two police officers smelled the scent of marijuana coming from inside the car. PO2 Cordero, after noticing something at the back seat, ordered the driver and his male companion to alight from the car. When the occupants alighted, the police officers found on the back seat of the car four (4) bricks of marijuana fruiting tops individually wrapped in newspaper (Exhibits B to B-3). The two men accosted at that time were identified as brothers Wilson P. Magbanua and Randy P. Magbanua *alias* Boyung, the driver and passenger respectively, the accused in this case.

Immediately thereafter, the apprehending officers turned over to their office the lightly tinted car, a Tanita weighing scale found on the dash board (Exhibit G), a cellular phone, and accused Randy and Wilson Magbanua for possession of suspected marijuana. PO2 Cordero, being the Duty Investigator then, conducted the investigation. The bricks of marijuana, which were confiscated from the car, were brought to the Philippine National Police Crime Laboratory for an examination. Said bricks were found to have a total weight of 3.766 kgs. and are positive for marijuana, a prohibited drug. Both accused implicated a Japanese national as their financier.

Forthwith, a follow-up investigation on Uehara Mikio, a Japanese national, was conducted and led by P/C Insp. Lamberto P. Ocampo, P/C Insp. Danilo C. Maniti and P/Insp. Jorge Antonio P. Bustos. At 4:00 o'clock in the afternoon of November 26, 1999, the police elements and the Magbanua brothers, armed with a Travel Order, went to Manila. Upon reaching Balintawak, Quezon City, the Magbanuas informed Uehara via cellular phone on the purchase of the marijuana stuff, with the communication that when the car's horn is blown upon reaching the hotel, Uehara will come out and ride at the back seat of the car where the marijuana will be placed for inspection. At around 7:20 o'clock in the evening, after the car's horn was blown, Uehara went out of the hotel and boarded the back seat of the car. While Uehara was examining the marijuana, SPO1 Sergio Manalo and PO3 Florante Narciso arrested Uehara and brought him to the Mabalacat Police Station.

PO2 Cordero and SPO1 Javier executed an Affidavit of Arrest (Exhibit D), and PO2 Cordero, an Investigation Report (Exhibit C). SPO3 Eduardo T. Raquidan filed a Criminal Complaint dated November 29, 1999 against the two accused and Uehara Mikio before the

Municipal Circuit Trial Court of Mabalacat, Pampanga. Later on, the case was dismissed against Uehara only for lack of jurisdiction. On November 29, 1999, the confiscated bricks of marijuana were brought to the Philippine National Police Crime Laboratory in Camp Olivas, San Fernando, Pampanga for an examination. The four bricks of marijuana found in the car were found by Forensic Chemical Officer Ma. Luisa G. David to have a total weight of 3.766 kgs. and to be positive for marijuana, a prohibited drug.

Edgardo S. Reyes, the owners of the Toyota Corolla XL car with plate no. ULR-467, rents out his car to Antonio and Rose Palces, the owners of a rent-a-car shop. In December 1999, Reyes went with Palces to Mabalacat, Pampanga and was able to ask for the release of his car from impoundment for a drug case upon execution of an affidavit of undertaking.

The dispositive portion of the decision reads:

WHEREFORE, the Court finds accused **RANDY P. MAGBANUA** *alias* "BOYUNG" and **WILSON P. MAGBANUA** guilty beyond reasonable doubt of the offense of Violation of Section 8, Article III[4] of Republic Act No. 6425, as amended, and hereby sentences each of them to suffer the penalty of *reclusion perpetua*, to pay a fine of Five Hundred Thousand pesos (₱500,000.00) each, and to pay the costs.

SO ORDERED.

Upon filing of a Notice of Appeal, the RTC elevated the records of the case directly to this Court. In the Resolution dated February 11, 2004, the Court accepted the appeal and required the parties to file their respective briefs. However, pursuant to the ruling in *People v. Mateo*,[5] promulgated on July 7, 2004, the case was transferred to the CA.

On September 28, 2005, the CA rendered the herein challenged Decision affirming the decision of the RTC thus:

xxx There is no doubt that the charge of illegal possession of marijuana was proven beyond reasonable doubt since the accused-appellants knowingly possess the said prohibited drug as it was found

[4] Should be Article II.

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

at the back seat of the car, without legal authority. The four (4) bricks of dried suspected marijuana found in the accused-appellants' possession, upon laboratory examination, were positively identified as marijuana, a prohibited drug.

The incriminatory evidence on record adequately established the accused-appellants' guilt beyond moral certainty for the possession of marijuana.

WHEREFORE, premises considered, the appeal is **DISMISSED**. Costs against the accused-appellants.

SO ORDERED.

In their respective briefs, the prosecution and the defense presented conflicting versions of the facts of the case.

While the prosecution stood by the facts as found by the RTC, accused-appellants claimed that the RTC and the CA erred in convicting them because their guilt was not proven beyond reasonable doubt. Even as they admitted that the *marijuana* was seized from the vehicle with them on board, they denied having knowledge of its existence. They offered a different version of the facts of the case.

According to accused-appellants, the *marijuana* belonged to a Japanese national, a certain Uehara Mikio. On November 26, 1999, Randy, who then worked as a driver for a rent a car service company, asked his brother Wilson to accompany him to Angeles, Pampanga to fetch a certain Mr. Tamayama, a Japanese national, and his Filipina companion at the America Hotel. Tamayama carried a black bag which accused-appellants placed at the trunk of the car. The party drove to the duty-free shop in Clark. After an hour, Tamayama and the girlfriend told accused-appellants to proceed to Paco Park Hotel where Uehara will pick up the bag from them. On their way to Manila, a policeman flagged down their vehicle, so they pulled over at the side of the road. The police officer allegedly told Wilson that the officer received information that accused-appellants were carrying guns. Wilson denied the accusation but the policeman forced him to open the compartment of the vehicle, took the bag and then ordered Randy to alight from the vehicle.

Accused-appellants were then brought to the Mabalacat Police Station. The officer who took the baggage went inside a room. He later emerged with the bag forcibly opened and in it were the bricks of *marijuana*. Randy told the police officer that the owner of the bag was in Manila. They went to Manila in order to identify to the police officers Uehara, the owner of the bag. Uehara was thereafter arrested and brought to a restaurant in Pampanga. Accused-appellants insinuate that they were made *fall guys* in place of Uehara who had allegedly paid his way to freedom. Randy allegedly heard a certain Major Ocampo and Major Maniti asking Uehara if he could afford to give ₱300,000.00. Thereafter Uehara handed ₱150,000.00, a Rolex watch, a racket and a diamond ring to Major Ocampo.[6] P/C Insp. Lamberto Ocampo took part in the follow-up operations after the arrest of the accused-appellants. The latter were directed to call up the Japanese national who told them to buy *marijuana*. Wilson saw the arrest of the Japanese national at the Paco Park Hotel in Ermita, Manila.[7]

Accused-appellants contend that the CA committed reversible error in affirming the judgment of conviction of the RTC which relied heavily on the allegedly inconsistent, contradictory and implausible testimonies of prosecution witnesses SPO1 Alberto Javier (SPO1 Javier) and P02 Noel Cordero.

Accused-appellants point to the inconsistencies in the testimony of prosecution witness SPO1 Javier. SPO1 Javier testified that when accused-appellants alighted from the vehicle, he found four (4) bricks of *marijuana* wrapped in newspaper, a weighing scale and a cellular phone. He identified the bricks of *marijuana* thru his initials.[8] However, on cross-examination, the same witness stated that he saw the weighing scale only when the same was brought to their office.[9] Likewise, SPO1 Javier denied placing his initials on the bricks of *marijuana*, and only saw the initials

---

[6] TSN, April 23, 2002, pp. 2-8.

[7] Record, pp. 93-94.

[8] TSN, June 29, 2000, pp. 6-7.

[9] TSN, July 25, 2000, p. 16.

when the *marijuana* was presented in court.[10] Accused-appellants contend that if SPO1 Javier only saw the initials during the trial of the case, he could not have identified the specimens presented in court as the ones confiscated from accused-appellants.

According to accused-appellants, the two police officers could not agree as to how they were able to discover the presence of *marijuana* inside the vehicle. SPO1 Javier stated that it was PO2 Cordero who first approached the vehicle, ordered the accused-appellants to step down from the vehicle and then they smelled something in the car. On the other hand, PO2 Cordero testified that it was SPO1 Javier who approached the vehicle and when the window was opened, that was the time they smelled something leading them to conduct an inspection inside the vehicle. Moreover, the trial court took into consideration the admission of the existence of bricks of *marijuana* and that these were found inside the car in arriving at its decision. However, accused-appellants argued that it was still incumbent upon the prosecution to prove their guilt beyond reasonable doubt.

We are not persuaded.

Contrary to accused-appellants' assertion, there is no real inconsistency between the testimonies of SPO1 Javier and PO2 Cordero.

While SPO1 Javier testified that aside from the *marijuana*, they also found a weighing scale inside the car, there is nothing on record that SPO1 Javier categorically stated that the same was found simultaneously with the *marijuana*. The testimonies of SPO1 Javier and PO2 Cordero were consistent in that they saw the weighing scale when it was brought inside their office.[11]

We find of little significance the fact that SPO1 Javier was not the one who placed his initials on the confiscated *marijuana*. PO2 Cordero explained that he was the one who placed his and SPO1 Javier's initials on the *marijuana* because he was the one tasked as the investigating officer even though SPO1 Javier was

[10] TSN, July 25, 2000, p. 19.

[11] TSN, July 25, 2000, p. 16; TSN, March 15, 2001, pp. 13, 17.

with him at the time the *marijuana* was discovered at the backseat of the car.[12] At any rate, during trial, SPO1 Javier easily identified the *marijuana* which had their initials affixed by PO2 Cordero.[13]

The two police officers also consistently testified that it was PO2 Cordero who flagged down the car and was the first to approach accused-appellants' car since it went past SPO1 Javier after Wilson ignored SPO1 Javier's halt signal to give way to crossing pedestrians. Thereafter, SPO1 Javier approached PO2 Cordero to assist him. The police officers smelled the aroma of *marijuana* after Wilson rolled down the car's window.[14] PO2 Cordero, after noticing something at the back seat, ordered the accused-appellants to alight from the car. Thereafter, the police officers found on the back seat of the car four (4) bricks of *marijuana* wrapped in newspaper.

The alleged inconsistencies in the testimonies of the two (2) police officers pointed out by the accused-appellants are not material but relate only to minor matters. What is essential in a conviction for violation of Section 8, Article II of R.A. No. 6425, as amended, is that the possession of the prohibited drug must be duly established.

As long as the testimonies of the witnesses corroborate each other on material points, the minor inconsistencies therein cannot destroy their credibility.[15] Such minor inconsistencies may even serve to strengthen their credibility as they negate any suspicion that their testimonies are fabricated or rehearsed. Even the most candid of witnesses commit mistakes and make confused and inconsistent statements.[16]

---

[12] TSN, January 18, 2001, pp. 3-4.

[13] TSN, June 29, 2000, pp. 6-7.

[14] TSN, July 25, 2000, pp. 12-14; TSN, October 26, 2000, pp. 7-10; TSN, March 15, 2001, p. 12.

[15] *People v. Emilio Rabutin*, G.R. Nos. 118131-32, May 5, 1997, 272 SCRA 197, 206.

[16] *People v. Jose Bulan and Allan Bulan*, G.R. No. 143404, June 8, 2005, 459 SCRA 550, 563-564.

Generally, courts give full faith and credit to police officers for they are presumed to have performed their duties in a regular manner. Courts cannot simply set aside their testimonies where there is no showing that the search conducted on the accused-appellants was clearly violative of their constitutional rights or the said search was a mere ploy to extort on the part of the police officers. While on this subject, we declare accused-appellants' insinuation of mulcting on the part of Major Ocampo and Major Maniti to be unfounded. As pointed out by the RTC, the confiscation of Uehara's jewelry and watch was properly documented by Confiscation Receipts. The same were later on released to and received by Uehara's counsel.

