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FROM

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 08-11-7-SC. August 28, 2009]

RE: REQUEST OF NATIONAL COMMITTEE ON LEGAL AID[1] TO EXEMPT LEGAL AID CLIENTS FROM PAYING FILING, DOCKET AND OTHER FEES.

SYLLABUS

1. REMEDIAL LAW; LEGAL FEES; RULE ON THE EXEMPTION FROM THE PAYMENT OF LEGAL FEES OF THE LEGAL AID CLIENTS, APPROVED.— The Rule on the Exemption From the Payment of Legal Fees of the Clients of the National Committee on Legal Aid (NCLA) and of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines (IBP) (which shall be assigned the docket number A.M. No. 08-11-7-SC [IRR] provided in this resolution is hereby *APPROVED*.

2. ID.; ID.; ID.; IMPROVED "MEANS AND MERIT TESTS" INCORPORATED IN THE RULE AS REASONABLE DETERMINANTS OF ELIGIBILITY FOR COVERAGE UNDER THE LEGAL AID PROGRAM.— The "means and merit tests" appear to be reasonable determinants of eligibility for coverage under the legal aid program of the IBP. Nonetheless, they may be improved to ensure that any exemption from the payment of legal fees that may be granted to clients of the NCLA and the legal aid offices of the various IBP chapters

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[1] Erroneously referred to as the "National Legal Aid Office" in the original caption of this administrative matter.

will really further the right of access to justice by the poor. This will guarantee that the exemption will neither be abused nor trivialized.

3. ID.; ID.; ID.; CONSTITUTIONAL GUARANTEE OF FREE ACCESS TO THE COURTS, ADVANCED.— The Constitution guarantees the rights of the poor to free access to the courts and to adequate legal assistance. The legal aid service rendered by the NCLA and legal aid offices of IBP chapters nationwide addresses only the right to adequate legal assistance. Recipients of the service of the NCLA and legal aid offices of IBP chapters may enjoy free access to courts by exempting them from the payment of fees assessed in connection with the filing of a complaint or action in court. With these twin initiatives, the guarantee of Section 11, Article III of Constitution is advanced and access to justice is increased by bridging a significant gap and removing a major roadblock.

4. REMEDIAL LAW; RIGHT OF ACCESS TO JUSTICE; IMPLEMENTING RULES.—The above rule, in conjunction with Section 21, Rule 3 and Section 19, Rule 141 of the Rules of Court, the Rule on Mandatory Legal Aid Service and the Rule of Procedure for Small Claims Cases, shall form a solid base of rules upon which the right of access to courts by the poor shall be implemented. With these rules, we equip the poor with the tools to effectively, efficiently and easily enforce their rights in the judicial system.

R E S O L U T I O N

CORONA, *J.*:

On September 23, 2008 the Misamis Oriental Chapter of the Integrated Bar of the Philippines (IBP) promulgated Resolution No. 24, series of 2008.[2] The resolution requested the IBP's National Committee on Legal Aid[3] (NCLA) to ask for the exemption from the payment of filing, docket and other fees of clients of the legal aid offices in the various IBP chapters. Resolution No. 24, series of 2008 provided:

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[2] *Rollo*, pp. 1-2.

[3] Referred to in the resolution as the "National Legal Aid Office."

Re: Request of National Committee on Legal Aid to Exempt Legal Aid Clients from Paying Filing, Docket and other Fees

RESOLUTION NO. 24, SERIES OF 2008

RESOLUTION OF THE IBP–MISAMIS ORIENTAL CHAPTER FOR THE IBP NATIONAL LEGAL AID OFFICE TO REQUEST THE COURTS AND OTHER QUASI-JUDICIAL BODIES, THE PHILIPPINE MEDIATION CENTER AND PROSECUTOR'S OFFICES TO EXEMPT LEGAL AID CLIENTS FROM PAYING FILING, DOCKET AND OTHER FEES INCIDENTAL TO THE FILING AND LITIGATION OF ACTIONS, AS ORIGINAL PROCEEDINGS OR ON APPEAL.

WHEREAS, Section 1, Article I of the Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines (otherwise known as ["]Guideline[s] on Legal Aid["]) provides: *Legal aid is not a matter of charity. It is a means for the correction of social imbalances that may often lead to injustice, for which reason, it is a public responsibility of the Bar. The spirit of public service should therefore unde[r]ly all legal aid offices. The same should be so administered as to give maximum possible assistance to indigent and deserving members of the community in all cases, matters and situations in which legal aid may be necessary to forestall injustice.*

WHEREAS, Section 2 of the same provides: *In order to attain the objectives of legal aid, legal aid office should be as close as possible to those who are in need thereof – the masses. Hence, every chapter of the IBP must establish and operate an adequate legal aid office.*

WHEREAS, the Legal Aid Office of the IBP–Misamis Oriental Chapter has long been operational, providing free legal services to numerous indigent clients, through the chapter's members who render volunteer services in the spirit of public service;

WHEREAS, the courts, quasi-judicial bodies, the various mediation centers and prosecutor's offices are collecting fees, be they filing, docket, motion, mediation or other fees in cases, be they original proceedings or on appeal;

WHEREAS, IBP Legal Aid clients are qualified under the same indigency and merit tests used by the Public Attorney's Office (PAO), and would have qualified for PAO assistance, but for reasons other than indigency, are disqualified from availing of the services of the PAO, like the existence of a conflict of interests or conflicting defenses, and other similar causes;

WHEREAS, PAO clients are automatically exempt from the payment of docket and other fees for cases, be they original proceedings or on appeal, by virtue of the provisions of Section 16–D of R.A. 9406 (PAO Law), without the need for the filing of any petition or motion to declare them as pauper litigants;

WHEREAS, there is no similar provision in any substantive law or procedural law giving IBP Legal Aid clients the same benefits or privileges enjoyed by PAO clients with respect to the payment of docket and other fees before the courts, quasi-judicial bodies and prosecutor's offices;

WHEREAS, the collection of docket and other fees from the IBP Legal Aid clients poses an additional strain to their next to non-existent finances;

WHEREAS, the quarterly allowance given by the National Legal Aid Office to the IBP Misamis Oriental Chapter is insufficient to even cover the incidental expenses of volunteer legal aid lawyers, much less answer for the payment of docket and other fees collected by the courts, quasi-judicial bodies and prosecutor's offices and mediation fees collected by the Philippine Mediation Center;

NOW THEREFORE, on motion of the Board of Officers of the IBP–Misamis Oriental Chapter, be it resolved as it is hereby resolved, to move the IBP National Legal Aid Office to make the necessary requests or representations with the Supreme Court, the Philippine Mediation Center, the Department of Justice and the National Prosecution Service and other quasi-judicial agencies to effect the grant of a like exemption from the payment of filing, docket and other fees to the IBP Legal Aid clients as that enjoyed by PAO clients, towards the end that IBP Legal Aid clients be automatically exempted from the filing of the abovementioned fees;

RESOLVED FURTHER, that copies of this Resolution be furnished to Supreme Court Chief Justice Honorable Reynato S. Puno, IBP National President Feliciano M. Bautista, the IBP Board of Governors, Secretary of Justice Hon. Raul M. Gonzalez, the National Supervisor of the Philippine Mediation Center, the National Labor Relations Commission, the Civil Service Commission and other quasi-judicial bodies and their local offices;

RESOLVED FINALLY to move the IBP Board of Governors and National Officers to make the necessary representations with the National Legislature and its members to effect the filing of a bill

before the House of Representatives and the Senate granting exemption to IBP Legal Aid clients from the payment of docket, filing and or other fees in cases before the courts, quasi-judicial agencies and prosecutor's offices and the mediation centers.

Done this 23rd day of September 2008, Cagayan De Oro City.

Unanimously approved upon motion severally seconded.[4]

The Court noted Resolution No. 24, series of 2008 and required the IBP, through the NCLA, to comment thereon.[5]

In a comment dated December 18, 2008,[6] the IBP, through the NCLA, made the following comments:

(a) Under Section 16-D of RA[7] 9406, clients of the Public Attorneys' Office (PAO) are exempt from the payment of docket and other fees incidental to the institution of action in court and other quasi-judicial bodies. On the other hand, clients of legal aid offices in the various IBP chapters do not enjoy the same exemption. IBP's indigent clients are advised to litigate as pauper litigants under Section 21, Rule 3 of the Rules of Court;

(b) They are further advised to submit documentary evidence to prove compliance with the requirements under Section 21, Rule 3 of the Rules of Court, *i.e.*, certifications from the *barangay* and the Department of Social Welfare and Development. However, not only does the process involve some expense which indigent clients could ill-afford, clients also lack knowledge on how to go about the tedious process of obtaining these documents;

(c) Although the IBP is given an annual legal aid subsidy, the amount it receives from the government is barely enough to cover various operating expenses;[8]

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[4] *Supra* note 2.

[5] Per resolution dated November 18, 2008.

[6] *Rollo*, pp. 8-12.

[7] Republic Act.

[8] These include (i) honoraria (subject to withholding tax) of legal aid lawyers

(d) While each IBP local chapter is given a quarterly allocation (from the legal aid subsidy),[9] said allocation covers neither the incidental expenses defrayed by legal aid lawyers in handling legal aid cases nor the payment of docket and other fees collected by the courts, quasi-judicial bodies and the prosecutor's office, as well as mediation fees and

(e) Considering the aforementioned factors, a directive may be issued by the Supreme Court granting IBP's indigent clients an exemption from the payment of docket and other fees similar to that given to PAO clients under Section 16-D of RA 9406. In this connection, the Supreme Court previously issued a circular exempting IBP clients from the payment of transcript of stenographic notes.[10]

At the outset, we laud the Misamis Oriental Chapter of the IBP for its effort to help improve the administration of justice, particularly, the access to justice by the poor. Its Resolution No. 24, series of 2008 in fact echoes one of the noteworthy recommendations during the *Forum on Increasing Access to Justice* spearheaded by the Court last year. In promulgating Resolution No. 24, the Misamis Oriental Chapter of the IBP has effectively performed its duty to "participate in the development of the legal system by initiating or supporting efforts in law reform and in the administration of justice."[11]

We now move on to determine the merits of the request.

ACCESS TO JUSTICE:
MAKING AN IDEAL A REALITY

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for cost; (ii) up to 70% of bills for operational expenses (including office rental, light/electricity, water and telephone bills); (iii) actual expenses for postage, telegram, supplies, repairs and maintenance of office typewriter, computer and other equipment and office supplies and (iv) transportation of legal aid clerks and lawyers (which cover actual fare only and does not include gasoline expense).

[9] The allocation is in varying amounts duly approved by the IBP Board of Governors.

[10] *Supra* note 6.

[11] *See* Canon 4, Code of Professional Responsibility.

Access to justice by all, especially by the poor, is not simply an ideal in our society. Its existence is essential in a democracy and in the rule of law. As such, it is guaranteed by no less than the fundamental law:

> 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**.[12] (emphasis supplied)

The Court recognizes the right of access to justice as the most important pillar of legal empowerment of the marginalized sectors of our society.[13] Among others, it has exercised its power to "promulgate rules concerning the protection and enforcement of constitutional rights"[14] to open the doors of justice to the underprivileged and to allow them to step inside the courts to be heard of their plaints. In particular, indigent litigants are permitted under Section 21, Rule 3[15] and

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[12] Section 11, Article III, Constitution.

[13] Chief Justice Reynato S. Puno, *Recognizing the Poor*. The speech was delivered on February 27, 2009 at the Malcolm Theater of the U.P. College of Law for the Alphan Lecture Series entitled *Emancipation From Poverty Through Legal Empowerment* sponsored by the Alpha Phi Beta Fraternity of the College of Law of the University of the Philippines. The Chief Justice enumerated four pillars of legal empowerment of the poor, namely, acquisition of property rights, business rights, labor rights and access to justice.

[14] Section 5(5), Article VIII, Constitution.

[15] SECTION 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

Section 19, Rule 14[16] of the Rules of Court to bring suits *in forma pauperis*.

The IBP, pursuant to its general objectives to "improve the administration of justice and enable the Bar to discharge its public responsibility more effectively,"[17] assists the Court in providing the poor access to justice. In particular, it renders free legal aid under the supervision of the NCLA.

A NEW RULE, A NEW TOOL FOR ACCESS TO JUSTICE

Under the IBP's Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the IBP (Guidelines on Legal Aid), the combined "means and merit tests" shall be used to determine the eligibility of an applicant for legal aid:

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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.

[16] SECTION 19. *Indigent-litigants exempt from payment of legal fees*. – Indigent litigant (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 Three Hundred Thousand (₱300,000.00) Pesos shall be exempt from the payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent 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, nor 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.

[17] Section 2, Article I, By-Laws of the IBP.

ARTICLE VIII
TESTS

SEC. 19. *Combined tests*. – The Chapter Legal Aid Committee or the [NCLA], as the case may be, shall pass upon the request for legal aid by the combined application of the means test and merit test, and the consideration of other factors adverted to in the following sections.

SEC. 20. *Means test*. – The means test aims at determining whether the applicant has no visible means of support or his income is otherwise insufficient to provide the financial resources necessary to engage competent private counsel owing to the demands for subsistence of his family, considering the number of his dependents and the conditions prevailing in the locality.

The means test shall not be applicable to applicants who fall under the Developmental Legal Aid Program such as Overseas Filipino Workers, fishermen, farmers, women and children and other disadvantaged groups.

SEC. 21. *Merit test*. – The merit test seeks to ascertain whether or not the applicant's cause of action or his defense is valid and chances of establishing the same appear reasonable.

SEC. 22. *Other factors*. – The effect of the Legal Aid Service or of the failure to render the same upon the Rule of Law, the proper administration of justice, the public interest involved in given cases and the practice of law in the locality shall likewise be considered.

SEC. 23. *Private practice*. – Care shall be taken that the Legal aid is not availed of to the detriment of the private practice of law, or taken advantage of by anyone for personal ends.

SEC. 24. *Denial*. – Legal aid may be denied to an applicant already receiving adequate assistance from any source other than the Integrated Bar.

The "means and merit tests" appear to be reasonable determinants of eligibility for coverage under the legal aid program of the IBP. Nonetheless, they may be improved to ensure that any exemption from the payment of legal fees that may be granted to clients of the NCLA and the legal aid offices of the various IBP chapters will really further the right of access to justice by the poor. This will guarantee that the exemption will

neither be abused nor trivialized. Towards this end, the following shall be observed by the NCLA and the legal aid offices in IBP chapters nationwide in accepting clients and handling cases for the said clients:

A.M. No. 08-11-7-SC (IRR): Re: Rule on the Exemption From the Payment of Legal Fees of the Clients of the National Committee on Legal Aid and of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines

Rule on the Exemption From the Payment of Legal Fees of the Clients of the National Committee on Legal Aid (NCLA) and of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines (IBP)

ARTICLE I
Purpose

Section 1. *Purpose*. – This Rule is issued for the purpose of enforcing the right of free access to courts by the poor guaranteed under Section 11, Article III of the Constitution. It is intended to increase the access to justice by the poor by exempting from the payment of legal fees incidental to instituting an action in court, as an original proceeding or on appeal, qualified indigent clients of the NCLA and of the legal aid offices in local IBP chapters nationwide.

ARTICLE II
Definition of Terms

Section 1. *Definition of important terms*. – For purposes of this Rule and as used herein, the following terms shall be understood to be how they are defined under this Section:

(a) "Developmental legal aid" means the rendition of legal services in public interest causes involving overseas workers, fisherfolk, farmers, laborers, indigenous cultural communities, women, children and other disadvantaged groups and marginalized sectors;

(b) "Disinterested person" refers to the *punong barangay* having jurisdiction over the place where an applicant for legal aid or client of the NCLA or chapter legal aid office resides;

(c) "Falsity" refers to any material misrepresentation of fact or any fraudulent, deceitful, false, wrong or misleading

statement in the application or affidavits submitted to support it or the affidavit of a disinterested person required to be submitted annually under this Rule which may substantially affect the determination of the qualifications of the applicant or the client under the means and merit tests;

(d) "Legal fees" refers to the legal fees imposed under Rule 141 of the Rules of Court as a necessary incident of instituting an action in court either as an original proceeding or on appeal. In particular, it includes filing or docket fees, appeal fees, fees for issuance of provisional remedies, mediation fees, sheriff's fees, stenographer's fees (that is fees for transcript of stenographic notes) and commissioner's fees;

(e) "Means test" refers to the set of criteria used to determine whether the applicant is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family;

(f) "Merit test" refers to the ascertainment of whether the applicant's cause of action or his defense is valid and whether the chances of establishing the same appear reasonable and

(g) "Representative" refers to the person authorized to file an application for legal aid in behalf of the applicant when the said applicant is prevented by a compelling reason from personally filing his application. As a rule, it refers to the immediate family members of the applicant. However, it may include any of the applicant's relatives or any person or concerned citizen of sufficient discretion who has first-hand knowledge of the personal circumstances of the applicant as well as of the facts of the applicant's case.

ARTICLE III
Coverage

Section 1. *Persons qualified for exemption from payment of legal fees*. – Persons who shall enjoy the benefit of exemption from the payment of legal fees incidental to instituting an action in court, as an original proceeding or on appeal, granted under this Rule shall be limited only to clients of the NCLA and the chapter legal aid offices.

The said clients shall refer to those indigents qualified to receive free legal aid service from the NCLA and the chapter legal aid offices. Their qualifications shall be determined based on the tests provided in this Rule.

Section 2. *Persons not covered by the Rule*. – The following shall be disqualified from the coverage of this Rule. Nor may they be accepted as clients by the NCLA and the chapter legal aid offices.

(a) Juridical persons; except in cases covered by *developmental legal aid* or public interest causes involving juridical entities which are non-stock, non-profit organizations, non-governmental organizations and people's organizations whose individual members will pass the means test provided in this Rule;

(b) Persons who do not pass the means and merit tests;

(c) Parties already represented by a counsel *de parte*;

(d) Owners or lessors of residential lands or buildings with respect to the filing of collection or unlawful detainer suits against their tenants and

(e) Persons who have been clients of the NCLA or chapter legal aid office previously in a case where the NCLA or chapter legal aid office withdrew its representation because of a falsity in the application or in any of the affidavits supporting the said application.

Section 3. *Cases not covered by the Rule*. – The NCLA and the chapter legal aid offices shall not handle the following:

(a) Cases where conflicting interests will be represented by the NCLA and the chapter legal aid offices and

(b) Prosecution of criminal cases in court.

ARTICLE IV
Tests of Indigency

Section 1. *Tests for determining who may be clients of the NCLA and the legal aid offices in local IBP chapters*. – The NCLA or the chapter legal aid committee, as the case may be, shall pass upon requests for legal aid by the combined application of the means and merit tests and the consideration of other relevant factors provided for in the following sections.

Section 2. *Means test; exception*. – (a) This test shall be based on the following criteria: (i) the applicant and that of his immediate family must have a gross monthly income that does not exceed an amount double the monthly minimum wage of an employee in the place where the applicant resides and (ii) he does not own real property with a fair market value as stated in the current tax declaration of more than Three Hundred Thousand (₱300,000.00) Pesos.

In this connection, the applicant shall execute an affidavit of indigency (printed at the back of the application form) stating that he and his immediate family do not earn a gross income abovementioned, nor own any real property with the fair value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the applicant's affidavit. The latest income tax return and/or current tax declaration, if any, shall be attached to the applicant's affidavit.

(b) The means test shall not be applicable to applicants who fall under the developmental legal aid program such as overseas workers, fisherfolk, farmers, laborers, indigenous cultural communities, women, children and other disadvantaged groups.

Section 3. *Merit test*. – A case shall be considered meritorious if an assessment of the law and evidence at hand discloses that the legal service will be in aid of justice or in the furtherance thereof, taking into consideration the interests of the party and those of society. A case fails this test if, after consideration of the law and evidence presented by the applicant, it appears that it is intended merely to harass or injure the opposite party or to work oppression or wrong.

Section 4. *Other relevant factors that may be considered*. – The effect of legal aid or of the failure to render the same upon the rule of law, the proper administration of justice, the public interest involved in a given case and the practice of law in the locality shall likewise be considered.

ARTICLE V
Acceptance and Handling of Cases

Section 1. *Procedure in accepting cases*. – The following procedure shall be observed in the acceptance of cases for purposes of this Rule:

(a) Filing of application – An application shall be made personally by the applicant, unless there is a compelling

reason which prevents him from doing so, in which case his representative may apply for him. It shall adhere substantially to the form made for that purpose. It shall be prepared and signed by the applicant or, in proper cases, his duly authorized representative in at least three copies.

Applications for legal aid shall be filed with the NCLA or with the chapter legal aid committee.

The NCLA shall, as much as possible, concentrate on cases of paramount importance or national impact.

Requests received by the IBP National Office shall be referred by the NCLA to the proper chapter legal aid committee of the locality where the cases have to be filed or are pending. The chapter president and the chairman of the chapter's legal aid committee shall be advised of such referral.

(b) Interview – The applicant shall be interviewed by a member of the chapter legal aid committee or any chapter member authorized by the chapter legal aid committee to determine the applicant's qualifications based on the means and merit tests and other relevant factors. He shall also be required to submit copies of his latest income tax returns and/or current tax declaration, if available, and execute an affidavit of indigency printed at the back of the application form with the supporting affidavit of a disinterested person attesting to the truth of the applicant's affidavit.

After the interview, the applicant shall be informed that he can follow up the action on his application after five (5) working days.

(c) Action on the application – The chapter legal aid committee shall pass upon every request for legal aid and submit its recommendation to the chapter board of officers within three (3) working days after the interview of the applicant. The basis of the recommendation shall be stated.

The chapter board of officers shall review and act on the recommendation of the chapter legal aid committee within two (2) working days from receipt thereof; *Provided*, however, that in urgent matters requiring prompt or immediate action, the chapter's executive director of legal

aid or whoever performs his functions may provisionally act on the application, subject to review by the chapter legal aid committee and, thereafter, by the chapter board of officers.

The action of the chapter board of officers on the application shall be final.

(d) *Cases which may be provisionally accepted*. – In the following cases, the NCLA or the chapter legal aid office, through the chapter's executive director of legal aid or whoever performs his functions may accept cases provisionally pending verification of the applicant's indigency and an evaluation of the merit of his case.

(i) Where a warrant for the arrest of the applicant has been issued;

(ii) Where a pleading has to be filed immediately to avoid adverse effects to the applicant;

(iii) Where an appeal has to be urgently perfected or a petition for *certiorari*, prohibition or *mandamus* filed has to be filed immediately; and

(iv) Other similar urgent cases.

(e) Assignment of control number – Upon approval of the chapter board of officers of a person's application and the applicant is found to be qualified for legal assistance, the case shall be assigned a control number. The numbering shall be consecutive starting from January to December of every year. The control number shall also indicate the region and the chapter handling the case.

Example:

Region[18]	Chapter	Year	Month	Number
GM -	Manila -	2009 -	03 -	099

[18] For purposes of the Rule, the following abbreviations shall be used to refer to the various regions of the IBP: NL – Northern Luzon, CL – Central Luzon, GM – Greater Manila, SL – Southern Luzon, B – Bicolandia, EV – Eastern Visayas, WV – Western Visayas, EM – Eastern Mindanao and WM – Western Mindanao.

(f) Issuance of a certification – After an application is approved and a control number duly assigned, the chapter board of officers shall issue a certification that the person (that is, the successful applicant) is a client of the NCLA or of the chapter legal aid office. The certification shall bear the control number of the case and shall state the name of the client and the nature of the judicial action subject of the legal aid of the NCLA or the legal aid office of a local IBP chapter.

The certification shall be issued to the successful applicant free of charge.

Section 2. *Assignment of cases.* – After a case is given a control number, the chapter board of officers shall refer it back to the chapter legal aid committee. The chapter legal aid committee shall assign the case to any chapter member who is willing to handle the case.

In case no chapter member has signified an intention to handle the case voluntarily, the chapter legal aid committee shall refer the matter to the chapter board of officers together with the names of at least three members who, in the chapter legal aid committee's discretion, may competently render legal aid on the matter. The chapter board of officers shall appoint one chapter member from among the list of names submitted by the chapter legal aid committee. The chapter member chosen may not refuse the appointment except on the ground of conflict of interest or other equally compelling grounds as provided in the Code of Professional Responsibility,[19] in which case the chapter board of officers shall appoint his replacement from among the remaining names in the list previously submitted by the chapter legal aid committee.

The chapter legal aid committee and the chapter board of officers shall take the necessary measures to ensure that cases are well-distributed to chapter members.

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[19] This is based on the principle that legal aid is not a matter of charity. It is a means for the correction of social imbalances that may and often do lead to injustice, for which reason it is a public responsibility of the bar. The spirit of public service should, therefore, underlie all legal aid offices. The same should be so administered as to give maximum possible assistance to indigent and deserving members of the community in all cases, matters and situations in which legal aid may be necessary to forestall an injustice (Section 1, Article I, Guidelines on Legal Aid). The aforementioned principle is likewise a primary basis of the Rule on Mandatory Legal Aid Service.

Section 3. *Policies and guidelines in the acceptance and handling of cases*. – The following policies and guidelines shall be observed in the acceptance and handling of cases:

(a) First come, first served – Where both the complainant/plaintiff/petitioner and defendant/respondent apply for legal aid and both are qualified, the first to seek assistance shall be given preference.

(b) Avoidance of conflict of interest – Where acceptance of a case will give rise to a conflict of interest on the part of the chapter legal aid office, the applicant shall be duly informed and advised to seek the services of a private counsel or another legal aid organization.

Where handling of the case will give rise to a conflict of interest on the part of the chapter member assigned to the case, the client shall be duly informed and advised about it. The handling lawyer shall also inform the chapter legal aid committee so that another chapter member may be assigned to handle the case. For purposes of choosing the substitute handling lawyer, the rule in the immediately preceding section shall be observed.

(c) Legal aid is purely gratuitous and honorary – No member of the chapter or member of the staff of the NCLA or chapter legal aid office shall directly or indirectly demand or request from an applicant or client any compensation, gift or present for legal aid services being applied for or rendered.

(d) Same standard of conduct and equal treatment – A chapter member who is tasked to handle a case accepted by the NCLA or by the chapter legal aid office shall observe the same standard of conduct governing his relations with paying clients. He shall treat the client of the NCLA or of the chapter legal aid office and the said client's case in a manner that is equal and similar to his treatment of a paying client and his case.

(e) Falsity in the application or in the affidavits – Any falsity in the application or in the affidavit of indigency or in the affidavit of a disinterested person shall be sufficient cause for the NCLA or chapter legal aid office to withdraw or terminate the legal aid. For this purpose, the chapter board of officers shall authorize the handling lawyer to file the

proper manifestation of withdrawal of appearance of the chapter legal aid office in the case with a motion for the dismissal of the complaint or action of the erring client. The court, after hearing, shall approve the withdrawal of appearance and grant the motion, without prejudice to whatever criminal liability may have been incurred.

Violation of this policy shall disqualify the erring client from availing of the benefits of this Rule in the future.

(f) Statement in the initiatory pleading – To avail of the benefits of the Rule, the initiatory pleading shall state as an essential preliminary allegation that (i) the party initiating the action is a client of the NCLA or of the chapter legal aid office and therefore entitled to exemption from the payment of legal fees under this Rule and (ii) a certified true copy of the certification issued pursuant to Section 1(e), of this Article is attached or annexed to the pleading.

Failure to make the statement shall be a ground for the dismissal of the action without prejudice to its refiling.

The same rule shall apply in case the client, through the NCLA or chapter legal aid office, files an appeal.

(g) Attachment of certification in initiatory pleading – A certified true copy of the certification issued pursuant to Section 1(e), of this Article shall be attached as an annex to the initiatory pleading.

Failure to attach a certified true copy of the said certification shall be a ground for the dismissal of the action without prejudice to its refiling.

The same rule shall apply in case the client, through the NCLA or chapter legal aid office, files an appeal.

(h) Signing of pleadings – All complaints, petitions, answers, replies, memoranda and other important pleadings or motions to be filed in courts shall be signed by the handling lawyer and co-signed by the chairperson or a member of the chapter legal aid committee, or in urgent cases, by the executive director of legal aid or whoever performs his functions.

Ordinary motions such as motions for extension of time to file a pleading or for postponement of hearing and manifestations may be signed by the handling lawyer alone.

(i) Motions for extension of time or for postponement – The filing of motions for extension of time to file a pleading or for postponement of hearing shall be avoided as much as possible as they cause delay to the case and prolong the proceedings.

(j) Transfer of cases – Transfer of cases from one handling lawyer to another shall be affected only upon approval of the chapter legal aid committee.

Section 4. *Decision to appeal*. – (a) All appeals must be made on the request of the client himself. For this purpose, the client shall be made to fill up a request to appeal.

(b) Only meritorious cases shall be appealed. If the handling lawyer, in consultation with the chapter legal aid committee, finds that there is no merit to the appeal, the client should be immediately informed thereof in writing and the record of the case turned over to him, under proper receipt. If the client insists on appealing the case, the lawyer handling the case should perfect the appeal before turning over the records of the case to him.

Section 5. *Protection of private practice*. – Utmost care shall be taken to ensure that legal aid is neither availed of to the detriment of the private practice of law nor taken advantage of by anyone for purely personal ends.

ARTICLE VI
Withdrawal of Legal Aid and Termination of Exemption

Section 1. *Withdrawal of legal aid*. – The NCLA or the chapter legal aid committee may, in justifiable instances as provided in the next Section, direct the handling lawyer to withdraw representation of a client's cause upon approval of the IBP Board of Governors (in the case of the NCLA) or of the chapter board of officers (in the case of the chapter legal aid committee) and through a proper motion filed in Court.

Section 2. *Grounds for withdrawal of legal aid*. – Withdrawal may be warranted in the following situations:

(a) In a case that has been provisionally accepted, where it is subsequently ascertained that the client is not qualified for legal aid;

(b) Where the client's income or resources improve and he no longer qualifies for continued assistance based on the means test. For this purpose, on or before January 15 every year, the client shall submit an affidavit of a disinterested person stating that the client and his immediate family do not earn a gross income mentioned in Section 2, Article V, nor own any real property with the fair market value mentioned in the same Section;

(c) When it is shown or found that the client committed a falsity in the application or in the affidavits submitted to support the application;

(d) When the client subsequently engages a *de parte* counsel or is provided with a *de oficio* counsel;

(e) When, despite proper advice from the handling lawyer, the client cannot be refrained from doing things which the lawyer himself ought not do under the ethics of the legal profession, particularly with reference to their conduct towards courts, judicial officers, witnesses and litigants, or the client insists on having control of the trial, theory of the case, or strategy in procedure which would tend to result in incalculable harm to the interests of the client;

(f) When, despite notice from the handling lawyer, the client does not cooperate or coordinate with the handling lawyer to the prejudice of the proper and effective rendition of legal aid such as when the client fails to provide documents necessary to support his case or unreasonably fails to attend hearings when his presence thereat is required; and

(g) When it becomes apparent that the representation of the client's cause will result in a representation of conflicting interests, as where the adverse party had previously engaged the services of the NCLA or of the chapter legal aid office and the subject matter of the litigation is directly related to the services previously rendered to the adverse party.

Section 3. *Effect of withdrawal*. – The court, after hearing, shall allow the NCLA or the chapter legal aid office to withdraw if it is satisfied that the ground for such withdrawal exists.

Except when the withdrawal is based on paragraphs (b), (d) and (g) of the immediately preceding Section, the court shall also order the dismissal of the case. Such dismissal is without prejudice to whatever criminal liability may have been incurred if the withdrawal is based on paragraph (c) of the immediately preceding Section.

ARTICLE VII
Miscellaneous Provisions

Section 1. *Lien on favorable judgment*. – The amount of the docket and other lawful fees which the client was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.

In case, attorney's fees have been awarded to the client, the same shall belong to the NCLA or to the chapter legal aid office that rendered the legal aid, as the case may be. It shall form part of a special fund which shall be exclusively used to support the legal aid program of the NCLA or the chapter legal aid office. In this connection, the chapter board of officers shall report the receipt of attorney's fees pursuant to this Section to the NCLA within ten (10) days from receipt thereof. The NCLA shall, in turn, include the data on attorney's fees received by IBP chapters pursuant to this Section in its liquidation report for the annual subsidy for legal aid.

Section 2. *Duty of NCLA to prepare forms*. – The NCLA shall prepare the standard forms to be used in connection with this Rule. In particular, the NCLA shall prepare the following standard forms: the application form, the affidavit of indigency, the supporting affidavit of a disinterested person, the affidavit of a disinterested person required to be submitted annually under Section 2(b), Article VI, the certification issued by the NCLA or the chapter board of officers under Section 1(f), Article V and the request to appeal.

The said forms, except the certification, shall be in Filipino. Within sixty (60) days from receipt of the forms from the NCLA, the chapter legal aid offices shall make translations of the said forms in the dominant dialect used in their respective localities.

Section 3. *Effect of Rule on right to bring suits in forma pauperis*. – Nothing in this Rule shall be considered to preclude those persons

not covered either by this Rule or by the exemption from the payment of legal fees granted to clients of the Public Attorney's Office under Section 16-D of RA 9406 to litigate *in forma pauperis* under Section 21, Rule 3 and Section 19 Rule 141 of the Rules of Court.

Section 4. *Compliance with Rule on Mandatory Legal Aid Service.* – Legal aid service rendered by a lawyer under this Rule either as a handling lawyer or as an interviewer of applicants under Section 1(b), Article IV hereof shall be credited for purposes of compliance with the Rule on Mandatory Legal Aid Service.

The chairperson of the chapter legal aid office shall issue the certificate similar to that issued by the Clerk of Court in Section 5(b) of the Rule on Mandatory Legal Aid Service.

ARTICLE VIII
Effectivity

Section 1. *Effectivity.* – This Rule shall become effective after fifteen days following its publication in a newspaper of general circulation.

The above rule, in conjunction with Section 21, Rule 3 and Section 19, Rule 141 of the Rules of Court, the Rule on Mandatory Legal Aid Service and the Rule of Procedure for Small Claims Cases, shall form a solid base of rules upon which the right of access to courts by the poor shall be implemented. With these rules, we equip the poor with the tools to effectively, efficiently and easily enforce their rights in the judicial system.

A FINAL WORD

Equity will not suffer a wrong to be without a remedy. *Ubi jus ibi remedium.* Where there is a right, there must be a remedy. The remedy must not only be effective and efficient, but also readily accessible. For a remedy that is inaccessible is no remedy at all.

The Constitution guarantees the rights of the poor to free access to the courts and to adequate legal assistance. The legal aid service rendered by the NCLA and legal aid offices of IBP chapters nationwide addresses only the right to adequate legal assistance. Recipients of the service of the NCLA and legal aid offices of IBP chapters may enjoy free access to courts by

exempting them from the payment of fees assessed in connection with the filing of a complaint or action in court. With these twin initiatives, the guarantee of Section 11, Article III of Constitution is advanced and access to justice is increased by bridging a significant gap and removing a major roadblock.

WHEREFORE, the Misamis Oriental Chapter of the Integrated Bar of the Philippines is hereby *COMMENDED* for helping increase the access to justice by the poor. The request of the Misamis Oriental Chapter for the exemption from the payment of filing, docket and other fees of the clients of the legal aid offices of the various IBP chapters is *GRANTED*. The Rule on the Exemption From the Payment of Legal Fees of the Clients of the National Committee on Legal Aid (NCLA) and of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines (IBP) (which shall be assigned the docket number A.M. No. 08-11-7-SC [IRR] provided in this resolution is hereby *APPROVED*. In this connection, the Clerk of Court is *DIRECTED* to cause the publication of the said rule in a newspaper of general circulation within five days from the promulgation of this resolution.

The Office of the Court Administrator is hereby directed to promptly issue a circular to inform all courts in the Philippines of the import of this resolution.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-08-2501. August 28, 2009]

WILSON B. TAN, *petitioner, vs.* **JESUS F. HERNANDO,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; COURT PERSONNEL; A COURT EMPLOYEE HAS A MORAL AND LEGAL DUTY TO PAY JUST DEBTS.— Having incurred just debts, Hernando had the moral and legal duty to pay them when they became due. As a court employee, he must comply with his valid contractual obligation, act fairly and adhere to high ethical standards to preserve the Judiciary's integrity and reputation. Unfortunately, he failed to prove that he had adequately discharged his obligation. Hence, his actuations warrant condign disciplinary action. The law on disciplinary action for nonpayment of just debts is Section 46(b)(22), Chapter 7, Subtitle A (Civil Service Commission), Title I, Book V of Executive Order (EO) No. 292 (*The Revised Administrative Code of* 1987) x x x Under Section 22, Rule XIV of the Rules Implementing Book V of EO No. 292, as modified by Section 52(C)(10), Rule IV of Resolution No. 991936 of the Civil Service Commission (*Uniform Rules on Administrative Cases in the Civil Service*), just debts include: 1) claims adjudicated by a court of law; or 2) claims the existence and justness of which are admitted by the debtor. Hernando's obligation falls under both classifications. Hernando cannot escape administrative responsibility. As we said in *Orasa v. Seva:* The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. "While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office." Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of (*sic*) onus and must at all times be characterized by, among other things, uprightness, propriety and decorum.

D E C I S I O N

BERSAMIN, *J.*:

All Judiciary employees are expected to be exemplars of fairness and honesty in both their official conduct and their personal actuations, including their business and commercial transactions. The community sees them in no other light. Thus, we insist upon this standard in dealing with the administrative complaint against an employee in the Office of the Clerk of Court of the Regional Trial Court (RTC) in Dumaguete City, Negros Oriental.

The antecedents follow.

By his letter-complaint dated July 5, 1999,[1] complainant Wilson Tan charged respondent Jesus F. Hernando, Clerk IV, with dishonesty, moral turpitude and conduct unbecoming a public officer. He alleged that on October 1, 1998, Hernando, then with the Office of the Clerk of Court, went to his store to borrow ₱3,000.00 because Hernando then needed money; that as payment Hernando promised to deliver his October 1998 half-month salary check worth ₱3,000.00 upon receiving it, which promise was reflected on an acknowledgement receipt; that Hernando reneged on his promise and did not pay his obligation despite repeated demands; and that the act of Hernando compelled him to commence a criminal case for *estafa* against Hernando.[2]

In his comment dated September 9, 1999,[3] Hernando admitted that he had borrowed ₱3,000.00 from the complainant on October 1, 1998, but insisted that he had already paid the loan in full on January 27, 1999. However, the acknowledgment receipt[4] issued by the complainant stated that Hernando still had a balance of ₱1,500.00.

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[1] *Rollo*, pp. 3-4.

[2] *Id*.

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

[4] *Id*., p. 13.

On March 12, 2001, we referred the matter to Executive Judge Eleuterio E. Chiu of the RTC in Dumaguete City for investigation, report and recommendation.[5]

In his report and recommendation dated June 29, 2001,[6] Judge Chiu recommended the following alternative courses of action, namely:

a) That the decision on the matter be held in abeyance until after a verdict was promulgated in Criminal Case No. L-345 of the Municipal Trial Court in Cities (MTCC), Branch 2, Dumaguete City (that is, the criminal case the complainant had filed against Hernando charging him with other deceits), because said case was based on the same facts involved in the administrative matter; or

b) That Hernando be suspended for 5 days, without pay, for dishonesty due to his failure to keep his promise to pay to the complainant the obligation of ₱3,000.00.

On December 10, 2001, the Court resolved to hold in abeyance its action on the evaluation, report and recommendation in order to await the final outcome of Criminal Case No. L-345.[7]

On May 8, 2007, the Office of the Court Administrator (OCAd) received from the complainant a certified copy of the decision promulgated in Criminal Case No. L-345 on August 9, 2004 by the MTCC, Branch 2, in Dumaguete City,[8] together with the entry of final judgment.[9]

On October 1, 2007, the Court referred the matter to the Executive Judge, RTC, in Dumaguete City for evaluation, report and recommendation.

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

[6] *Id.*, pp. 104-108.

[7] *Id.*, p. 114.

[8] *Id.*, pp. 131-135.

[9] *Id.*, p. 136.

Through her letter dated January 14, 2008,[10] RTC Executive Judge Fe Lualhati D. Bustamante reported that the decision in Criminal Case No. L-345 rendered by the MTCC, Branch 2, in Dumaguete City had absolved Hernando criminally but had ordered him to pay to the complainant the amount of ₱3,000.00 and interest at the rate of 12% *per annum* from October 1, 1998 until the amount was fully satisfied. She noted that Hernando had reached the compulsory age of retirement on December 25, 2004.

In the same report, Executive Judge Bustamante also made the following recommendation, to wit:

> Mr. Hernando is in the twilight of his years. In his youth, he may have committed certain indiscretions. But he was a model employee, well-liked and steadfast in his work as clerk in the Office of the Clerk of Court of the then Court of First Instance and later the Regional Trial Court. He married late and had children who are still of tender ages (the youngest is ten years old). This is the reason why he had to resort to borrowing as his salary is not enough to support a growing family as the wife is unemployed. Mr. Hernando was humble enough to admit that as of the moment, he could not pay his obligation to Dr. Tan as he is living on a day to day basis as his salary was cut off upon retirement.
>
> The undersigned therefore recommends that the Court adopts the findings of his honor, Roderick A. Maxino, who found that he is civilly liable to Dr. Wilson B. Tan in the amount of ₱3,000.00 and that he be ordered to pay the aforesaid amount with interest of 12% from 1 October 1998 until fully paid.
>
> The undersigned humbly recommends that Mr. Hernando be allowed to retire so that the retirement benefits due him be released.

On March 12, 2008, we referred the matter to the OCAd for evaluation, report and recommendation.[11]

In the memorandum dated May 8, 2008,[12] Court Administrator Zenaida Elepaño stated:

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[10] *Id*., pp. 141-142.

[11] *Id*., p. 150.

[12] *Id*., pp. 152-155.

The trial court absolved respondent of the crime of other deceits but found him civilly liable to complainant in the amount of ₱3,000.00 with interest at the rate of 12% per annum from October 1, 1998 until the amount is fully satisfied. The trial court explained that respondent's civil liability was pegged at ₱3,000.00, the full amount of the loan, in view of the parties' failure to show proof of the amount that has been paid by the respondent, thus, leaving the outstanding balance uncertain.

Considering the foregoing, we recommend that Respondent be found guilty of "willful failure to pay just debts" which is classified as a light offense and punishable as follows: 1st offense - reprimand; 2nd offense - suspension for one (1) day to thirty (30) days; 3rd offense - dismissal. Just debts refer to (1) claims adjudicated by a court of law; or (2) claims the existence and justness of which are admitted by the debtor.

This being respondent's first offense, the imposable penalty would have been a reprimand. However, since respondent already reached the compulsory retirement age on 25 December 2004 and is no longer reporting to work, the penalty of fine should be imposed instead.

WHEREFORE, premises considered, it is respectfully recommended that the instant complaint be re-docketed as a regular administrative matter and that respondent Jesus F. Hernando be FINED in the amount of ₱5,000.00.

We adopt the recommendation of the Court Administrator because it was supported by the evidence on record.

Having incurred just debts, Hernando had the moral and legal duty to pay them when they became due. As a court employee, he must comply with his valid contractual obligation, act fairly and adhere to high ethical standards to preserve the Judiciary's integrity and reputation. Unfortunately, he failed to prove that he had adequately discharged his obligation. Hence, his actuations warrant condign disciplinary action.

The law on disciplinary action for nonpayment of just debts is Section 46(b)(22), Chapter 7, Subtitle A (Civil Service Commission), Title I, Book V of Executive Order (EO) No. 292 (*The Revised Administrative Code of* 1987), which pertinently states:

Sec. 46. *Discipline: General Provisions.*— (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(22) Willful failure to pay just debts or willful failure to pay taxes due to the government;

x x x x x x x x x

Under Section 22, Rule XIV of the Rules Implementing Book V of EO No. 292, as modified by Section 52(C)(10), Rule IV of Resolution No. 991936 of the Civil Service Commission (*Uniform Rules on Administrative Cases in the Civil Service*), just debts include: 1) claims adjudicated by a court of law; or 2) claims the existence and justness of which are admitted by the debtor. Hernando's obligation falls under both classifications.

Hernando cannot escape administrative responsibility. As we said in *Orasa v. Seva:*[13]

> The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. "While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office." Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of (*sic*) onus and must at all times be characterized by, among other things, uprightness, propriety and decorum.

The Court Administrator recommends a fine of ₱5,000.00, in lieu of reprimand, the penalty for the violation to be imposed on a first-time offender like Hernando. The recommendation is premised on the fact that he had meanwhile retired from the service, rendering reprimand an impractical and ineffectual penalty.

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[13] A.M. No. P-03-1669, October 5, 2005, 472 SCRA 75, 84-85.

Although we agree that a fine is appropriate under the circumstances, we hold that the amount be only ₱1,000.00 considering that Hernando had already been adjudged by the MTCC in the criminal case to pay to the complainant the amount of ₱3,000.00.

WHEREFORE, respondent Jesus F. Hernando is fined in the amount of ₱1,000.00.

In the interest of justice and for humanitarian reasons, the Court directs that the respondent's retirement benefits be released to him at the soonest possible time.

SO ORDERED.

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

EN BANC

[A.M. No. P-08-2553. August 28, 2009]
(Formerly A.M. OCA IPI No. 98-455-P)

LEO MENDOZA, *complainant, vs.* **PROSPERO V. TABLIZO, CLERK OF COURT VI, REGIONAL TRIAL COURT, VIRAC, CATANDUANES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; COURT PERSONNEL; FAILURE TO APPEAR AND ANSWER THE CHARGES CONSTITUTES A WAIVER OF RIGHT TO DEFEND HIMSELF AND AN IMPLIED ADMISSION OF THE CHARGES AGAINST HIM.— The failure of Tablizo to appear and answer the charges against him despite all the opportunities he was given constitutes a waiver of his right to defend himself. As correctly observed in the

Memorandum of the Office of the Court Administrator, in the natural order of things, a man would resist an unfounded claim or imputation and defend himself. It is totally against human nature to remain silent and say nothing in the face of false accusations. In the case at bar, Tablizo's silence may be construed as an implied admission and acknowledgment of the veracity of the allegations stated in the sworn Letter-Complaint filed by Mendoza – the veracity of which he could have easily debunked had he come to the fore to assail them. By his silence, he admitted, albeit tacitly, the allegations subscribed and sworn to by Mendoza that he cancelled the auction sale without the knowledge of the Executive Judge and without notice to Mendoza, and refused to accept another petition filed by Mendoza for extrajudicial foreclosure against mortgagor spouses Ricardo and Adelina Abrasaldo.

2. ID.; ID.; ID.; ID.; A SHERIFF'S ACTS OF UNILATERALLY CANCELLING AN AUCTION SALE AND REFUSING TO ACCEPT A PETITION FOR EXTRAJUDICIAL FORECLOSURE CONSTITUTE GRAVE MISCONDUCT, INCOMPETENCE, MALFEASANCE AND MISFEASANCE.— The evidence on record clearly establishes that the first petition filed by Mendoza for extrajudicial foreclosure against mortgagor David Joson was stamped received and docketed as Foreclosure No. F0184. The corresponding filing fees and cost of publication were paid. The Notice to Parties of Sheriff's Public Auction Sale and the Notice of Extrajudicial Foreclosure with Auction Sale of Real Property under Act No. 3135, as amended, were likewise issued by Tablizo. Thus, when Tablizo cancelled the auction sale for no reason and without the knowledge and consent of the Executive Judge, he did so in clear violation of his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under the Administrative Order. As to the second petition for extrajudicial foreclosure filed by Mendoza against mortgagor spouses Ricardo and Adelina Abrasaldo which was allegedly refused outright by Tablizo, the evidence on record shows that the said petition was marked with the receiving stamp of the Office of the Clerk of Court of the Regional Trial Court of Virac, Catanduanes. The same petition also bears the mark "F-0193" at the upper right-hand corner of the first page. The mark appears to denote that the petition, docketed as Foreclosure No. F0193, is an Extrajudicial Foreclosure Sale under Act No. 3135, as

amended. It raises valid suspicion, however, why the receiving stamp was left blank despite the docket number written on the petition. This unexplained act on the part of Tablizo shows another violation of his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under Administrative Order No. 3, Series of 1984. We have reminded sheriffs time and again that, as court employees, they must conduct themselves with propriety and decorum so that their actions must be above suspicion at all times. x x x The acts and omissions of Tablizo in both instances fell short of this standard set by the Court. Thus, for failing to do what was incumbent upon him under the law, we find Tablizo guilty of grave misconduct, incompetence, malfeasance and misfeasance.

3. ID.; ID.; ID.; ID.; CONTUMACIOUS REFUSAL TO COMMENT ON THE CHARGES AGGRAVATES THE FINDING OF GRAVE MISCONDUCT.— Tablizo's contumacious refusal to comment on the administrative cases filed against him is glaring proof of his recalcitrance and stubbornness to obey legitimate orders of the Court, as well as his utter disregard of the Court's power of administrative supervision over its employees. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. This Court, being the agency exclusively vested by the Constitution with administrative supervision over all courts, can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority. In the case at bar, the silence and contumacious refusal of Tablizo to comment on the charges filed against him aggravate our finding of grave misconduct, incompetence, malfeasance and misfeasance and leave the Court with no alternative but to uphold the recommendation of the Office of the Court Administrator to forfeit his retirement benefits, except his accrued leave credits, and with prejudice to re-employment in the government service. Had it not been for his compulsory retirement, respondent would have been meted the penalty of dismissal from the service considering that his acts of unilaterally cancelling the auction sale and refusing to accept a petition for extrajudicial foreclosure constituted intentional violation of the law and established rules.

APPEARANCES OF COUNSEL

Angeles A. Velasco for complainant.

D E C I S I O N

PUNO, *C.J.*:

Complainant Leo Mendoza charged respondent Prospero V. Tablizo, Clerk of Court VI of the Regional Trial Court of Virac, Catanduanes, in his capacity as *Ex-Officio* Sheriff, with grave misconduct, misfeasance, malfeasance and incompetence in a sworn Letter-Complaint[1] dated 23 April 1998.

Mendoza, as mortgagee, applied for the satisfaction of the loan obligation of mortgagor David Joson in an extrajudicial foreclosure which he filed in February 1998. Mendoza had paid the filing fee and the cost of the publication of the Notice of the Extrajudicial Sale. However, on 10 March 1998, without the knowledge of the Executive Judge and without notice to Mendoza, Tablizo allegedly cancelled the auction sale. Mendoza was also allegedly informed, through a letter by a Deputy Sheriff, that the interest to be charged should not exceed 12% per annum and not as that stipulated in the Deed of Mortgage. Mendoza later filed another petition for extrajudicial foreclosure against mortgagor spouses Ricardo and Adelina Abrasaldo but Tablizo allegedly refused to accept the same.

Mendoza alleged that Tablizo's actions violated Supreme Court Administrative Order No. 3, Series of 1984, which vested on the Executive Judge direct supervision over the Clerk of Court in connection with all applications for extrajudicial foreclosure of mortgage under Act No. 3135, as amended by Act No. 4118. Mendoza likewise claimed that in another Supreme Court Resolution dated 18 September 1984, the Executive Judge and the Clerk of Court are charged with ministerial duties in relation to the extrajudicial foreclosure of mortgages. Finally, Mendoza

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[1] *Rollo*, pp. 1-3. The Letter-Complaint was written by Atty. Angeles A. Velasco for and in behalf of complainant Leo Mendoza.

cited Central Bank Circular No. 905 which leaves to the discretion of the lender and the borrower the interest rate to be charged.

In a 1st Indorsement dated 17 August 1998, the Court required Tablizo to file his Comment on the administrative complaint but the latter did not comply. He also failed to comply despite the 1st Tracer dated 17 January 2000 which was received by his representative on 7 February 2000 per Registry Receipt No. 1821.

On 10 December 2001, the Office of the Court Administrator submitted an Agenda Report[2] informing the Court that Tablizo was no longer under the disciplinary powers of the Supreme Court due to his compulsory retirement effective 4 September 2000. As Tablizo had consistently refused to comment in other administrative matters filed against him, the Office of the Court Administrator recommended that if Tablizo's benefits were still unpaid, a fine of ₱5,000.00 should be imposed and deducted from his benefits.

The Court, in a Resolution[3] issued by the First Division, required the Office of the Court Administrator to verify whether Tablizo's benefits had already been fully paid. In a Memorandum[4] dated 19 March 2002, the Office of the Court Administrator informed the Court that the records of the Office of the Administrative Services-Employees Welfare and Benefits Division and the Financial Management Office show that Tablizo had not filed his application for retirement.

In a Resolution[5] dated 6 May 2002, the Court directed the withholding of the amount of ₱50,000.00 from Tablizo's retirement benefits. The Court likewise issued another Resolution[6] referring the case to the Office of the Court Administrator for evaluation, report and recommendation. In its Memorandum[7]

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[2] *Id.* at 90-91.

[3] *Id.* at 93.

[4] *Id.* at 94.

[5] *Id.* at 95.

[6] *Id.* at 111.

[7] *Id.* at 112-115.

dated 31 July 2008, the Office of the Court Administrator found Tablizo to have waived his right to defend himself despite the ample opportunity he was given to answer the charges against him. It construed his silence as an implied admission of the truth of the imputations hurled against him by Mendoza. It recommended that the case be re-docketed as a regular administrative case and that Tablizo's retirement benefits, save his terminal leave benefits, be forfeited, with prejudice to re-employment in the government service.

We agree with the findings and recommendation of the Office of the Court Administrator.

The failure of Tablizo to appear and answer the charges against him despite all the opportunities he was given constitutes a waiver of his right to defend himself. As correctly observed in the Memorandum of the Office of the Court Administrator, in the natural order of things, a man would resist an unfounded claim or imputation and defend himself. It is totally against human nature to remain silent and say nothing in the face of false accusations.[8] In the case at bar, Tablizo's silence may be construed as an implied admission and acknowledgment of the veracity of the allegations stated in the sworn Letter-Complaint filed by Mendoza – the veracity of which he could have easily debunked had he come to the fore to assail them. By his silence, he admitted, albeit tacitly, the allegations subscribed and sworn to by Mendoza that he cancelled the auction sale without the knowledge of the Executive Judge and without notice to Mendoza, and refused to accept another petition filed by Mendoza for extrajudicial foreclosure against mortgagor spouses Ricardo and Adelina Abrasaldo. In both instances, Tablizo failed to discharge his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under Administrative Order No. 3 dated 19 October 1984 which sets the procedure to be followed in extrajudicial foreclosure of mortgages, *viz.*:

1. All application for extra-judicial foreclosure of mortgage under Act 3135, as amended by Act 4118, and Act 1508, as amended, shall

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[8] *Ibid.*

be filed with the Executive Judge, through the Clerk of Court who is also the *Ex-Officio* Sheriff;

2. Upon receipt of an application for extra-judicial foreclosure of mortgage, **it shall be the duty of the Office of the Sheriff** to:

a) receive and docket said application and to stamp the same with the corresponding file number and date of filing;

b) collect the filing fees therefor and issue the corresponding official receipt;

c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under its direction or under the direction of a notary public, pursuant to Sec. 4, of Act 3135, as amended;

d) sign and issue certificate of sale, subject to the approval of the executive Judge, or in his absence, the Vice-Executive Judge; and

e) turn over, after the certificate of sale has been issued to the highest bidder, the complete folder to the Records Section, Office of the Clerk of Court, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which the records shall be archived.

3. The notices of auction sale in extra-judicial foreclosure for publication shall be published in a newspaper of general circulation pursuant to Section 1, Presidential Decree No. 1709, dated January 26, 1977, and non-compliance therewith shall constitute a violation of Section 6 thereof;

4. The Executive Judge shall assign with the assistance of the Clerk of Court and *Ex-Officio* Sheriff, the cases by raffle among the deputy sheriffs, under whose direction the auction sale shall be made. Raffling shall be strictly enforced in order to avoid unequal distribution of cases and fraternization between the sheriff and the applicant-mortgagee, such as banking institutions, financing companies, and others.[9]

The evidence on record clearly establishes that the first petition filed by Mendoza for extrajudicial foreclosure against mortgagor

[9] Emphasis supplied.

David Joson was stamped received and docketed as Foreclosure No. F0184.[10] The corresponding filing fees and cost of publication were paid. The Notice to Parties of Sheriff's Public Auction Sale[11] and the Notice of Extrajudicial Foreclosure with Auction Sale of Real Property under Act No. 3135, as amended, were likewise issued by Tablizo. Thus, when Tablizo cancelled the auction sale for no reason and without the knowledge and consent of the Executive Judge, he did so in clear violation of his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under the Administrative Order.

As to the second petition for extrajudicial foreclosure filed by Mendoza against mortgagor spouses Ricardo and Adelina Abrasaldo which was allegedly refused outright by Tablizo, the evidence on record shows that the said petition[12] was marked with the receiving stamp of the Office of the Clerk of Court of the Regional Trial Court of Virac, Catanduanes. The same petition also bears the mark "F-0193" at the upper right-hand corner of the first page. The mark appears to denote that the petition, docketed as Foreclosure No. F0193, is an Extrajudicial Foreclosure Sale under Act No. 3135, as amended. It raises valid suspicion, however, why the receiving stamp was left blank despite the docket number written on the petition. This unexplained act on the part of Tablizo shows another violation of his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under Administrative Order No. 3, Series of 1984. We have reminded sheriffs time and again that, as court employees, they must conduct themselves with propriety and decorum so that their actions must be above suspicion at all times. As we held in *Tagaloguin v. Hingco, Jr.*, *viz*.:

> x x x the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff down to the lowliest clerk should be

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[10] Petition for Extrajudicial Foreclosure Under Act No. 3135, as amended; *rollo,* pp. 21-22.

[11] Annex D of Complaint-Affidavit.

[12] Petition for Extrajudicial Foreclosure Under Act No. 3135, as amended; *rollo,* pp. 29-31.

circumscribed with the heavy burden of responsibility. Their conduct, at all times, must be characterized with propriety and decorum, but above all else, must be above and beyond suspicion. For every employee of the judiciary should be an example of integrity, uprightness and honesty.[13]

The acts and omissions of Tablizo in both[14] instances fell short of this standard set by the Court. Thus, for failing to do what was incumbent upon him under the law, we find Tablizo guilty of grave misconduct, incompetence, malfeasance and misfeasance.

That is not all.

Tablizo's contumacious refusal to comment on the administrative cases filed against him is glaring proof of his recalcitrance and stubbornness to obey legitimate orders of the Court, as well as his utter disregard of the Court's power of administrative supervision over its employees. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary.[15] This Court, being the agency exclusively vested by the Constitution with administrative supervision over all courts, can hardly discharge its constitutional mandate of overseeing judges and court personnel and taking proper administrative sanction against them if the judge or personnel concerned does not even recognize its administrative authority.[16]

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[13] A.M. No. P-05-2008, June 21, 2005, 460 SCRA 360, 373.

[14] The other allegation of Mendoza that he was informed, through a letter by a Deputy Sheriff, that the interest to be charged should not exceed 12% per annum and not as that stipulated in the Deed of Mortgage is unsubstantiated and not supported by any evidence on record.

[15] *Martinez v. Zoleta*, A.M. No. MTJ-94-904, 29 September 1999. *Citations omitted.*

[16] *Himalin v. Balderian*, A.M. No. MTJ-03-1504, August 26, 2003. *Citations omitted.*

In the case at bar, the silence and contumacious refusal of Tablizo to comment on the charges filed against him aggravate our finding of grave misconduct, incompetence, malfeasance and misfeasance and leave the Court with no alternative but to uphold the recommendation of the Office of the Court Administrator to forfeit his retirement benefits, except his accrued leave credits, and with prejudice to re-employment in the government service. Had it not been for his compulsory retirement, respondent would have been meted the penalty of dismissal from the service considering that his acts of unilaterally cancelling the auction sale and refusing to accept a petition for extrajudicial foreclosure constituted intentional violation of the law and established rules. Further, the Office of the Court Administrator had significantly noted that this is not the first time that respondent was found guilty of an administrative offense. On 16 January 2002, he was fined in the amount of ₱2,000.00 for Neglect of Duty and Incompetence in A.M. No. P-02-1543. On 22 February 2008, he was again fined in the amount of ₱40,000.00 for Gross Neglect of Duty and Refusal to Perform Official Duty in A.M. No. P-05-1999. Prior to these sanctions, he was fined in the amount of ₱2,000.00 for Habitual Absenteeism on 18 July 2001 in A.M. No. P-99-1301.

IN VIEW WHEREOF, the Court finds respondent Prospero V. Tablizo, retired Clerk of Court VI of the Regional Trial Court of Virac, Catanduanes, *GUILTY* of grave misconduct, incompetence, malfeasance and misfeasance, with *FORFEITURE* of retirement benefits, except the accrued terminal leave benefits, and with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Velasco, Jr., J., no part.

SECOND DIVISION

[G.R. No. 171951. August 28, 2009]

AMADO ALVARADO GARCIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; THE EFFICACY OF A DECISION IS NOT IMPAIRED BY THE FACT THAT THE *PONENTE* DID NOT TRY THE CASE IN ITS ENTIRETY.— We reiterate, the efficacy of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided over the trial. It does not follow that the judge who was not present during the trial, or a fraction thereof, cannot render a valid and just decision. Here, Judge Andres Q. Cipriano took over the case after Judge Manauis recused himself from the proceedings. Even so, Judge Cipriano not only heard the evidence for the defense, he also had an opportunity to observe Dr. Cleofas Antonio who was recalled to clarify certain points in his testimony. Worth mentioning, too, is the fact that Judge Cipriano presided during the taking of the testimonies of Fidel Foz, Jr. and Alvin Pascua on rebuttal. In any case, it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand. He can rely on the transcripts of stenographic notes and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law.