Accused-appellants failed to show any motive why the arresting police officers would falsely impute a serious crime against them. Without such proof and with the presumption that official duty was performed regularly, the findings of the trial court on the credibility of witnesses shall prevail over accused-appellants' self-serving and uncorroborated denial.

Anent the contention that the absence of a confiscation receipt or inventory of the items confiscated from them casts doubt as to accused-appellants culpability of the crime charged, such argument deserves scant consideration.

In the case of *Yolly Teodosio y Blancaflor v. Court of Appeals and People of the Philippines*,[17] the Court belittled the argument that the prosecution's case was weakened by the fact that the police officers did not issue a receipt for the confiscated drugs and declared that issuing such a receipt is not essential to establishing a criminal case for selling drugs as it is not an element of the crime. Neither is it an element of illegal possession of prohibited drug.

The evidence for the prosecution proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a prohibited drug, namely, (a) the accused-appellants were in possession of an item or an object identified

---

[17] G.R. No. 124346, June 8, 2004, 431 SCRA 194, 207.

to be a prohibited or a regulated drug, (b) such possession was not authorized by law, and (c) the accused-appellants freely and consciously possessed said drug.[18] Section 8, Article II of R.A. No. 6425, as amended, provides:

> SEC. 8. Possession or Use of Prohibited Drugs. – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to provisions of Section 20 hereof.

Under this Section, the mere possession of any prohibited drug consummates the crime. The charge of illegal possession of *marijuana* was proven beyond reasonable doubt as it was found at the back seat of the car with accused-appellants, without legal authority. The four (4) bricks of dried suspected *marijuana* found in the accused-appellants' possession, upon laboratory examination, were positively identified as *marijuana*, a prohibited drug.

As long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team, the failure to issue a receipt will not render the items seized/confiscated inadmissible as evidence. As held by the Court in *People v. Alvin Pringas*,[19] what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

Here, the integrity and the evidentiary value of the items involved were safeguarded. The seized drugs were immediately marked for proper identification. Thereafter, they were forwarded to the Crime Laboratory for examination.

Well-settled is the rule that prosecutions involving the possession of illegal drugs depend largely on the credibility of the police officer. This Court has access only to the cold and impersonal

---

[18] *People v. Khor*, G.R. No. 126391, May 19, 1999, 307 SCRA 295.

[19] G.R. No. 175928, August 31, 2007, 531 SCRA 828, 843.

records of the proceedings. Thus, the Court relies heavily on the rule that the weighing of evidence, particularly when there are conflicts in the testimonies of witnesses, is best left to the trial court which had the unique opportunity to observe their demeanor, conduct, and manner while testifying. Hence, its factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[20]

Accordingly, the Court finds and so holds that the CA committed no reversible error in affirming the decision of the RTC finding accused-appellants guilty beyond reasonable doubt of the crime of violation of Section 8, Article II of R.A. No. 6425, as amended.

WHEREFORE, the present appeal is hereby *DISMISSED*. The September 28, 2005 Decision of the CA in CA-G.R. CR-H.C. No. 01063 is hereby *AFFIRMED*.

SO ORDERED.

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

---

[20] *People v. Chen Tiz Chang and Cheng Jung San a.k.a. Willy Tan,* G.R. Nos. 131872-73, February 17, 2000, 325 SCRA 776, 778.

SECOND DIVISION

[G.R. No. 177741. August 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **WILLIE RIVERA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; VOLUNTARY SUBMISSION TO THE COURT'S JURISDICTION CONSTITUTES A WAIVER OF PROTECTION AGAINST ILLEGAL ARREST.— Appellant questions his arrest without warrant, not any of the instances when a warrantless arrest – the person to be arrested must have committed, is actually committing, or is attempting to commit an offense –having been allegedly present when he was arrested. *Buenaventura v. People*, citing *People v. Bagsit*, teaches, however: x x x It is long settled that where the accused, by his voluntary submission to the jurisdiction of the court, as shown by the counsel-assisted plea he entered during the arraignment and his active participation in the trial thereafter, voluntarily waives his constitutional protection against illegal arrests and searches. We have consistently ruled that any objection concerning the issuance or service of a warrant or a procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived. The records do not show that appellant raised any question on the legality of his arrest before he was arraigned or in his petition for bail. By submitting himself to the jurisdiction of the court and presenting evidence in his defense, appellant voluntarily waived his constitutional protection against illegal arrest.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT ON THE WITNESSES AND THEIR TESTIMONIES ARE GENERALLY CONCLUSIVE AND BINDING UPON THE COURT.— The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the witness'

demeanor, conduct and position to discriminate between truth and falsehood. That is a time-tested doctrine. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses. This is especially true when the trial court's findings have been affirmed by the appellate court as in the present case, because they are generally conclusive and binding upon the Court, unless it be manifestly shown, and appellant has not in the present case, that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case. Given the penalty imposed on appellant, however, the Court just the same assiduously evaluated the evidence for the prosecution but found nothing to warrant a reversal of the lower courts' evaluation.

3. ID.; ID.; ID.; ABSENCE OF MOTIVE OF APPELLANT TO FALSELY TESTIFY.— Appellant has not even proffered any credible motive why the police officers would falsely charge him. His alleged refusal to divulge the whereabouts of those two persons mentioned above fails to impress. Neither does his claim that the police officers wanted him to pay off his liberty. For, *inter alia*, if he were just a house painter, as he claimed, and not a drug dealer, the police would not expect him to come up with such amount (₱20,000).

4. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); NON-COMPLIANCE WITH SECTION 21 THEREOF IS NOT FATAL.— In consonance with the hornbook precept that an appeal in a criminal case opens the entire case for review on any question including one not raised by the parties, the Court went on to determine whether the requirements of Section 21.1 of R.A. 9165 was complied with. The buy bust operation in the present case was coordinated with the PDEA. After the sachets of *shabu* were confiscated from appellant and PO3 Salisa marked them, a spot report was submitted to the PDEA detailing the items seized from appellant and the procedure undertaken. P/ Sr. Inspector Villaruel soon after issued a memorandum transmitting the sachets to, which were received at 3:55 P.M. by, the EPD-PNP Crime Laboratory for examination. While PO3 Salisa's testimony did not indicate if he made a list of the sachets as well as the buy-bust money in the presence of appellant or if photographs thereof were taken, the defense did

not propound questions suggesting doubt as to the integrity of the sachets. *People v. Pringas* teaches that non-compliance with Section 21 is *not* necessarily fatal as long as there is justifiable ground therefor, what is important being the preservation of the integrity and evidentiary value of the seized items.

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 Decision of August 14, 2006,[1] the Court of Appeals affirmed the conviction of Willie Rivera (appellant) by the Regional Trial Court of Pasig City, Branch 154 for violation of Section 5, Article II of Republic Act No. 9165 (R.A. 9165), the "*Comprehensive Dangerous Drugs Act of 2002*."

The Information against appellant reads:

On or about March 13, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused (appellant), not being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and give away to PO3 Amilassan M. Salisa, a police poseur-buyer, two (2) heat-sealed transparent sachets each containing four centigrams (0.04 gram) of white crystalline substance, which were found positive to the test of methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

CONTRARY TO LAW.[2]

From the documentary and testimonial evidence for the prosecution, particularly the testimony of its principal witness

[1] *Rollo*, pp. 3-16, penned by Associate Justice Fernanda Lampas-Peralta with the concurrence of Associate Justices Eliezer R. Delos Santos and Myrna Dimaranan-Vidal.

[2] Records, p. 1

PO3 Amilassan Salisa (PO3 Salisa), the following version is culled:

On March 13, 2003, upon the request of the Pasig City Mayor's Special Action Team which had received information from a civilian agent that a certain "Kirat" was engaged in open selling of prohibited drugs in Villa Reyes St., Barangay Bambang, Pasig City, P/Insp. Rodrigo E. Villaruel of the Pasig Philippine National Police formed a team to conduct a buy-bust operation in the area. The team which was composed of SPO4 Manuel Buenconsejo as leader, PO2 Arturo San Andres, PO1 Roland Panis, PO1 Janet Sabo, and PO3 Salisa as poseur buyer, was given control number NOC-1303-03-04 by the Philippine Drug Enforcement Agency (PDEA).

P/Insp. Villaruel gave PO3 Salisa two one hundred peso (₱100) bills on which the latter wrote his initials "AMS" above the serial numbers ZK801664 and JT972090 printed on the top right portion of the bills. To signal consummation of the sale, it was agreed that PO3 Salisa would remove his cap.

At 12:55 o'clock in the afternoon of March 13, 2003, the buy-bust team proceeded to the place where "Kirat" was reportedly peddling prohibited drugs.

Upon arrival at the target area, the buy-bust team parked the van that carried them to the "other side of the street." PO3 Salisa and the informant thereupon alighted from the van and, from a distance of about five (5) meters, on seeing appellant who was wearing short pants and a cap, the informant pointed to and identified him as "Kirat" to PO3 Salisa.

As the informant approached appellant, he introduced PO3 Salisa as a buyer of *shabu* worth ₱200. PO3 Salisa at once handed the marked bills to appellant who in turn handed him two heat-sealed plastic sachets containing white crystalline substance. At that instant, PO3 Salisa removed his cap.

The members of the buy-bust team thus closed in, and PO3 Salisa held appellant's arm and introduced himself as a police officer and informed him of his violation and his constitutional

rights. PO3 Salisa then placed the markings "EXH-1 AMS" and "EXH-B AMS 03/13/03" on the two sachets.

The buy-bust team brought appellant to the Rizal Medical Center for physical check-up, and later to the Pasig City Police Station. In a memorandum, accomplished at 3:00 p.m. also on March 13, 2003, addressed to the Chief of the Physical Science Division of the Eastern Police District-Philippine National Police (EPD-PNP) Laboratory Service, P/Insp. Villaruel requested for the conduct of laboratory examination on the seized items to determine the presence of dangerous drugs and their weight.

Still on the same day, March 13, 2003, at 3:55 P.M., the plastic sachets were delivered to Police Inspector Lourdeliza M. Gural, Forensic Chemist at the EPD-PNP Crime Laboratory Office who examined them and recorded at 5:55 p.m. of even date her findings and conclusion in Chemistry Report No. D-455-03-E, *viz*:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets with markings "EXH-1 AMS and EXH-B AMS 03/13/03" each containing 0.04 gram of white crystalline substance and marked as A and B respectively.

x x x x x x x x x

F I N D I N G S:

Qualitative examination conducted on the above-stated specimen gave **POSITIVE** result to the tests for Methylamphetamine hydrochloride, a dangerous drug.

x x x x x x x x x

C O N C L U S I O N:

Specimens A and B contain Methylamphetamine Hydrochloride, a dangerous drug.[3] (Emphasis and underscoring supplied)

x x x x x x x x x

[3] *Id.* at 12.

Hence, the filing of the Information against appellant.

Denying the charge against him, appellant claimed that he was framed up and gave the following version:

On March 13, 2003, as he was walking towards his mother's house in SPS Compound, Barangay Bambang, Pasig City, two police officers accosted him, in the presence of "kibitzers," for allegedly selling *shabu*. He was dragged and brought inside a parked van wherein the police officers, under threats, tried to elicit from him information on the whereabouts of a certain "Ebot" and "Beng" whom he did not personally know, however. The police officers tried to extort from him ₱200,000, which was reduced to ₱20,000, for his release but he did not come across as he could not afford it, hence, they charged him with violation of Section 5, Article II of R.A. 9165.

Appellant presented Lourdes Sanchez, his mother's neighbor, who declared that at the time of the incident, while she was outside her nipa hut in the field waiting for her son, she saw appellant come out of "the alley" upon which two police officers approached and handcuffed him, and "[w]hen there were many kibitzers around," they dragged him "near the van."