2. CRIMINAL LAW; CRIMINAL LIABILITY; ESSENTIAL REQUISITES FOR THE APPLICATION OF ARTICLE 4(1) OF THE REVISED PENAL CODE, PRESENT.— The inevitable conclusion then surfaces that the myocardial infarction suffered by the victim was the direct, natural and logical consequence of the felony that petitioner had intended to commit. Article 4(1) of the Revised Penal Code states that criminal liability shall be incurred "by any person committing a felony *(delito)* although the wrongful act done be different

from that which he intended." The essential requisites for the application of this provision are: (a) the intended act is felonious; (b) the resulting act is likewise a felony; and (c) the unintended albeit graver wrong was primarily caused by the actor's wrongful acts. In this case, petitioner was committing a felony when he boxed the victim and hit him with a bottle. Hence, the fact that Chy was previously afflicted with a heart ailment does not alter petitioner's liability for his death. Ingrained in our jurisprudence is the doctrine laid down in the case of *United States v. Brobst* that: x x x where death results as a direct consequence of the use of illegal violence, the mere fact that the diseased or weakened condition of the injured person contributed to his death, does not relieve the illegal aggressor of criminal responsibility. In the same vein, *United States v. Rodriguez* enunciates that: x x x although the assaulted party was previously affected by some internal malady, if, because of a blow given with the hand or the foot, **his death was hastened**, beyond peradventure he is responsible therefor who produced the cause for such acceleration as the result of a voluntary and unlawfully inflicted injury. In this jurisdiction, a person committing a felony is responsible for all the natural and logical consequences resulting from it although the unlawful act performed is different from the one he intended; "*el que es causa de la causa es causa del mal causado*" (he who is the cause of the cause is the cause of the evil caused). Thus, the circumstance that petitioner did not intend so grave an evil as the death of the victim does not exempt him from criminal liability. Since he deliberately committed an act prohibited by law, said condition simply mitigates his guilt in accordance with Article 13(3) of the Revised Penal Code.

3. ID.; HOMICIDE; PENALTY WHEN THERE IS A MITIGATING CIRCUMSTANCE AND WITHOUT AN AGGRAVATING CIRCUMSTANCE TO OFFSET IT.— [W]e must appreciate as mitigating circumstance in favor of petitioner the fact that the physical injuries he inflicted on the victim, could not have resulted naturally and logically, in the actual death of the victim, if the latter's heart was in good condition. Considering that the petitioner has in his favor the mitigating circumstance of lack of intention to commit so grave a wrong as that committed without any aggravating circumstance to offset it, the imposable penalty should be in the minimum period, that is, *reclusion*

temporal in its minimum period, or anywhere from twelve (12) years and one (1) day to fourteen years (14) years and eight (8) months. Applying the Indeterminate Sentence Law, the trial court properly imposed upon petitioner an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal* as maximum.

4. ID.; ID.; DAMAGES, AWARDED.— We shall, however, modify the award of damages to the heirs of Manuel Chy for his loss of earning capacity in the amount of ₱332,000. In fixing the indemnity, the victim's actual income at the time of death and probable life expectancy are taken into account. x x x Branch 9 of the Aparri, Cagayan RTC took judicial notice of the salary which Manuel Chy was receiving as a sheriff of the court. At the time of his death, Chy was 51 years old and was earning a gross monthly income of ₱10,600 or a gross annual income of ₱127,200. But, in view of the victim's delicate condition, the trial court reduced his life expectancy to 10 years. It also deducted ₱7,000 from Chy's salary as reasonable living expense. However, the records are bereft of showing that the heirs of Chy submitted evidence to substantiate actual living expenses. And in the absence of proof of living expenses, jurisprudence approximates net income to be 50% of the gross income. Accordingly, by reason of his death, the heirs of Manuel Chy should be awarded ₱1,229,600 as loss of earning capacity x x x. We sustain the trial court's grant of funerary expense of ₱200,000 as stipulated by the parties and civil indemnity of ₱50,000. Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. However, in obedience to the controlling case law, the amount of moral damages should be reduced to ₱50,000.

APPEARANCES OF COUNSEL

Tumaru & Tumaru Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] dated December 20, 2005 of the Court of Appeals in CA-G.R.-CR No. 27544 affirming the Decision[2] dated July 2, 2003 of the Regional Trial Court (RTC), Branch 9, Aparri, Cagayan, which found petitioner Amado Garcia guilty beyond reasonable doubt of homicide. Contested as well is the appellate court's Resolution[3] dated March 13, 2006 denying petitioner's Motion for Reconsideration.[4]

On February 10, 2000, petitioner was charged with murder in an Information that alleges as follows:

> The undersigned, Provincial Prosecutor accuses AMADO GARCIA @ Manding of the crime of Murder, defined and penalized under Article [248] of the Revised Penal Code, as amended by Republic Act No. 7659, committed as follows:
>
> That on or about September 29, 1999, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bottle, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack, box, club and maul one Manuel K. Chy, inflicting upon the latter fatal injuries which caused his death.
>
> CONTRARY TO LAW.[5]

Upon arraignment, petitioner entered a not guilty plea. Thereafter, trial on the merits ensued.

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[1] *Rollo*, pp. 51-65. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Conrado M. Vasquez, Jr. and Juan Q. Enriquez, Jr., concurring.

[2] CA *rollo*, pp. 93-108. Penned by Presiding Judge Andres Q. Cipriano.

[3] *Rollo*, p. 101.

[4] *Id.* at 69-98.

[5] Records, p. 2.

The factual antecedents are as follows:

At approximately 11:00 a.m. on September 26, 1999, petitioner, Fidel Foz, Jr. and Armando Foz had a drinking spree at the apartment unit of Bogie Tacuboy, which was adjacent to the house of Manuel K. Chy. At around 7:00 p.m., Chy appealed for the group to quiet down as the noise from the videoke machine was blaring. It was not until Chy requested a second time that the group acceded. Unknown to Chy, this left petitioner irate and petitioner was heard to have said in the *Ilocano* vernacular, "*Dayta a Manny napangas makaala caniac dayta*." (This Manny is arrogant, I will lay a hand on him.)[6]

On September 28, 1999, the group met again to celebrate the marriage of Ador Tacuboy not far from Chy's apartment. Maya Mabbun advised the group to stop singing lest they be told off again. This further infuriated petitioner who remarked, "*Talaga a napangas ni Manny saan ko a pagbayagen daytoy*," meaning, "This Manny is really arrogant, I will not let him live long."[7]

Yet again, at around 12:00 p.m. on September 29, 1999, the group convened at the house of Foz and Garcia. There, petitioner, Foz, Jr. and Fred Rillon mused over the drinking session on the 26th and 28th of September and the confrontation with Chy. Enraged at the memory, petitioner blurted out "*Talaga a napangas dayta a day[t]oy a Manny ikabbut ko ita*." (This Manny is really arrogant, I will finish him off today.)[8] Later that afternoon, the group headed to the store of Adela dela Cruz where they drank until petitioner proposed that they move to Punta. On their way to Punta, the group passed by the store of Aurelia Esquibel, Chy's sister, and there, decided to have some drinks.

At this juncture, petitioner ordered Esquibel to call on Chy who, incidentally, was coming out of his house at the time. Upon being summoned, the latter approached petitioner who suddenly punched him in the face. Chy cried out, "*Bakit mo ako sinuntok*

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[6] TSN, September 24, 2001, p. 8.

[7] *Id.* at 10.

[8] *Id.* at 11.

hindi ka naman [inaano]?" (Why did you box me[?] I'm not doing anything to you.)[9] But petitioner kept on assaulting him. Foz attempted to pacify petitioner but was himself hit on the nose while Chy continued to parry the blows. Petitioner reached for a bottle of beer, and with it, struck the lower back portion of Chy's head. Then, Foz shoved Chy causing the latter to fall.

When Chy found an opportunity to escape, he ran towards his house and phoned his wife Josefina to call the police. Chy told Josefina about the mauling and complained of difficulty in breathing. Upon reaching Chy's house, the policemen knocked five times but nobody answered. Josefina arrived minutes later, unlocked the door and found Chy lying unconscious on the kitchen floor, salivating. He was pronounced dead on arrival at the hospital. The autopsy confirmed that Chy died of myocardial infarction.

After trial in due course, the RTC of Aparri, Cagayan (Branch 9) found petitioner guilty beyond reasonable doubt of homicide. The dispositive portion of the RTC decision reads:

WHEREFORE, the Court renders judgment:

1) Finding AMADO GARCIA guilty beyond reasonable doubt for the crime of HOMICIDE defined and penalized by Article 249 of the Revised Penal Code and after applying in his favor the provisions of the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate prison term of TEN (10) YEARS OF *PRISION MAYOR*, as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of *RECLUSION TEMPORAL* as maximum;

2) Ordering him to pay the heirs of Manuel Chy the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as death indemnity; TWO HUNDRED THOUSAND (₱200,000.00) PESOS, representing expenses for the wake and burial; THREE HUNDRED THOUSAND (₱300,000.00) PESOS, as moral damages; and THREE HUNDRED THIRTY[-]TWO THOUSAND (₱332,000.00] PESOS, as loss of earning, plus the cost of this suit.

SO ORDERED.[10]

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[9] *Id.* at 21.

[10] CA *rollo*, pp. 107-108.

On appeal, the Court of Appeals affirmed the conviction in a Decision dated December 20, 2005, thus:

> WHEREFORE, premises considered, appeal is hereby [**DENIED**] and the July 2, 2003 Decision of the Regional Trial Court of Aparri, Cagayan, Branch [9], in Criminal Case No. 08-1185, is hereby **AFFIRMED *IN TOTO***.
>
> SO ORDERED.[11]

Petitioner moved for reconsideration but his motion was denied in a Resolution dated March 13, 2006.

Hence, the instant appeal of petitioner on the following grounds:

I.

THE APPELLATE COURT ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT THAT PETITIONER IS THE ONE RESPONSIBLE FOR INFLICTING THE SLIGHT PHYSICAL INJURIES SUSTAINED BY THE DECEASED MANUEL CHY.

II.

THE APPELLATE COURT ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT FINDING PETITIONER LIABLE FOR THE DEATH OF MANUEL CHY DESPITE THE FACT THAT THE CAUSE OF DEATH IS MYOCARDIAL INFARCTION, A NON-VIOLENT RELATED CAUSE OF DEATH.

III.

THE APPELLATE COURT ERRED IN AFFIRMING THE RULING OF THE TRIAL COURT WHICH CONCLUDED THAT THE HEART FAILURE OF MANUEL CHY WAS DUE TO "FRIGHT OR SHOCK CAUSED BY THE MALTREATMENT."

IV.

BOTH THE APPELLATE TRIBUNAL AND THE TRIAL COURT ERRED IN NOT ACQUITTING THE PETITIONER ON THE GROUND OF REASONABLE DOUBT.[12]

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[11] *Rollo*, p. 65.

[12] *Id.* at 188.

In essence, the issue is whether or not petitioner is liable for the death of Manuel Chy.

In his undated Memorandum,[13] petitioner insists on a review of the factual findings of the trial court because the judge who penned the decision was not the same judge who heard the prosecution evidence. He adds that the Court of Appeals had wrongly inferred from, misread and overlooked certain relevant and undisputed facts, which, if properly considered, would justify a different conclusion.[14]

At the onset, petitioner denies laying a hand on Manuel Chy. Instead, he implicates Armando Foz as the author of the victim's injuries. Corollarily, he challenges the credibility of Armando's brother, Fidel, who testified concerning his sole culpability. Basically, petitioner disowns responsibility for Chy's demise since the latter was found to have died of myocardial infarction. In support, he amplifies the testimony of Dr. Cleofas C. Antonio[15] that Chy's medical condition could have resulted in his death anytime. Petitioner asserts that, at most, he could be held liable for slight physical injuries because none of the blows he inflicted on Chy was fatal.

The Office of the Solicitor General reiterates the trial court's assessment of the witnesses and its conclusion that the beating of Chy was the proximate cause of his death.

Upon careful consideration of the evidence presented by the prosecution as well as the defense in this case, we are unable to consider the petitioner's appeal with favor.

The present petition was brought under Rule 45 of the Rules of Court, yet, petitioner raises questions of fact. Indeed, it is opportune to reiterate that this Court is not the proper forum from which to secure a re-evaluation of factual issues, save where the factual findings of the trial court do not find support in the evidence on record or where the judgment appealed from

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[13] *Id.* at 180-220.

[14] *Id.* at 190.

[15] TSN, September 16, 2002, pp. 15-19.

was based on a misapprehension of facts.[16] Neither exception applies in the instant case as would justify a departure from the established rule.

Further, petitioner invokes a recognized exception to the rule on non-interference with the determination of the credibility of witnesses. He points out that the judge who penned the decision is not the judge who received the evidence and heard the witnesses. But while the situation obtains in this case, the exception does not. The records reveal that Judge Conrado F. Manauis inhibited from the proceedings upon motion of no less than the petitioner himself. Consequently, petitioner cannot seek protection from the alleged adverse consequence his own doing might have caused. For us to allow petitioner relief based on this argument would be to sanction a travesty of the Rules which was designed to further, rather than subdue, the ends of justice.

We reiterate, the efficacy of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided over the trial. It does not follow that the judge who was not present during the trial, or a fraction thereof, cannot render a valid and just decision.[17] Here, Judge Andres Q. Cipriano took over the case after Judge Manauis recused himself from the proceedings. Even so, Judge Cipriano not only heard the evidence for the defense, he also had an opportunity to observe Dr. Cleofas Antonio who was recalled to clarify certain points in his testimony. Worth mentioning, too, is the fact that Judge Cipriano presided during the taking of the testimonies of Fidel Foz, Jr. and Alvin Pascua on rebuttal.

In any case, it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand.[18] He can rely on the transcripts of stenographic notes

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

[17] *Resayo v. People*, G.R. No. 154502, April 27, 2007, 522 SCRA 391, 401-402.

[18] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 283.

and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law.[19]

The Autopsy Report on the body of Manuel Chy disclosed the following injuries:

POSTMORTEM FINDINGS

Body embalmed, well preserved.

Cyanotic lips and nailbeds.

Contusions, dark bluish red: 4.5 x 3.0 cms., **lower portion of the left ear**; 4.0 x 2.8 cms., left inferior mastoid region; 2.5 x 1.1 cms., upper lip; 2.7 x 1.0 cms., **lower lip**; 5.8 x 5.5 cms., dorsum of **left hand**.

Lacerated wound, 0.8 cm., involving mucosal surface of the **upper lip on the right side.**

No fractures noted.

Brain with tortuous vessels. Cut sections show congestion. No hemorrhage noted.

Heart, with abundant fat adherent on its epicardial surface. Cut sections show a reddish brown myocardium with an area of hyperemia on the whole posterior wall, the lower portion of the anterior wall and the inferior portion of the septum. Coronary arteries, gritty, with the caliber of the lumen reduced by approximately thirty (30%) percent. Histopathological findings show **mild fibrosis of the myocardium**.

Lungs, pleural surfaces, shiny; with color ranging from dark red to dark purple. Cut sections show a gray periphery with reddish brown central portion with fluid oozing on pressure with some reddish frothy materials noted. Histopathological examinations show pulmonary edema and hemorrhages.

Kidneys, purplish with glistening capsule. Cut sections show congestion. Histopathological examinations show mild lymphocytic infiltration.

Stomach, one-half (½) full with brownish and whitish materials and other partially digested food particles.

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[19] *Id.* at 284.

CAUSE OF DEATH: - Myocardial Infarction. (Emphasis supplied.)[20]

At first, petitioner denied employing violence against Chy. In his undated Memorandum, however, he admitted inflicting injuries on the deceased, *albeit*, limited his liability to slight physical injuries. He argues that the superficial wounds sustained by Chy did not cause his death.[21] Quite the opposite, however, a conscientious analysis of the records would acquaint us with the causal connection between the death of the victim and the mauling that preceded it. In open court, Dr. Antonio identified the immediate cause of Chy's myocardial infarction:

ATTY. TUMARU:

Q: You diagnose[d] the cause of death to be myocardial infarction that is because there was an occlusion in the artery that prevented the flowing of blood into the heart?

A: That was not exactly seen at the autopsy table but it changes, the hyperemic changes [in] the heart muscle were the one[s] that made us [think] or gave strong conclusion that it was myocardial infarction, and most likely the cause is **occlusion of the blood vessels** itself. (Emphasis supplied.)[22]

By definition, coronary occlusion[23] is the complete obstruction of an artery of the heart, usually from progressive *arteriosclerosis*[24] or the thickening and loss of elasticity of the arterial walls. This can result from sudden emotion in a person with an existing *arteriosclerosis*; otherwise, a heart attack will not occur.[25] Dr. Jessica Romero testified on direct examination relative to this point:

ATTY. CALASAN:

Q: Could an excitement trigger a myocardial infarction?

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[20] Records, p. 260.

[21] *Rollo*, p. 216.

[22] TSN, September 26, 2001, pp. 10-11.

[23] R. SLOANE, *THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY* 506 (1987).

[24] *Id.* at 60.

[25] *Id.* at 506.

A: Excitement, I cannot say that if the patient is normal[;] that is[,] considering that the patient [does] not have any previous [illness] of hypertension, no previous history of myocardial [ischemia], **no previous [arteriosis] or hardening of the arteries**, then excitement [cannot] cause myocardial infarction. (Emphasis supplied.)[26]

The Autopsy Report bears out that Chy has a mild fibrosis of the myocardium[27] caused by a previous heart attack. Said fibrosis[28] or formation of fibrous tissue or scar tissue rendered the middle and thickest layer of the victim's heart less elastic and vulnerable to coronary occlusion from sudden emotion. This causation is elucidated by the testimony of Dr. Antonio:

ATTY. CALASAN:

Q: You said that the physical injuries will cause no crisis on the part of the victim, Doctor?

A: Yes, sir.

Q: And [these] physical injuries [were] caused by the [boxing] on the mouth and[/]or hitting on the nape by a bottle?

A: Yes, sir.

Q: On the part of the deceased, that [was] caused definitely by emotional crisis, Doctor?

A: Yes, sir.

Q: And because of this emotional crisis the heart palpitated so fast, so much so, that there was less oxygen being pumped by the heart?

A: Yes, sir.

Q: And definitely that caused his death, Doctor?

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[26] TSN, August 5, 2002, p. 39.

[27] *Supra* note 23, at 60.

Myocardium is the middle and thickest layer of the heart wall, composed of cardiac muscle.

[28] *Id.* at 285.

A: Yes, sir, it could be.[29]

In concurrence, Dr. Antonio A. Paguirigan also testified as follows:

ATTY. CALASAN:

Q: I will repeat the question… Dr. Antonio testified that the deceased died because of the blow that was inflicted, it triggered the death of the deceased, do you agree with his findings, Doctor?

A: Not probably the blow but the reaction sir.

Q: So you agree with him, Doctor?

A: It could be, sir.

Q: You agree with him on that point, Doctor?

A: Yes, sir.[30]

It can be reasonably inferred from the foregoing statements that the emotional strain from the beating aggravated Chy's delicate constitution and led to his death. The inevitable conclusion then surfaces that the myocardial infarction suffered by the victim was the direct, natural and logical consequence of the felony that petitioner had intended to commit.

Article 4(1) of the Revised Penal Code states that criminal liability shall be incurred "by any person committing a felony *(delito)* although the wrongful act done be different from that which he intended." The essential requisites for the application of this provision are: (a) the intended act is felonious; (b) the resulting act is likewise a felony; and (c) the unintended albeit graver wrong was primarily caused by the actor's wrongful acts.[31]

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[29] TSN, September 16, 2002, pp. 20-21.

[30] TSN, June 20, 2002, p. 44.

[31] *People v. Ortega, Jr.*, G.R. No. 116736, July 24, 1997, 276 SCRA 166, 182.

In this case, petitioner was committing a felony when he boxed the victim and hit him with a bottle. Hence, the fact that Chy was previously afflicted with a heart ailment does not alter petitioner's liability for his death. Ingrained in our jurisprudence is the doctrine laid down in the case of *United States v. Brobst*[32] that:

> x x x where death results as a direct consequence of the use of illegal violence, the mere fact that the diseased or weakened condition of the injured person contributed to his death, does not relieve the illegal aggressor of criminal responsibility.[33]

In the same vein, *United States v. Rodriguez*[34] enunciates that:

> x x x although the assaulted party was previously affected by some internal malady, if, because of a blow given with the hand or the foot, **his death was hastened**, beyond peradventure he is responsible therefor who produced the cause for such acceleration as the result of a voluntary and unlawfully inflicted injury. (Emphasis supplied.)[35]

In this jurisdiction, a person committing a felony is responsible for all the natural and logical consequences resulting from it although the unlawful act performed is different from the one he intended;[36] "*el que es causa de la causa es causa del mal causado*" (he who is the cause of the cause is the cause of the evil caused).[37] Thus, the circumstance that petitioner did not intend so grave an evil as the death of the victim does not exempt him from criminal liability. Since he deliberately committed an act prohibited by law, said condition simply mitigates

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[32] 14 Phil. 310 (1909).

[33] *Id.* at 318.

[34] 23 Phil. 22 (1912).

[35] *Id.* at 25.

[36] *Quinto v. Andres*, G.R. No. 155791, March 16, 2005, 453 SCRA 511, 520.

[37] *People v. Ural*, No. L-30801, March 27, 1974, 56 SCRA 138, 144.

his guilt in accordance with Article 13(3)[38] of the Revised Penal Code.[39] Nevertheless, we must appreciate as mitigating circumstance in favor of petitioner the fact that the physical injuries he inflicted on the victim, could not have resulted naturally and logically, in the actual death of the victim, if the latter's heart was in good condition.

Considering that the petitioner has in his favor the mitigating circumstance of lack of intention to commit so grave a wrong as that committed without any aggravating circumstance to offset it, the imposable penalty should be in the minimum period, that is, *reclusion temporal* in its minimum period,[40]or anywhere from twelve (12) years and one (1) day to fourteen years (14) years and eight (8) months. Applying the Indeterminate Sentence Law,[41] the trial court properly imposed upon petitioner an

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[38] **ART. 13.** *Mitigating circumstances.* – The following are mitigating circumstances:

x x x x x x x x x

3. That the offender had no intention to commit so grave a wrong as that committed.

x x x x x x x x x

[39] *People v. Ilustre*, 54 Phil. 594, 599 (1930).

[40] Article 64(2) of the Revised Penal Code provides:

ART. 64. *Rules for the application of penalties which contain three periods.* – In cases in which the penalties prescribed by law contains three periods, whether it be a single divisible penalty or composed of three different penalties; each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

x x x x x x x x x

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

x x x x x x x x x

[41] Act No. 4103.

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed

indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal* as maximum.

We shall, however, modify the award of damages to the heirs of Manuel Chy for his loss of earning capacity in the amount of ₱332,000. In fixing the indemnity, the victim's actual income at the time of death and probable life expectancy are taken into account. For this purpose, the Court adopts the formula used in *People v. Malinao*:[42]

Net earning capacity =	2/3 x (80 age of the victim at the time of his death)	x	a reasonable portion of the annual net income which would have been received by the heirs for support.[43]

Branch 9 of the Aparri, Cagayan RTC took judicial notice of the salary which Manuel Chy was receiving as a sheriff of the court. At the time of his death, Chy was 51 years old and was earning a gross monthly income of ₱10,600 or a gross annual income of ₱127,200. But, in view of the victim's delicate condition, the trial court reduced his life expectancy to 10 years. It also deducted ₱7,000 from Chy's salary as reasonable living expense. However, the records are bereft of showing that the heirs of Chy submitted evidence to substantiate actual living expenses. And in the absence of proof of living expenses, jurisprudence[44] approximates net income to be 50% of the gross income. Accordingly, by reason of his death, the heirs of Manuel Chy should be awarded ₱1,229,600 as loss of earning capacity, computed as follows:

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under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and minimum shall not be less than the minimum term prescribed by the same. (*As amended by Act No. 4225.)*

[42] G.R. No. 128148, February 16, 2004, 423 SCRA 34.

[43] *Id.* at 54.

[44] *Id.* at 55.

Net earning capacity = 2/3 x (80-51) x [₱127,200 - ½ (₱127,200)]

= 2/3 x (29) x ₱63,600

= 19 1/3 x ₱63,600

= ₱1,229,600

We sustain the trial court's grant of funerary expense of ₱200,000 as stipulated by the parties[45] and civil indemnity of ₱50,000.[46] Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[47] However, in obedience to the controlling case law, the amount of moral damages should be reduced to ₱50,000.

WHEREFORE, the Decision dated December 20, 2005 and the Resolution dated March 13, 2006 of the Court of Appeals in CA-G.R.-CR No. 27544 are *AFFIRMED with MODIFICATION* in that the award of moral damages is reduced to ₱50,000. Petitioner is further ordered to indemnify the heirs of Manuel K. Chy ₱50,000 as civil indemnity; ₱200,000, representing expenses for the wake and burial; and ₱1,229,600 as loss of earning capacity.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and *Abad, JJ.,* concur.

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[45] TSN, October 17, 2001, p. 7.

[46] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 476.

[47] *Id.* at 477.

SECOND DIVISION

[G.R. No. 172680. August 28, 2009]

THE HEIRS OF THE LATE FERNANDO S. FALCASANTOS, namely; MODESTA CANDIDO-SAAVEDRA and ANGEL F. CANDIDO; and the HEIRS OF THE LATE JOSE S. FALCASANTOS, namely: FELIX G. FALCASANTOS, RAMON G. FALCASANTOS, CORAZON N. FERNANDO, ANASTACIO R. LIMEN, PAZ CANDIDO-SAYASA and MARIO F. MIDEL; represented by ANASTACIO R. LIMEN IN HIS BEHALF AND IN BEHALF OF THE OTHERS AS ATTORNEY-IN-FACT, *petitioners, vs.* **SPOUSES FIDEL YEO TAN and SY SOC TIU, SPOUSES NESIQUIO YEO TAN and CHUA YOK HONG, SPOUSES NERI YEO TAN and MERCEDES UY and SPOUSES ELOY YEO TAN and EVELYN WEE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY; CASE AT BAR.— The trial court's order of dismissal of petitioners' complaint attained finality on September 2, 2005 following their failure to appeal it, which is a final, not an interlocutory order, within 15 days from August 18, 2005 when their counsel received a copy thereof.

2. ID.; ID.; *CERTIORARI*; REQUISITES; CASE AT BAR.— Even if procedural rules were to be relaxed by allowing petitioners' availment before the appellate court of *Certiorari*, instead of appeal, to assail the dismissal of their complaint, not only was the petition for *Certiorari* filed beyond the 60-day reglementary period. It glaringly failed to allege how the trial court committed grave abuse of discretion in dismissing the complaint. It merely posited that in dismissing the complaint, petitioners were deprived of the opportunity to present evidence to "prove the causes of action." Such position does not lie, however, for petitioners' complaint was dismissed precisely because after considering respondents' Motion to Dismiss and petitioners' 14-page "VEHEMENT OPPOSITION to the Motion to Dismiss"

in which they proffered and exhaustively discussed the grounds for the denial of the Motion to Dismiss, the trial court dismissed the complaint on the ground of prescription. x x x The Court finds that the petition for *Certiorari* before the appellate court was doomed for it failed to allege that the trial court 1) acted *without jurisdiction* for not having the legal power to determine the case; 2) acted in *excess of jurisdiction* for, being clothed with the power to determine the case, it overstepped its authority as determined by law; and 3) committed *grave abuse of discretion* for acting in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction.

APPEARANCES OF COUNSEL

Go & Go Law Offices for petitioners.
Elpidio F. Nuval for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The now deceased Policarpio Falcasantos (Policarpio) was the registered owner of a parcel of land in Zamboanga City covered by Original Certificate of Title (OCT) No. 3371[1] issued on September 10, 1913.

OCT No. 3371 was cancelled and, in its stead, Transfer Certificate of Title (TCT) No. 5668 was issued on March 6, 1925[2] in the name of Jose Falcasantos (Jose), one of his eight children, the others being Arcadio, Lecadia, Basilisa, Fernando, Martin, Dorothea, and Maria, all surnamed Falcasantos.

TCT No. 5668 was in turn cancelled on May 28, 1931 and, in its stead, TCT No. RT-749 (10723) was issued in the name of one Tan Ning.[3]

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[1] Records, p. 20.

[2] *Id.* at 21.

[3] *Id.* at 24.

Still later, TCT No. RT-749 (10723) was cancelled and TCT No. 3366 was issued in its stead in the name of one Tan Kim Piao *a.k.a.* Oscar Tan on August 30, 1950.[4]

Finally, TCT No. RT-749 (10723) was cancelled and in its stead TCT No. T-64,264 was issued on July 27, 1981 in the name of herein respondents spouses Fidel Yeo Tan and Sy Soc Tin, *et al.*[5]

On January 26, 2004, the heirs of brothers Jose and Fernando Falcasantos, herein petitioners, filed before the Regional Trial Court (RTC) of Zamboanga City a complaint,[6] which was later amended on July 15, 2004, for **quieting of title and/or declaration of nullity of documents** against respondents, alleging that on March 6, 1922, Jose, without the knowledge of his seven siblings, through fraud, deceit and/or undue influence caused their (Jose and his siblings') father Policarpio, who was then sick and incapacitated, to sign a Deed of Sale, which came to their knowledge only in 2003, by making it appear that Policarpio sold him (Jose) *one half* of the property on account of which Jose was able to have even the entire area of the property titled in his name on March 6, 1925.

Petitioners also alleged that while respondents and their predecessors-in-interest have not taken possession of the property, they (petitioners) and their predecessors-in-interest have exercised exclusive, public, continuous, and adverse possession of the property for about 82 years since the supposed sale to Jose in 1922.

In a Motion to Dismiss,[7] respondents contended that, among other things, petitioners' action, which involves an immovable, had already prescribed in 30 years, citing Article 1141 of the New Civil Code; and that petitioners were in fact estopped by laches. To the Motion, petitioners countered that an action for

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[4] *Id.* at 26.

[5] *Id.* at 23.

[6] *Id.* at 1-19.

[7] *Id.* at 36-45.

quieting of title is imprescriptible and that, in any event, they had already acquired the property by acquisitive prescription.[8]

By Order[9] of September 30, 2004, Branch 14 of the Zamboanga City Regional Trial Court (RTC) dismissed the complaint in this wise:

> On the quieting of title [cause of action] . . . plaintiffs miserably failed to allege in their complaint that they possess . . . legal ownership [or] equitable ownership of the litigated property. Hence, plaintiff's cause of action on quieting of title has no legal leg to stand on.
>
> As regards plaintiffs' cause of action invoking the declaration of nullity of the aforementioned certificates of title, they based their claim of ownership thereof on the alleged fraud and deceit in the execution of deed of sale between Jose Falcasantos and his father Policarpio on March 7, 1922.
>
> It is well-settled that a Torrens certificate is the best evidence of ownership over registered land.
>
> The certificate serves as evidence of an indefeasible title to the property in favor of the persons whose names appear therein (*Republic v. Court of Appeals, Artemio Guido, et al.*, 204 SCRA 160 (1991), *Demausiado v. Velasco*, 71 SCRA 105, 112 [1976]).
>
> It may be argued that the certificate of title is not conclusive of ownership when the issue of fraud and misrepresentation in obtaining it is raised. However, this issue must be raised seasonably (*Monticives v. Court of Appeals*, 53 SCRA 14, 21 [1973]).
>
> In the present action, TCT No. 5668 was issued on March 6, 1925 to Jose Falcasantos. Upon the expiration of one (1) year from and after the date of entry of the decree of registration, not only such decree but also the corresponding certificate of title becomes incontrovertible and indefeasible (Section 32, P.D. 1529). Otherwise stated, TCT No. 5668 issued to defendant attained the status of indefeasibility one year after its issuance on March 6, 1925, hence, it is no longer open to review, on the ground of fraud. Consequently, the filing of instant complaint on January 27, 2004 or about 79 years after, can no longer re-open or revise or cancel

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[8] *Id.* at 51-69.

[9] *Id.* at 121-130.

TCT No. 5668 on the ground of fraud. No reasonable and plausible excuse has been shown for such unusual delay. The law serves these who are vigilant and diligent and not those who sleep when the law requires them to act.

The same is true with TCT Nos. RT-749 (10723) issued on May 28, 1931, No. T-3366 issued on August 30, 1950 and T-64,264 issued on July 27, 1981. These certificates of title became indefeasible one (1) year after their issuance.

Although complainants may still have the remedy of reconveyance, assuming that they are the "owners" and actual occupants of the litigated Lot 2152, as claimed by them, this remedy, however, can no longer be availed of by complainants due to prescription, The prescriptive period for reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of issuance of the certificate of title.

Complainants' discovery of the fraud must be deemed to have taken place from the issuance of the aforementioned certificates of title because the registration of the real property is considered a constructive notice to all persons from the time of such registering, filing or entering (*Serna v. Court of Appeals*, 527 SCRA 537, 536).

Inasmuch the complaint was filed by the complainants only on January 7, 2004, the ten, year prescriptive period had elapsed.

On the matter of prescription raised by the defendants, the Supreme Court, in the case of *Miailhe v. Court of Appeals*, 354 SCRA 686, 681-682, held:

> "x x x In *Gicano v. Gegato*, this Court held that a complaint may be dismissed when the facts showing the lapse of the prescriptive period are apparent from the records. In its words:
>
> > 'x x x We have ruled that the trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; x x x and it may do so on the basis of the motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. What is essential only, to

> repeat, is that the facts demonstrating the lapse of the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.'

It should be noted that the fact of prescription is clear from the very allegations found in paragraph 9 to 10.4 of the amended complaint, which reads:

> "9. Lately, 2003 last year, the [plaintiffs wanted to extra-judicially settle and partition among themselves the real property above-described but when they went to the Office of the Registry of Deeds for Zamboanga City, to their dismay and consternation, they discovered that OCT No. T-3371 has already been cancelled and a certificate of title for the said real property, TCT No. T-64,264 in the name of private defendants was issued by the Registry of Deeds for Zamboanga City on July 27, 1981. By this time also, 2003, they have learned of the fraud and simulation perpetrated by Jose Falcasantos in the execution of the 1922 Deed of Sale. Certified machine copy of CT(sic) No, T-64,264 is hereto attached as Annexes "D" and "D-1"
>
> 10. The plaintiffs learned that further from the Office of the Registry of Deeds for Zamboanga City that:
>
> 10.1- TCT No, T-64,264 was derived from TCT No. T-3366, issued in the name of TAN KIM PIAO *a.k.a.* OSCAR TAN, married to Yeo King Hua, by the Registry of Deeds for Zamboanga City on August 30, 1950. Copy of TCT No. T-3366 is hereto attached as Annexes "F", "F-1", "F-2", and "F-3".
>
> 10.2- TCT No, T-3366 was derived from TCT No. RT-749 (10723), a reconstituted title issued in the name of TAN NING, widower and Chinese citizen, by the Registry of Deeds for the Province of Zamboanga City on May 28, 1931. Certified machine copy of TCT No RT-749 (10723) is hereto attached as Annexes "E", "E-1", "E-2", and "E-3".
>
> 10.3- Reconstituted TCT No. RT-749 (10723) in the name of TAN NING was derived from TCT No. 5668 (Annexes "C" and "C-1"), issued in the name of Jose Falcasantos which cancelled OCT No. 3371; and

> 10.4- Reconstituted TCT No. RT- No. 749 (10723) and all its derivative certificates of titles, namely TCT Nos. T-3366 in the name of TAN KIM PIAO *a.k.a.* OSCAR TAN and T-64,264 in the name of private defendants are also void *ab initio* because the above-described real property was never sold by Jose Falcasantos to TAN NING.[10]

Petitioners filed a Motion for Reconsideration[11] of the dismissal of the complaint which the trial court, by Order of July 28, 2005, denied. Copy of the July 28, 2005 Order was received by petitioners' counsel on August 18, 2005 who thus had 15 days or up to September 2, 2005 to appeal. No appeal having been filed, the trial court issued on September 12, 2005 a Certificate of Finality of Judgment.

On October 18, 2005, petitioners assailed the trial court's Orders of September 30, 2004 and July 28, 2005 via *Certiorari* before the Court of Appeals, relying, in the main, as ground for the allowance thereof, their alleged deprivation of due process by the trial court for not giving them the opportunity to present evidence "to prove the causes of action."

By Decision[12] of January 20, 2006, the appellate court, holding that *Certiorari* is not the proper remedy to assail a final order of the trial court and, in any event, the petition for *Certiorari* was not only filed one day late, but was also defective in form and substance in that

a) The Petition failed to indicate all the material dates showing the timeliness of the Petition, pursuant to Section 3 of Rule 46 of the Revised Rules of Court. It failed to state the date when the notice of assailed Order dated 30 September 2004 was received.

b) The Petition and the Certification against Forum Shopping was only signed and verified by Petitioner ANASTACIO

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[10] *Id.* at 125-129.

[11] *Id.* at 131-146.

[12] Penned by Court of Appeals Associate Justice Myrna Dimaranan Vidal, with the concurrence of Associate Justices Romulo V. Borja and Ricardo R. Rosario. CA *rollo*, pp. 200-209.

LIMEN. It was only Petitioner ROMAN FALCASANTOS who executed a Special Power of Attorney authorizing Petitioner ANASTACIO LIMEN to file the instant Petition. The special Power of Attorney allegedly executed by other heirs was not presented.

c) The attached copy of the Order dated 30 September 2004 is not legible and a certified true copy as mandated under Section 1, Rule 65 of the Revised Rules of Court and worse, it lacks page 5 thereof.

d) The attached copy of Petitioners' "VEHEMENT OPPOSITION" marked as Annex "D" is not legible, (Underscoring supplied),

dismissed the petition.

Hence, the present petition, faulting the appellate court

I

X X X IN RULING THAT *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT IS NOT APPROPRIATE OR IS AN UNAVAILABLE REMEDY INSTITUTED BY THE PETITIONERS; [AND]

II

X X X IN NOT DISREGARDING PROCEDURAL DEFECTS IN THE DISMISSED PETITION.[13] (Emphasis in the original)

The trial court's order of dismissal of petitioners' complaint attained finality on September 2, 2005 following their failure to appeal it, which is a final, not an interlocutory order, within 15 days from August 18, 2005 when their counsel received a copy thereof.

Even if procedural rules were to be relaxed by allowing petitioners' availment before the appellate court of *Certiorari*, instead of appeal, to assail the dismissal of their complaint, not only was the petition for *Certiorari* filed beyond the 60-day reglementary period. It glaringly failed to allege how the trial court committed grave abuse of discretion in dismissing the complaint. It merely posited that in dismissing the complaint,

[13] *Rollo*, p. 22.

petitioners were deprived of the opportunity to present evidence to "prove the causes of action." Such position does not lie, however, for petitioners' complaint was dismissed precisely because after considering respondents' Motion to Dismiss and petitioners' 14-page "VEHEMENT OPPOSITION to the Motion to Dismiss" in which they proffered and exhaustively discussed the grounds for the denial of the Motion to Dismiss, the trial court dismissed the complaint on the ground of prescription.

While in their Motion for Reconsideration of the appellate court's decision petitioners explained why the questioned dismissal by the trial court of their complaint was issued in grave abuse of discretion, *viz*:

> The questioned orders were issued in grave abuse of discretion because the rulings therein violated the doctrine ***stare decisis*** that obliged judges to follow the principle of law laid down in earlier cases when the court *a quo* did not apply the jurisprudence cited by the petitioners in their "VEHEMENT OPPOSITION" dated 21 April 2004 and Motion for Reconsideration dated October 29, 2004.[14] (Emphasis and italics in the original, citation omitted),

the Court finds that just the same, the petition for *Certiorari* before the appellate court was doomed for it failed to allege that the trial court 1) acted *without jurisdiction* for not having the legal power to determine the case; 2) acted in *excess of jurisdiction* for, being clothed with the power to determine the case, it overstepped its authority as determined by law; and 3) committed *grave abuse of discretion* for acting in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction.[15]

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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

[15] *Vide* Regalado, *REMEDIAL LAW COMPENDIUM,* Vol. 1, Ninth Revised Ed., p. 781.

EN BANC

[G.R. No. 175605. August 28, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNOLD GARCHITORENA *Y* CAMBA *A.KA.* JUNIOR; JOEY PAMPLONA *A.K.A.* NATO and JESSIE GARCIA *Y* ADORINO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WRITER OF DECISION MAY NOT HAVE HEARD TESTIMONIES OF WITNESSES; CASE AT BAR.—Accused-appellant Pamplona contends that the trial court's decision was rendered by a judge other than the one who conducted trial. Hence, the judge who decided the case failed to observe the demeanor of the witnesses on the stand so as to gauge their credibility. This argument does not convince the Court for the reason it has consistently maintained, to wit: We have ruled in *People v. Sandiganbayn* (G.R. No. 87214, March 30, 1993, 220 SCRA 551), that the circumstance alone that the judge who wrote the decision had not heard the testimonies of the prosecution witnesses would not taint his decision. After all, he had the full record before him, including the transcript of stenographic notes which he could study. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is a clear showing of a grave abuse of discretion in the factual findings reached by him. A perusal of the trial court's decision readily shows that it was duly based on the evidence presented during the trial. It is evident that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses.

2. ID.; EVIDENCE; WITNESSES; TESTIMONY; EYEWITNESS DULCE BORERO'S TESTIMONY WAS UNWAVERING, STRAIGHTFORWARD, CATEGORICAL AND SPONTANEOUS IN HER NARRATION OF HOW THE KILLING OF HER BROTHER TOOK PLACE; CASE AT BAR.— The eyewitness Dulce Borero's testimony clearly established Pamplona and Garcia's participation and,

consequently, their culpability in the appalling murder of Mauro Biay x x x. Even under cross-examination, Dulce Borero was unwavering, straightforward, categorical and spontaneous in her narration of how the killing of her brother Mauro took place. Notably, her testimony as to the identification of Garchitorena as the one who stabbed Mauro Biay was even corroborated by defense witness Miguelito Gonzalgo.

3. ID.; ID.; ID.; ID.; EYEWITNESS BORERO'S TESTIMONY CONFIRMED BY PHYSICAL EVIDENCE; CASE AT BAR.—Moreover, the prosecution's version is supported by the physical evidence. Borero's testimony that the victim was successively stabbed several times conforms with the autopsy report that the latter suffered multiple stab wounds.

4. ID.; ID.; ID.; ID.; MINOR INCONSISTENCIES STRENGTHEN THE CREDIBILITY OF WITNESSES; CASE AT BAR.— The seeming inconsistencies between her direct testimony and her cross-examination testimonies are not sufficient ground to disregard them. In *People v. Alberto Restoles y Tuyo, Roldan Noel y Molet and Jimmy Alayon y De la Cruz,* we ruled that: . . . minor inconsistencies do not affect the credibility of witnesses, as they may even tend to strengthen rather than weaken their credibility. Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities. Moreover, such inconsistencies did not contradict the credibility of Borero or her narration of the incident. On the contrary, they showed that her account was the *entire* truth. In fact, her narration was in harmony with the account of defense witness Gonzalgo. We note further that both the Sworn Statement of Borero and her testimony before the lower court were in complete congruence.

5. ID.; ID.; ID.; ID.; POSITIVE IDENTIFICATION PREVAILS OVER ALIBI AND DENIAL.— Positive identification, where categorical and consistent, and not attended by any showing of ill motive on the part of the eyewitnesses on the matter, prevails over alibi and denial.

6. ID.; ID.; ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY OF THE ACCUSED TO BE AT THE SCENE OF THE CRIME

MUST BE PROVEN; CASE AT BAR.— Accused–appellant Garcia's alibi has no leg to stand on. In *People v. Desalisa*, this Court ruled that: . . . for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence. Here, the crime was committed at Binan, Laguna. Although Garcia testified that he was still riding a bus from his work in Blumentritt and arrived in Binan only at 11:00 P.M. or two hours after the killing incident, still, he failed to prove that it was physically impossible for him to be at the place of the crime or its immediate vicinity. His alibi must fail.

7. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; INSANITY; PHILIPPINE COURTS HAVE ESTABLISHED A MORE STRINGENT CRITERION; CASE AT BAR.— Accused-appellant Garchitorena's defense of insanity has also no merit. Unlike other jurisdictions, Philippine courts have established a more stringent criterion for the acceptance of insanity as an exempting circumstance. As aptly argued by the Solicitor General, insanity is a defense in the nature of confession and avoidance. As such, it must be adequately proved, and accused-appellant Garchitorena utterly failed to do so. We agree with both the CA and trial court that he was not totally deprived of reason and freedom of will during and after the stabbing incident, as he even instructed his co-accused-appellants to run away from the scene of the crime.

8. ID.; CONSPIRACY WHEN PRESENT; CASE AT BAR.— In *People v. Maldo*, we stated: "Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. *Direct proof is not essential, for conspiracy may be inferred from the acts of the accused prior to, during or subsequent to the incident.* Such acts must point to a joint purpose, concert of action or community of interest. *Hence, the victim need not be actually hit by each of the conspirators for the act of one of them is deemed the act of all."* In this case, conspiracy was shown because accused-appellants were together in performing the concerted acts in pursuit of their common objective. Garcia grabbed the victim's hands and twisted his arms; in turn, Pamplona, together with Garchitorena, strangled him and straddled him on the ground,

then stabbed him. The victim was trying to free himself from them, but they were too strong. All means through which the victim could escape were blocked by them until he fell to the ground and expired. The three accused-appellants' prior act of waiting for the victim outside affirms the existence of conspiracy, for it speaks of a common design and purpose.

9. ID.; ID.; ID.; LIABILITY OF ALL CONSPIRATORS AS CO-PRINCIPALS BECAUSE THE ACT OF ONE IS THE ACT OF ALL.— Where there is conspiracy, as here, evidence as to who among the accused rendered the fatal blow is not necessary. All conspirators are liable as co-principals regardless of the intent and the character of their participation, because the act of one is the act of all.

10. ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; CASE AT BAR.— Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, considering that a situation of superiority of strength is notoriously advantageous for the aggressor and is selected or taken advantage of by him in the commission of the crime. This circumstance was alleged in the Information and was proved during the trial. In the case at bar, the victim certainly could not defend himself in any way. The accused-appellants, armed with a deadly weapon, immobilized the victim and stabbed him successively using the same deadly weapon.

11. ID.; MURDER; PENALTY; INSTEAD OF DEATH, *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE, IMPOSED; CASE AT BAR.— All told, the trial court correctly convicted the accused-appellants of murder, considering the qualifying circumstance of abuse of superior strength. Since an aggravating circumstance of abuse of superior strength attended the commission of the crime, each of the accused-appellants should be sentenced to suffer the penalty of death in accordance with Article 63 of the Revised Penal Code. Murder, under Article 248 of the Revised Penal Code, is punishable by *reclusion perpatua* to death. Following Article 63 of the same code, the higher penalty of death shall be applied. In view, however, of the passage of *R.A. No. 9346*, otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, *reclusion perpetua* without eligibility for parole should instead be imposed. Accordingly,

accused-appellants shall be sentenced to *reclusion perpetua* without eligibility for parole in lieu of the penalty of death.

12. ID.; ID.; CIVIL INDEMNITY; DEPENDENT NOT ON ACTUAL IMPOSITION OF DEATH PENALTY BUT ON THE QUALIFYING CIRCUMSTANCES WARRANTING IMPOSITION OF DEATH PENALTY.— While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still ₱75,000.00. In *People v. Quiachon*, we explained that even if the penalty of death was not to be imposed on appellant because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 was still proper. Following the ratiocination in *People v. Victor,* the said award is not dependent on the actual imposition of the death penalty, but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the crime. Hence, we modify the award of civil indemnity by the trial court from ₱50,000.00 to ₱75,000.00. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.

13. CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARDED IN CASE AT BAR.—Likewise the award of ₱50,000.00 for moral damages is modified and increased to ₱75,000.00, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death, it is reduced to *reclusion perpetua* pursuant to R.A. 9346. The award of moral damages does not require allegation and proof of the emotional suffering of the heirs, since the emotional wounds from the vicious killing of the victim cannot be denied.

14. ID.; ID.; EXEMPLARY DAMAGES; REDUCED IN CASE AT BAR.— The trial court's award of exemplary damages in the amount of ₱50,000.00 shall, however, be reduced to ₱30,000.00, also pursuant to the latest jurisprudence on the matter.

15. ID.; ID.; TEMPERATE DAMAGES; WHEN AWARDED.— As to the award of actual damages amounting to ₱16,700.00, we modify the same. In *People v. Villanueva,* this Court declared that ". . . when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual

damages of a lesser amount." In the light of such ruling, the victim's heirs in the present case should, therefore, be awarded temperate damages in the amount of ₱25,000.00.

16. ID.; ID.; LOSS OF EARNING CAPACITY; MUST BE SUBSTANTIATED BY DOCUMENTARY EVIDENCE; EXCEPTIONS; CASE AT BAR.— As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Julita F. Escueta-Gonzales for Arnold Garchitorena.
Luis G. Lambrento for Joey Pamplona.
Harry J. Pajares for Jessie Garcia.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For automatic review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR. HC No. 00765 which affirmed an earlier Decision[2] of the Regional Trial Court (RTC) of Binan City, Branch 25 in Criminal Case No. 9440-B, finding accused-appellants Arnold Garchitorena *y* Gamba, *a.k.a.* "Junior," Joey Pamplona, *a.k.a.* "Nato," and Jessie Garcia *y* Adorino guilty beyond reasonable doubt of murder and sentencing them to

[1] Penned by then Associate Justice Elvi John S. Asuncion (ret.) with Associate Justices Noel G. Tijam and Mariflor P. Punzalan-Castillo, concurring; *rollo* Vol. II, pp. 3-10.

[2] Penned by Judge Hilario F. Corcuera, Records, Vol. II, pp. 427-444.

suffer the penalty of death and to indemnify jointly and severally the heirs of the victim in the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱16,700.00 as actual damages, ₱408,000.00 for loss of earning capacity and to pay the costs of the suit.

The conviction of accused-appellants stemmed from an Information[3] dated January 22, 1996, filed with the RTC for the crime of Murder, the accusatory portion of which reads:

> That on or about September 22, 1995, in the Municipality of Binan, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Arnold Garchitorena *y* Gamba, alias "Junior," Joey Pamplona alias "Nato" and Jessie Garcia *y* Adorino, conspiring, confederating together and mutualy helping each other, with intent to kill, while conveniently armed with a deadly bladed weapon, with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one Mauro Biay *y* Almarinez with the said weapon, thereby inflicting upon him stab wounds on the different parts of his body which directly caused his death, to the damage and prejudice of his surviving heirs.
>
> That the crime was committed with the qualifying aggravating circumstance of abuse of superior strength.
>
> CONTRARY TO LAW.

When arraigned, accused-appellants, duly assisted by their counsel, pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution presented three (3) witnesses; namely, Dulce Borero, elder sister of the victim Mauro Biay and eyewitness to the killing of her brother; Dr. Rolando Poblete, who conducted an autopsy on the body of the victim and prepared the post-mortem report; and Amelia Biay, the victim's widow. The evidence for the prosecution, as culled from the CA Decision under review, is as follows:

> In the proceedings before the trial court, witness for the prosecution Dulce Borero testified that on September 22, 1995, at around 9:00

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[3] *Rollo,* pp. 9-10.

o'clock in the evening, she was selling "*balut*" at Sta. Inez, Almeda Subdivision, Brgy. Dela Paz, Binan, Laguna. Her brother, Mauro Biay, also a "*balut*" vendor, was also at the area, about seven (7) arms length away from her when she was called by accused Jessie Garcia. Borero testified that when her brother Mauro approached Jessie, the latter twisted the hand of her brother behind his back and Jessie's companions-accused Arnold Garchitorena and Joey Pamplona – began stabbing her brother Mauro repeatedly with a shiny bladed instrument. Joey was at the right side of the victim and was strangling Mauro from behind. Witness saw her brother Mauro struggling to free himself while being stabbed by the three (3) accused, until her brother slumped facedown on the ground. Arnold then instructed his two co-accused to run away. During cross-examination, Borero claims that she wanted to shout for help but nothing came out from her mouth. When the accused had left after the stabbing incident, witness claimed that she went home to call her elder brother Teodoro Biay, but when they returned to the scene, the victim was no longer there as he had already been brought to the Perpetual Help Hospital. They learned from the tricycle driver who brought Mauro top (sic) the hospital that their brother was pronounced dead on arrival.

Dr. Rolando Poblete, the physician who conducted an autopsy on victim Mauro Biay and prepared the post-mortem report, testified that the victim's death was caused by "hypovolemic shock secondary to multiple stab wounds." Witness specified the eight (8) stab wounds suffered by the victim – one in the neck, two in the chest, one below the armpit, two on the upper abdomen, one at the back and one at the left thigh – and also a laceration at the left forearm of Mauro. According to the expert witness, the nature of stab wounds indicate that it may have been caused by more than one bladed instrument.

The victim's widow, Amelia Biay, testified that she incurred burial expenses amounting to ₱16,700.00 due to the death of her husband. Also, her husband allegedly earned a minimum of ₱300.00 a day as a "*balut*" vendor and ₱100.00 occasionally as a part-time carpenter.

The accused-appellants denied the charge against them. Specifically, accused-appellant Joey Pamplona denied that he participated in the stabbing of Mauro Biay, accused-appellant Jessie Garcia interposed the defense of alibi, while accused-appellant Arnold Garchitorena interposed the defense of insanity. Succinctly, the CA Decision summed up their respective defenses:

On the other hand, accused Joey Pamplona denied that he participated in the stabbing of Mauro Biay. Joey Pamplona claims that he was seated on a bench when co-accused Arnold came along. Then the "*balut*" vendor arrived and Joey saw Arnold stand up, pull something from the right side of his pocket and stab the "*balut*" vendor once before running away. Joey Pamplona testified that after the stabbing incident, due to fear that Arnold might also stab him, he also ran away to the store of a certain Mang Tony, a *barangay* official and related the incident to Aling Bel, the wife of Mang Tony. Joey Pamplona said that he stayed at Mang Tony's store until his father arrived and told him to go home.

Danilo Garados testified that on Septemebr (sic) 22, 1995, he was at the store of Mang Tony to buy cigarettes and saw Arnold and Joey seated on the bench near the artesian well. Arnold and Joey allegedly called Mauro Biay and he saw Arnold stabbing Mauro. Jessie Garcia was not there and Joey allegedly ran away when Arnold stabbed Mauro.

Clavel Estropegan testified that on September 22, 1995, around 9:00 p.m. Joey Pamplona entered her store and told her that Junior or Arnold Garchitorena was stabbing somebody. She did not hear any commotion outside her house which is just four houses away from the artesian well. However, she closed her store for fear that Arnold will enter her house.

Barangay Captain Alfredo Arcega testified that he investigated the stabbing incident and, although he had no personal knowledge, he found out that it was Arnold Garchitorena who stabbed Mauro Biay. Upon questioning Arnold, the latter admitted that he did stab Mauro.

Defense witness Miguelito Gonzalgo testified that on September 22, 1995, he was in his shoe factory at his house located at 186 Sta. Teresita Street, Almeda Subdivision, Binan when he heard Mauro Biay shouting, and so he went out of his house. He allegedly saw two persons "embracing" each other near the artesian well. He recognized these two persons as Mauro and Arnold. He saw Arnold pulling out a knife from the body of Mauro and the latter slowly fell down on his side. After Arnold washed his hands at the artesian well and walked away towards the house of his aunt, this witness approached Mauro and seeing that the victim was still breathing, went to get a tricycle to bring Mauro to the hospital. When he got back to the area, there were many people who helped board Mauro in the tricycle and they brought him to the Perpetual Help Hospital in Binan.

The other co-accused Jessie Garcia took the stand and claimed that on September 22, 1995, between 8:00 and 9:00 in the evening, he was still riding a bus from his work in Blumentritt. He arrived at his home in Binan only at 11:00 p.m. On September 24, 1995, he was fetched by two (2) policemen and two (2) Barangay Tanods from his house and brought to the Binan Police Station for questioning. Thereafter, he was put in jail and incarcerated for six (6) months without knowing the charges against him. He was only informed that he was one of the suspects in the killing of Mauro Biay by his mother.

With respect to Arnold Garchitorena, Dr. Evelyn Belen, Medical Officer III and resident physician of the National Center for Mental Health, testified that she examined the accused Arnold and based on the history of the patient, it was found that he had been using prohibited drugs like *shabu* and marijuana for two (2) years prior to the stabbing incident in 1995. The patient is allegedly suffering from schizophrenia, wherein he was hearing auditory voices, seeing strange things and is delusional. However, Dr. Belen also testified that the accused Garchitorena had remissions or exaservation and understands what he was doing and was aware of his murder case in court.[4]

On May 9, 2001, the trial court rendered a Decision,[5] as follows:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court finds accused Arnold Garchitorena *y* Gamboa *alias* Junior, Joey Pamplona alias Nato and Jessie Garcia *y* Adorino GUILTY beyond reasonable of the crime of "MURDER" as defined and penalized under Article 248 of the Revised Penal Code, as amended, by Republic Act 7659, (Heinous Crimes). Accordingly, all of them are hereby sentenced to suffer the penalty of DEATH.

Furthermore, all of the accused are hereby ordered to pay jointly and severally Amelia Biay, widow of the victim Mauro Biay, the following sums:

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[4] *Rollo,* Vol. II, pp. 4-7.

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

a) 50,000.00 – as and for civil indemnity
b) 50,000.00 – as and for moral damages
c) 50,000.00 – as and for exemplary damages
d) 16,700.00 – as and for actual damages
e) 408,000.00 – as and for loss of the earning capacity of Mauro Biay; and
f) To pay the costs of suit.

Likewise, the Provincial Warden of the Provincial Jail, Sta. Cruz, Laguna, is hereby ordered to transfer/commit the three (3) accused to the New Bilibid Prisons, Muntinlupa City, immediately upon receipt hereof.

Considering that death penalty was meted against all of the accused, let the entire records of the above-entitled case be forwarded to the Supreme Court for automatic review and judgment pursuant to Rule 122, Sec.10 of the Revised Rules of Criminal Procedure.

SO ORDERED.[6]

Accused-appellants appealed to the CA. Pamplona and Garcia reiterated their denial of the charge against them. Garchitorena who never denied his participation in the killing, insisted, however, insisted that he is exempt from criminal liability because he was suffering from a mental disorder before, during and after the commission of the crime.

On May 31, 2006, the CA rendered the Decision[7] now under review, affirming RTC's Decision *in toto*, thus:

WHEREFORE, based on the foregoing premises, the instant appeal is DISMISSED. Accordingly, the appealed March 9, 2001 Decuision (sic) of the Regional Trial Court of Binan, Laguna, Branch 25, in Criminal Case No. 9440-B finding herein accused-appellants guilty beyond reasonable doubt of the crime of murder is AFFIRMED in its entirety.

SO ORDERED.

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

[7] *Supra* note 1.

In arriving at the assailed Decision, the CA ratiocinated as follows:

After studying the records of this case, we do not find any reason to overturn the ruling of the trial court.

Despite the testimony of defense witnesses that it was only accused-appellant Arnold Garchitorena who stabbed the victim Mauro Biay, we find reason to uphold the trial court's giving credence to prosecution witness Dulce Borero who testified as an eyewitness on the circumstances surrounding the incident and the manner by which the crime committed.

Defense witness Garados testified that he was at the store and saw both Arnold and Joey at the vicinity where the stabbing incident happened, seated on a bench near the artesian well, when they called the victim Mauro. Defense witness Gonzalgo was in his house when he heard the commotion and went outside to see Arnold and Mauro "embracing" near the artesian well and the former pulling a knife from the body of the latter. On the other hand, prosecution witness Borero was merely seven arms length away from the incident and could easily see the victim Mauro overpowered and attacked by his assailants, Arnold Garchitorena, Joey Pamplona and Jessie Garcia. She witnessed the stabbing incident in its entirely and positively identified the accused and their criminal acts. It is a well-settled rule that the evaluation of testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not. (*People vs. Cardel,* 336 SCRA 144)

Evidence presented by the prosecution shows that the accused conspired to assault the victim Mauro Biay. Accused Jessie Garcia was the one who called the victim and prompted the latter to approach their group near the artesian well. When the victim was near enough, accused Jessie Garcia and co-accused Joey Pamplona restrained Mauro Biay and overpowered him. Witness Borero then saw the two accused, Jessie Garcia and Joey Pamplona, together with their co-accused Arnold Garchitorena instructed his two co-accused to run. Conspiracy is apparent in the concerted action of the three accused. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (*People vs. Pendatun,* 434 SCRA 148). Conspiracy may be deduced

from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused which show a joint or common purpose and design, a concerted action and community of interest among the accused (*People vs. Sicad, et al.*, 391 SCRA 19).

Likewise, we affirm the trial court's appreciation of the aggravating circumstance of abuse of superior strength to qualify the crime into murder. "While it is true that superiority in number does not per se mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense." (*People of the Phils. vs. Parreno*, 433 SCRA 591). In the case at bar, the victim was rendered helpless when he was assaulted by the three accused. He was restrained and overpowered by the combined strength and the weapons used by his assailants.

We do not find improbable Borero's failure to act or shout for help upon witnessing the stabbing of her brother Mauro Biay. It is an accepted maxim that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling experience. xxx There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. (*People of the Philippines vs. Aspuria*, 391 SCRA 404)

Accused-appellant Jessie Garcia's denial of any involvement cannot prevail over Borero's positive identification. As ruled by the trial court, allegations that accused Jessie Garcia was somewhere else when the crime was committed is not enough. He must likewise demonstrate that he could not have been present at the crime scene, or in its vicinity. He also could have sought the help of his co-worker, employer or anyone in the area to support his defense of alibi. Indeed, we affirm that accused Jessie Garcia's allegation that he was elsewhere when the crime was committed is not substantiated by evidence. Alibi can easily be fabricated. Well-settled is the rule that alibi is an inherently weak defense which cannot prevail over the positive identification of the accused by the victim. (*People of the Phils. vs. Cadampog*, 428 SCRA 336)

Finally, the defense of insanity cannot be given merit when the expert witness herself, Dr. Belen, attested that accused Arnold Garchitorena was experiencing remission and was even aware of his murder case in court. The trial court had basis to conclude that during the commission of the crime, Arnold was not totally deprived of reason and freedom of will. In fact, after the stabbing incident, accused Arnold Garchitorena instructed his co-accused to run away from the scene. We agree that such action demonstrates that Arnold possessed the intelligence to be aware of his and his co-accused's criminal acts. A defendant in a criminal case who interpose the defense of mental incapacity has the burden of establishing the fact that he was insane at the very moment when the crime was committed. There must be complete deprivation of reason in the commission of the act, or that the accused acted without discernment, which must be proven by clear and positive evidence. The mere abnormality of his mental faculties does not preclude imputability. Indeed, a man may act crazy but it does not necessarily and conclusively prove that he is legally so. (*People of the Philippines vs. Galigao*, 395 SCRA 195)

Having found the court *a quo's* decision to be supported by the evidence on record, and for being in accord with prevailing jurisprudence, we find no reason to set it aside.