Finding for the prosecution, the trial court, by Decision of January 23, 2004, convicted appellant, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused **WILLIE RIVERA GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. 9165 for selling of *shabu* as charged in the information, and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of ₱500,000.00.
>
> Considering the penalty imposed by the Court, his immediate commitment to the National Penitentiary is hereby ordered.
>
> SO ORDERED.[4] (Emphasis in the original)

---

[4] *Id.* at 67-72, Decision of January 23, 2004 by the Regional Trial Court of Pasig City, Branch 154.

The case was forwarded to the Court after appellant filed a notice of appeal. Per *People v. Mateo*,[5] however, this Court referred the case to the Court of Appeals by Resolution of August 3, 2005.[6]

As earlier stated, the Court of Appeals upheld appellant's conviction.

Hence, the present appeal, appellant faulting the appellate court

I. . . . IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED.

II. . . . IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT 9165.[7] (Underscoring supplied)

Appellant questions his arrest without warrant, not any of the instances when a warrantless arrest – the person to be arrested must have committed, is actually committing, or is attempting to commit an offense[8] – having been allegedly present when he was arrested.

Buenaventura v. People,[9] citing *People v. Bagsit*,[10] teaches, however:

---

[5] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[6] CA *rollo*, pp. 83-84.

[7] *Id.* at 38-51, Brief for the Accused-Appellant filed before the Court of Appeals.

[8] RULES OF COURT, Rule 113, Section 5 par.(a).

[9] G.R. No. 171578, August 8, 2007, 529 SCRA 500, 513.

[10] G.R. No. 148877, August 19, 2003, 409 SCRA 350, 354.

x x x It is long settled that where the accused, by his voluntary submission to the jurisdiction of the court, as shown by the counsel-assisted plea he entered during the arraignment and his active participation in the trial thereafter, voluntarily waives his constitutional protection against illegal arrests and searches. We have consistently ruled that any objection concerning the issuance or service of a warrant or a procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived. (Citations omitted; underscoring supplied)

The records do not show that appellant raised any question on the legality of his arrest before he was arraigned or in his petition for bail. By submitting himself to the jurisdiction of the court and presenting evidence in his defense, appellant voluntarily waived his constitutional protection against illegal arrest.

In any event, appellant forgets that from the evidence for the prosecution, he was arrested while committing a crime – peddling of illegal drugs, a circumstance where warrantless arrest is justified under Rule 113, Section 5(a) of the Rules of Court which reads:

SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

xxx xxx xxx

Appellant's other assigned error delves on the reliance by the lower courts on the prosecution evidence in finding him guilty beyond reasonable doubt.

The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the witness' demeanor, conduct and position to discriminate between truth and falsehood. That is a time-tested doctrine. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of

witnesses. This is especially true when the trial court's findings have been affirmed by the appellate court as in the present case, because they are generally conclusive and binding upon the Court, unless it be manifestly shown, and appellant has not in the present case, that the lower courts had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[11]

Given the penalty imposed on appellant, however, the Court just the same assiduously evaluated the evidence for the prosecution but found nothing to warrant a reversal of the lower courts' evaluation.

Appellant has not even proffered any credible motive why the police officers would falsely charge him. His alleged refusal to divulge the whereabouts of those two persons mentioned above fails to impress. Neither does his claim that the police officers wanted him to pay off his liberty. For, *inter alia,* if he were just a house painter, as he claimed, and not a drug dealer, the police would not expect him to come up with such amount (₱20,000). Besides, since, by his and his witness' information, there were "kibitzers" around, including neighbors, when he was arrested, why no timely succor to him, or any form of protest by anyone of them against his arrest was lodged, if he were indeed innocent, does not speak well of his defense.

In consonance with the hornbook precept that an appeal in a criminal case opens the entire case for review on any question including one not raised by the parties, the Court went on to determine whether the requirements of Section 21.1[12] of R.A. 9165 was complied with.

---

[11] *William Ching v. People of the Philippines*, G.R. No. 177237, October 17, 2008.

[12] 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 or dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner:

The buy bust operation in the present case was coordinated with the PDEA. After the sachets of *shabu* were confiscated from appellant and PO3 Salisa marked them, a spot report was submitted to the PDEA detailing the items seized from appellant and the procedure undertaken.[13] P/Sr. Inspector Villaruel[14] soon after issued a memorandum transmitting the sachets to, which were received at 3:55 P.M. by, the EPD-PNP Crime Laboratory for examination.[15]

While PO3 Salisa's testimony did not indicate if he made a list of the sachets as well as the buy-bust money in the presence of appellant or if photographs thereof were taken, the defense did not propound questions suggesting doubt as to the integrity of the sachets.

People v. Pringas teaches that non-compliance with Section 21 is *not* necessarily fatal as long as there is justifiable ground therefor, what is important being the preservation of the integrity and evidentiary value of the seized items:

> Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, *and* as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized

---

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the persons/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x

[13] Records, p. 9.

[14] *Id.* at 11.

[15] *Id.* at 12.

in the determination of the guilt or innocence of the accused.[16] (Citation omitted, emphasis supplied)

Appellant, as in *Pringas*, has not questioned at any stage of the case the custody and disposition of the items taken from him.

AT ALL EVENTS, the Court appreciates no showing that the integrity of the seized items has been compromised.

WHEREFORE, the August 14, 2006 Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Quisumbing(Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179280. August 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PEDRO CALANGI *alias* HAPLAS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMINAL LIABILITY; EFFECT OF THE DEATH OF THE ACCUSED ON THE PENDING CRIMINAL CASE.— In view of appellant's death, the dismissal of the cases under review, Criminal Case Nos. 6886-G and 6888-G is in order. The dismissal by reason of appellant's death has the force and effect of an acquittal, the constitutionally mandated presumption of innocence in his favor not having been overcome by a *final* finding of guilt. His civil liability *ex delicto* is accordingly extinguished. The intervening death and resulting absolution of appellant from secular accountabilities notwithstanding, the

---

[16] G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

Court is not precluded from reviewing the present cases, especially as it finds the appeal to be impressed with merit, in order to vindicate his name.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE WITNESS' TESTIMONY DID NOT PASS THE TEST OF CREDIBILITY.— While in rape cases, the lone testimony of the supposed victim is enough to sustain a conviction, the testimony must meet the test of credibility which requires that it should not only come from the mouth of a credible witness but should likewise be credible and reasonable in itself. It must conform to human knowledge, observation and experience, and whatever is repugnant to these is outside of juridical cognizance. The Court finds that the testimony of BBB does not measure up to this test of credibility. x x x The prosecution, in a bid to explain BBB's stunted narrative, informed that she was only able to finish Grade 1, hence, her low intelligence. To be sure, the Court had ruled that the mental deficiency or low intelligence of a victim does not lessen her credibility as long as she has communicated her ordeal clearly and consistently. In BBB's case, however, the Court finds her assertions to be utterly vague and disjointed for the most part, despite the **leading** questions thrown her way. Human experience teaches that even mentally deficient persons or individuals having low intelligence can still narrate their ordeals in detailed manner and recall painful experiences like any average individual could. Here, BBB notably could not even recall feeling anything after appellant supposedly penetrated her private part. Indeed, BBB left out rudimentary particulars that would establish that appellant sexually abused her. The fact is, it was the prosecutor who supplied the details of BBB's supposed ordeal to which she merely affirmed or replied with irresponsive answers. Remarkably, the prosecution failed to establish the date or even the year when the crime was committed. It thus comes as a surprise how the prosecution was able to allege in the Information that BBB was raped on two occasions in August 1999. Even in her *Sinumpaang Salaysay*, BBB did not mention the date of the alleged rape as it was her father who supplied the same. x x x AAA's narration centered on a purported sexual episode that occurred in 1986, not in July 1996 as alleged in each of the Information in Criminal Case No. 6886-G. Even if a rape in 1986 is proved, still, appellant cannot be convicted of

rape in said case without violating his right to be informed of the nature and cause of the accusation against him. The disparity of the dates is too wide to prejudice him in the preparation of his defense. More. AAAs' claim that appellant was on top of her "continuously pumping" for four (4) hours in the course of which her two children were crying and calling her name is incredulous. Would not her children's cries and calls have at least given cause for her to free herself? And would not the same have curbed appellant's libido? And since, it would appear that her children were aware of what happened to her, why was not the incident immediately reported?

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.*:

Pedro Calangi (appellant) was charged before the Regional Trial Court (RTC) of Gumaca, Quezon with two (2) counts of rape of his daughter-in-law AAA and another two (2) counts of rape of his granddaughter BBB,[1] allegedly committed as follows:

CRIM. CASE NO. **6886-G**

"The undersigned accuses Pedro Calangi @ 'Haplas' (prisoner), of the crime of rape, committed as follows:

That on or about the month of July 1996, at Sitio Mangahan, Barangay Pagsangahan, Municipality of San Francisco, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with handgun of unknown caliber, with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [**AAA**], his daughter-in-law, against her will.

---

[1] The real names of the complainants are withheld per Republic Act (R.A.) No. 7610 and R.A. No. 9262. *Vide*: *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

CONTRARY TO LAW."[2] (Emphasis and underscoring supplied)

CRIM. CASE NO. **6887-G**

"The undersigned accuses Pedro Calangi @ 'Haplas' (prisoner), of the crime of rape, committed as follows:

That on or about the month of July 1996, at Sitio Mangahan, Barangay Pagsangahan, Municipality of San Francisco, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with handgun of unknown caliber, with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [**AAA**], his daughter-in-law, against her will.

CONTRARY TO LAW."[3] (Emphasis and underscoring supplied)

CRIM. CASE NO. **6888-G**

"The undersigned accuses Pedro Calangi *alias* 'Haplas' (prisoner), of the crime of rape, in violation of Article 266-B of Republic Act No. 8353, committed as follows:

That on or about the month of August 1999, at Sitio Mangahan, Barangay Pagsangahan, Municipality of San Francisco, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm of unknown caliber with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [**BBB**], his granddaughter who is within his second degree of consanguinity, a minor, 15 years of age, against her will.

CONTRARY TO LAW."[4] (Emphasis and underscoring supplied)

CRIM. CASE NO. **6889-G**

"The undersigned accuses Pedro Calangi *alias* 'Haplas' (prisoner), of the crime of rape, in violation of Article 266-B of Republic Act No. 8353, committed as follows:

---

[2] CA *rollo*, pp. 4-5.

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

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

That on or about the month of August 1999, at Sitio Mangahan, Barangay Pagsangahan, Municipality of San Francisco, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm of unknown caliber with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [**BBB**], his granddaughter who is within his second degree of consanguinity, a minor, 15 years of age, against her will.

CONTRARY TO LAW."[5] (Emphasis and underscoring supplied)

From the evidence for the prosecution, the following version is established:

At 5:00 p.m. of a day in July 1996, while AAA, a mother of two, was cooking at her house in Sitio Mangahan, *Barangay* Pagsangahan, San Francisco, Quezon, appellant who was brandishing a small gun, arrived. He asked AAA if his son, who is her husband, was at home, to which she replied in the negative. Appellant at once embraced her and removed her clothes. As he poked his gun at her, he succeeded in having carnal knowledge with her. Having been overcome by fear, she could not shout or fight him off.

Appellant, who succeeded in having sexual intercourse with AAA a second time[6] on the same occasion, was "on top of her" for four hours.[7]

AAA reported her defilement to her husband CCC who told her to "just let the thing pass and let the law do something about it." She and CCC eventually reported the matter to the authorities, in order to deter appellant from doing the same to others. As to when she reported the rape, she could not remember. She was later to learn that appellant had also raped her eldest daughter BBB.[8]

---

[5] *Id.* at 10-11.