WHEREFORE, based on the foregoing premises, the instant appeal is DISMISSED. Accordingly, the appealed March 9, 2001 Decision of the Regional Trial Court of Biñan, Laguna, Branch 25, in Criminal Case No. 9440-B finding herein accused-appellants guilty beyond reasonable doubt of the crime of murder is AFFIRMED in its entirely.

SO ORDERED.

The case was elevated to this Court for automatic review. The People and the accused-appellants opted not to file any supplemental brief. The respective assignments of errors contained in the briefs that they filed with the CA are set forth hereunder.

For accused-appellant Pamplona:

I

THE TRIAL COURT ERRED IN GIVING FULL AND TOTAL CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS DULCE BORERO

II

THE TRIAL COURT ERRED IN FAILING TO APPRECIATE THE EVIDENCE IN FAVOR OF THE APPELLANT

III

THE TRIAL COURT ERRED IN CONVICTING APPELLANT WHEN HIS GUILT HAS NOT BEEN DULY PROVEN BEYOND REASONABLE DOUBT

For accused-appellant Garcia:

I

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE ALLEGED EYEWITNESS ACCOUNT GIVEN BY DULCE BORERO, ELDER SISTER OF THE VICTIM AND PROSECUTION WITNESS, IN RESPECT OF THE PARTICIPATION OF THE HEREIN ACCUSED DESPITE GLARING INCONSISTENCIES, INHERENT IMPROBABILITIES AND UNRELIABLE DECLARATION ATTENDING THE SAME; AND, ON THE OTHERHAND, IN DISREGARDING THE COHERENT, CONSISTENT AND CREDIBLE EYEWITNESS ACCOUNT OF DEFENSE WITNESSES – ALL IN CONTRAVENTION OF THE RULES GOVERNING QUANTUM OF PROOF IN CRIMINAL CASES AND THE PRESUMPTION OF INNOCENSE EXISTING IN FAVOR OF ACCUSED GARCIA;

II

THE TRIAL COURT ERRED IN COMPLETELY DISREGARDING THE DEFENSE OF ALIBI INTERPOSED BY ACCUSED-APPELLANT JESSIE GARCIA WHO WAS SOMEWHERE ELSE AT THE TIME AS TO RENDER IT PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME AND EVEN IF THE SAME IS SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, THAT IS, THE TESTIMONIES OF OITHER (sic) DEFENSE WITNESSES WHO WERE ONE IN SAYING THAT HE WAS NOT PRESENT THEREAT;

III

THE LOWER COURT ERRED IN ENTERING A VERDICT OF CONVICTION FOR JESSIE GARCIA INSTEAD OF ACQUITTAL

WHEN NONE OF THE OTHER ACCUSED, AFTER HAVING ADMITTED THEIR PARTICIPATION IN THE CRIME, IMPLICATED HIM;

IV

THE LOWER COURT ERRED, IN AWARDING MORAL AND EXEMPLARY DAMAGES IN THE ABSENCE OF EVIDENCE THEREFOR.

For accused-appellant Garchitorena:

I

THE COURT ERRED IN NOT GIVING WEIGHT AND CREDENCE OVER THE TESTIMONY OF AN EXPERT WITNESS.

II

THE COURT ERRED IN FINDING ACCUSED ARNOLD GARCHITORENA TO HAVE WILLFULLY EXECUTED THE ACTS COMPLAINED OF.

Accused-appellant **Pamplona** capitalized on Dulce Borero's inaction at the time when she had supposedly witnessed the slaying of her younger brother. He argued that if she really witnessed the crime, she would have had readily helped her brother Mauro instead of fleeing. Accused-appellant **Garcia** anchored his acquittal on his defense of alibi, while accused-appellant **Garchitorena** used his alleged mental disorder, specifically, *schizophrenia*, as a ground to free himself from criminal liability.

The core issues raised by the both accused-appellants Pamplona and Garcia are factual in nature and delve on the credibility of the witnesses.

Since the accused-appellants raise factual issues, they must use cogent and convincing arguments to show that the trial court erred in appreciating the evidence. They, however, have failed to do so.

Accused-appellant Pamplona contends that the trial court's decision was rendered by a judge other than the one who

conducted trial. Hence, the judge who decided the case failed to observe the demeanor of the witnesses on the stand so as to gauge their credibility. This argument does not convince the Court for the reason it has consistently maintained, to wit:

> We have ruled in *People v. Sandiganbayan* (G.R. No. 87214, March 30, 1993, 220 SCRA 551), that the circumstance alone that the judge who wrote the decision had not heard the testimonies of the prosecution witnesses would not taint his decision. After all, he had the full record before him, including the transcript of stenographic notes which he could study. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is a clear showing of a grave abuse of discretion in the factual findings reached by him.[8]

A perusal of the trial court's decision readily shows that it was duly based on the evidence presented during the trial. It is evident that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses. This Court finds no plausible ground to set aside the factual findings of the trial court, which were sustained by the CA.

The eyewitness Dulce Borero's testimony clearly established Pamplona and Garcia's participation and, consequently, their culpability in the appalling murder of Mauro Biay:[9]

> "Fiscal Nofuente (To the witness)
>
> Q: Madam witness, do you know Mauro Biay?
> A: Yes sir.
>
> x x x x x x x x x
>
> Q: Do you know likewise the cause of his death?
> A: Yes sir.
>
> Q: **What was the cause of his death?**
> A: **He was repeatedly stabbed sir.**

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[8] *People v. Fulinara*, G.R. No. 88326, August 3, 1995, 247 SCRA 38.

[9] TSN, April 23, 1996, Dulce Borero, pp. 4-14

Q: You said that Mauro Biay was repeatedly stabbed, **who stabbed Mauro Biay repeatedly?**
A: **Arnold Gatchitorena, was stabbing repeatedly the victim sir.**

Q: Was Arnold Gatchitorena alone when he stabbed Mauro Biay?
A: They were three (3) who were stabbing Mauro Biay, sir.

Q: You said that they were three who were stabbing Mauro Biay, who are the other two?
A: **Jessie Garcia and Joey Pamplona** sir.

Q: So that when you said three, you are referring to Arnold Gatchitorena, Joey Pamplona and Jessie Garcia?
A: Yes sir.

Q: Now, when [did] this stabbing incident [happen]?
A: On September 22, 1995 sir.

Q: Do you know what was [the] time when this incident happened on September 22, 1995?
A: 9:00 o'clock in the evening sir.

Q: Where [did] this stabbing [happen]?
A: At Sta. Inez, Almeda Subdivision, dela Paz, Biñan, Laguna sir.

Q: Could you tell Madam Witness, where in particular place in Sta. Inez, Almeda Subdivision this stabbing incident happened?
A: In the street near the artesian well sir.

Q: Do you know where is that street?
A: Sta Inez St., Almeda Subdivision, dela Paz, Biñan, Laguna sir.

Q: You said a while ago that accused Arnold Gatchitorena, Jessie Garcia, Joey Pamplona repeatedly [stabbed] Mauro Biay, do you know these three accused?
A: Yes sir.

x x x x x x x x x

Q: Will you kindly step down from your seat and tap the three accused that you have pointed to us to be the persons who stabbed and killed your brother Mauro Biay?

Court: Police Officer Dionisio will you kindly accompany the witness.
P02 Dionisio: Yes sir.

Fiscal: I would like to manifest Your Honor, that the witness was crying when she was pointing to the three accused, uttering that "*Sila ang pumatay sa aking kapatid!*."

x x x x x x x x x

Q: What is the name of that person wearing that blue t-shirts?
A: Arnold Gatchitorena sir.

Q: We would like to confirm if he is really Arnold Gatchitorena pointed to by the witness?

Interpreter: The person pointed to by the witness wearing blue t-shirts identified himself as Arnold Gatchitorena.

Fiscal: Do you know the name of second person whom you tapped on his side wearing white t-shirts?
A: Yes sir.

Q: What is his name?
A: Jessie Garcia sir.

Interpreter: The person pointed to by the witness identified himself as certain Jessie Garcia.

Fiscal: Likewise Madam Witness, do you know the name of a person in longsleeves polo shirts-checkered?
A: Yes sir, Joey Pamplona sir.

Interpreter: The person pointed by the witness identified himself as certain Joey Pamplona.

x x x x x x x x x

Q: How far were you from Mauro Biay when he was being stabbed by the three accused Joey Pamplona, Jessie Garcia, and Arnold Gatchitorena?
A: Seven (7) arms length sir.

Q: You said that your brother was stabbed successively by the three accused, how did it [happen] Madam Witness?
A: They called him sir.

Q: Who was called?
A: Mauro Biay sir.

Q: Who called Mauro Biay?
A: It was Jessie who called sir.

Q: When you said Jessie, are you referring to Jessie Garcia, one of the accused in this case?
A: Yes sir.

Q: When Mauro Biay was called by Jessie Garcia, what was [M]auro Biay doing there?
A: Mauro Biay approached sir.

Q: By the way Madam Witness, do you know why Mauro Biay was in that place where the incident happened?
A: Yes sir.

Atty. Pajares: Witness would be incompetent Your Honor.

Court: Witness may answer.

Fiscal: Why was he there?
A: He was selling "*balot*" sir.

x x x x x x x x x

Fiscal: When Mauro Biay approached Jessie Garcia, what [did] Mauro Biay do, if any?
A: Jessie Garcia twisted the hand of my brother and placed the hand at his back sir.

Q: Who were the companions of Jessie Garcia when he called [M]auro Biay?
A: Joey Pamplona and Jr. Gatchitorena sir.

Q: When you said Jr. Gatchitorena are you referring to Arnold Gatchitorena?
A: Yes sir.

Q: So that when Jessie Garcia called Mauro Biay, he was together with Arnold Gatchitorena and Joey Pamplona?
A: Yes sir.

Q: If you know Madam Witness, what did Joey Pamplona and Arnold Gatchitorena do after Jessie Garcia twisted the arm of Mauro Biay on his back?
A: Arnold Gatchitorena repeatedly stabbed [M]auro Biay at his back and also Jessie Garcia also stabbed my brother sir.

x x x x x x x x x

Q: Were you able to know the weapon used to stab Mauro Biay?
A: It was like a shiny bladed instrument sir.

Q: Now, what was the position of Mauro Biay when being stabbed by the three accused?
A: He was struggling to free himself sir.

Q: You said that he was struggling to free himself, why did you say that he was struggling to free himself?
A: Because I could see sir.

Q: You see what?
A: Because that three were repeatedly stabbing Mauro Biay sir.

Q: Aside from stabbing Mauro Biay, what was Joey Pamplona doing to Mauro Biay, if you can still remember?
A: He was also repeatedly stabbing my brother sir.

Q: Aside from that stabbing, what else if any Joey Pamplona was doing to Mauro Biay?
A: Aside from stabbing Mauro Biay Joey Pamplona was also struggling [strangling] the neck of Mauro Biay sir.

Q: You said that Mauro Biay was stabbed by the three accused successively, was Mauro Biay hit by these stabbing?
A: Yes sir.

Q: Why do you know that he was hit by stabbing of the three?
A: Because I saw the blood oozing from the part of his body sir.

Q: Now, what happened to Mauro Biay, when he was stabbed and hit by the successive stabbing of the three accused?
A: The victim Mauro Biay was suddenly slumped face down on the ground sir.

x x x x x x x x x

Q: What did you learn if any when you went to the hospital to see your brother [M]auro Biay?
A: He was already dead sir.

Even under cross-examination, Dulce Borero was unwavering, straightforward, categorical and spontaneous in her narration of how the killing of her brother Mauro took place.[10] Notably, her testimony as to the identification of Garchitorena as the one who stabbed Mauro Biay was even corroborated by defense witness Miguelito Gonzalgo,[11] thus:

Q: From the time you saw these two persons near the artesian well, what happened after that, mr. witness?
A: Mauro Biay slumped on the floor and I saw Junior stabbed once more the victim but I am not sure if the victim was hit at the back, ma'am.

Q: How far were you from the two when you saw the incident, mr. witness?
A: More or less 7 to 8 meters, ma'am.

Q: Were there anything blocking your sight from the place where you were standing to the place of incident, mr. witness?
A: None, ma'am.

Absent any showing of ill motive on the part of Borero, we sustain the lower court in giving her testimony full faith and credence. Moreover, the prosecution's version is supported by the physical evidence.[12] Borero's testimony that the victim was successively stabbed several times conforms with the autopsy report that the latter suffered multiple stab wounds.[13]

Accused-appellant Pamplona's argument that there were inconsistencies in the testimony of prosecution witnesses Borero is not convincing. He specifically points out that in the direct examination of Borero, she stated that it was Jessie Garcia who

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[10] TSN, May 8, 1996, Dulce Borero, pp. 13-20.

[11] TSN, February 24, 1997, pp. 9-10.

[12] Exhibit "B", Records, Vol. I, p. 127.

[13] *Id*.

twisted the hand of Mauro Biay backwards when the latter approached the former.[14] In the cross-examination, she stated that it was Joey Pamplona who strangled the victim when the latter approached Jessie Garcia.

The seeming inconsistencies between her direct testimony and her cross-examination testimonies are not sufficient ground to disregard them. In *People v. Alberto Restoles y Tuyo, Roldan Noel y Molet and Jimmy Alayon y De la Cruz*,[15] we ruled that:

> …minor inconsistencies do not affect the credibility of witnesses, as they may even tend to strengthen rather than weaken their credibility. Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities.

Moreover, such inconsistencies did not contradict the credibility of Borero or her narration of the incident. On the contrary, they showed that her account was the *entire* truth. In fact, her narration was in harmony with the account of defense witness Gonzalgo. We note further that both the Sworn Statement[16] of Borero and her testimony before the lower court[17] were in complete congruence.

Undoubtedly, accused-appellants' identities as the perpetrators were established by the prosecution. The prosecution witness was able to observe the entire incident, because she was there. Thus, we find no reason to differ with the trial court's appreciation of her testimony. Positive identification, where categorical and consistent, and not attended by any showing of ill motive on

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[14] Pamplona's Appellant's Brief.

[15] G.R. No. 112692, August 25, 2000, 339 SCRA 40, citing *People v. Flora*, G.R. No. 125909, June 23, 2000, 334 SCRA 626.

[16] Exhibit "A", Records, Vol. I, p. 8.

[17] TSN, Dulce Borero, May 8, 1996, pp. 13-20; TSN, Dulce Borero, April 23, 1996, pp. 5-14.

the part of the eyewitnesses on the matter, prevails over alibi and denial.[18]

Accused-appellant Garcia's alibi has no leg to stand on. In *People v. Desalisa*,[19] this Court ruled that:

> …for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.

Here, the crime was committed at Binan, Laguna. Although Garcia testified that he was still riding a bus from his work in Blumentritt and arrived in Binan only at 11:00 P.M. or two hours after the killing incident, still, he failed to prove that it was physically impossible for him to be at the place of the crime or its immediate vicinity. His alibi must fail.

Accused-appellant Garchitorena's defense of insanity has also no merit. Unlike other jurisdictions, Philippine courts have established a more stringent criterion for the acceptance of insanity as an exempting circumstance.[20] As aptly argued by the Solicitor General, insanity is a defense in the nature of confession and avoidance. As such, it must be adequately proved, and accused-appellant Garchitorena utterly failed to do so. We agree with both the CA and the trial court that he was not totally deprived of reason and freedom of will during and after the stabbing incident, as he even instructed his co-accused-appellants to run away from the scene of the crime.

Accused-appellant Garcia also argues that there was no conspiracy, as "there was no evidence whatsoever that he aided the other two accused-appellants or that he participated in their

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[18] *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260.

[19] *People v. Desalisa*, G.R. No. 148327, June 12, 2003, 403 SCRA 723.

[20] *People v. Belonio*, G.R. No. 148695, May 27, 2004, 429 SCRA 579.

criminal designs."[21] We are not persuaded. In *People v. Maldo*,[22] we stated:

"Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. *Direct proof is not essential, for conspiracy may be inferred from the acts of the accused prior to, during or subsequent to the incident*. Such acts must point to a joint purpose, concert of action or community of interest. *Hence, the victim need not be actually hit by each of the conspirators for the act of one of them is deemed the act of all*." (citations omitted, emphasis ours)

In this case, conspiracy was shown because accused-appellants were together in performing the concerted acts in pursuit of their common objective. Garcia grabbed the victim's hands and twisted his arms; in turn, Pamplona, together with Garchitorena, strangled him and straddled him on the ground, then stabbed him. The victim was trying to free himself from them, but they were too strong. All means through which the victim could escape were blocked by them until he fell to the ground and expired. The three accused-appellants' prior act of waiting for the victim outside affirms the existence of conspiracy, for it speaks of a common design and purpose.

Where there is conspiracy, as here, evidence as to who among the accused rendered the fatal blow is not necessary. All conspirators are liable as co-principals regardless of the intent and the character of their participation, because the act of one is the act of all.[23]

The aggravating circumstance of superior strength should be appreciated against the accused-appellants. Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, considering that a situation of superiority of strength is notoriously advantageous for the

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[21] Garcia's Appellant's Brief, *rollo*, Vol. I, p. 119.

[22] G.R. No. 131347, May 19, 1999, 307 SCRA 436.

[23] *People v. Salison, Jr.*, G.R. No. 115690, February 20, 1996, 253 SCRA 758.

aggressor and is selected or taken advantage of by him in the commission of the crime.[24] This circumstance was alleged in the Information and was proved during the trial. In the case at bar, the victim certainly could not defend himself in any way. The accused-appellants, armed with a deadly weapon, immobilized the victim and stabbed him successively using the same deadly weapon.

All told, the trial court correctly convicted the accused-appellants of murder, considering the qualifying circumstance of abuse of superior strength. Since an aggravating circumstance of abuse of superior strength attended the commission of the crime, each of the accused-appellants should be sentenced to suffer the penalty of death in accordance with Article 63[25] of the Revised Penal Code. Murder, under Article 248[26] of the Revised Penal Code, is punishable by *reclusion perpetua* to death. Following Article 63 of the same code, the higher penalty of death shall be applied.

In view, however, of the passage of *R.A. No. 9346*,[27] otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, *reclusion perpetua* without eligibility for parole should instead be imposed. Accordingly,

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[24] *People v. Cortez*, G.R. No. 131924, December 26, 2000, 348 SCRA 663, 674.

[25] Art. 63. x x x x x x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1) When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

[26] Art. 248. Murder – Any person who, not falling within the provisions of Art. 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense of means or persons to insure or afford impunity.

2. x x x x x x x x x

[27] Approved on June 24, 2006.

accused-appellants shall be sentenced to *reclusion perpetua* without eligibility for parole in lieu of the penalty of death.

While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous.[28] Consequently, the civil indemnity for the victim is still ₱75,000.00. In *People v. Quiachon*,[29] we explained that even if the penalty of death was not to be imposed on appellant because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 was still proper. Following the ratiocination in *People v. Victor*,[30] the said award is not dependent on the actual imposition of the death penalty, but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the crime.

Hence, we modify the award of civil indemnity by the trial court from ₱50,000.00 to ₱75,000.00. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Likewise the award of ₱50,000.00 for moral damages is modified and increased to ₱75,000.00, consistent with recent jurisprudence[31] on heinous crimes where the imposable penalty is death, it is reduced to *reclusion perpetua* pursuant to R.A. 9346. The award of moral damages does not require allegation and proof of the emotional suffering of the heirs, since the emotional wounds from the vicious killing of the victim cannot be denied.[32] The trial court's

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[28] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676. See also *People v. Ranin*, G.R. No. 173023, June 25, 2008; and *People v. Entrialgo*, G.R. No. 177353, November 11, 2008.

[29] G.R. No. 170235, August 31, 2006, 500 SCRA 704, 719.

[30] G.R. No. 127903, July 9, 1998, 292 SCRA 186.

[31] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 547; *People v. Orbita*, G.R. No. 172091, March 31, 2008; *People v. Balobalo*, G.R. No. 177563, October 18, 2008.

[32] *People v. Caraig*, G.R. Nos. 116224-27, March 28, 2003, 448 Phil. 78, 98 (2003).

award of exemplary damages in the amount of ₱50,000.00 shall, however, be reduced to ₱30,000.00, also pursuant to the latest jurisprudence on the matter.[33]

As to the award of actual damages amounting to ₱16,700.00, we modify the same. In *People v. Villanueva*,[34] this Court declared that "…when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount." In the light of such ruling, the victim's heirs in the present case should, therefore, be awarded temperate damages in the amount of ₱25,000.00.

The award of ₱408,000.00 for loss of earning capacity is justified. As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[35] It cannot be disputed that the victim, at the time of his death, was self-employed and earning less than the minimum wage under current labor laws. The computation arrived at by the trial court was in accordance with the formula for computing the award for loss of earning capacity.[36] Thus,

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[33] *People v. Sia*, G.R. No. 174059, February 27, 2009.

[34] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

[35] *People v. Oco*, G.R. Nos. 137370-71, September 29, 2003, 412 SCRA 190, 222.

[36] *People v. Ibañez, et al.*, G.R. No. 148627, April 28, 2004, 428 SCRA 146, 163.

Award for lost earnings	= 2/3 [80-age at time of death] x [gross annual income – 50% (GAI)]
	= 2/3 [80-29] x ₱24,000.00 – ₱12,000.00
	= (34) x (₱12,000.00)
	= ₱408,000.00

WHEREFORE, the appealed decision of the CA in CA-G.R.CR HC No. 00765, finding the three- accused appellants guilty beyond reasonable doubt of murder is hereby *AFFIRMED WITH the following MODIFICATIONS:* (**1**) the penalty of death imposed on accused-appellants is *REDUCED* to *RECLUSION PERPETUA* without eligibility for parole pursuant to RA 9346; (**2**) the monetary awards to be paid jointly and severally by the accused-appellants to the heirs of the victim are as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages in lieu of actual damages; (**3**) ₱408,000.00 for loss of earning capacity; and (**4**) interest is imposed on all the damages awarded at the legal rate of 6% from this date until fully paid.[37]

No costs.

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. Filed pleading as Solicitor General.

Ynares-Santiago, J., on official leave.

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[37] *People v. Regalario*, G.R. No. 174483, March 31, 2009; *People v. Guevarra*, G.R. No. 182199, October 29, 2008.

THIRD DIVISION

[G.R. No. 180824. August 28, 2009]

URBAN CONSOLIDATED CONSTRUCTORS PHILIPPINES, INC., *petitioner, vs.* **THE INSULAR LIFE ASSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; NOVATION; ABSENT IN CASE AT BAR, AS THE COMMUNICATIONS BETWEEN THE PARTIES SHOW THAT URBAN WAS STILL OBLIGED TO PROVIDE THE MATERIALS FOR THE CONSTRUCTION OF THE BUILDING.— The Court sustains the finding of the Court of Appeals that the communications between Insular and Urban prior to and after the execution of the GCA on February 19, 1991 never varied the obligation of Urban to provide the materials for the construction of the building. While Insular's January 14, 1991 letter to Urban stated that the former will purchase in advance the major construction materials, the same was never reflected in the January 28, 1991 minutes of the meeting which culminated in the execution of the aforequoted provision vesting Urban the obligation to **supply and furnish** all the construction materials. It was never agreed that Insular would assume the obligation of procuring the materials from the suppliers and delivering them at the construction site. Moreover, Insular's March 14, 1991 letter to Urban approved only a direct payment scheme and not an undertaking to provide the construction materials. As explained by Insular in its September 30, 1991 letter, the support it extended to Urban was not a commitment to furnish the materials but merely to pay the same in the agreed scheme. Thus: We would like to point out that the above extension of deadline and financial assistance on the part of Insular Life are mere accommodations and are extended to Urban in our desire to have the building completed as early as possible. This should not be misconstrued that Insular Life is committed to supply all major materials in order to finish the building. Moreover, the nature of said accommodation of

Insular as a financial assistance was confirmed by Urban's president, Benjamin F. Alamario in his letters dated — (1) February 14, 1991: "Thank you for granting us price adjustment of ₱8,386,302.00 and agreeing to provide financial assistance in the form of direct payment to suppliers for major materials required for the project." (2) October 11, 1991: "In view of our common interest to complete the above subject project soonest, we wish to appeal to your good office to provide us with financial assistance through direct payments to our suppliers for the remaining major materials to complete the project in the amount of ₱1,963,920.83."

2. ID.; ID.; DELAY IN FULFILLMENT; CASE AT BAR.—As for the change orders of Insular which allegedly delayed the construction of the building, suffice it to state that the trial court (which attributed the delay, although erroneously, to the alleged failure of Insular, to procure the construction materials), never pronounced that the cause of such delay was the change orders of Insular. At any rate, the period for completion for said change orders was already considered by the parties when they moved the deadline from June 30, 1991 to September 30, 1991. Also, the delay in the construction of the building was caused by Urban's lack of necessary funds and its failure to facilitate the delivery of materials at the construction site as provided in the GCA.

3. ID.; DAMAGES; LIQUIDATED DAMAGES; MAY BE EQUITABLY REDUCED IF INIQUITOUS OR UNCONSCIONABLE; CASE AT BAR.— Anent the award of liquidated damages, Article 2227 of the Civil Code provides that liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable. As a general rule, courts are not at liberty to ignore the freedom of the parties to agree on such terms and conditions as they see fit as long as they are not contrary to law, morals, and good custom, public policy or public order. Nevertheless courts may equitably reduce a stipulated penalty in the contract where, as in the instant case, the principal obligation has been partly performed (97%) and where the penalty is iniquitous. Article 1229 of the Civil Code, states: Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the

debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

APPEARANCES OF COUNSEL

Eva Almario-Castillo for petitioner.
Rodrigo Berenguer & Guno for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The only issue in this petition for review on *certiorari* is whether petitioner Urban Consolidated Constructors Philippines, Inc. (Urban) is liable to pay liquidated damages to respondent Insular Life Assurance Co., Inc. (Insular).

The facts show that on October 13, 1989, respondent Insular engaged the services of Urban to construct a six-storey building within a period not to exceed 365 days at a contract price of ₱30,498,689.00. On February 19, 1991, the parties executed a General Construction Agreement (GCA),[1] which, among others, extended the deadline for the completion of the project to June 30, 1991, and increased the contract price to ₱38,885,000.00. The parties thereafter agreed to move the deadline to September 30, 1991, but the construction was beset by several delays. When Urban tendered the building for acceptance on July 21, 1992, Insular refused to accept the same.

On February 11, 1993, Urban filed an action for collection of sum of money and damages[2] against Insular contending that Insular caused the delay in the completion of the project and that, as a consequence of said delay, Urban suffered damages. Insular allegedly failed to inform Urban about the government road widening project which necessitated alterations/revisions in the plans and specifications and delayed the issuance of the

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[1] Exhibit "48", Folder of Exhibits for the Defendant, p. 73.

[2] Records, p. 1.

building permit, as well as the boundary dispute which Insular had with the adjoining lot owner. Insular also allegedly incurred delay in the approval/payment of monthly billings; in the delivery of materials to the construction site; and in the execution of a formal written construction agreement.

Urban also alleged that on September 7, 1992, Insular took over the project and occupied the building without justifiable cause. Urban thus prayed that it be awarded (1) ₱4 Million as excess construction costs for the increase in the cost of materials during the period of the delay; (2) ₱250,000.00 for increase in financing costs; (3) ₱250,000.00 for the illegal take over of the project; (4) ₱1,454,799.50 for unpaid change orders or additional works; (5) ₱554,972.51 for unpaid progress billings; (6) ₱2,134,908.80 representing the amount retained by Insular; (7) ₱1 Million for lost opportunities to enter into other construction contracts; (8) ₱1 Million as attorney's fees; (9) liquidated damages to be determined by the court; and (10) the costs of suit.

In its Answer with Compulsory Counterclaim,[3] Insular alleged that the delay in the construction of the building was due to Urban's failure to timely procure the building permit and not the road widening project and the boundary dispute with the adjacent owner. Insular further averred that although it agreed to directly pay the suppliers of material by way of accommodation to Urban which always lacked funds, however the obligation to have the materials delivered to the construction site still remained with Urban. Moreover, the obligation to directly pay the suppliers arise only after the delivery of the materials, and evaluation by Insular's project manager.

Insular claimed that in the execution of the GCA on February 19, 1991, the parties took into consideration the problems that arose after October 13, 1989. Thus, (1) the deadline for the completion of the project was moved to June 30, 1991 and the contract price was increased to ₱38,885,000.00; (2) Insular extended financial assistance to Urban by directly paying the suppliers of construction materials; and (3) the construction deadline was

[3] *Id*. at 59.

further extended to September 30, 1991. However, Urban still failed to meet the target completion date.

As regards the change orders, Insular explained that these were freely agreed upon by the parties and the resultant delays were sufficiently compensated by the extension of the completion date. Insular also averred that when it took over the construction of the building on September 3, 1992, Urban was already behind the original schedule by one year; and that it applied the retention money to the expenses it incurred in the completion of the substandard and unfinished work of Urban. By way of compulsory counterclaim, Insular claimed liquidated damages in the amount of ₱19,014,765.00; moral damages; exemplary damages; attorney's fees; and litigation costs.

On May 5, 1989, the Regional Trial Court of Makati City, Branch 145 rendered its decision, the dispositive portion of which, reads:

> WHEREFORE, premises considered judgment is hereby rendered in favor of plaintiff Urban Consolidated Constructors Phils., Inc. and as against defendant, Insular Life Assurance Co., Ltd., ordering the latter to pay the former the following actual damages:
>
> [a.] ₱4,000,000.00 as amount representing the excess construction costs;
>
> [b.] ₱1,454,799.90 representing the unpaid construction costs of all completed change orders;
>
> [c.] ₱2,134,908.80 representing the amount for over-due and unpaid retention money;
>
> [d.] ₱500,000.00 as the amount representing opportunity losses; and
>
> [e.] ₱100,000.00 as reasonable attorney's fees.
>
> Cost against defendant.
>
> SO ORDERED.[4]

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[4] *Rollo*, pp. 27-28; penned by Judge Oscar B. Pimentel.

Insular appealed to the Court of Appeals which found that the increase in the costs claimed by Urban was already covered and taken into consideration when the parties executed the GCA, which among others, increased the contract price from ₱30,498,689.00 to ₱38,885,000.00. The appellate court debunked the claim of Urban that Insular caused the delay in the completion of the project, holding that it was Urban, as contractor, which has the obligation to procure the construction materials and that Insular's commitment was only to give financial assistance.

The appellate court thus found Insular entitled to an award of liquidated damages. Under the GCA, the liquidated damages is set at 1/10 of 1% of ₱38,885,000.00, which is ₱38,885.00 per day or ₱11,432,190.00 for the 294 days of delay from October 1, 1991 to July 21, 1992 when Urban turned over the building. For equitable considerations, however, the Court of Appeals reduced the same to ₱2,940,000.00 computed at a penalty of ₱10,000.00 per day.

Likewise, the Court of Appeals directed Insular to pay Urban ₱1,144,030.94 representing the balance of the costs of several change orders or modification of the plan for which no payment was proven to have been made. Insular was also ordered to release to Urban the ₱2,134,908.80 retention money, considering that it failed to substantiate the works it purportedly performed to improve the building.

Offsetting[5] the amounts decreed against Urban with the amount payable by Insular, the latter is still liable to pay Urban ₱338,939.40. The dispositive portion of the decision of the Court of Appeals, reads:

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[5] Section 2, Article XIV of the GCA, reads: Section 2 – Any sum which may be payable to the OWNER for such liquidated damages may be deducted from the amounts retained under Article VII or retained by the OWNER from any balance of whatsoever nature which may be due or become due to the CONTRACTOR when any particular works called for under this agreement shall have been finished or completed.

WHEREFORE, in view of the above considerations, the instant appeal is GRANTED. The assailed decision dated May 5, 1999 is REVERSED and SET ASIDE and a new one is hereby rendered ORDERING:

I. Insular Life Assurance, Co., Ltd TO PAY Urban Consolidated Contractors Philippines, Inc.

1) ₱1,144,030.94 representing the balance on the change orders; and

2) ₱2,134,908.80 representing the unpaid retention money.

II. Urban Consolidated Contractors Philippines, Inc. TO PAY Insular Life Assurance, Co., Ltd. ₱2,940,000.00 as liquidated damages.

The amounts due from both parties shall be subject to offsetting pursuant to Section 2, Article XIV of the General Construction Agreement.

ORDERED.[6]

Both parties respectively filed motions for reconsideration but were denied on December 5, 2007.[7] Insular no longer assailed the decision of the Court of Appeals directing it to pay the balance of the change orders and to return to Urban the balance of the retention money.

On the other hand, Urban filed the present petition contending that it cannot be made liable for liquidated damages for the completion of the project beyond the September 30, 1991 deadline because the delay was caused by Insular who requested several change orders and who failed to procure all the major construction materials it undertook to provide.

The sole issue for resolution is whether Urban is liable to pay liquidated damages.

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[6] *Rollo*, p. 114; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas.

[7] *Id.* at 117.

We rule in the affirmative.

The Court sustains the finding of the Court of Appeals that the communications between Insular and Urban prior to and after the execution of the GCA on February 19, 1991 never varied the obligation of Urban to provide the materials for the construction of the building. Section 1, Article V of the GCA reads:

> Section 1 – x x x For this purpose, the CONTRACTOR [Urban] **shall furnish and supply all necessary materials**, labor, equipment and tools, plant, supervision for the complete works and all other facilities needed, and shall accordingly perform everything necessary for the complete and successful construction of the aforesaid office building and facilities.[8] (Emphasis supplied)

While Insular's January 14, 1991 letter[9] to Urban stated that the former will purchase in advance the major construction materials, the same was never reflected in the January 28, 1991 minutes of the meeting which culminated in the execution of the aforequoted provision vesting Urban the obligation to **supply and furnish** all the construction materials. Pertinent portion of said minutes of meeting provides:

> 9. It was also agreed that cost of major materials purchase[d] by Urban shall be paid directly by Insular Life upon presentation of Invoice duly certified and verified by TAP Resident Engineer.[10]

It was never agreed that Insular would assume the obligation of procuring the materials from the suppliers and delivering them at the construction site. Moreover, Insular's March 14, 1991 letter[11] to Urban approved only a direct payment scheme and not an undertaking to provide the construction materials. As explained by Insular in its September 30, 1991 letter, the support

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[8] Exhibit "48", Folder of Exhibits for the Defendant, p. 78.

[9] Exhibit "CC", Records, p. 322.

[10] Exhibit "EE", Records, p. 326.

[11] Pertinent portion thereof, states: "We are pleased to inform you that Insular Life has approved the direct payment scheme for major materials to be used for the above project…" (Exhibit "J", Records, p. 281)

it extended to Urban was not a commitment to furnish the materials but merely to pay the same in the agreed scheme. Thus:

> We would like to point out that the above extension of deadline and financial assistance on the part of Insular Life are mere accommodations and are extended to Urban in our desire to have the building completed as early as possible. This should not be misconstrued that Insular Life is committed to supply all major materials in order finish the building.[12]

Moreover, the nature of said accommodation of Insular as a financial assistance was confirmed by Urban's president, Benjamin F. Almario in his letters dated –

(1) February 14, 1991:

> "Thank you for granting us price adjustment of ₱8,386,302.00 and agreeing to provide financial assistance in the form of direct payment to suppliers for major materials required for the project."[13]

(2) October 11, 1991:

> "In view of our common interest to complete the above subject project soonest, we wish to appeal to your good office to provide us with financial assistance through direct payments to our suppliers for the remaining major materials to complete the project in the amount of ₱1,963,920.83.[14]

As correctly held by the Court of Appeals, Urban as the contractor, has the obligation to furnish the materials and Insular's commitment is to provide financial assistance only by way of direct payment to the suppliers after the materials have been procured by Urban and delivered to construction site.

As for the change orders of Insular which allegedly delayed the construction of the building, suffice it to state that the trial court (which attributed the delay, although erroneously, to the alleged failure of Insular, to procure the construction materials),

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[12] Exhibit "1", Folder of Exhibits for the defendant, p. 1.

[13] Exhibit "12", Folder of Exhibits for the defendant, p. 21.

[14] Exhibit "19", Folder of Exhibits for the defendant, p. 34.

never pronounced that the cause of such delay was the change orders of Insular. At any rate, the period for completion for said change orders was already considered by the parties when they moved the deadline from June 30, 1991 to September 30, 1991. Also, the delay in the construction of the building was caused by Urban's lack of necessary funds and its failure to facilitate the delivery of materials at the construction site as provided in the GCA.

The Court of Appeals therefore correctly held that the delay in the completion of the construction of the subject building cannot be attributed to Insular.

Anent the award of liquidated damages, Article 2227 of the Civil Code provides that liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable. In the case at bar, the liquidated damages computed on the basis of the GCA is ₱11,432,190 (1/10 of 1% of ₱38,885,000.00, which is ₱38,885.00 per day for the 294 days from October 1, 1991 to July 21, 1992). However, finding said amount to be unconscionable and citing *Filinvest Land, Inc. v. Court of Appeals*,[15] the appellate court set the liquidated damages at ₱2,940,000.00 or at ₱10,000.00 per day.

In *Filinvest*, the penalty for the delay in the completion of the project was ₱3,990,000.00 or ₱15,000.00 per day but the Court affirmed the reduction of said amount to ₱1,881,867.66 considering that the project was already 94.53% complete and that Filinvest agreed to extend the period of completion, which extensions Filinvest included in computing the amount of the penalty. The Court also noted that the contractor did not act in bad faith and that Filinvest was not free of blame as it failed to pay the costs of work actually performed by the contractor in the amount of ₱1,881,867.66. Thus–

> In herein case, the trial court ruled that the penalty charge for delay – pegged at ₱15,000.00 per day of delay in the aggregate amount of ₱3,990,000.00 — was excessive and accordingly reduced it to ₱1,881,867.66 "considering the amount of work already performed

[15] G.R. No. 138980, September 20, 2005, 470 SCRA 260.

and the fact that [Filinvest] consented to three (3) prior extensions." The Court of Appeals affirmed the ruling but added as well that the penalty was unconscionable "as the construction was already not far from completion." x x x

x x x x x x x x x

We are hamstrung to reverse the Court of Appeals as it is rudimentary that the application of Article 1229 is essentially addressed to the sound discretion of the court. As it is settled that the project was already 94.53% complete and that Filinvest did agree to extend the period for completion of the project, which extensions Filinvest included in computing the amount of the penalty, the reduction thereof is clearly warranted.

x x x x x x x x x

Finally, Filinvest advances the argument that while it may be true that courts may mitigate the amount of liquidated damages agreed upon by the parties on the basis of the extent of the work done, this contemplates a situation where the full amount of damages is payable in case of total breach of contract. In the instant case, as the penalty clause was agreed upon to answer for delay in the completion of the project considering that time is of the essence, "the parties thus clearly contemplated the payment of accumulated liquidated damages despite, and precisely because of, partial performance." In effect, it is Filinvest's position that the first part of Article 1229 on partial performance should not apply precisely because, in all likelihood, the penalty clause would kick in situations where Pecorp had already begun work but could not finish it on time, thus, it is being penalized for delay in its completion.

The above argument, albeit sound, is insufficient to reverse the ruling of the Court of Appeals. It must be remembered that the Court of Appeals not only held that the penalty should be reduced because there was partial compliance but categorically stated as well that the penalty was unconscionable. Otherwise stated, the Court of Appeals affirmed the reduction of the penalty not simply because there was partial compliance *per se* on the part of Pecorp with what was incumbent upon it but, more fundamentally, because it deemed the penalty unconscionable in the light of Pecorp's 94.53% completion rate.

In *Ligutan v. Court of Appeals*, we pointed out that the question of whether a penalty is reasonable or iniquitous can be partly

subjective and partly objective as its "resolution would depend on such factors as, but not necessarily confined to, the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties, and the like, the application of which, by and large, is addressed to the sound discretion of the court.

In herein case, there has been substantial compliance in good faith on the part of Pecorp which renders unconscionable the application of the full force of the penalty especially if we consider that in 1979 the amount of ₱15,000.00 as penalty for delay per day was quite steep indeed. Nothing in the records suggests that Pecorp's delay in the performance of 5.47% of the contract was due to it having acted negligently or in bad faith. Finally, we factor in the fact that Filinvest is not free of blame either as it likewise failed to do that which was incumbent upon it, *i.e.*, it failed to pay Pecorp for work actually performed by the latter in the total amount of ₱1,881,867.66. Thus, all things considered, we find no reversible error in the Court of Appeals' exercise of discretion in the instant case.[16]

In the present case, the factors considered by the Court of Appeals were the absence of bad faith on the part of Urban and the fact that the project was 97% complete at the time it was turned over to Insular. In addition, we noted that Insular is likewise not entirely blameless considering that it failed to pay Urban ₱1,144,030.94 representing the balance of unpaid change orders and to return the retention money in the amount of ₱2,134,908.80, or a total of ₱3,578,939.74. Had Insular released said amount upon demand, the same could have been used by Urban to comply with its obligation to purchase the needed construction materials and to expedite the completion of the project. Under the circumstances, we find that this omission on the part of Insular justifies a further reduction of the liquidated damages decreed against Urban from ₱2,940,000.00 to ₱1,940,000.00.

As a general rule, courts are not at liberty to ignore the freedom of the parties to agree on such terms and conditions as they see

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[16] *Id.* at 270-274.

fit as long as they are not contrary to law, morals, and good custom, public policy or public order. Nevertheless courts may equitably reduce a stipulated penalty in the contract where, as in the instant case, the principal obligation has been partly performed (97%) and where the penalty is iniquitous.[17] Article 1229 of the Civil Code, states:

> Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The June 8, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 652332 which reversed and set aside the May 5, 1999 Decision of the Regional Trial Court of Makati City, Branch 145, is *AFFIRMED with MODIFICATION* that the award of liquidated damages is *REDUCED* from ₱2,940,000.00 to ₱1,940,000.00.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[17] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 189-190; *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, September 20, 2005, 470 SCRA 260, 269-270, citing *Lo v. Court of Appeals*, G.R. No. 141434, September 23, 2003, 411 SCRA 523.

FIRST DIVISION

[G.R. No. 180988. August 28, 2009]

JULIE'S FRANCHISE CORPORATION, ROBERTO R. GANDIONCO, JOSE ENRICO R. GANDIONCO, CORNELIO R. GANDIONCO, JOSEPH R. GANDIONCO, PATRICIA CARLA G. UY, VIRGILIO G. ESPELETA, EMMANUEL E. VIADO, ATTY. GOERING G.C. PADERANGA, and ATTY. INOCENTES C. PEPITO, JR., *petitioners, vs.* **HON. CHANDLER O. RUIZ in his capacity as Presiding Judge of the Regional Trial Court, Branch 10, Dipolog City, HON. YOLINDA C. BAUTISTA in her capacity as Presiding Judge of the Regional Trial Court, Branch 9, Dipolog City, and RICHARD EMMANUEL G. DANCEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PURPOSE.— The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; FINAL JUDGMENTS MAY NO LONGER BE MODIFIED.— Except to correct clerical errors, a judgment which has acquired finality can no longer be modified in any respect if the modification is

meant to correct a perceived erroneous conclusion of fact or law. There would be no end to litigation if parties are allowed to relitigate issues which were already resolved with finality.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DESIGNED FOR CORRECTION OF ERRORS OF JURISDICTION.— A *certiorari* proceeding is an extraordinary remedy designed for the correction of errors of jurisdiction and not errors of judgment. As such, a petition for *certiorari* must aver only jurisdiction matters or raise questions of jurisdiction. Thus, if the facts alleged do not raise any genuine jurisdiction issue, the petition for *certiorari* would be devoid of merit. As held in *People v. Court of Appeals*: in a petitioner for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or via a petition for review on *certiorari* in this Court under Rule 45 of the Rules of Court. *Certiorari* will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.

4. ID.; ID.; ID.; NOT PROPER TO INCLUDE AN ISSUE INVOLVING A SEPARATE CASE FROM A DIFFERENT BRANCH OF THE TRIAL COURT; CASE AT BAR.—The eighth issue raised by petitioners involves a separate case of indirect contempt filed in another branch–Regional Trial Court of Dipolog City, Branch 9. Petitioners allege that respondent Judge Bautista of the Regional Trial Court of Dipolog City, Branch 9, should desist from taking cognizance of the indirect

contempt charge. It is not proper to include in this petition for *certiorari* an issue involving a separate case from a different branch of the trial court. Hence, we will refrain from resolving issue number 8, which should have been the subject of a separate petition for prohibition and not *certiorari*.

APPEARANCES OF COUNSEL

Paderanga Iway and Nonato Law Office for petitioner.
Ricardo R. Luna for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure, seeking to annul the Joint Resolution dated 19 July 2007 of respondent Presiding Judge Chandler O. Ruiz (Judge Ruiz) of the Regional Trial Court, Branch 10, Dipolog City (trial court), which denied the motion to dismiss and motion for summary judgment of petitioner Julie's Franchise Corporation (petitioner corporation), and also denied petitioner corporation's application for preliminary injunction in Civil Case No. 6108. Petitioners allege that the Joint Resolution, which further ordered the issuance of the assailed Writ of Preliminary Injunction, was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The petition also seeks to reverse Judge Ruiz's Resolution dated 8 October 2007 which denied petitioner corporation's motion to lift the injunction and the Resolution dated 16 November 2007 denying petitioner corporation's motion for reconsideration.

Furthermore, the petition seeks to restrain respondent Presiding Judge Yolinda C. Bautista (Judge Bautista) of the Regional Trial Court, Branch 9, Dipolog City, from taking cognizance of the indirect contempt proceedings in Civil Case No. 6320, filed by private respondent Richard Emmanuel G. Dancel (respondent Dancel) against petitioners.

The Facts

On 28 July 1999, respondent Dancel, as franchisee, entered into two franchise agreements with petitioner corporation, as franchiser, over the two bakeshop outlets located in Rizal Avenue, Dipolog City and Sindangan, Zamboanga Del Norte. On 8 March 2000, respondent Dancel entered into a third franchise agreement with petitioner corporation over the bakeshop located on Balintawak Street, Dipolog City. In 2003, respondent Dancel decided to renew the franchise agreements for the three Julie's bakeshops. Three months before the expiration of the franchise agreements, petitioner corporation evaluated the performance of the three Julie's bakeshops and the results were favorable. In 2004, respondent Dancel paid the renewal fees for the next five years of the franchise agreements covering the three Julie's bakeshops. However, when respondent Dancel and his business partner Jose Rodion Uy dissolved their business partnership, petitioner corporation informed respondent Dancel that it was terminating the three franchise agreements and that the extended term of the franchises would expire on 30 June 2005. Uy is the son-in-law of Rodrigo M. Gandionco, Sr., who was the original owner of the trade name and business style "Julie's Bakeshop."[1]

On 22 June 2005, respondent Dancel filed against petitioner corporation a complaint for Specific Performance with prayer for the issuance of a Writ of Preliminary Injunction or Temporary Restraining Order before the trial court, docketed as Civil Case No. 6108. The trial court denied respondent Dancel's application for the issuance of a Writ of Preliminary Injunction or Temporary Restraining Order for lack of jurisdiction. When the trial court denied his motion for reconsideration, respondent Dancel filed a petition for *certiorari* with the Court of Appeals which was docketed as CA-G.R. SP No. 00740. In January 2006, the Court of Appeals resolved to grant the Temporary Restraining Order, effective for 60 days from notice, restraining or enjoining petitioner

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[1] *Rollo*, pp. 291-299. Summary of facts as stated in the Court of Appeals Decision dated 14 August 2006, pp. 2-11.

corporation from terminating the franchise agreements. On 14 August 2006, the Court of Appeals rendered a decision,[2] the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is GRANTED. The Order dated 15 August 2005 of the public respondent is set aside and annulled. The Presiding Judge of Branch 10, Regional Trial Court of Dipolog City, is hereby directed to issue the writ of preliminary injunction with dispatch conditioned upon the requirements of law until she shall have resolved the case on the merits.
>
> SO ORDERED.[3]

The Court of Appeals held that the trial court has jurisdiction to issue the Writ of Preliminary Injunction. The Court of Appeals noted that the three franchise agreements being terminated by petitioner corporation pertained to the bakeshop outlets located in Dipolog City and Zamboanga Del Norte, which are within the jurisdiction of the trial court. Thus, petitioner corporation's acts which were sought to be refrained were being done within the jurisdiction of the trial court, which has the power and authority to issue the injunction. This is in accordance with the rule that the jurisdiction or authority of courts to control or restrain acts by means of a writ of injunction is limited to acts which are being committed or about to be committed within the territorial boundaries of their respective provinces and cities. The Court of Appeals ruled that although the decision of petitioner corporation to pre-terminate the renewed five-year contract may have been made in Cebu City, where petitioner corporation's main office is located, the implementation of said decision and its effects would take place in Dipolog City and Zamboanga Del Norte where the trial court sits. Thus, the Court of Appeals held that the trial court gravely abused its discretion when it denied respondent Dancel's prayer for the issuance of a Temporary Restraining Order or Writ of Preliminary Injunction. The Court of Appeals found that the complaint alleged reasonable grounds

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[2] *Id.* at 290-305.

[3] *Id.* at 304.

to support the prayer for the issuance of a Temporary Restraining Order or Writ of Preliminary Injunction and that the trial court's denial of the application based merely on its alleged lack of jurisdiction was erroneous.

Petitioner corporation filed a motion for reconsideration, which the Court of Appeals denied, holding that the right of respondent Dancel to the writ is clear considering that petitioner corporation has demanded and received from respondent Dancel the franchise fees for the three bakeshops for the entire five-year period starting 2004 until 2009.[4]

Petitioner corporation then filed with this Court a petition for review on *certiorari*. In a Resolution dated 12 February 2007, this Court denied the petition for late filing since the petition was filed beyond the reglementary period of 15 days.[5] Petitioner corporation twice moved for reconsideration, which this Court denied.

On 27 March 2007, respondent Dancel filed with the trial court a Motion for the Issuance of a Writ of Preliminary Injunction. In a Joint Resolution[6] dated 19 July 2007, the trial court resolved to issue a Writ of Preliminary Injunction in accordance with the Court of Appeals' Decision[7] dated 14 August 2006 in CA-G.R. SP No. 00740, which has become final and executory. On 23 July 2007, the trial court issued a Writ of Preliminary Mandatory and Prohibitory Injunction,[8] in which petitioner corporation, its agents, employees and all persons acting for and in its behalf were directed:

1. To refrain from terminating the three (3) franchise agreements it executed with the plaintiff [Richard Emmanuel Dancel];

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[4] *Id.* at 307-309.

[5] *Id.* at 310-311.

[6] *Id.* at 88-100.

[7] Penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Rodrigo F. Lim, Jr. and Sixto C. Marella, Jr., concurring.

[8] *Rollo,* pp. 102-106.

2. To deliver to the three (3) bakeshops operated by the plaintiff all supplies, materials, and ingredients necessary for the incessant and unhampered operation of the bakeshops; and

3. To allow the plaintiff to use the trade name "Julie's Bakeshop," all signages, packaging materials, and other paraphernalia connected therewith and to advertise himself as a franchisee of JFC [Julie's Franchise Corporation].[9]

Petitioner corporation filed a motion for reconsideration on 7 August 2007. While the motion was still pending, petitioner corporation also filed with the trial court a Motion to Dissolve or Lift the Preliminary Injunction on 11 September 2007. On 20 September 2007, petitioner corporation filed an Amended Motion to Dissolve or Lift the Preliminary Injunction. The trial court denied the amended motion in its Resolution dated 8 October 2007. On 5 November 2007, petitioner corporation filed a motion for reconsideration of the Resolution dated 8 October 2007. On 11 November 2007, petitioner corporation also filed a Very Urgent Motion for Inhibition and for Suspension of Proceedings. In a Resolution dated 16 November 2007, the trial court denied the motion for reconsideration and the motion for inhibition and suspension of proceedings.

Meanwhile, on 14 November 2007, petitioners received summons regarding the indirect contempt charges filed against them by respondent Dancel in the Regional Trial Court, Branch 9, Dipolog City.

On 28 December 2007, petitioners filed this petition for *certiorari*.

The Issues

Petitioners raise the following issues:

1. WHETHER THE HONORABLE JUDGE RUIZ ACTED WITHOUT JURISDICTION IN ISSUING THE ASSAILED WRIT OF PRELIMINARY INJUNCTION TO ENJOIN ACTS COMMITTED OR ABOUT TO BE COMMITTED OUTSIDE THE TRIAL COURT'S TERRITORIAL BOUNDARIES;

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[9] *Id.* at 106.

2. WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN EXTENDING THE EXPIRED FRANCHISE CONTRACTS BY GRANTING THE PRELIMINARY INJUNCTION;

3. WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN GRANTING THE PRELIMINARY INJUNCTION DESPITE THE FACT THAT IT WOULD CONSTITUTE PREJUDGMENT OF THE CASE;

4. WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT VOLUNTARILY INHIBITING AS A RESULT OF PREJUDGMENT OF THE CASE;

5. WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT DISMISSING THE CASE ON SUMMARY JUDGMENT BASED ON JUDICIAL ADMISSIONS AND FOR LACK OF CAUSE OF ACTION;

6. WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN GRANTING THE PRELIMINARY INJUNCTION DESPITE THE ABSENCE OF A RIGHT IN ESSE;

7. WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION IN NOT GRANTING A PRELIMINARY INJUNCTION IN FAVOR OF JFC TO PROTECT ITS INTELLECTUAL PROPERTY RIGHTS AS A REGISTERED COMPANY WITH THE INTELLECTUAL PROPERTY OFFICE;

8. WHETHER THE INDIRECT CONTEMPT CHARGE CAN BE ENJOINED; AND

9. WHETHER PETITIONERS ARE ENTITLED TO A RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION ENJOINING THE TWO DIPOLOG CITY COURTS FROM ENFORCING THE ASSAILED WRIT OF PRELIMINARY INJUNCTION DURING THE PENDENCY OF THIS PETITION.[10]

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[10] *Id.* at 42-44.

The Ruling of the Court

We find the petition without merit.

The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[11] The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.[12] To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[13]

The first, second, third, and sixth issues raised by petitioners question the issuance of the Writ of Preliminary Injunction. We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court, which merely issued the questioned Writ of Preliminary Injunction in accordance with the decision of the Court of Appeals which has already attained finality. The propriety of the issuance of the Writ of Preliminary Injunction was already ruled upon by the Court of Appeals in its Decision dated 14 August 2006 in CA-G.R. SP No. 00740. Such decision has become final and

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[11] *People v. Romualdez*, G.R. No. 166510, 23 July 2008, 559 SCRA 492; *People v. Terrado*, G.R. No. 148226, 14 July 2008, 558 SCRA 84.

[12] *Feliciano v. Villasin*, G.R. No. 174929, 27 June 2008, 556 SCRA 348; *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73.

[13] *Vergara v. Ombudsman*, G.R. No. 174567, 12 March 2009; *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, G.R. No. 155844, 14 July 2008, 558 SCRA 148.

executory after petitioner corporation's appeal to this Court was denied for being filed beyond the reglementary period.

Except to correct clerical errors,[14] a judgment which has acquired finality can no longer be modified in any respect even if the modification is meant to correct a perceived erroneous conclusion of fact or law.[15] There would be no end to litigation if parties are allowed to relitigate issues which were already resolved with finality.

As regards the fifth[16] and seventh[17] issues, although petitioners allege grave abuse of discretion, such issues involve errors of judgment which are not reviewable in a *certiorari* proceeding. In the fifth issue, petitioners claim that the case can be dismissed on summary judgment for lack of cause of action while in the seventh issue, they assert that the trial court should have granted a preliminary injunction in favor of petitioner corporation to protect its intellectual property rights. The Court notes that the arguments raised by petitioners are not errors involving jurisdiction but one of judgment, which is beyond the ambit of a *certiorari* proceeding. A *certiorari* proceeding is an extraordinary remedy designed for the correction of errors of jurisdiction and not errors of judgment.[18]

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[14] *Tamayo v. People,* G.R. No. 174698, 28 July 2008, 560 SCRA 312; *Gutierrez v. Valiente,* G.R. No. 166802, 4 July 2008, 557 SCRA 211.

[15] *Garcia v. Philippine Airlines,* G.R. No. 162868, 14 July 2008, 558 SCRA 171.

[16] WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT DISMISSING THE CASE ON SUMMARY JUDGMENT BASED ON JUDICIAL ADMISSIONS AND FOR LACK OF CAUSE OF ACTION.

[17] WHETHER THE RESPONDENT JUDGE RUIZ COMMITTED GRAVE ABUSE OF DISCRETION IN NOT GRANTING A PRELIMINARY INJUNCTION IN FAVOR OF JFC TO PROTECT ITS INTELLECTUAL PROPERTY RIGHTS AS A REGISTERED COMPANY WITH THE INTELLECTUAL PROPERTY OFFICE.

[18] *Soriano v. Ombudsman,* G.R. No. 160772, 13 July 2009; *Castro v. People,* G.R. No. 180832, 23 July 2008, 559 SCRA 676.

As such, a petition for *certiorari* must aver only jurisdictional matters or raise questions of jurisdiction. Thus, if the facts alleged do not raise any genuine jurisdictional issue, the petition for *certiorari* would be devoid of merit.[19] As held in *People v. Court of Appeals*:[20]

> In a petition for *certiorari*, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or via a petition for review on *certiorari* in this Court under Rule 45 of the Rules of Court. *Certiorari* will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.[21]

The eighth issue[22] raised by petitioners involves a separate case of indirect contempt filed in another branch – Regional Trial Court of Dipolog City, Branch 9. Petitioners allege that respondent Judge Bautista of the Regional Trial Court of Dipolog City, Branch 9, should desist from taking cognizance of the

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[19] *De Baron v. Court of Appeals*, 420 Phil. 474 (2001).

[20] G.R. No. 144332, 10 June 2004, 431 SCRA 610.

[21] *Id.* at 617.

[22] WHETHER THE INDIRECT CONTEMPT CHARGE CAN BE ENJOINED.

indirect contempt charge. It is not proper to include in this petition for *certiorari* an issue involving a separate case from a different branch of the trial court. Hence, we will refrain from resolving issue number 8, which should have been the subject of a separate petition for prohibition[23] and not *certiorari*.

WHEREFORE, we *DISMISS* the petition.

SO ORDERED.

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

EN BANC

[G.R. No. 182267. August 28, 2009]

PAGAYANAN R. HADJI-SIRAD, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM CIVIL SERVICE TO COURT OF APPEALS VIA A PETITION FOR REVIEW UNDER RULE 43.— Section 50, Rule III of the Uniform Rules on Administrative Cases in the CSC plainly states that a party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court. Sections 1 and 5, Rule 43 of

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[23] Under Section 2, Rule 65 of the Rules of Civil Procedure, a petition for prohibition which seeks that a tribunal desist from further proceedings in an action is proper when the proceedings of a tribunal are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of its jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

the 1997 Revised Rules of Civil Procedure, as amended, provide that final orders or resolutions of the CSC are appealable to the Court of Appeals through a petition for review, to wit: SECTION 1. *Scope*. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of quasi judicial functions. Among these agencies are the **Civil Service Commission,** Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. SEC. 5. *How appeal taken*. – Appeal shall **be taken by filing a verified petition for review** in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NOT A SUBSTITUTE FOR A LOST OR LAPSED REMEDY OF APPEAL.— As we have held in numerous cases, a special civil action for *certiorari* is not a substitute for a lost or lapsed remedy of appeal. We have often enough reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure lies only when there is no appeal or plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.

3. ID.; ID.; ID.; FAILURE TO COMPLY WITH REQUIREMENTS THEREOF, SUFFICIENT GROUND FOR DISMISSAL.— The requirements for petitions under Rule 65 of the 1997 Revised Rules of Civil Procedure, particularly, the second and third paragraphs of Section 3, Rule 46, of the same rules, are: SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.*— x x x In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when notice of the judgment or final order or resolution subject thereof was received, **when a motion for new trial or reconsideration, if any, was filed** and when notice of the denial thereof was received. It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and **shall be accompanied by a clearly legible duplicate original or certified true copy of the** judgment, order, resolution, or ruling subject thereof, **such material portions of the record as referred to therein, and other documents relevant or pertinent thereto.** The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original. The consequence for non-compliance with any of such requirements is sheerly spelled out in the sixth paragraph of Rule 3, Section 46 of the 1997 Revised Rules of Civil Procedure, to be as follows: The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the **dismissal** of the petition.

4. ID.; RULES OF PROCEDURE; DESIGNED TO PROMOTE EFFICIENCY AND ORDERLINESS AS WELL AS TO FACILITATE ATTAINMENT OF JUSTICE; EXCEPTIONS. — Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that strict adherence thereto is required. However, technical rules of procedure are not designed to frustrate the ends of justice. The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of

justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. In *Sanchez v. Court of Appeals*, the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; PROCEDURAL DUE PROCESS; ADMINISTRATIVE PROCEEDINGS.— In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings, which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.

6. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; SUFFICIENT BASIS FOR THE IMPOSITION OF ANY DISCIPLINARY ACTION UPON AN EMPLOYEE.— The law requires that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient basis for the imposition of any disciplinary action upon an employee. The

standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of trust and confidence demanded by his position.

7. ID.; APPEALS; FINDINGS OF FACTS OF ADMINISTRATIVE AGENCIES; GENERALLY HELD TO BE BINDING AND FINAL SO LONG AS THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD OF THE CASE.— As a general rule, the findings of fact of the CSC and the Court of Appeals are accorded great weight. In a plethora of cases, we have held that lower courts are in a better position to determine the truth of the matter in litigation, since the pieces of evidence are presented before them, and they are able to look into the credibility and the demeanor of the witnesses on the witness stand. Furthermore, quasi-judicial bodies like the CSC are better equipped in handling cases involving the employment status of employees as those in the Civil Service since it is within the field of their expertise. Factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case. It is not the function of the Supreme Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal or office. The Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court.

8. ID.; EVIDENCE; PRESUMPTIONS; CSC OFFICIALS ENJOY THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR OFFICIAL DUTY.— We cannot even consider the possibility that the CSC officials who supervised the examinations committed a mistake in matching the pictures and signatures *vis-à-vis* the examinees, as the said CSC officials enjoy the presumption of regularity in the performance of their official duty. Besides, such a mix-up is highly unlikely due to the strict procedures followed during civil service examinations, described in detail in *Cruz v. Civil Service Commission*, wit: It should be stressed that as a matter of procedure, the room examiners assigned to supervise the

> conduct of a Civil Service examination closely examine the pictures submitted and affixed on the Picture Seat Plan (CSC Resolution No. 95-3694, Obedencio, Jaime A.). The examiners carefully compare the appearance of each of the examinees with the person in the picture submitted and affixed on the PSP. In cases where the examinee does not look like the person in the picture submitted and attached on the PSP, the examiner will not allow the said person to take the examination (CSC Resolution No. 95-5195, Taguinay, Ma. Theresa).