[6] Transcript of Stenographic Notes (TSN), October 24, 2001, pp. 3-5.

[7] TSN, November 14, 2002, p. 8.

[8] TSN, October 24, 2001, p. 6.

As regards the charge complaint of AAA's daughter BBB, by BBB's account, appellant held her hands, removed her clothes, and touched her breasts before he inserted his penis in her vagina. How old she was and when she was raped by appellant, she does not remember. Only after appellant abused her a second time did she report to her mother AAA what befell her. She in fact begot a child who was adopted by the Department of Social Welfare and Development.[9]

CCC, AAA's husband and father of BBB, could not remember when BBB actually reported the incidents of rape to him, but he recalled that it was when she was about to give birth.[10] He remembered that AAA subsequently told him that she was also sexually abused by appellant.[11] Despite those reports, he did not confront his father-appellant as he wanted him to himself disclose them.[12] He later sought assistance from a *barangay* captain and *kagawad* who assisted him in reporting to the police.[13]

BBB was examined by Dr. Teofista Ojeda on March 1, 2000[14] when she was found to be five to six months pregnant.

Upon the other hand, appellant, interposing alibi, denied going in July 1996 to the house of AAA which can be reached on foot in two hours. He likewise denied raping AAA, or BBB whom he described as "abnormal." He could not, however, think of any reason why his son CCC, together with AAA and BBB, would charge him of rape.[15]

Defense witnesses Jonaskie Moromoto and Ric Ric Revolio averred that they were with appellant at the time the alleged rape of AAA took place in July 1996.[16]

---

[9] TSN, February 27, 2003, pp. 7-18.

[10] TSN, January 15, 2003, p. 9.

[11] *Id.* at 5.

[12] *Id.* at 10-11.

[13] *Id.* at 6.

[14] TSN, June 26, 2003, p. 4.

[15] TSN, June 9, 2004, pp. 3-6.

[16] TSN, August 11, 2004, pp. 1-5; TSN, December 8, 2004, pp. 2-6.

By Decision[17] of June 23, 2005, the trial court convicted appellant in all cases, disposing as follows:

WHEREFORE AND IN VIEW OF ALL THE FOREGOING, the court finds accused PEDRO CALANGI guilty of Rape of [AAA] for two counts defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. [No.] 7659 in Criminal Cases Nos. 6886-G and 6887-G and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and to pay the amount of Php50,000.00 as moral damages and Php50,000.00 as civil indemnity for each count of rape.

The Court finds PEDRO CALANGI guilty beyond reasonable doubt of the crime of Rape of [BBB] for two (2) counts defined and penalized under Articles 266-A and 266-B of the Revised Penal Code as amended by R.A. [No.] 8353 in Criminal Cases Nos. 6888-G and 6889-G and is hereby sentenced to suffer the penalty of DEATH and to pay the amount of Php75,000.00 as civil indemnity and Php50,000.00 as moral damages and Php25,000.00 as exemplary damages for each count of rape.

SO ORDERED.

On appeal, the Court of Appeals,[18] by Decision[19] of March 21, 2007, **acquitted** appellant in Criminal Case Nos. 6887-G and 6889-G for insufficiency of evidence, but **affirmed** appellant's conviction in Criminal Case Nos. 6886-G and 6888-G of which AAA and BBB were the private complainants, respectively. Thus the appellate court disposed:

WHEREFORE, the June 23, 2005 Decision of the Regional Trial Court, Branch 61, Gumaca, Quezon, in Criminal Case Nos. 6886-G to 6889-G, is hereby MODIFIED to read as follows:

WHEREFORE, in Criminal Cases [sic] No. 6886-G, finding the accused Pedro Calangi guilty beyond reasonable doubt of the crime of Rape committed against [AAA], the Court hereby sentences him

---

[17] Records, pp. 176-210.

[18] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato Jr., concurring.

[19] *Rollo*, pp. 2-22.

to suffer the penalty of *reclusion perpetua* and to pay the amount of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity.

In Criminal Case No. 6887-G, there being no sufficient evidence, the Court hereby acquits the accused.

In Criminal Cases [sic] No. 6888-G, finding the accused Pedro Calangi guilty beyond reasonable doubt of the crime of Rape committed against [BBB], the Court hereby sentences him to suffer the penalty of *reclusion perpetua* and to pay the amount [of] ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity.

In Criminal Case No. 6889-G, there being no sufficient evidence, the Court hereby acquits the accused.

SO ORDERED.

In affirming appellant's conviction in Criminal Case Nos. 6886-G and 6888-G, the appellate court noted that

[w]hat makes the complaints of the two victims all the more credible is the fact that the accused is the father-in-law of [AAA] and the grandfather of [BBB]. Even his very own son, [CCC], took the witness stand against him even if his testimony was only on the fact that [AAA] immediately reported what his father did to her and that he reported the crimes to the *kagawads* in their place. **A son, a daughter-in-law and a granddaughter would not falsely impute the offense of rape against him if it were not true.** It is hardly conceivable that they would fabricate matters and undergo the travails of a public trial, exposing themselves to humiliation and embarrassment by revealing what they underwent because of his insatiable lust. x x x. (Emphasis and underscoring supplied)[20]

Hence, the present appeal, appellant proffering the following

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE OF [BBB] DESPITE THE INDEFINITENESS OF TIME WHEN THE ALLEGED RAPE INCIDENTS WERE COMMITTED.

xxx xxx xxx

[20] *Id.* at 17-18.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE IN CRIMINAL CASE NOS. [6886]-G AND [6888]-G WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[21] (Underscoring supplied)

Appellant contends that the prosecution failed to prove that he twice raped BBB sometime in August 1999 as alleged in each of the last two Informations, quoted above as BBB could not even recall the month or the year when the alleged rapes took place; and that even if BBB's pregnancy were true, this does not necessarily mean that he raped her and was responsible for her pregnancy. He adds that the prosecution did not even present the birth certificate of the purported child.[22]

Appellant underscores that due consideration should be given to his defense of alibi in view of the glaring inconsistencies and improbabilities of the testimonies of the prosecution witnesses.

The Solicitor General counters that the alleged inconsistencies in the private complainants' testimonies do not delve on the elements of rape; that as against the complainants' positive identification of appellant as the perpetrator of the crimes, the latter merely raised denial and alibi as defense; and that the complainants' testimonies, corroborated by medical findings, sufficiently prove that, indeed, they had been ravished.[23]

During the pendency of the present appeal, the Court received on June 19, 2009 a communication from the Bureau of Corrections informing that **appellant died on April 1, 2009** at the National Bilibid Prisons Hospital in Muntinlupa City.

In view of appellant's death, the dismissal of the cases under review, Criminal Case Nos. 6886-G and 6888-G is in order. The dismissal by reason of appellant's death has the force and effect

---

[21] CA *rollo*, p. 56; Via manifestation, appellant and appellee adopted their respective Briefs filed at the CA, in lieu of Supplemental Briefs.

[22] *Id.* at 62-64.

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

of an acquittal,[24] the constitutionally mandated presumption of innocence in his favor not having been overcome by a *final* finding of guilt. His civil liability *ex delicto* is accordingly extinguished.[25]

The intervening death and resulting absolution of appellant from secular accountabilities notwithstanding, the Court is not precluded from reviewing the present cases, especially as it finds the appeal to be impressed with merit, in order to vindicate his name. The Court thus resolved to take a judicious review of the evidence presented in the cases.

While in rape cases, the lone testimony of the supposed victim is enough to sustain a conviction, the testimony must meet the test of credibility which requires that it should not only come from the mouth of a credible witness but should likewise be credible and reasonable in itself.[26] It must conform to human knowledge, observation and experience, and whatever is repugnant to these is outside of juridical cognizance.[27] The Court finds that the testimony of BBB does not measure up to this test of credibility.

Consider the following testimony of BBB, quoted *verbatim*:

Q [BBB], was there a thing or had you been violated by your grandfather?

A Yes, Madam.

Q When you said "*pinagsamantalahan*," or you had been violated, what did he do to you?

A He held my hand

Q Then after holding your hands, what did he do?

A He removed my clothes.

---

[24] *People v. Yanson-Dumancas*, 378 Phil. 341, 363 (1999).

[25] Vide *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239.

[26] *People v. Mala*, G.R. No. 152351, September 18, 2003, 411 SCRA 327, 337.

[27] *People v. Dayag*, G.R. No. L-30619, 155 Phil. 421, 431 (1974).

Q **After he removed your clothes, what else did he do?**

A **None, Madam.**

Q Did he undress himself also?

A Yes, Madam.

Q And after he had undressed himself, did he touch you?

A Yes, Madam.

Q **What part of your body did he touch you?**

A **Here** (witness pointing [to] her front body)

Q Did he touch your breast?

A Yes, Madam.

Q Did he touch your private part?

A Yes, Madam.

Q And aside from holding your private parts, did he insert his penis to your vagina?

A Yes, Madam.

Q **What did you feel?**

A ***None, Madam.***

xxx xxx xxx

Q For how many times did he do that to you?

A Twice, Madam.

Q ***Could you still remember when?***

A ***No Madam***.

Q Miss Witness, did you report what he did to you to anybody in your family?

A Yes, Madam.

Q To whom did you report what your grandfather had done to you?

A To my mother.

Q ***And what did your mother tell you?***

A ***None, Madam***. (Italics, emphasis and underscoring supplied)[28]

xxx xxx xxx

Q After he removed your shorts and panty, and [after] he removed his brief, what did your grandfather do to you?

A *He put himself on top of me.*

Q What did he do on your top?

A He held my breast.

Q After holding your breast, what did he do next?

A None.

Q What do you mean by none?

A None, sir.

Q Why, did you not say he inserted his penis to your vagina?

A Yes, sir, I said it.

Q *After he inserted [h]is penis into your vagina, what did he do?*

A *He put himself on top of me.*

Q Did he move up and down?

A Yes, sir.

Q How long if you know?

A For quite a long time.

Q **What time of the day was that?**

A **I donot (sic) know.**

Q Did you eat your breakfast already?

A Not yet, sir.

Q Very early in the morning?

---

[28] TSN, February 27, 2003, pp. 4-6.

A Yes, sir.

Q ***And you donot (sic) know the date?***

A ***Yes, sir.***

Q ***And you donot (sic) know the year?***

A ***No sir.***[29]

xxx xxx xxx

Q ***When did you give birth to a child?***

A ***I donot (sic) know, sir.***

Q How many child do you have?

A Only one, sir.

Q **Have you seen your child?**

A **No, sir.** (Italics, emphasis and underscoring supplied)[30]

The prosecution, in a bid to explain BBB's stunted narrative, informed that she was only able to finish Grade 1, hence, her low intelligence.[31] To be sure, the Court had ruled that the mental deficiency or low intelligence of a victim does not lessen her credibility as long as she has communicated her ordeal clearly and consistently.[32] In BBB's case, however, the Court finds her assertions to be utterly vague and disjointed for the most part, despite the **leading** questions thrown her way.

Human experience teaches that even mentally deficient persons or individuals having low intelligence can still narrate their ordeals

---

[29] *Id.* at 10-11.

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

[31] The prosecution's offer of BBB's testimony reads: If Your Honor please, the prosecution is offering the testimony of [BBB] as the victim in Criminal Cases Nos. 6888-G and 6889[-G]. May I request that because of lack of education and also for her mentality, may I be allowed to ask leading questions?; *Vide*: TSN, February 27, 2003, p. 3.

[32] *Vide: People v. San Juan*, G.R. No. 105556, April 14, 1997, 270 SCRA 693, 705. In this case, the victim was a 26-year-old woman whose mental development was that of a 5-year-and-10-month-old child.

in detailed manner and recall painful experiences like any average individual could. Here, BBB notably could not even recall feeling anything after appellant supposedly penetrated her private part.