APPEARANCES OF COUNSEL

Pangalangan Cabrera Lee Mitmug Wacnang and Associates for petitioner.

Office of the Legal Affairs (CSC) for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, petitioner Pagayanan Hadji-Sirad is seeking the review and reversal of the Resolutions dated 18 January 2008[1] and 12 March 2008[2] of the Court of Appeals, dismissing her Petition for *Certiorari* in CA-G.R. SP No. 02103-MIN, for being the wrong mode of appeal, for her failure to state material dates as regards her Motion for Reconsideration before the Civil Service Commission (CSC), and for her failure to append a copy of said Motion for Reconsideration to her dismissed Petition. Petitioner intended to challenge in her Petition before the Court of Appeals (1) CSC Resolution No. 070875[3] dated 7 May 2007, affirming the Decision dated 27 February 2006 of CSC Regional Office

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[1] Penned by Associate Justice Elihu A. Ybanez with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring; *rollo*, pp. 55-57.

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

[3] Penned by Chairman Karina Constantino-David and concurred in by Commissioner Mary Ann Z. Fernandez-Mendoza. (*Id.* at 231-238.)

(CSCRO) No. XII, finding petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and dismissing petitioner from service; and (2) CSC Resolution No. 072196[4] dated 26 November 2007, denying petitioner's Motion for Reconsideration.

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

On 4 February 2002, petitioner, an employee of the Commission on Audit (COA) in the Autonomous Region for Muslim Mindanao (ARMM), was formally charged by CSCRO No. XII with Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. Pertinent portions of the Formal Charge against petitioner read:

The result of the investigation established the following facts:

1. On November 10, 1994, Pagayanan R. Hadji-Sirad, formerly Pagayanan M. Romero accomplished a Personal Data Sheet;

2. The said Personal Data Sheet was submitted to the Civil Service Field Office-COA to support her appointment as State Auditor I;

3. In Item number 18 of the Personal Data Sheet, particularly on civil service eligibility, Hadji-Sirad indicated that she possesses Career Service Professional Eligibility having passed the examination on October 17, 1993 at Iligan City with a rating of 88.31%;

4. Accordingly, the examination records of Hadji-Sirad were retrieved. The same were compared with the entries in her Personal Data Sheet. It is revealed that:

    4.1 Applicant and examinee Hadji-Sirad took the same as shown by the picture attached to the application form and picture seat plan for Room 003 Administration Building, Iligan City National High School, Iligan City. In fact, it is apparent that these pictures were taken from a single shot;

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[4] *Id.* at 239-246.

4.2 Comparison, however of these pictures with that found in the Personal Data Sheet of Hadji-Sirad dated November 10, 1994 reveals that appointee bears no semblance with applicant or examinee Hadji Sirad; Examinee Hadji Sirad looks older than the true Hadji Sirad despite the fact that the examination was conducted in 1993 while the Personal Data Sheet was accomplished in 1994;

4.3 There exist differences in the strokes used in affixing the signature in the picture seat plan compared with that in the personal data sheet. The examinee Hadji-Sirad used slanting strokes in affixing her signature while the appointee Hadji-Sirad utilized vertical strokes.

The foregoing facts and circumstances indicate that Pagayanan Romero Hadji-Sirad allowed another person to take the October 17, 1993 Career Service Professional Examination. This act undermines the integrity of civil service examinations and warrants the institution for administrative case against her for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

WHEREFORE, Pagayanan Romero Hadji-Sirad is hereby formally charged with Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.[5]

A formal investigation was thereafter conducted.

The first hearing of the administrative case against petitioner was repeatedly postponed, upon petitioner's request, from the original date of 29 August 2002 to 16 October 2002, 20 December 2002, 14 January 2003, 20 March 2003, and 16 April 2003. During these instances, petitioner had been constantly warned that having utilized the allowable number of postponements, failure to attend the succeeding investigations could be taken as waiver of her right to present evidence.

On 2 April 2003, petitioner filed a Motion for Change of Venue of hearing of the case from CSCRO No. XII in Cotabato City, to CSCRO No. X in Cagayan de Oro City, averring that

[5] *Rollo*, pp. 234-235.

her lawyer was reluctant to go to Cotabato City due to its distance from Iligan City, as well as the unfavorable peace and order condition in Cotabato City; and also arguing that the *situs* of petitioner's alleged offense was in Iligan City, and not in Cotabato City. However, the CSC, in its Resolution No. 031139 dated 11 November 2003, denied petitioner's Motion.[6]

The hearing of the case was again set on 19 February 2004. On said date, however, petitioner requested another postponement because she was attending an Echo-Seminar on Planning in Cotabato City. Petitioner sought further postponement of the hearings scheduled for 17 March and 31 March 2004.

Finally, petitioner and her counsel attended the hearings on 17 May 2004 and 23 September 2004, and the prosecution was able to present its evidence.

The prosecution presented evidence establishing that petitioner previously took, and failed, the Career Service (CS) Professional Examination held on 29 November 1992 at Room 26, Iligan Capitol College, Iligan City. She allegedly again took the CS Professional Examination on 17 October 1993. The prosecution, however, claimed that, while petitioner's pictures and signatures in her Application Form (AF) and Picture Seat Plan (PSP) for the CS Professional Examination on 29 November 1992 which she failed appeared similar to those in her PDS dated 10 November 1994, the pictures and signatures appearing in her AF and PSP for the CS Professional Examination on 17 October 1993 were different.

The prosecution then rested after its formal offer of evidence. It was petitioner's turn to present evidence in her defense.

Petitioner herself took the witness stand on 25 November 2004. Petitioner admitted that she previously took the CS Professional Examination on 29 November 1992, but she failed the same. She again applied for and actually took the CS Professional Examination on 17 October 1993, which she passed. Petitioner insisted that the pictures and signatures

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[6] *Id.* at 247.

appearing in the AF and PSP for the CS Professional Examination on 17 October 1993 were all hers. She confirmed knowing Adelaida L. Casanguan (Casanguan), one of her witnesses, who also took the CS Professional Examination on 17 October 1993 at Room 003, Administration Building of the Iligan City National High School.

Casanguan, recounted that she took the CS Professional Examination on 17 October 1993 at Room 003, Administration Building of the Iligan City National High School, but she did not pass the same. She claimed that she knew petitioner, having seen the latter take the CS Professional Examination also on 17 October 1993 in the same room.

Petitioner's third and last witness was Dick U. Yasa (Yasa). Yasa, then Personnel Specialist II of CSCRO No. XII, testified that he personally got to know petitioner, an employee of COA-ARMM, and formerly Ms. Pagayanan Romero, since their offices previously shared the same building. Yasa was among those who assisted in the conduct of the CS Professional Examination held on 17 October 1993 in Iligan City. At around 7:00 to 7:30 in the morning of said date, Yasa alleged seeing petitioner in Room 003 of Iligan City National High School for the CS Professional Examination.

CSCRO No. XII rendered its Decision on 27 February 2006, the dispositive portion of which reads:

> WHEREFORE, respondent Pagayanan Romero-Hadji Sirad is hereby found GUILTY of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. She is hereby meted the penalty of DISMISSAL from the service. The accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, prohibition from entering the government service and disqualification from taking future government examinations are likewise imposed.
>
> Let copy of this Decision be furnished respondent and her counsel in their addresses on record; the Commission on Audit – Autonomous Region in Muslim Mindanao (COA-ARMM), Cotabato City; the Office for Legal Affairs (OLA), Civil Service Commission, Quezon City; the Civil Service Commission – Autonomous Region in Muslim Mindanao (CSC-ARMM), Cotabato City; the Government Service

Insurance System (GSIS) – Cotabato Branch; and the Examination Services Division and Policies and Systems Evaluation Division, this Office, for information and appropriate action.[7]

Petitioner's Motion for Reconsideration was denied by CSCRO No. XII in a Resolution[8] dated 30 May 2006.

Aggrieved, petitioner appealed to the CSC.

In Resolution No. 070875 dated 7 May 2007, the CSC agreed in the findings of CSCRO No. XII, the *fallo* of which reads:

> WHEREFORE, the appeal of Pagayanan R. Hadji-Sirad is hereby DISMISSED. Accordingly, the Decisions of the Civil Service Commission Regional Office No. XII dated February 27, 2006 finding Hadji-Sirad guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and imposing upon her the penalty of dismissal from the service and its accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, disqualification from holding public office and bar from taking any Civil Service examinations, and dated March 30, 2006 denying her Motion for Reconsideration, respectively, are hereby AFFIRMED.[9]

The CSC denied petitioner's Motion for Reconsideration in CSC Resolution No. 072196 dated 26 November 2007. According to said Resolution:

> The doctrine of *res ipsa loquitur* finds application in her case, as the evidence cannot lie. Worst, the [herein petitioner] did not present any controverting evidence sufficient enough to support her defense that indeed she was the same person appearing in the PSP and AF for the October 17, 1993 Career Service Professional Examination held in Iligan City and the one who actually took the said examination. The [petitioner] must remember that, although the very examination record in question was the October 17, 1993 Career Service Professional Examination, reference was made in the November 22, 1992 Career Service Professional Examination records when

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[7] *Id.* at 405.

[8] *Id.* at 415-417.

[9] *Id.* at 238.

it was confirmed that she took the same examination. In the November 22, 1992 Career Service Professional Examination records, the pictures attached to the PSP and AF and the signatures affixed thereon are very much similar to the picture and signature in her PDS. The conclusion drawn from all these is that Hadji-Sirad took the November 22, 1992 Career Service Examination but she did not take the October 17, 1993 examinations. These are not mere inferences but are simple truth strongly supported by the evidence on record.[10]

The CSC, in the end, disposed:

WHEREFORE, the motion for reconsideration of Pagayanan R. Hadji-Sirad [petitioner] is hereby DENIED. Accordingly, Civil Service Commission Resolution No. 070875 dated May 7, 2007 finding her guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, STANDS.[11]

Unwavering, petitioner filed before the Court of Appeals a Petition for *Certiorari*[12] under Rule 65 of the 1997 Revised Rules of Civil Procedure on the ground that the CSC Resolutions dated 7 May 2007 and 26 November 2007 were issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The Petition was docketed as CA-G.R. SP No. 02103-MIN.

On 18 January 2008, the Court of Appeals issued a Resolution dismissing the Petition in CA-G.R. SP No. 02103-MIN for being a wrong mode of appeal. Petitioner should have filed a petition for review under Rule 43, not a petition for *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure. The appellate court likewise dismissed the Petition for petitioner's failure to indicate therein the material date of filing of her Motion for Reconsideration before the CSC, and to append thereto the said Motion for Reconsideration, in violation of the second and third paragraphs of Section 3, Rule 46 of the 1997 Revised Rules of Civil Procedure.

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[10] *Id.* at 245.

[11] *Id.* at 246.

[12] *Id.* at 107-154.

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated 12 March 2008.

Petitioner comes before this Court *via* the present Petition for Review on *Certiorari*, posing the following issues for resolution:

WHETHER OR NOT RULE 65 IS THE PROPER REMEDY

WHETHER OR NOT THE COURT OF APPEALS IS CORRECT IN DISMISSING THE PETITION FOR *CERTIORARI* FILED BY PETITIONER BASED ON MERE TECHNICALITIES

WHETHER OR NOT THE CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION BY IGNORING THE IMPORTANT PIECES OF EVIDENCE DULY PRESENTED BY THE PETITIONER.

The Court of Appeals did not err in dismissing the Petition for *Certiorari* in CA-G.R. SP No. 02103-MIN for being the wrong mode of appeal and for non-compliance with several other procedural requirements.

Section 50, Rule III of the Uniform Rules on Administrative Cases in the CSC[13] plainly states that a party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court.[14]

Sections 1 and 5, Rule 43 of the 1997 Revised Rules of Civil Procedure, as amended, provide that final orders or resolutions of the CSC are appealable to the Court of Appeals through a petition for review, to wit:

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[13] Section 50. *Petition for Review with the Court of Appeals.* – A party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court.

[14] *Commissioner on Higher Education v. Mercado*, G.R. No. 157877, 10 March 2006, 484 SCRA 424, 432.

SECTION 1. *Scope*. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of quasi judicial functions. Among these agencies are the **Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act. No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

SEC. 5. *How appeal taken*. –Appeal shall **be taken by filing a verified petition for review** in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Hence, in accordance with the foregoing rules, if petitioner indeed received a copy of CSC Resolution No. 072196 dated 26 November 2007, denying her Motion for Reconsideration, on **5 December 2007**, she had 15 days thereafter, or until **20 December 2007**, to file a petition for review with the Court of Appeals. However, petitioner filed instead a Petition for *Certiorari* on **27 December 2007**, already 22 days after receipt of a copy of CSC Resolution No. 072196 dated 26 November 2007.

As we have held in numerous cases, a special civil action for *certiorari* is not a substitute for a lost or lapsed remedy of appeal.[15] We have often enough reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure lies only when there is no appeal or plain, speedy and adequate remedy in the

[15] *Tuazon, Jr. v. Godoy*, 442 Phil. 130, 136 (2002).

ordinary course of law.[16] *Certiorari* is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[17] In this case, petitioner utterly failed to provide any justification for her resort to a special civil action for *certiorari*, when the remedy of appeal by petition for review was clearly available.

In addition to being the wrong mode of appeal, the Court of Appeals also dismissed the Petition for *Certiorari* in CA-G.R. SP No. 02103-MIN for petitioner's failure to comply with the requirements for petitions under Rule 65 of the 1997 Revised Rules of Civil Procedure, particularly, the second and third paragraphs of Section 3, Rule 46, of the same rules, which read:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* –
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> x x x x x x x x x
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> In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when notice of the judgment or final order or resolution subject thereof was received, **when a motion for new trial or reconsideration, if any, was filed** and when notice of the denial thereof was received.
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> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and **shall be accompanied by a clearly legible duplicate original or certified true copy of the** judgment, order, resolution, or ruling subject thereof, **such material portions of the record as referred to therein, and other documents relevant or pertinent thereto**. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of

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[16] *Dwikarna v. Domingo*, G.R. No. 153454, 7 July 2004, 433 SCRA 748, 754; *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, 402 Phil. 356, 370 (2001); *Heirs of Pedro Atega v. Garilao*, 409 Phil. 214, 218 (2001); *Zarate, Jr. v. Olegario*, 331 Phil. 278, 287 (1996); *Solis v. National Labor Relations Commission*, 331 Phil. 928, 932 (1996).

[17] *Heirs of Lourdes Padilla v. Court of Appeals*, 469 Phil. 196, 204 (2004).

the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The consequence for non-compliance with any of such requirements is sheerly spelled out in the sixth paragraph of Rule 3, Section 46 of the 1997 Revised Rules of Civil Procedure, to be as follows:

> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the **dismissal** of the petition. (Emphasis supplied.)

Petitioner failed to indicate in her Petition for *Certiorari* in CA-G.R. SP No. 02103-MIN the material date when she filed her Motion for Reconsideration of CSC Resolution No. 070875 dated 7 May 2007, and to append to the same Petition a certified true copy or duplicate original of the said Motion for Reconsideration. Accordingly, the Court of Appeals dismissed the Petition.

Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that strict adherence thereto is required.[18] However, technical rules of procedure are not designed to frustrate the ends of justice. The Court is fully aware that procedural rules are not to be belittled or simply disregarded, for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[19]

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[18] *Moncielcoji Corporation v. National Labor Relations Commission,* 409 Phil. 486, 491-492 (2001).

[19] *Barranco v. Commission on the Settlement of Land Problems,* G.R. No. 168990, 16 June 2006, 491 SCRA 222, 232, citing *Reyes v. Torres*, 429 Phil. 95, 101 (2002).

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application.[20] In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis 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.[21]

In *Sanchez v. Court of Appeals,*[22] the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.[23]

Pointedly, even if we were to overlook petitioner's procedural lapses and review her case on the merits, we find no reason to reverse her dismissal from service by the CSC.

Firstly, petitioner was dismissed from service only after being accorded due process.

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[20] *Polanco v. Cruz,* G.R. No. 182426, 13 February 2009.

[21] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista,* 491 Phil. 476, 484 (2005).

[22] 452 Phil. 665, 674 (2003); *Macasasa v. Sicad,* G.R. No. 146547, 20 June 2006, 491 SCRA 368, 383, citing *Barnes v. Padilla,* 482 Phil. 903, 915 (2004).

[23] *Barranco v. Commission on the Settlement of Land Problems, supra* note 19.

In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.[24] "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[25]

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings, which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[26]

Petitioner cannot claim denial of due process when records reveal that (1) petitioner was given sufficient notice of the Formal Charge against her and the setting of the hearings of her administrative case before CSCRO No. XII; (2) petitioner was formally charged after an initial investigation was conducted; (3) her several requests for postponement of the hearings were granted; (4) the prosecution only presented evidence during the hearings on 17 May 2004 and 23 September 2004, when petitioner and her counsel were present; (5) petitioner herself and her two witnesses, Casanguan and Yasa, got the opportunity to testify on 25 November 2004; (6) only after the parties had submitted their arguments and evidence did CSCRO No. XII render its Decision on 27 February 2006; (7) petitioner was

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[24] *Padilla v. Hon. Sto. Tomas*, 312 Phil. 1095, 1103 (1995).

[25] *Salonga v. Court of Appeals*, 336 Phil. 514, 528 (1997).

[26] *Fabella v. Court of Appeals*, 346 Phil. 940, 952-953 (1997).

able to file a Motion for Reconsideration with CSCRO No. XII, but it was denied; (8) petitioner sought recourse with the CSC by filing an appeal, as well as a Motion for Reconsideration of the unfavorable judgment subsequently rendered by the CSC; and (8) when her Petition for *Certiorari* was dismissed by the Court of Appeals, petitioner was able to file the instant Petition before us. All these establish that petitioner was able to avail herself of all procedural remedies available to her.

Secondly, the Decision dated 27 February 2006 of CSCRO No. XII, affirmed by the CSC, which dismissed petitioner from service for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, is supported by competent and credible evidence.

The law requires that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[27]

Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient basis for the imposition of any disciplinary action upon an employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct, and his participation therein renders him unworthy of trust and confidence demanded by his position.[28]

There is such substantial evidence herein to prove petitioner guilty of the administrative offenses for which she was charged.

Even only a cursory examination of petitioner's pictures and signatures in her PDS dated 10 November 1994, and in the AF and PSP for the CS Professional Examination of 29 November 1992, on one hand; and petitioner's purported pictures and signatures in the AF and PSP for the CSC Professional

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[27] *Atty. San Juan, Jr. v. Sangalang*, 404 Phil. 11, 21 (2001).

[28] *Reyno v. Manila Electric Company*, 478 Phil. 830, 840 (2004).

Examination of 17 October 1993, on the other, reveals their marked differences from one another. It can be observed by the naked eye that the pictures and signatures bear little resemblance/similitude, or none at all. The pictures could not have been those of the same individual, nor could the signatures have been made by the same person.

This conclusion is strengthened by the CSCRO when it expostulates that:

> It is a different matter, however, upon evaluation of the examination records of respondent for the October 17, 1993 CS Professional Exam *vis-à-vis* her Personal Data Sheet as well as her examination records for the November 29, 1992 CS Professional Exam. It reveals that respondent Hadji Sirad is not the same person who took the October 17, 1993 CS exam. The facial features as well as the signatures of examinee and appointee Romero are glaringly different. Records clearly show that the person appearing in the picture for the November 1992 exam is the same person whose picture appears in the PDS – that is appointee Hadji Sirad. Examinee Romero (Hadji-Sirad) in the October 1993 exam, on the other hand, does not look like appointee Romero (Hadji-Sirad) as shown in the two documents. Most notable is the mole on the left side of the cheek of Romero which examinee does not have. This can be clearly observed in the scanned photos below: x x x.[29]

And reechoed by the CSC, thus:

> The Commission also made a careful examination and comparison of the picture attached to the PSP and AF for the Career Civil Service Professional Examination held on October 17, 1993 with those attached to the PSP and AF for the previous Career Service Professional Examination she took on November 29, 1992 on file with the Commission, and those attached to Hadji-Sirad's PDS; it is convinced that another person took the Career Service Professional Examination held on October 17, 1993.
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> While it is true that the pictures of Hadji-Sirad attached to the PSP and AF for the Career Service Professional Examination held on November 29, 1992 and to her PDS were not the same, the

[29] *Rollo,* p. 402.

resemblance, however, in the facial features in said pictures are notable and unmistakably belong to one and the same person. Comparing these pictures to the pictures attached to the PSP and AF for the October 17, 1993 Career Service Professional Examination, the differences are so striking that one would conclude easily that the persons therein are two different individuals. As correctly observed by the CSCRO No. XII, the person appearing in the picture attached to the PSP and AF in October 17, 1993 Career Service Professional Examination looked quite older than the more recent picture of Hadji-Sirad attached to her PDS dated November 10, 1994.

The Commission also noted a remarkable difference in the signatures of Hadji-Sirad appearing in the PSP and AF for the October 17, 1993 Career Service Professional Examination and those affixed in the PSP for the November 29, 1992 Career Service Professional Examination previously taken by her and in her PDS. The strokes used in the signature affixed in the PSP and AF of the October 17, 1993 Career Service Professional Examination were somewhat forcedly pressed and slanting, and the letters thereof were more prominent and defined while those affixed in other documents on file with the Commission were finer and were in an upright stroke and the letters were less defined. Even to the naked eye, the slants and strokes are very dissimilar and are clearly made by two (2) different persons.

Based on the foregoing circumstances and on the substantial evidence on record, the Commission is convinced that Hadji-Sirad has allowed another person to apply and take the Career Service Professional Examination held on October 17, 1993 in her behalf to ensure her passing the said examination.[30]

As a general rule, the findings of fact of the CSC and the Court of Appeals are accorded great weight. In a plethora of cases, we have held that lower courts are in a better position to determine the truth of the matter in litigation, since the pieces of evidence are presented before them, and they are able to look into the credibility and the demeanor of the witnesses on the witness stand. Furthermore, quasi-judicial bodies like the CSC are better-equipped in handling cases involving the employment status of employees as those in the Civil Service

[30] *Id.* at 236.

since it is within the field of their expertise. Factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case. It is not the function of the Supreme Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal or office. The Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court.[31]

Petitioner attributes the difference in the way she looked in the pictures to the passage of time or difference in the "positioning" when the pictures were taken; and the variance in her signatures to her state of mind at the time she was actually signing and the kind of writing implement and paper she was using.

We are unconvinced. Petitioner's explanations would have accounted for small or few differences in the pictures and signatures; but not when they are on the whole strikingly dissimilar. Moreover, it would have been easy for petitioner to submit evidence such as pictures to show the gradual change in her appearance through the years, or samples of her signatures made when she was of a different state of mind or using other writing implements and papers; yet, petitioner failed to do so.

We cannot even consider the possibility that the CSC officials who supervised the examinations committed a mistake in matching the pictures and signatures *vis-à-vis* the examinees, as the said CSC officials enjoy the presumption of regularity in the performance of their official duty. Besides, such a mix-up is highly unlikely due to the strict procedures followed during civil service examinations, described in detail in *Cruz v. Civil Service Commission*,[32] to wit:

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[31] *Pabu-aya v. Court of Appeals*, 408 Phil. 782, 788 (2001).

[32] 422 Phil. 236, 245 (2001).

It should be stressed that as a matter of procedure, the room examiners assigned to supervise the conduct of a Civil Service examination closely examine the pictures submitted and affixed on the Picture Seat Plan (CSC Resolution No. 95-3694, Obedencio, Jaime A.). The examiners carefully compare the appearance of each of the examinees with the person in the picture submitted and affixed on the PSP. In cases where the examinee does not look like the person in the picture submitted and attached on the PSP, the examiner will not allow the said person to take the examination (CSC Resolution No. 95-5195, Taguinay, Ma. Theresa).

The only logical scenario is that another person, who matched the picture in the PSP, actually signed the AF and took the CS Professional Examination on 17 October 1993, in petitioner's name.

True, petitioner was able to present testimonial evidence supporting her allegation that she was at Room 003 of the Administration Building of Iligan City National High School on 17 October 1993, the day of the CS Professional Examination. But, despite said testimonies, both CSCRO No. XII and the CSC still gave the prosecution's evidence more credit and weight. On this point, we again pertinently quote the following observations in the decision of the Regional Director dated 27 February 2006 and in the Resolution denying the petitioner's motion for reconsideration issued on 30 May 2006:

Further, testimonies of witnesses Casanguan and Yasa do not stand conclusive of the fact that it was indeed respondent who took the said examination. Yasa only testified that he saw Romero's name at Room No. 003 of Iligan City National High School and that allegedly he saw respondent at around 7-7:30 a.m. in the examination center but he did not stay any longer at the said venue, hence he was not there anymore when the examination actually began and ended. Thus, Yasa could not claim that he actually saw respondent take the examination.

x x x x x x x x x

The testimony of respondent-movant and that of witness Casanguan are self-serving. The testimony of Yasa, on the other hand, negated his sworn statement that he actually saw Hadji Sirad

take the October 1993 examination. On the witness stand, it was made clear that he only saw the name of Hadji Sirad in the list of examinees posted outside Room 003. Further, that the only time he saw Hadji Sirad was prior to the start of the examination. Clearly, he did not see Hadji Sirad actually take the exam nor hand in her examination papers after she finished the examination. Finally, it is stressed that the fact that Yasa is a long-time employee of the Commission does not render his statements relative to the conduct of the 1993 CS Professional examination in Iligan City as gospel truth.

Given the foregoing, the Court finds that petitioner is, indeed, guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. Dishonesty alone, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service.[33]

WHEREFORE, the instant Petition is hereby *DENIED.* The Resolutions dated 18 January 2008 and 12 March 2008 of the Court of Appeals in CA-G.R. SP No. 02103-MIN are *AFFIRMED.* Costs against the petitioner.

SO ORDERED.

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

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[33] *De la Pena v. Sia,* A.M. No. P-06-2167, 27 June 2006, 493 SCRA 8, 20.

EN BANC

[G.R. No. 182380. August 28, 2009]

ROBERT P. GUZMAN, *petitioner, vs.* **COMMISSION ON ELECTIONS, MAYOR RANDOLPH S. TING and SALVACION GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* INDISPENSABLE ELEMENTS.— The indispensable elements of a petition for *certiorari* are: (a) that it is directed against a tribunal, board or officer exercising judicial or *quasi*-judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

2. ID.; ID.; ID.; RULE THAT A MOTION FOR RECONSIDERATION MUST BE FILED IN THE COURT OF ORIGIN BEFORE INVOKING THE *CERTIORARI* JURISDICTION OF A SUPERIOR COURT; EXCEPTIONS.— As a rule, it is necessary to file a motion for reconsideration in the court of origin before invoking the *certiorari* jurisdiction of a superior court. Hence, a petition for *certiorari* will not be entertained unless the public respondent has been given first the opportunity through a motion for reconsideration to correct the error being imputed to him. The rule is not a rigid one, however, for a prior motion for reconsideration is not necessary in some situations, including the following: a. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction; b. Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; c. Where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; d. Where, under the circumstances, a motion for reconsideration would be useless; e. Where the petitioner was deprived of due process and there is extreme

urgency for relief; f. Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; g. Where the proceedings in the lower court are a nullity for lack of due process; h. Where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and i. Where the issue raised is one purely of law or where public interest is involved.

3. ID.; ID.; ID.; ID.; ID.; LAST EXCEPTION "WHERE ISSUE RAISED IS ONE PURELY OF LAW," APPLICABLE IN CASE AT BAR.— That the situation of the petitioner falls under the last exception is clear enough. The petitioner challenges only the COMELEC's interpretation of Section 261(v) and (w) of the *Omnibus Election Code*. Presented here is an issue purely of law, considering that all the facts to which the interpretation is to be applied have already been established and become undisputed. Accordingly, he did not need to first seek the reconsideration of the assailed resolution.

4. ID.; ID.; ID.; ID.; ID.; ID.; DISTINCTIONS BETWEEN A QUESTION OF LAW AND A QUESTION OF FACT.— The distinctions between a question of law and a question of fact are well known. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. Such a question does not involve an examination of the probative value of the evidence presented by the litigants or any of them. But there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities of the situation.

5. POLITICAL LAW; *OMNIBUS ELECTION CODE*; PROHIBITION AGAINST DISBURSEMENT OF PUBLIC FUNDS FOR PUBLIC WORKS DURING ELECTION BAN; ACQUISITION OF LOTS 5860 AND 5881 FOR USE AS A CEMETERY DURING ELECTION BAN, NOT A VIOLATION OF SEC. 261 (V), *OMNIBUS ELECTION CODE*.— As the legal provision of Sec. 261 (v), *Omnibus Election Code* shows, the prohibition of the release, disbursement or

expenditure of public funds for any and all kinds of public works depends on the following elements: (a) a public official or employee releases, disburses or spends public funds; (b) the release, disbursement and expenditure is made within 45 days before a regular election or 30 days before a special election; and (c) the public funds are intended for any and all kinds of *public works* except the four situations enumerated in paragraph (v) of Section 261. Absent an indication of any contrary legislative intention, the term *public works* as used in Section 261 (v) of the *Omnibus Election Code* is properly construed to refer to any building or structure on land or to structures (such as roads or dams) built by the Government for public use and paid for by public funds. Public works are clearly works, whether of construction or adaptation undertaken and carried out by the national, state, or municipal authorities, designed to subserve some purpose of public necessity, use or convenience, such as public buildings, roads, aqueducts, parks, *etc*.; or, in other words, all *fixed* works constructed for public use. It becomes inevitable to conclude, therefore, that the petitioner's insistence – that the acquisition of Lots 5860 and 5881 for use as a public cemetery be considered a disbursement of the public funds for public works in violation of Section 261(v) of the *Omnibus Election Code* – was unfounded and unwarranted.

6. ID.; ID.; ID.; ID.; THE TERM "PUBLIC WORKS," DEFINED AS REFERRING TO FIXED INFRASTRUCTURES BUILT BY THE GOVERNMENT FOR PUBLIC USE.— The *Local Government Code of 1991* considers public works to be the fixed infrastructures and facilities owned and operated by the government for public use and enjoyment. According to the Code, cities have the responsibility of providing infrastructure facilities intended primarily to service the needs of their residents and funded out of city funds, such as, among others, roads and bridges; school buildings and other facilities for public elementary and secondary schools; and clinics, health centers and other health facilities necessary to carry out health services. Likewise, the Department of Public Works and Highways (DPWH), the engineering and construction arm of the government, associates public works with fixed infrastructures for the public. In the declaration of policy pertinent to the DPWH, Public Works, enumerated in Sec. 1, Chapter 1, Title V,

Book IV, *Administrative Code of* 1987 as x x x "infrastructure facilities, especially national highways, flood control and water resources development systems, and other public works in accordance with national development objectives" – means that only the fixed public infrastructures for use of the public are regarded as public works.