Indeed, BBB left out rudimentary particulars that would establish that appellant sexually abused her. The fact is, it was the prosecutor who supplied the details of BBB's supposed ordeal to which she merely affirmed or replied with irresponsive answers.

Remarkably, the prosecution failed to establish the date or even the year when the crime was committed. It thus comes as a surprise how the prosecution was able to allege in the Information that BBB was raped on two occasions in August 1999. Even in her *Sinumpaang Salaysay*,[33] BBB did not mention the date of the alleged rape as it was her father who supplied the same.[34]

As for AAA, who was fairly descriptive of the supposed rape done on her by appellant, her testimony centered on another alleged rape that occurred in 1986. Thus in 2001 when she took the witness stand, AAA testified as follows:

Q ***Now, Mrs. Witness, you said you were raped two times by your father-in-law Pedro Calangi, as a result of the said rape, did you get pregnant?***

A ***Yes, Mam.***

Q ***How old is the child now?***

A ***Twelve (12) years old, Mam.***

Q Mrs. Witness, how about [BBB] after she was raped by her grandfather, did she get pregnant?

A Yes, Mam.

Q How many times [was] [BBB] . . . raped by her grandfather?

A Two (2) times, Mam.

Q Can you remember the dates when she was raped?

---

[33] IV Records, p. 6.

[34] *Id*. at 5.

A No, Mam. (Italics, emphasis and underscoring supplied)[35]

On further examination by the prosecutor, AAA appeared confused all the more.

Q **Mrs. Witness, during the direct examination, you were asked how old was the child of yours fathered by Pedro Calangi whom you said had raped you in 1996? Can you explain why you said that the child was twelve years old when you were raped in 1996?**

RECORD: NO ANSWER from the witness

PROS. FLORIDO:

I withdraw the question, the witness may probably not understand the question.

Q **Actually when was the first time that you were raped by your father-in-law[?] [W]hat year was that?**

A **1986.** (Emphasis and underscoring supplied)[36]

On cross-examination, AAA recounted:

Q For how long was he on top of you?

A About four (4) hours, sir.

Q **You mean to say mrs. witness, that he stayed on your top** [*sic*] **for four (4) hours?**

A **Yes, sir.**

Q **And for that length of almost four hours, he continued the pumping?**

A **Yes, sir.**

Q And how many times were there ejaculation?

A Many, sir.

xxx xxx xxx

---

[35] TSN, October 24, 2001, p. 7.

[36] TSN, October 25, 2001, pp. 2-3.

Q After that almost four (4) hours this Mr. Calangi was on your top [*sic*], what did he do?

A He went home, sir.

Q Now, Mrs. witness, for purposes of curiousity [*sic*], was he very tired after he went down from you?

A Yes, sir.

Q How did you know that he was tired?

ATTY. HASIM:

We wanted [*sic*] to manifest that it takes a long time for the witness to answer, up to now there's no answer given.

xxx xxx xxx

Q How about the food that you are cooking?

A It was burned, sir.

Q How about your two (2) children who were inside your house for that almost length of time/hours, what did they do?

A They were crying, sir.

Q Where were they crying?

A Inside our house and they were calling me, sir.

Q **Did you not say that you become** [*sic*] **pregnant because of that rape of your father-in-law?**

A **Yes, sir.**

Q **When did you deliver that child?**

A **1986, sir.**

Q **What month in 1986 did you give birth to your child as a result of the rape?**

A **1987, sir.** (Emphasis and underscoring supplied)[37]

Clearly, AAA's narration centered on a purported sexual episode that occurred in 1986, not in July 1996 as alleged in each of the

[37] TSN, November 14, 2002, pp. 8-10.

Information in Criminal Case No. 6886-G. Even if a rape in 1986 is proved, still, appellant cannot be convicted of rape in said case without violating his right to be informed of the nature and cause of the accusation against him.[38] The disparity of the dates is too wide to prejudice him in the preparation of his defense.

More. AAA's claim that appellant was on top of her "continuously pumping" for four (4) hours in the course of which her two children were crying and calling her name is incredulous. Would not her children's cries and calls have at least given cause for her to free herself? And would not the same have curbed appellant's libido? And since, it would appear that her children were aware of what happened to her, why was not the incident immediately reported?

Respecting the medical findings of Dr. Ojeda, the same bear no probative value on the case. If any, they merely dinned in on BBB's purported pregnancy but not on the fact of rape.

In fine, as its witnesses' contradictory and confounding statements on important and material details erode the integrity of their testimonies, the prosecution failed to prove beyond reasonable doubt appellant's guilt.

WHEREFORE, Criminal Cases Nos. 6886-G and 6888-G against the late PEDRO CALANGI *alias* "HAPLAS" are, in light of the foregoing discussions, *DISMISSED*.

Costs *de oficio*.

SO ORDERED.

Quisumbing (Chairperson), Del Castillo, and *Abad, JJ.,* concur.

Brion, J., in the result.

---

[38] Rule 115 (b) of the Revised Rules of Criminal Procedure.

SECOND DIVISION

[G.R. No. 180921. August 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BERNARDO RIMANDO, JR. *Y* BASILIO*, alias* "JOJO,"** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FAILURE TO CALL FOR HELP DOES NOT DIMINISH THE CREDIBILITY OF A WITNESS-VICTIM.— Appellant assails AAA's credibility, citing her "quite unbelievable" conduct of failing to call for help from her grandparents and siblings who were just at the sala, adjacent to the room where she claimed to have been raped. Appellant's argument does not persuade. Forthright victims of rape are not immune from fear. The threats AAA received stilled her from "shouting" for help. She did utter "*huwag, pa,*" however, and was crying, audible enough to have been heard by her grandparents, setting them to believe that appellant was doing something wrong to her and to thus seek police assistance. In any event, that appellant is AAA's own father who exercises moral ascendancy on her should reasonably explain her obedience and submission to his threat.

2. CRIMINAL LAW; RAPE; RUPTURED HYMEN IS NOT AN ELEMENT OF RAPE.— Appellant goes on to argue that "if [she] was really raped, how come [her] hymen was still intact?," citing the Certification x x x issued by Dr. Anne Nerissa Sanchez, who examined AAA x x x soon after the occurrence of the alleged rape x x x. That AAA's hymen was still intact despite the acts complained of does not negate the commission of rape by appellant. The rupture or laceration of the hymen is not an

essential element of rape, nor is full penetration of the male penis into the woman's vagina. Proof of the slightest penetration of the penis with the labia or pudendum of the woman's organ suffices.

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.*:

Caught *in flagrante* by his own mother and police authorities of molesting his own minor daughter AAA,[1] the Court of Appeals, by Decision[2] of June 14, 2007, affirmed with modification the January 19, 2006 Decision of Branch 67 of the Regional Trial Court in Bauang, La Union convicting Bernardo Rimando, Jr. *y* Basilio *alias* "Jojo" (appellant) of rape.

The accusatory portion of the Information filed against appellant reads:

That on or about the 31st day of October, 1999, in the Municipality of Naguilian, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and actuated by lust, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a 10-year old minor, against her will and consent, to the damage and prejudice of the offended party.

---

[1] The real name of the victim is withheld to protect her privacy; instead, fictitious initials are used to represent her, pursuant to Section 44 of Republic Act No. 9262 (the Anti-Violence Against Women and Their Children Act of 2004). 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] Penned by Associate Justice Lucas P. Bersamin (now a Member of this Court) and concurred in by Associate Justices Marina L. Buzon and Estela M. Perlas-Bernabe; CA *rollo*, pp. 127-145.

CONTRARY TO LAW.[3] (Underscoring supplied)

Through the testimonies of AAA, her paternal grandmother DDD, and P03 Judy Calica, the prosecution proffered the following version:

AAA, who was born on June 17, 1989 to BBB[4] and appellant in Compostela, Davao, as shown by her Certificate of Live Birth,[5] was five years old when her parents separated. Since her parents' separation, her paternal grandparents, CCC and DDD, took care of her and her two sisters, then aged 11 and 13. Together with appellant, they lived in his parents' house at Bato, Naguilian, La Union. One room was occupied by appellant and AAA, the second by appellant's youngest brother, and the third by his parents and AAA's sisters.[6]

When AAA was in Grade 2, appellant, on several occasions, removed her underwear and let her sit on his penis. Every time he did this, she felt pain as his penis partly penetrated her vagina. He would later place himself on top of her and try to insert his penis into her vagina during which she would merely cry in helplessness as he threatened to kill her and her sisters if she revealed to anyone about what he had been doing to her.[7]

In the early evening of October 31, 1999, while AAA, who was then 10 years old and in Grade 3, was watching television with her sisters and grandparents at the sala of their house, appellant arrived home drunk. With a loud voice, he summoned AAA and ordered her to sleep in their room which is adjacent to the sala. While she refused as she was not yet sleepy, she obliged after he shouted and got angry at her.

---

[3] Records, p. 1.

[4] The mother's real name is not disclosed; instead, fictitious initial is used pursuant to R.A. No. 9262.

[5] Exhibit "A", records, p. 169.

[6] Transcript of Stenographic Notes (TSN), April 28, 2004, pp. 4-7, 10; RTC records, pp. 267-270, 273.

[7] *Id.* at 7-11; *id.* at 270-274.

On entering the room, AAA lied down on bed and covered her body with a blanket. Appellant followed her, lied down beside her and removed her blanket. As he began removing her short pants and panties, she cried as she uttered "*huwag, pa*." He warned her, however, not to create any noise, threatening to slap her. After he removed her short pants and panties, he pulled his short pants down to his knees, placed himself on top of her, held his penis and tried many times to insert it into her vagina.

When appellant was able to place a portion of his penis into AAA's vagina, he started pushing up and down. As she felt pain in her vagina, she continued crying. She was scared to shout for help, however, "because he said if I will be noisy, he will kill us." He continued the act for quite sometime and stood up only when policemen and her grandparents entered their room.[8]

The policemen, P03 Judy Calica, P03 Elesio Mosuela and P02 Christopher Buslay of the Naguilian Police Station, repaired to the house on the request of AAA's grandfather CCC, he and his wife DDD having suspected that their son-herein appellant was molesting AAA when they heard her cry and utter "*huwag, pa*."

On arriving at the house, as the policemen heard someone crying, AAA's grandmother DDD led them to appellant's room and slowly opened the unlocked door. There they saw on the bed the naked appellant mounted between the legs of AAA who was lying without any panties and crying, her left hand being held by him as his right hand was holding his penis which he was trying to insert into her vagina.

As DDD switched on the light of the room, appellant immediately jumped out of bed and put on his short pants, while AAA held her private organ, telling the policemen and DDD that it was painful.

---

[8] *Id.* at 11-18; *id.* at 274-281.

Appellant was thereupon arrested and brought to the Naguilian District Hospital for medical examination and to the police station for investigation.[9]

Denying the accusation, appellant gave the following version:

After arriving home from work on the night in question, while his three daughters including AAA and his parents were watching television at the sala, he went to sleep. While lying inside his room, he heard somebody knocking at his door. Later becoming aware of the presence of policemen, he woke up AAA whose presence in the room he could not explain. The policemen at once brought him out of the room without telling him the reason why, and took him to the Naguilian Hospital and to the police station.

Appellant ventured that his indictment could have been triggered by his having berated his mother DDD for telling other people that he is a drunkard and had been maltreating his children.

By Decision of January 19, 2006, the trial court found appellant guilty of qualified rape, disposing as follows:

WHEREFORE, the Court finds the accused Bernardo Rimando, Jr. *y* Basilio GUILTY beyond reasonable doubt of the crime of qualified rape defined in and penalized by Article 226-B, of the Revised Penal Code, as amended, and sentences him to suffer the supreme penalty of DEATH by lethal injection.

The accused is further ordered to pay the victim [AAA] the amount of Seventy Five Thousand (₱75,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos as moral damages and to pay the costs.

SO ORDERED.[10]

---

[9] TSN, December 11, 2002, pp. 2-18, 38, 41; June 16, 2004, p. 10; *id.* at pp. 219-235, 255, 258, 305.

[10] Records, p. 364.

Per *People v. Mateo*,[11] the records of the case were forwarded to the Court of Appeals for review by Order dated February 21, 2006 issued by the trial court.[12]

The appellate court, by Decision of June 14, 2007, affirmed the factual findings of the trial court but modified the sentence to *reclusion perpetua* in light of Republic Act No. 9346[13] which proscribes the imposition of death penalty. It likewise modified the award of civil damages by increasing the moral damages to ₱75,000.00 and additionally awarding AAA ₱25,000.00 as exemplary damages, consistent with prevailing jurisprudence.[14] It thus disposed:

> WHEREFORE, the **DECISION DATED JANUARY 19, 2006** is **AFFIRMED** subject to the **MODIFICATION** that **BERNADO RIMANDO, JR.** is **SENTENCED** to suffer *reclusion perpetua* without eligibility for parole.
>
> The accused is **ORDERED** to pay to AAA the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱25,000.00 as exemplary damages; and the costs of suit.
>
> SO ORDERED. (Emphasis in the original)

In his Brief, appellant faults the trial court

> I
>
> … IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.
>
> II
>
> … IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

---

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

[12] CA records, p. 31.

[13] "An Act Prohibiting The Imposition of Death Penalty in the Philippines," signed into law on June 24, 2006; *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481, 502.

[14] *People v. Bidoc*, *id.* at 503-504, citing *People v. Sambrano*, 398 SCRA 106, 117 (2003).

[15] Accused-Appellant's Brief, CA *rollo*, p. 38.

Appellant assails AAA's credibility, citing her "quite unbelievable" conduct of failing to call for help from her grandparents and siblings who were just at the sala, adjacent to the room where she claimed to have been raped.[16]

Appellant's argument does not persuade.

Forthright victims of rape are not immune from fear. The threats AAA received stilled her from "shouting" for help. She did utter "*huwag, pa,*" however, and was crying, audible enough to have been heard by her grandparents, setting them to believe that appellant was doing something wrong to her and to thus seek police assistance.

In any event, that appellant is AAA's own father who exercises moral ascendancy on her should reasonably explain her obedience and submission to his threat.[17]

Appellant goes on to argue that "if [she] was really raped, how come [her] hymen was still intact?,"[18] citing the Certification dated November 3, 1999[19] issued by Dr. Anne Nerissa Sanchez, who examined AAA on October 31, 1999 soon after the occurrence of the alleged rape, which reads:

PELVIC EXAMINATION

Genitalia: no pubic hair; *labia majora* well opposed; *labia minora* seen upon separation of the *labia majora* which was erythematous. Hymen – oval, intact. (Underscoring supplied)

That AAA's hymen was still intact despite the acts complained of does not negate the commission of rape by appellant.[20] The rupture or laceration of the hymen is not an essential element

---

[16] *Id.* at 51.

[17] *Vide People v. Arellano*, G.R. No. 176640, August 22, 2009, 563 SCRA 181, 187-188; *People v. Ricamora*, G.R. No. 168628, December 6, 2006, 510 SCRA 514, 527-528.

[18] Accused-Appellant's Brief, *supra* at 55.

[19] Exhibit "B" and Exhibit "1", cited in the RTC Decision, records, p. 359.

[20] See *People v. Bernabe*, G.R. No. 141881, November 21, 2001, 370 SCRA 142, 147.

of rape, nor is full penetration of the male penis into the woman's vagina. Proof of the slightest penetration of the penis with the labia or pudendum of the woman's organ suffices.[21] As found by the trial court,

xxx xxx xxx

. . . although the doctor found that the hymen of the complainant was oval, intact, the *labia minor* (sic) which is found upon separation of the *labia majora* was **'erythematous'**, which means it had a superficial blotchy redness of its skin which is **indicative of a possible contact of the *labia minora* with a foreign object**. x x x. (Emphasis and underscoring supplied)

That the Court entertains no doubt on appellant's culpability, it quotes the following observations of the appellate court which merit its approval:

x x x, [T]he accused was **caught *in flagrante delicto*** by the arresting officers and his own mother, DDD, he being still on top of AAA, naked and committing rape, when they opened the room. **More decisively,** AAA clearly and unwaveringly detailed the shameless act of her father, to wit:

Pros. Bernabe:
And after you said he [appellant] pulled down his shorts down to his knees, what did he do next?
A: He went on top of me, Ma'am.

Q: After he went on top of you, what did he do next?
A: [He] was holding his penis and tried to insert it into my vagina, Ma'am.

Q: And how many times did he try to insert his penis into your vagina?
A: Many times, Ma'am.

Court:
That evening was he able to insert his penis into your vagina?
A: Yes, sir.

[21] *Id*.

Pros. Bernabe:
Was he able to insert the whole penis or part of it?
A: Part only, Ma'am.
Court:
After inserting his penis into your vagina, what did he do next?
A: He moved, your Honor.

Q: How did he move after inserting his penis into your vagina?
A: He was pumping, sir.

Q: Did you feel anything coming out from his penis?
A: None, sir.

Q: What did you feel, madam witness, when he was inserting his penis in your vagina and pumping?
A: Painful, Ma'am.

Q: And the whole time you were crying?
A: Yes, Ma'am. (TSN, April 28, 2004, pp. 16-17)

That the accused had carnal knowledge of AAA, his own minor daughter, was competently established. x x x.

The aforecited testimony of AAA indicated that the slightest penetration of the penis into the lips of the female genitalia was achieved because she felt pain. Such penetration suffices for conviction. x x x.[22] (Emphasis and underscoring supplied)

Appellant's challenge to the assailed decision having failed, his conviction must be upheld.

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02029 is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

---

[22] *Rollo,* pp. 11-13.

SECOND DIVISION

[G.R. No. 183329. August 27, 2009]

RUFINO C. MONTOYA, *petitioner, vs.* **TRANSMED MANILA CORPORATION/MR. EDILBERTO ELLENA and GREAT LAKE NAVIGATION CO., LTD.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; NATURE OF RULE 45 REVIEW OF A COURT OF APPEALS' RULING IN A LABOR CASE, DISCUSSED AND APPLIED.— We review in this **Rule 45 petition** the decision of the CA on a Rule 65 petition filed by Montoya with that court. In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?** As framed by Montoya, the petition before us involves mixed questions of fact and law, with the core issue being one of fact. This issue – from which the other issues spring – is whether the tuberculosis afflicting the petitioner is work-related. Stated otherwise, can this illness be reasonably linked to, or reasonably be said to be caused by, Montoya's work as a seaman, his working environment, or incidents at work; or, is it an illness that Montoya contracted

outside of his work, or because of genetic predisposition, or from another illness contracted out of work but which led to the tuberculosis? As a question of fact, this question of linkage or causation is an issue we cannot touch under Rule 45, *except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating this factual issue.* Whether Montoya is entitled to disability or to attorney's fees are issues that require the consideration and application of provisions of law and are essentially questions of law. In the context of this case, however, these are legal questions that spring from and cannot be resolved without the definitive resolution of the factual issue mentioned above.

2. LABOR AND SOCIAL LEGISLATION; STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; CLAIM FOR DISABILITY BENEFITS; EVIDENCE OF ACTUAL WORK-RELATEDNESS IS REQUIRED FOR TUBERCULOSIS TO BE COMPENSABLE.— Tuberculosis, the ailment for which Montoya claimed compensation, is not work-related under the circumstances of this case, as the NLRC and the CA commonly ruled. The CA's consideration of this factual issue – as basis for the finding that the NLRC did not commit grave abuse of discretion – was clear and concise. x x x While pulmonary tuberculosis appears in the list of occupational diseases in the contract of employment, the inclusion is conditional; a claimant has to show *actual* work-relatedness if the condition does not apply. Montoya was not engaged in one of the occupations where tuberculosis is a listed illness; thus, Montoya carried the burden of showing by substantial evidence that his *tuberculosis ileitis* was due to the abdominal injury he sustained on board the M/V *Papa* or to his exposure to toxic chemicals and substances and to harsh weather conditions. As the CA found, he had nothing to support his claim other than the cryptic comment of his physician, Dr. Vicaldo, that "[H]is illness is considered as work-related and work-aggravated," without elaborating on how the doctor arrived at this finding.

3. ID.; ID.; ID.; MECHANISM FOR RESOLUTION OF CONFLICTING MEDICAL ASSESSMENT BETWEEN THE DOCTOR APPOINTED BY THE SEAFARER AND THE COMPANY-DESIGNATED PHYSICIAN, NOT OBSERVED.— A divergence

in medical findings and assessment is a possibility the contract of employment and the law have anticipated so that a mechanism for resolution was properly provided. Section 20(B)(3) of Department Order No. 4, as implemented by POEA Memorandum Circular No. 9, Series of 2000, which forms part of the Contract, provides that "*[I]f a doctor appointed by the seafarer* ***disagrees with the assessment****, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.*" Had Montoya observed the procedure laid down in the Contract, the disagreement could have been clarified or resolved at that point.

4. ID.; ID.; ID.; CONFLICTING MEDICAL ASSESSMENTS, HOW RESOLVED IN CASE AT BAR.— In considering this conflict of medical assessment, we took into account the fact that the company-designated physicians attended to Montoya and coordinated his medical examination and treatment upon his repatriation on July 25, 2003, up to late November 2003; Dr. Vicaldo examined Montoya only eight months after his repatriation. The examination and treatment of Montoya by the company-designated physicians had been much more extensive than the examination conducted by Dr. Vicaldo in his clinic. Not only was Montoya examined by Drs. Lim and Uy, he was referred to and examined by a pathologist (Dr. Nelson T. Geraldino); was operated on by a surgeon, Dr. Danilo Chua (*Dr. Chua*); and had been monitored after his operation by Dr. Chua and a gastroenterologist. In the absence of clear proof to the contrary, this series of specialized treatments negates the claim that the evaluation of the company-designated physicians was self-serving and biased in favor of the company. They amply demonstrate, too, that they arrived at their evaluation after a close and meticulous monitoring and actual treatment of their patient's condition. We likewise find it significant that the doctors on both sides of the case had the same *medical findings.* Dr. Vicaldo's findings themselves show that Montoya's injury had completely healed, and that he confirmed that the *incidental HIV positive finding* made Montoya "prone to other viral, bacterial or even fungal infections as a consequence x x x." Dr. Vicaldo also noted that there was no assurance of complete cure, nor assurance of non-

recurrence due to his HIV positive condition. These considerations, in our view, tilt the work-relatedness argument towards the CA's conclusion that Montoya's "having been hit by a pipe is too remote a cause as to result in the illness sought to be compensated."

5. ID.; NATIONAL LABOR RELATIONS COMMISSION; WHEN ITS DISMISSAL OF A SEAFARER'S COMPLAINT MAY NOT AMOUNT TO GRAVE ABUSE OF DISCRETION.— [T]he CA properly recognized that the NLRC committed no grave abuse of discretion in dismissing Montoya's complaint; the NLRC's findings of facts have sufficient basis in evidence and in the records of the case and, in our own view, far from the arbitrariness that characterizes excess of jurisdiction. If Montoya had any basis at all to support his claim, such basis *might* have been found after considering that he was medically fit when he boarded the ship based on the requisite pre-employment examination; his tuberculosis was only discovered after repatriation, and the company doctor himself certified that it could have been pre-existing and *might have just flared up because of the accident.* Under this Court's ruling in *Belarmino v. Employees' Compensation Commission,* a work-relatedness could *possibly* have been shown since the tuberculosis, apparently dormant when Montoya boarded his ship, "flared up" after the work-related accident and its stresses intervened. This possible line of argument, however, is one that escaped the parties and the tribunals below, and to date has remained unexplored. In any event, even if invoked, the CA's omission to recognize the validity of this line of argument would have only been an error of judgment, not a grave abuse of discretion, since the argument would have simply embodied a competing theory that the CA did not adopt in a situation not attended by any arbitrariness or grave abuse of discretion.

APPEARANCES OF COUNSEL

Romulo P. Valmores for petitioner.
Tarriela Tagao Ona & Associates for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is the petition for review on *certiorari*,[1] filed by petitioner Rufino C. Montoya (*Montoya*), seeking to set aside the decision[2] and resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 98516,[4] entitled "*Rufino C. Montoya v. National Labor Relations Commission, et al.*"

THE ANTECEDENT FACTS

On January 14, 2003, Montoya entered into a one-year contract of employment with respondent Transmed Manila Corporation (*Transmed*) for its principal, Great Lake Navigation Co., Ltd. (*Great Lake*); he was employed as an able seaman on board the *M/V Papa* with a basic monthly salary of US$385.00. Montoya was medically examined, as required before employment, and was declared fit to work by the company-designated physician. He boarded the *M/V Papa* on February 12, 2003.

Sometime in May 2003 or a short three months after, while on duty, Montoya was accidentally hit by a pipe on the right side of his abdomen. He complained of abdominal pains and had to be confined for treatment at a hospital in Amsterdam, The Netherlands, from July 21 to 24, 2003. His diagnosis showed that he had "*contusion right upper abdomen: (1) hematoma between skin and liver; (2) contusion of kidney function; and unclear damage of gut right upper abdomen*." **He was also declared unfit for duty**.[5]

---

[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 9-26.

[2] Promulgated on February 11, 2008, and penned by Associate Justice Estela M. Perlas with Associate Justice Portia Aliño Hormachuelos and Associate Justice Lucas P. Bersamin (now a Member of this Court), concurring; *id.*, pp. 207-216.

[3] Promulgated on June 5, 2008; *id.*, p. 218.

[4] *Id.*, p. 30.

[5] *Ibid.*

On July 25, 2003, Montoya was repatriated to the Philippines, and was confined at the Metropolitan Hospital under the care of the company-designated physicians, Dr. Alexander Uy (*Dr. Uy*) and Dr. Robert Lim (*Dr. Lim*). The doctors referred him to a pathologist for further examination. The examination showed that he had *"chronic granulomatous inflammation with caseation necrosis and langhans type giant cell, consistent with tuberculosis."*[6]

On July 31, 2003, Montoya underwent an operation under the directive: *"Explore Laparatomy – Drainage of Intra-Peritoneal Abscess,"* and was found to be suffering from:

- Subphrenic and subhepatic abscess secondary to blunt abdominal trauma;
- Tuberculosis ileitis;
- S/P Exploratory Laparatomy with drainage of subphrenic and subhepatic abscess on July 31;
- Incidental finding – HIV Positive.[7]

Montoya underwent further medical check-ups on September 1, 2003, September 22, 2003, and November 10, 2003, revealing improvements in his condition. His diagnosis showed that *"[T]he drain site wound has already healed. Patient was noted to be gaining weight with no gastro-intestinal problem at present. He was advised to continue his anti-tuberculosis medications for his tuberculosis ileitis."*[8]

Montoya did not return for further scheduled check-ups. Claiming that the company-designated doctors failed to properly evaluate his disability, Montoya sought in March 2004 the medical advice of Dr. Efren R. Vicaldo (*Dr. Vicaldo*), a private physician, who made the following findings:

---

[6] *Id.*, p. 35.

[7] *Id.*, p. 36.

[8] *Id.*, pp. 38-40.

- Subphrenic, subhepatic abscess secondary to blunt trauma;
- S/P Exploratory Laparatomy with drainage of subphrenic and subhepatic abscess;
- Tuberculous Eleitis;
- Incidental finding – HIV Positive;
- Impediment Grade I (120%).[9]

On the basis of Dr. Vicaldo's findings, Montoya demanded the payment of his disability benefits and illness allowance from respondents Transmed and Great Lake, which demand the respondents refused to heed. The denial prompted the filing of Montoya's complaint against the two firms with the National Labor Relations Commissions (*NLRC*).[10]

THE LABOR ARBITRATION RULINGS

Montoya alleged before the labor arbiter that his illness – "Tuberculosis Ileitis" – resulted from the traumatic accident he suffered while at work, not from the HIV incidentally found during his examination. He added that Dr. Vicaldo had certified to the work-related status of his illness, as it was caused by his workplace accident, aggravated by his constant exposure to harmful substances on board the vessel. He claimed that Section 32-A, paragraph 18, of the POEA Standard Employment Contract (*Contract*) considers pulmonary tuberculosis compensable in cases of constant exposure to harmful substances in the working environment.

Transmed denied Montoya's claims, contending that his sickness allowance and medical expenses for his "subphrenic and subhepatic abscesses secondary to blunt abdominal trauma have been paid" and that "tuberculosis, brought about by his illness diagnosed as HIV positive," is not compensable under both his employment contract and the Labor Code.

---

[9] *Id.*, p. 41.

[10] NLRC OFW Case No. (M) 04-05-01285-00.

Labor Arbiter Jovencio Ll. Mayor, Jr. ruled in Montoya's favor. He found Montoya permanently and totally disabled and awarded him disability compensation of US$60,000.00; illness allowance of US$1,540.00; and 10% attorney's fee, or US$6,154.00; or a total of US$67,694.00.

The NLRC, on Transmed's appeal, reversed the labor arbiter's decision,[11] thereby granting the appeal and dismissing the underlying complaint. Montoya moved for the reconsideration of the ruling, but the NLRC denied his motion.[12] Montoya then sought relief from the CA by way of a petition for *certiorari* under Rule 65 of the Rules of Court.

THE CA DECISION

In its decision promulgated on February 11, 2008,[13] the CA dismissed the petition (and thereby effectively affirmed the NLRC's decision) for Montoya's failure to establish any grave abuse of discretion in the NLRC's decision. The appellate court pointed to several reasons in support of its conclusion.

First, Montoya failed to observe the established procedure in the assessment of his illness under Section 20(B), Nos. 2 and 3, pars. 2 and 3 of the Contract, particularly the provision which states that "*if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.*" Montoya, therefore, failed to administratively contest the company's assessment on his medical condition and fitness for work, and the absence of any work-related disability.[14]

Second, the CA found that the NLRC correctly ruled that Montoya's illness for which he claimed compensation was not

---

[11] *Rollo*, pp. 143-149.

[12] *Id.*, pp. 163-164.

[13] *Supra* note 2.

[14] CA Decision, 1st par., p. 4, *id.*

work-related. The appellate court held, as the NLRC did, that Montoya failed to properly establish *by evidence* that he contracted tuberculosis because of the accident and injury he suffered while working on board, and that his tuberculosis was aggravated by "inhalation and direct contact to various harmful chemicals x x x and other deleterious substances/agents," his exposure "to varying hot and freezing cold temperature as the vessel crossed ocean boundaries, amidst harsh sea weather conditions," and "the strenuous work on board the vessel." To the CA, Montoya only submitted bare allegations, unsubstantiated and uncorroborated by any other evidence establishing: a causal link between his *tuberculosis ileitis* and the abdominal trauma he suffered in his accident, and the claimed aggravation of his tuberculosis by shipboard working conditions.

Third, the CA saw no evidence showing that Montoya ever complained of any illness while on board the vessel, or that he was repatriated due to tuberculosis. The appellate court noted that Montoya was afforded proper medical attention upon his repatriation, and his "subphrenic and subhepatic abscess secondary to blunt trauma" that resulted from his accident had healed. Hence, the accident he suffered and the resulting trauma were too remote to cause the illness he sought compensation for. Montoya likewise failed to refute the findings of his own physician that his being HIV positive made him "prone to other viral, bacterial or even fungal infections," which "could be fatal," and there is "no assurance of complete cure nor assurance of non-occurrence" of *tuberculosis ileitis*.

THE PETITION

Montoya filed the present petition based on the following grounds:

1. the CA erred in not holding that petitioner is suffering from total and permanent disability following the ruling in *Crystal Shipping, Inc., A/S Stein Line Bergen v. Deo P. Natividad;*[15]

[15] G.R. No. 154798, October 20, 2005, 473 SCRA 559.

2. there is great probability that petitioner suffered his tuberculosis due to his exposure to the elements and working conditions on the vessel; and

3. he is entitled to attorney's fees.

Directly addressing the CA's findings, Montoya argues that pursuant to the Contract, a seafarer is not prohibited from securing the services of his own physician; the company-designated physician does not have exclusive authority to examine the seafarer and to declare and determine his disability because "the company-designated physician is, more often than not, palpably self-serving and biased in favor of the company." Montoya points out that the referral of a seafarer to a third doctor, in case of conflicting opinions between the company-designated doctors and his own physician, is not mandatory but optional, pursuant to the provision of the Contract cited by the CA.

Montoya disputes the CA's finding that there is no evidence to show that he suffered from tuberculosis on account of his work. He reiterates that working on board the vessel exposed him to various harmful chemicals, fumes, hydrocarbon emissions, and other deleterious substances/agents, as well as to varying hot and freezing temperature; moreover, his separation from his family made his work emotionally stressful, so that there is great probability that he contracted tuberculosis while working on board *M/V Papa*. He posits that considering the working conditions on board the vessel, it is more reasonable and probable to state that his *tuberculosis ileitis* is work-related than to assert that it was due to his being HIV positive.

Montoya also contends that he had been unable to perform his work as an able seaman for more than 120 days from the time of his repatriation on July 25, 2003. He argues that the company-designated physicians have not declared him fit to work; on the other hand, in a certification dated March 18, 2004, his independent physician "declared him unfit to work" and determined his disability as Grade 1. He submits that because he has been unable to perform his work for more than 120

days, he may be considered as suffering from total and "permanent disability," as defined by the Court in *Crystal Shipping.*[16]

Finally, Montoya claims that the unjustified failure and refusal of Transmed and Great Lake to satisfy his valid claim compelled him to secure the services of a counsel, for which he should be awarded attorney's fees.

THE RESPONDENTS' POSITION

In their Comment, respondents Transmed and Great Lake note that Montoya's arguments have been fully passed upon and found unmeritorious by the CA and the NLRC. They also contend that the petition involves questions of fact which are not allowed under Rule 45 of the Rules of Court.

The respondents point out as well that the reason for the denial of Montoya's claim was the absence of substantial evidence showing the connection between his work and "*tuberculosis ileitis*" – the illness cited as basis for the compensation claim. The evidence on record, particularly the findings of the company-designated physicians and Montoya's own physician, shows that the tuberculosis he contracted was not due to his work on board the vessel, but to his self-inflicted HIV positive status.

Lastly, they argue that if Montoya can cite a cause for compensable disability, this was the injury he suffered from his work-related accident, but this injury had already been treated and had healed; the benefits and allowances due him for his injury have all been paid. On the other hand, Montoya did not even complain of tuberculosis while on board the vessel, and likewise failed to prove any reasonable connection between this illness and the nature of his job.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

1. We review in this **Rule 45 petition** the decision of the CA on a Rule 65 petition filed by Montoya with that court.

[16] *Ibid.*

In a Rule 45 review, we consider the **correctness of the assailed CA decision,**[17] in contrast with the review for jurisdictional error that we undertake under Rule 65.[18] Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision.[19] In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.**[20] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**

2. As framed by Montoya, the petition before us involves mixed questions of fact and law, with the core issue being one of fact. This issue – from which the other issues spring – is

---

[17] The remedy under Rule 45 is after all an appeal. An appeal brings up for review errors of judgment committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment. See *Silverio v. CA*, G.R. No. L-39861, March 17, 1986, 141 SCRA 469.

[18] See *Hajin Engineering and Construction Co., Ltd. v. CA*, G.R. No. 165910, April 10, 2006, 487 SCRA 78. See also *Coca-cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494.

[19] Rule 45, Sec. 1. A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** [emphasis supplied]

[20] *Coca-cola Bottlers Phils., Inc. v. Daniel, supra;* Sec. 1, Rule 65 of the Rules of Court.

whether the tuberculosis afflicting the petitioner is work-related. Stated otherwise, can this illness be reasonably linked to, or reasonably be said to be caused by, Montoya's work as a seaman, his working environment, or incidents at work; or, is it an illness that Montoya contracted outside of his work, or because of genetic predisposition, or from another illness contracted out of work but which led to the tuberculosis? As a question of fact, this question of linkage or causation is an issue we cannot touch under Rule 45, *except in the course of determining whether the CA correctly ruled in determining whether or not the NLRC committed grave abuse of discretion in considering and appreciating this factual issue.*

Whether Montoya is entitled to disability or to attorney's fees are issues that require the consideration and application of provisions of law and are essentially questions of law. In the context of this case, however, these are legal questions that spring from and cannot be resolved without the definitive resolution of the factual issue mentioned above.

3. Our review of the records and of the CA decision shows that the CA correctly ruled in recognizing that the NLRC did not commit any grave abuse of discretion in concluding that Montoya's claim for disability benefits was without basis. Tuberculosis, the ailment for which Montoya claimed compensation, is not work-related under the circumstances of this case, as the NLRC and the CA commonly ruled. The CA's consideration of this factual issue – as basis for the finding that the NLRC did not commit grave abuse of discretion – was clear and concise. To quote the CA:

> In this case, petitioner's contention that he contracted tuberculosis while on board the vessel as a result of "inhalation and direct contact to various harmful chemicals x x x and other deleterious substances/ agents, his exposure to varying hot and freezing cold temperature as the vessel crossed ocean boundaries, amidst harsh sea weather conditions, and the strenuous work on the vessel," are bare allegations which were not substantiated nor corroborated by any other evidence that would have established a causal relationship between tuberculosis ileitis that rendered him unfit to work with the condition of his work

aboard the vessel, and the abdominal trauma he suffered when he was hit by a pipe.

x x x x x x x x x

There was likewise no showing that he complained of any illness while on board the vessel nor was it established that petitioner was repatriated due to tuberculosis. Moreover, it bears to note that petitioner was afforded proper medical attention upon his repatriation due to the accident he suffered while on board the vessel M/V Papa and the operation he underwent due to "subphrenic and subhepatic abscess secondary to blunt trauma" have (*sic*) healed. Hence, his having been hit by a pipe is too remote a cause as to result in the illness sought to be compensated. Besides, petitioner failed to refute the findings of his own physician that his being HIV Positive made him "prone to other viral, bacterial or even fungal infections" which "could be fatal" and there is "no assurance of complete cure, nor assurance of non-recurrence" of tuberculosis ileitis.[21]

While pulmonary tuberculosis appears in the list of occupational diseases in the contract of employment, the inclusion is conditional;[22] a claimant has to show *actual* work-relatedness if the condition does not apply. Montoya was not engaged in one of the occupations where tuberculosis is a listed illness; thus, Montoya carried the burden of showing by substantial evidence that his *tuberculosis ileitis* was due to the abdominal injury he sustained on board the M/V *Papa* or to his exposure to toxic chemicals and substances and to harsh weather conditions. As the CA found, he had nothing to support his claim other than the cryptic comment of his physician, Dr. Vicaldo, that "[H]is illness is considered as work-related and

---

[21] *Rollo,* pp. 214-215.

[22] See: Annex "A", 7(e), Rule XII, Book IV of the Implementing Rules and Regulations of the Labor Code (*ECC Rules*) which provides that tuberculosis is an occupational disease in "Any occupation involving close and frequent contact with a source or sources of tuberculosis infection by reason of employment: (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis; (b) as a laboratory worker, pathologist or postmortem worker, where occupation involves working with material which is a source of tuberculosis infection."

work-aggravated,"[23] without elaborating on how the doctor arrived at this finding.

We note that the medical examination Dr. Vicaldo conducted on Montoya several months after the latter's repatriation was markedly different from the procedure the company-designated physicians undertook on Montoya upon his arrival. The records show that upon his repatriation, Montoya was admitted to the Metropolitan Hospital and was examined by Dr. Lim and Dr. Uy, the company doctors, and was operated on, revealing the extent of his on-board injury. Montoya underwent post-operation check-ups, three sessions in all, (September 1 & 22, 2003, and November 10, 2003) whose significant findings were the subject of Dr. Lim's reports.[24] These reports indicated the progressive healing of his injury; his check-up in November showed that Montoya's wound had already healed, and he was advised to continue his anti-tuberculosis medications. Notably, the doctors asked him to return for re-evaluation in December, but he did not. In March the following year, he consulted Dr. Vicaldo; allegedly, he was dissatisfied with the respondents' company-designated physicians' findings.

Significantly, Dr. Vicaldo came up with the same medical results, and differed only on the assessment that Montoya's illness was work-related and work-aggravated. A divergence in medical findings and assessment is a possibility the contract of employment and the law have anticipated so that a mechanism for resolution was properly provided. Section 20(B)(3) of Department Order No. 4, as implemented by POEA Memorandum Circular No. 9, Series of 2000, which forms part of the Contract, provides that "*[I]f a doctor appointed by the seafarer* ***disagrees with the assessment****, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.*" Had Montoya observed the procedure laid down in the Contract, the disagreement could have been clarified or

---

[23] *Rollo,* p. 14.

[24] *Supra* note 8.

resolved at that point. From the point of view of the decision under review, the CA properly noted this aspect of the case and concluded that the NLRC did not commit any grave abuse of discretion in making Montoya's failure to use the prescribed procedure a basis for its finding that his compensation claim should be denied.

Dr. Vicaldo declared Montoya unfit to work, not for the "injury he sustained" as this had completely healed, but for *tuberculosis ileitis* which Dr. Vicaldo declared to be work-related. Notably, this declaration was not supported by any reason or proof submitted together with the assessment or in the course of the arbitration. The declaration was a plain statement that his illness was work-related and work-aggravated; nothing more followed.

In contrast, Dr. Uy, who, together with Dr. Lim, attended to Montoya when he was repatriated and who monitored his progress until his wound had completely healed, certified that his tuberculosis ileitis "cannot be directly connected with the abdominal trauma he suffered. It could have been pre-existing before the trauma and might have just flared up because of the stress-related accident."[25] Montoya rejected this assessment as he considered the findings of the company-designated physicians "more often than not, palpably self-serving and biased in favor of the company." As already mentioned, neither he nor his physician presented any proof of work relatedness other than the bare allegation that the tuberculosis was the result of the injury Montoya sustained while at work and was an illness aggravated by the working conditions on board the vessel.

In considering this conflict of medical assessment, we took into account the fact that the company-designated physicians attended to Montoya and coordinated his medical examination and treatment upon his repatriation on July 25, 2003, up to late November 2003; Dr. Vicaldo examined Montoya only eight months after his repatriation. The examination and treatment of Montoya by the company-designated physicians had been

[25] *CA rollo,* p. 123.

much more extensive than the examination conducted by Dr. Vicaldo in his clinic. Not only was Montoya examined by Drs. Lim and Uy, he was referred to and examined by a pathologist (Dr. Nelson T. Geraldino);[26] was operated on by a surgeon, Dr. Danilo Chua (*Dr. Chua*); and had been monitored after his operation by Dr. Chua and a gastroenterologist.[27] In the absence of clear proof to the contrary, this series of specialized treatments negates the claim that the evaluation of the company-designated physicians was self-serving and biased in favor of the company. They amply demonstrate, too, that they arrived at their evaluation after a close and meticulous monitoring and actual treatment of their patient's condition.

We likewise find it significant that the doctors on both sides of the case had the same *medical findings*. Dr. Vicaldo's findings themselves show that Montoya's injury had completely healed, and that he confirmed that the *incidental HIV positive finding* made Montoya "prone to other viral, bacterial or even fungal infections as a consequence x x x."[28] Dr. Vicaldo also noted that there was no assurance of complete cure, nor assurance of non-recurrence due to his HIV positive condition. These considerations, in our view, tilt the work-relatedness argument towards the CA's conclusion that Montoya's "having been hit by a pipe is too remote a cause as to result in the illness sought to be compensated."

To recapitulate, the CA properly recognized that the NLRC committed no grave abuse of discretion in dismissing Montoya's complaint; the NLRC's findings of facts have sufficient basis in evidence and in the records of the case and, in our own view, far from the arbitrariness that characterizes excess of jurisdiction. If Montoya had any basis at all to support his claim, such basis *might* have been found after considering that he was medically fit when he boarded the ship based on the

---

[26] *Supra* note 6.

[27] *Supra* note 7.

[28] *Rollo,* p. 14.

requisite pre-employment examination;[29] his tuberculosis was only discovered after repatriation,[30] and the company doctor himself certified that it could have been pre-existing and *might have just flared up because of the accident*.[31] Under this Court's ruling in *Belarmino v. Employees' Compensation Commission*,[32] a work-relatedness could *possibly* have been shown since the tuberculosis, apparently dormant when Montoya boarded his ship, "flared up" after the work-related accident and its stresses intervened. This possible line of argument, however, is one that escaped the parties and the tribunals below, and to date has remained unexplored. In any event, even if invoked, the CA's omission to recognize the validity of this line of argument would have only been an error of judgment, not a grave abuse of discretion, since the argument would have simply embodied a competing theory that the CA did not adopt in a situation not attended by any arbitrariness or grave abuse of discretion.

In the absence of any duly proven work-relatedness, we see no point in considering the imputed legal errors that could have only been triggered by a finding of work-relatedness.

WHEREFORE, premises considered, the petition is hereby *DENIED* for lack of merit. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

---

[29] See statement on this point at p. 2 hereof.

[30] *Supra* note 6.

[31] *Supra* note 25.

[32] G.R. No. 90104, May 11, 1990, 185 SCRA 304.

INDEX

INDEX

ATTORNEYS

Attorney-client relationship — A client is bound by his counsel's mistakes and negligence; exceptions. (Lalican *vs*. The Insular Life Assurance Co., Ltd., G.R. No. 183526, Aug. 25, 2009) p. 518

Code of Professional Responsibility — A lawyer shall at all times uphold the integrity and the dignity of the legal profession and support the activities of the Integrated Bar. (Query of Atty. Silverio-Buffe, on the Prohibition from Engaging in the Private Practice of Law, A.M. No. 08-6-352-RTC, Aug. 19, 2009) p. 1

— Lawyers are duty-bound to obey and respect the law; prohibition against engaging in unlawful conduct. *(Id.)*

— Lawyers, as members of the bar and officers of the court, are duty-bound to uphold the dignity and authority of the Supreme Court and to maintain the respect due its members. (Pobre *vs*. Sen. Defensor-Santiago, A.C. No. 7399, Aug. 25, 2009) p. 352

Discipline of — Generally, a lawyer holding a government office may not be disciplined as a member of the bar for misconduct committed while in the discharge of official duties, unless said misconduct also constitutes a violation of his/her oath as a lawyer. (Pobre *vs*. Sen. Defensor-Santiago, A.C. No. 7399, Aug. 25, 2009) p. 352

— Lawyers may be disciplined even for any conduct committed in their private capacity, as long as their misconduct reflects their want of probity or good demeanor. *(Id.)*

— Use of intemperate language to demean and denigrate the highest court of the land is a clear violation of the duty of respect lawyers owe to the courts, which is a proper subject of disciplinary proceedings. *(Id.)*

BANKING LAWS

General Banking Law of 2000 (R.A. No. 879) — Mortgagor loses all legal interest over foreclosed property after

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

I. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

Page

II. FOREIGN AUTHORITIES

BOOKS