7. ID.; ID.; ID.; ID.; ISSUANCE OF TREASURY WARRANTS DURING ELECTION BAN VIOLATED SECTION 261 (W) OF THE *OMNIBUS ELECTION CODE*.— Section 261(w) of the *Omnibus Election Code* reads thus: x x x (w) *Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices.*– During the period of forty five days preceding a regular election and thirty days before a special election, any person who: (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; *or* (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds. x x x Section 261 (w) covers not only one act but two, *i.e.*, the act under subparagraph (a) above and that under subparagraph (b) above. For purposes of the prohibition, the acts are *separate* and *distinct*, considering that Section 261(w) uses the disjunctive *or* to separate subparagraphs (a) and (b). In legal hermeneutics, *or* is a disjunctive that expresses an alternative or gives a choice of one among two or more things. The word signifies disassociation and independence of one thing from another thing in an enumeration. x x x Consequently, whether or not the treasury warrant in question was intended for public works was even of no moment in determining if the legal provision was violated. There was a probable cause to believe that Section 261(w), subparagraph (b), of the *Omnibus Election Code* was violated when City Mayor Ting and City Treasurer Garcia issued Treasury Warrant No. 0001534514 during the election ban period.

8. REMEDIAL LAW; *CERTIORARI*; COURTS WILL NOT INTERFERE WITH COMELEC'S FINDINGS AS TO THE EXISTENCE OF PROBABLE CAUSE TO PROSECUTE ELECTION OFFENSES.— True, the COMELEC, as the body tasked by no less than the 1987 Constitution to investigate

and prosecute violations of election laws, has the full discretion to determine whether or not an election case is to be filed against a person and, consequently, its findings as to the existence of probable cause are not subject to review by courts.

9. ID.; ID.; ID.; EXCEPTION; WHERE GRAVE ABUSE OF DISCRETION IS PRESENT.— Yet, this policy of non-interference does not apply where the COMELEC, as the prosecuting or investigating body, was acting arbitrarily and capriciously, like herein, in reaching a different but patently erroneous result. The COMELEC was plainly guilty of grave abuse of discretion. 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."

APPEARANCES OF COUNSEL

Vicente D. Lasam and Associates for petitioner.
The Solicitor General for public respondent.
Edwin V. Pascua for Mayor Randolph S. Ting.

D E C I S I O N

BERSAMIN, *J.*:

Through *certiorari* under Rule 64, in relation to Rule 65, Rules of Court, the petitioner assails the February 18, 2008 resolution of the Commission of Elections *en banc* (COMELEC),[1] dismissing his criminal complaint against respondents City Mayor Randolph Ting and City Treasurer Salvacion Garcia, both of Tuguegarao City, charging them with alleged violations of the prohibition against disbursing public funds and undertaking public works, as embodied in Section 261, paragraphs (v) and (w), of the *Omnibus Election Code*, during the 45-day period of the

[1] *Rollo*, pp. 43-55.

election ban by purchasing property to be converted into a public cemetery and by issuing the treasury warrant in payment. He asserts that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in thereby exonerating City Mayor Ting and City Treasurer Garcia based on its finding that the acquisition of the land for use as a public cemetery did not constitute public works covered by the ban.

Antecedents

On March 31, 2004, the *Sangguniang Panlungsod* of Tuguegarao City passed Resolution No. 048-2004 to authorize City Mayor Ting to acquire two parcels of land for use as a public cemetery of the City. Pursuant to the resolution, City Mayor Ting purchased the two parcels of land, identified as Lot Nos. 5860 and 5861 and located at Atulayan Sur, Tuguegarao City, with an aggregate area of 24,816 square meters (covered by Transfer Certificates of Title [TCT] No. T-36942 and TCT No. T-36943 of the Register of Deeds in Tuguegarao City), from Anselmo Almazan, Angelo Almazan and Anselmo Almazan III. As payment, City Treasurer Garcia issued and released Treasury Warrant No. 0001534514 dated April 20, 2004 in the sum of ₱8,486,027.00. On May 5, 2004, the City Government of Tuguegarao caused the registration of the sale and the issuance of new certificates in its name (*i.e.*, TCT No. T-144428 and TCT No. T-144429).

Based on the transaction, the petitioner filed a complaint in the Office of the Provincial Election Supervisor of Cagayan Province against City Mayor Ting and City Treasurer Garcia, charging them with a violation of Section 261, paragraphs (v) and (w), of the *Omnibus Election Code,* for having undertaken to construct a public cemetery and for having released, disbursed and expended public funds within 45 days prior to the May 9, 2004 election, in disregard of the prohibitions under said provisions due to the election ban period having commenced on March 26, 2004 and ended on May 9, 2004.

City Mayor Ting denied the accusations in his counter-affidavit but City Treasurer Garcia opted not to answer.

After investigation, the Acting Provincial Election Supervisor of Cagayan recommended the dismissal of the complaint by a resolution dated December 13, 2006, to wit:

> WHEREFORE, premises considered, the undersigned investigator finds that respondents did not violate Section 261 subparagraphs (v) and (w) of the Omnibus Election Code and Sections 1 and 2 of Comelec Resolution No. 6634 and hereby recommends the DISMISSAL of the above-entitled case for lack of merit.[2]

The COMELEC *en banc* adopted the foregoing recommendation in its own resolution dated February 18, 2008 issued in E.O. Case No. 06-14[3] and dismissed the complaint for lack of merit, holding that the acquisition of the two parcels of land for a public cemetery was not considered as within the term *public works*; and that, consequently, the issuance of Treasury Warrant No. 0001534514 was not for public works and was thus in violation of Section 261 (w) of the *Omnibus Election Code*.

Not satisfied but without first filing a motion for reconsideration, the petitioner has commenced this special civil action under Rule 64, in relation to Rule 65, *Rules of Court*, claiming that the COMELEC committed grave abuse of discretion in thereby dismissing his criminal complaint.

Parties' Positions

The petitioner contended that the COMELEC's point of view was unduly restrictive and would defeat the very purpose of the law; that it could be deduced from the exceptions stated in Section 261 (v) of the *Omnibus Election Code* that the disbursement of public funds within the prohibited period should be limited only to the ordinary prosecution of public administration and for emergency purposes; and that any expenditure other than such was proscribed by law.

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[2] *Ibid.,* p. 52, quoted in the February 18, 2008 resolution of the COMELEC *en banc*.

[3] *Supra,* footnote no. 1.

For his part, City Mayor Ting claimed that the mere acquisition of land to be used as a public cemetery could not be classified as *public works*; that there would be public works only where and when there was an actual physical activity being undertaken and after an order to commence work had been issued by the owner to the contractor.

The COMELEC stated that the petition was premature because the petitioner did not first present a motion for reconsideration, as required by Section 1(d), Rule 13 of the 1993 COMELEC Rules of Procedure;[4] and that as the primary body empowered by the Constitution to investigate and prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses and malpractices,[5] it assumed full discretion and control over determining whether or not probable cause existed to warrant the prosecution in court of an alleged election offense committed by any person.

The Office of the Solicitor General (OSG) concurred with the COMELEC to the effect that the acquisition of the land within the election period for use as a public cemetery was not covered by the 45-day public works ban under Section 261(v) of the *Omnibus Election Code*; but differed from the COMELEC as to the issuance of Treasury Warrant No. 0001534514, opining that there was probable cause to hold City Mayor Ting and City Treasurer Garcia liable for a violation of Section 261(w), subparagraph (b), of the *Omnibus Election Code*.

Issues

The issues to be resolved are:

(1) Whether or not the petition was premature;

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[4] Section 1. *What Pleadings are not Allowed*.– The following pleadings are not allowed:

x x x x x x x x x

(d) Motion for reconsideration of an *en banc* ruling, resolution, order or decision except in election offense cases;

x x x x x x x x x

[5] 1987 Constitution, Article IX-C, Section 2(6).

(2) Whether or not the acquisition of Lots 5860 and 5881 during the period of the election ban was covered by the term *public works* as to be in violation of Section 261 (v) of the *Omnibus Election Code*; and

(3) Whether or not the issuance of Treasury Warrant No. 0001534514 during the period of the election ban was in violation of Section 261 (w) of the *Omnibus Election Code*.

Ruling of the Court

The petition is meritorious.

I
The Petition Was Not Premature

The indispensable elements of a petition for *certiorari* are: (a) that it is directed against a tribunal, board or officer exercising judicial or *quasi*-judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[6]

The COMELEC asserts that the "plain, speedy and adequate" remedy available to the petitioner was to file a motion for reconsideration *vis-à-vis* the assailed resolution, as required in the 1993 COMELEC Rules of Procedure; and that his omission to do so and his immediately invoking the *certiorari* jurisdiction of the Supreme Court instead rendered his petition premature.

We do not sustain the COMELEC.

As a rule, it is necessary to file a motion for reconsideration in the court of origin before invoking the *certiorari* jurisdiction of a superior court. Hence, a petition for *certiorari* will not be entertained unless the public respondent has been given first

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[6] Sec. 1, Rule 65; *Barbers v. COMELEC,* G.R. No. 165691, June 22, 2005, 460 SCRA 569; *De los Santos v. Court of Appeals,* G.R. No. 169498, December 11, 2008; *Gelindon v. Judge Dela Rama,* G.R. No. 105072, December 9, 1993, 228 SCRA 322; *Cochingyan, Jr. v. Cloribel,* Nos. L-27070-71, April 22, 1977, 76 SCRA 361.

the opportunity through a motion for reconsideration to correct the error being imputed to him.[7]

The rule is not a rigid one, however, for a prior motion for reconsideration is not necessary in some situations, including the following:

a. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

b. Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

c. Where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable;

d. Where, under the circumstances, a motion for reconsideration would be useless;

e. Where the petitioner was deprived of due process and there is extreme urgency for relief;

f. Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

g. Where the proceedings in the lower court are a nullity for lack of due process;

h. Where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and

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[7] *Lopez de la Rosa Development Corporation v. Court of Appeals*, G.R. No. 148470, April 29, 2005, 457 SCRA 614; *Veloso v. China Airlines, Ltd.*, G.R. No. 104302, July 14, 1999, 310 SCRA 274; *Cruz v. Del Rosario*, No. L- 17440, December 26, 1963, 9 SCRA 755; *Jariol v. COMELEC*, G.R. No. 127456, March 20, 1997, 270 SCRA 255; *De Gala-Sison v. Judge Maddela*, No. L-24584, October 30, 1975, 67 SCRA 478; *Manuel v. Jimenez*, No. L-22058, May 17, 1966, 17 SCRA 55.

i. Where the issue raised is one purely of law or where public interest is involved.[8]

That the situation of the petitioner falls under the last exception is clear enough. The petitioner challenges only the COMELEC's interpretation of Section 261(v) and (w) of the *Omnibus Election Code*. Presented here is an issue purely of law, considering that all the facts to which the interpretation is to be applied have already been established and become undisputed. Accordingly, he did not need to first seek the reconsideration of the assailed resolution.

The distinctions between a question of law and a question of fact are well known. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. Such a question does not involve an examination of the probative value of the evidence presented by the litigants or any of them. But there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities of the situation.[9]

II

Acquisition of Lots 5860 And 5881 During the Period of the Election Ban, Not Considered as "Public Works" in Violation of Sec. 261 (v), *Omnibus Election Code*

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[8] *Star Paper Corporation v. Espiritu,* G.R. No. 154006, November 2, 2006, 506 SCRA 556, 564-565; *Cervantes v. Court of Appeals,* G.R. No. 166755, November 18, 2005, 475 SCRA 562, 569-570; *Acance v. Court of Appeals,* G.R. No. 159699, March 16, 2005, 453 SCRA 548, 558-559; *Metro Transit Organization, Inc. v. Court of Appeals,* G.R. No. 142133, November 19, 2002, 392 SCRA 229, 236.

[9] *Pagsibigan v. People,* G. R. No. 163868, June 4, 2009; *Caiña v. People,* G.R. No. 78777, September 2, 1992, 213 SCRA 309, 313-314; *Cheesman v. IAC,* G.R. No. 74833, January 21, 1991, 193 SCRA 93, 100-101; *Ramos v. Pepsi-Cola Bottling Co.,* No. L- 22533, February 9, 1967, 19 SCRA 289, 292; *Lim v. Calaguas,* No. L- 2031, May 30, 1949, 83 Phil 796, 799.

The COMELEC held in its resolution dated February 18, 2008 that:

To be liable for violation of Section 261 (v), *supra*, four (4) essential elements must concur and they are:

1. A public official or employee releases, disburses, or expends any public funds;
2. The release, disbursement or expenditure of such funds must be within forty-five days before regular election;
3. The release, disbursement or expenditure of said public funds is for any and all kinds of public works; and
4. The release, disbursement or expenditure of the public funds should not cover any exceptions of Section 261 (v). (Underscoring supplied).

Applying the foregoing as guideline, it is clear that what is prohibited by law is the release, disbursement or expenditure of public funds for any and all kinds of public works. Public works is defined as fixed works (as schools, highways, docks) constructed for public use or enjoyment esp. when financed and owned by the government. From this definition, the purchase of the lots purportedly to be utilized as cemetery by the City Government of Tuguegarao cannot by any stretch of imagination be considered as public works, hence it could not fall within the proscription as mandated under the aforementioned section of the Omnibus Election Code. And since the purchase of the lots is not within the contemplation of the word public works, the third of the elements stated in the foregoing guideline is not present in this case. Hence since not all the elements concurred, the respondents are not liable for violation of Section 261 (v) of the Omnibus Election Code.

The foregoing ratiocination of the COMELEC is correct.

Section 261(v) of the *Omnibus Election Code* provides as follows:

Section 261. *Prohibited acts.*– The following shall be guilty of an election offense:

x x x x x x x x x

(v) *Prohibition against release, disbursement or expenditure of public funds*.– Any public official or employee including *barangay* officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds:

(1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: *Provided*, that not more than the average number of laborers or employees already employed therein during the sixth- month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: *Provided, further*, That no additional laborer shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or negotiated contract awarded, before the forty-five day period before election: *Provided*, That work for the purpose of this section undertaken under the so-called "*takay*" or "*paquiao*" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: *Provided*, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to the said ministry, except for salaries of personnel and for such other expenses as the Commission may authorize after due and necessary hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and

(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to the said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.

As the legal provision shows, the prohibition of the release, disbursement or expenditure of public funds for any and all kinds of public works depends on the following elements: (a) a public official or employee releases, disburses or spends public funds; (b) the release, disbursement and expenditure is made within 45 days before a regular election or 30 days before a special election; and (c) the public funds are intended for any and all kinds of *public works* except the four situations enumerated in paragraph (v) of Section 261.

It is decisive to determine, therefore, whether the purchase of the lots for use as a public cemetery constituted public works within the context of the prohibition under the *Omnibus Election Code*.

We first construe the term *public works* – which the *Omnibus Election Code* does not define–with the aid of extrinsic sources.

The *Local Government Code of 1991* considers public works to be the fixed infrastructures and facilities owned and operated by the government for public use and enjoyment. According to the Code, cities have the responsibility of providing infrastructure

facilities intended primarily to service the needs of their residents and funded out of city funds, such as, among others, roads and bridges; school buildings and other facilities for public elementary and secondary schools; and clinics, health centers and other health facilities necessary to carry out health services.[10]

Likewise, the Department of Public Works and Highways (DPWH), the engineering and construction arm of the government, associates public works with fixed infrastructures for the public. In the declaration of policy pertinent to the DPWH, Sec. 1, Chapter 1, Title V, Book IV, *Administrative Code of* 1987, states:

Sec. 1. *Declaration of Policy*. – The State shall maintain an engineering and construction arm and continuously develop its technology, for the purposes of ensuring the safety of all

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[10] Republic Act 7160, Book I, Title 1, Chapter 2, Section 17, paragraph (4) in relation to Section 17, paragraph (2), subparagraph (viii):–

SEC 17. *Basic Services and Facilities*.–

x x x x x x x x x

(b) Such basic services and facilities include, but are not limited to, the following:

x x x x x x x x x

(2) *For a Municipality*:

x x x x x x x x x

(viii) Infrastructure facilities intended primarily to service the needs of the residents of the municipality and which are funded out of municipal funds including, but not limited to, municipal roads and bridges; school buildings and other facilities for public elementary and secondary schools; clinics, health centers and other health facilities necessary to carry out health services; communal irrigation, small water impounding projects and other similar projects; artesian wells, spring development, rainwater collectors and water supply systems; seawalls, dikes, drainage and sewerage, and flood control; traffic signals and road signs; and similar facilities;

x x x x x x x x x

(4) *For a City*:

All the services and facilities of the municipality and province, and in addition thereto, the following:

(i) Adequate communication and transportation facilities;

(ii) Support for education, police and fire services and facilities;

x x x x x x x x x

infrastructure facilities and securing for all public works and highways the highest efficiency and the most appropriate quality in construction. The planning, design, construction and maintenance of **infrastructure facilities, especially national highways, flood control and water resources development systems, and other public works in accordance with national development objectives**, shall be the responsibility of such an engineering and construction arm. However, the exercise of this responsibility shall be decentralized to the fullest extent feasible.

The enumeration in Sec. 1, *supra* – "infrastructure facilities, especially national highways, flood control and water resources development systems, and other public works in accordance with national development objectives" – means that only the fixed public infrastructures for use of the public are regarded as public works. This construction conforms to the rule of *ejusdem generis,* which Professor Black has restated thuswise:[11]

> It is a general rule of statutory construction that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. But this rule must be discarded where the legislative intention is plain to the contrary.

Accordingly, absent an indication of any contrary legislative intention, the term *public works* as used in Section 261 (v) of the *Omnibus Election Code* is properly construed to refer to any building or structure on land or to structures (such as roads or dams) built by the Government for public use and paid for by public funds. Public works are clearly works, whether of construction or adaptation undertaken and carried out by the national, state, or municipal authorities, designed to subserve some purpose of public necessity, use or convenience, such as

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[11] Black, *Handbook on the Construction and Interpretation of the Laws*, 2nd Edition (1911), West Publishing Co., St. Paul, Minn., p. 203; cited in *Smith, Bell & Co., Ltd. v. Register of Deeds of Davao*, 96 Phil. 53, 58 (1954); and *Republic v. Migriño*, 189 SCRA 289, 296-297.

public buildings, roads, aqueducts, parks, *etc*.; or, in other words, all *fixed* works constructed for public use.[12]

It becomes inevitable to conclude, therefore, that the petitioner's insistence – that the acquisition of Lots 5860 and 5881 for use as a public cemetery be considered a disbursement of the public funds for public works in violation of Section 261(v) of the *Omnibus Election Code* – was unfounded and unwarranted.

III
Issuance of the Treasury Warrant During the Period of the Election Ban Violated Section 261 (w), *Omnibus Election Code*

Section 261(w) of the *Omnibus Election Code* reads thus:

x x x x x x x x x

(w) *Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices.*– During the period of forty five days preceding a regular election and thirty days before a special election, any person who: (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; *or* (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.

x x x x x x x x x

The OSG posits that the foregoing provision is violated in either of two ways: (a) by any person who, within 45 days preceding a regular election and 30 days before a special election, undertakes the construction of any public works except those enumerated in the preceding paragraph; *or* (b) by any person who issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds within 45 days preceding a regular election and 30 days before a special election.

We concur with the OSG's position.

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[12] California Words, Phrases and Maxims (1960).

Section 261 (w) covers not only one act but two, *i.e.*, the act under subparagraph (a) above and that under subparagraph (b) above. For purposes of the prohibition, the acts are *separate* and *distinct*, considering that Section 261(w) uses the disjunctive *or* to separate subparagraphs (a) and (b). In legal hermeneutics, *or* is a disjunctive that expresses an alternative or gives a choice of one among two or more things.[13] The word signifies disassociation and independence of one thing from another thing in an enumeration. It should be construed, as a rule, in the sense that it ordinarily implies as a disjunctive word.[14] According to Black,[15] too, the word *and* can never be read as *or*, or vice versa, in criminal and penal statutes, where the rule of strict construction prevails. Consequently, whether or not the treasury warrant in question was intended for public works was even of no moment in determining if the legal provision was violated.

There was a probable cause to believe that Section 261(w), subparagraph (b), of the *Omnibus Election Code* was violated when City Mayor Ting and City Treasurer Garcia issued Treasury Warrant No. 0001534514 during the election ban period. For this reason, our conclusion that the COMELEC *en banc* gravely abused its discretion in dismissing E.O. Case No. 06-14 for lack of merit is inevitable and irrefragable.

True, the COMELEC, as the body tasked by no less than the 1987 Constitution to investigate and prosecute violations of election laws,[16] has the full discretion to determine whether or not an election case is to be filed against a person and, consequently, its findings as to the existence of probable cause are not subject to review by courts. Yet, this policy of non-interference does not apply where the COMELEC, as the prosecuting or investigating body, was acting arbitrarily and

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[13] *Dotty v. State,* Fla. App., 197 So. 2d 315, 317.

[14] *State ex rel, Finigan v. Norfolk Live Stock Sales Co.,* 132 N. W. 2d 302, 304, 178 Neb. 87.; see also Agpalo, *Statutory Construction,* 1995 Edition, p. 157.

[15] *Op. cit.,* p. 229.

[16] 1987 Constitution, Article IX-C, Section 2(6).

capriciously, like herein, in reaching a different but patently erroneous result.[17] The COMELEC was plainly guilty of grave abuse of discretion.

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."[18]

WHEREFORE, WE grant the petition for *certiorari* and set aside the resolution dated February 18, 2008 issued in E.O. Case No. 06-14 by the Commission of Elections *en banc*.

The Commission on Elections is ordered to file the appropriate criminal information against respondents City Mayor Randolph S. Ting and City Treasurer Salvacion Garcia of Tuguegarao City for violation of Section 261 (w), subparagraph (b), of the *Omnibus Election Code.*

Costs of suit to be paid by the private respondents.

SO ORDERED.

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

Puno, C.J., Del Castillo, and *Abad, JJ.,* no part.

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

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[17] *Malinias v. COMELEC*, 439 Phil. 319, 330.

[18] *Reyes-Tabujara v. Court of Appeals*, G.R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

THIRD DIVISION

[G.R. No. 183059. August 28, 2009]

ELY QUILATAN & ROSVIDA QUILATAN-ELIAS, *petitioners, vs.* **HEIRS OF LORENZO QUILATAN, namely NENITA QUILATAN-YUMPING, LIBRADA QUILATAN-SAN PEDRO, FLORENDA QUILATAN-ESTEBRAN and GODOFREDO QUILATAN and the MUNICIPAL ASSESSOR OF TAGUIG, METRO MANILA (now TAGUIG CITY),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; IN AN ACTION FOR PARTITION OF REAL ESTATE, IT IS THE PLAINTIFF WHO IS MANDATED TO IMPLEAD ALL THE INDISPENSABLE PARTIES; CASE AT BAR.— Respondents could not be blamed if they did not raise this issue in their Answer because in an action for partition of real estate, it is the plaintiff who is mandated by the Rules to implead all the indispensable parties, considering that the absence of one such party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. Thus, the Court of Appeals correctly applied Section 1, Rule 69 and Section 7, Rule 3 of the Rules of Court.

2. ID.; ID.; ID.; ID.; ID.; RATIONALE.— The rationale for treating all the co-owners of a property as indispensable parties in a suit involving the co-owned property is explained in *Arcelona v. Court of Appeals*. As held by the Supreme Court, were the courts to permit an action in ejectment to be maintained by a person having merely an undivided interest in any given tract of land, a judgment in favor of the defendants would not be conclusive as against the other co-owners not parties to the suit, and thus the defendant in possession of the property might be harassed by as many succeeding actions of ejectment, as there might be co-owners of the title asserted against him. The purpose of

this provision was to prevent multiplicity of suits by requiring the person asserting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

APPEARANCES OF COUNSEL

Capco & Campanilla for petitioners.
Imelda A. Herrera for Heirs of Lorenzo Quilatan.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The issue for resolution is whether the Court of Appeals correctly reversed the decision of the Regional Trial Court (RTC) of Pasig City, Branch 266, and ordered the dismissal without prejudice of Civil Case No. 67367 on the ground of failure to implead all the indispensable parties to the case.

On August 15, 1999, petitioners Ely Quilatan and Rosvida Quilatan-Elias filed Civil Case No. 67367 for nullification of Tax Declaration Nos. D-014-00330 and D-014-00204 and Partition of the Estate of the late Pedro Quilatan with damages against respondent heirs of Lorenzo Quilatan. They claim that during his lifetime, Pedro Quilatan owned two parcels of land covered by Tax Declaration Nos. 1680 and 2301, both located in Taguig, Metro Manila; that sometime in 1998,[1] they discovered that said tax declarations were cancelled without their knowledge and new ones were issued, to wit: Tax Declaration No. D-014-00204 and D-014-00330, under the names of Spouses Lorenzo Quilatan and Anita Lizertiquez as owners thereof.[2]

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[1] *Rollo*, p. 46.

[2] *Id.* at 65-66.

On June 22, 2004, the trial court rendered its decision declaring as void the cancellation of Tax Declaration Nos. 1680 and 2301. At the same time, it ordered the partition of the subject properties into three equal shares among the heirs of Francisco, Ciriaco and Lorenzo, all surnamed Quilatan.

On appeal, the Court of Appeals reversed without prejudice the decision of the trial court on the ground that petitioners failed to implead other co-heirs who are indispensable parties to the case. Thus, the judgment of the trial court was null and void for want of jurisdiction.[3] Petitioners filed a motion for reconsideration[4] but it was denied.

Hence, this petition for review where petitioners argue that the issue of failure to implead indispensable parties was a mere afterthought because respondents did not raise the same in their Answer to the complaint, but only for the first time in their Motion for Reconsideration of the June 22, 2004 decision of the trial court.[5] Petitioners further argue that the order of dismissal without prejudice and the re-filing of the case in order to implead the heirs of Ciriaco only invite multiplicity of suits since the second action would be a repetition of the first action, where the judgment therein rightly partitioned the subject properties into three equal shares, apportioning each share to the heirs of the children of Pedro Quilatan.[6]

The petition lacks merit.

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[3] *Id*. at 71.

[4] *Id*. at 91.

[5] *Id*. at 20.

[6] *Id*. at 21 and 26.

Records show that Pedro Quilatan died intestate in 1960 and was survived by his three children, namely, Ciriaco, Francisco and Lorenzo, all of whom are now deceased. Ciriaco was survived by his children, namely Purita Santos, Rosita Reyes, Renato Quilatan, Danilo Quilatan, and Carlito Quilatan; Francisco was survived by herein petitioners and their two other siblings, Solita Trapsi and Rolando Quilatan; while Lorenzo was survived by his children, herein respondents.

In the complaint filed by petitioners before the trial court, they failed to implead their two siblings, Solita and Rolando, and all the heirs of Ciriaco, as co-plaintiffs or as defendants. It is clear that the central thrust of the complaint filed in Civil Case No. 67367 was to revert the subject properties back to the estate of Pedro Quilatan, thereby making all his heirs *pro indiviso* co-owners thereof, and to partition them equally among themselves; and that all the co-heirs and persons having an interest in the subject properties are indispensable parties to an action for partition, which will not lie without the joinder of said parties.

Respondents could not be blamed if they did not raise this issue in their Answer because in an action for partition of real estate, it is the plaintiff who is mandated by the Rules to implead all the indispensable parties, considering that the absence of one such party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[7]

Thus, the Court of Appeals correctly applied Section 1, Rule 69 and Section 7, Rule 3 of the Rules of Court, which read:

SECTION 1. *Complaint in action for partition of real estate.* — A person having the right to compel the partition of real estate may do so as in this rule prescribed, setting forth in his **complaint** the nature and extent of his title and an adequate description of

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[7] *Sepulveda v. Pelaez*, 490 Phil. 710, 722 (2005).

the real estate of which partition is demanded and joining as defendants all the other persons interested in the property. (Emphasis supplied)

SECTION 7. *Compulsory joinder of indispensable parties.* — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

In *Moldes v. Villanueva*,[8] the Court held that:

An indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. A party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. He is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. In *Commissioner Andrea D. Domingo v. Herbert Markus Emil Scheer*, the Court held that the joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Strangers to a case are not bound by the judgment rendered by the court. The absence of an indispensable party renders all subsequent actions of the court null and void, with no authority to act not only as to the absent party but also as to those present. **The responsibility of impleading all the indispensable parties rests on the petitioner/plaintiff.**

Likewise, in *Metropolitan Bank and Trust Company v. Hon. Floro T. Alejo*, the Court ruled that the evident aim and intent of the Rules regarding the joinder of indispensable and necessary parties is a complete determination of all possible issues, not only between the parties themselves but also as regards to other persons who may be affected by the judgment. A valid judgment cannot even be rendered where there is want of indispensable parties.

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[8] G.R. No. 161955, August 31, 2005, 468 SCRA 697, 707-708.

On the issue of multiplicity of suits, the Court of Appeals correctly ordered the dismissal of Civil Case No. 67367 without prejudice for want of jurisdiction. The dismissal could have been avoided had petitioners, instead of merely stating in their complaint the unimpleaded indispensable parties, joined them as parties to the case in order to have a complete and final determination of the action. As aptly observed by the appellate court:

> Indeed, a perusal of the records will show that plaintiffs-appellees did not implead their other co-heirs, either as plaintiffs or defendants in the case. Their complaint squarely stated that Pedro Quilatan had three children, namely, Ciriaco Quilatan, Francisco Quilatan, and Lorenzo Quilatan, who are now all deceased. Ciriaco Quilatan is survived by his children, namely, Purita Santos, Rosita Reyes, Renato Quilatan, Danilo Quilatan, and Carlito Quilatan. Defendants-appellants are the children of Lorenzo Quilatan. The plaintiffs-appellees, along with Solita Trapsi and Rolando Quilatan, are the children of Francisco Quilatan. However, Purita Santos, Rosita Reyes, Renato Quilatan, Danilo Quilatan, Carlito Quilatan, Solita Trapsi, and Rolando Quilatan were not joined as parties in the instant case.[9]

The rationale for treating all the co-owners of a property as indispensable parties in a suit involving the co-owned property is explained in *Arcelona v. Court of Appeals*:[10]

> As held by the Supreme Court, were the courts to permit an action in ejectment to be maintained by a person having merely an undivided interest in any given tract of land, a judgment in favor of the defendants would not be conclusive as against the other co-owners not parties to the suit, and thus the defendant in possession of the property might be harassed by as many succeeding actions of ejectment, as there might be co-owners of the title asserted against him. The purpose of this provision was to prevent

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[9] *Rollo*, p. 69.

[10] 345 Phil. 250, 268-269 (1997), cited in *Casals v. Tayud Golf and Country Club, Inc.*, G.R. No. 183105, July 22, 2009.

multiplicity of suits by requiring the person asserting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

In fine, the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. Hence, the trial court should have ordered the dismissal of the complaint.

WHEREFORE, the Petition for Review on *Certiorari* is hereby *DENIED*. The Decision of the Court of Appeals dated March 17, 2008 in CA-G.R. CV No. 88851 which reversed the decision of the Regional Trial Court of Pasig City, Branch 266, for want of jurisdiction for failure to implead all indispensable parties is *AFFIRMED*. The case is *REMANDED* to the trial court which is hereby *DIRECTED* to implead all indispensable parties.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184905. August 28, 2009]

LAMBERT S. RAMOS, *petitioner, vs.* **C.O.L. REALTY CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; QUASI-DELICTS; WHEN PLAINTIFF'S OWN NEGLIGENCE WAS THE IMMEDIATE AND PROXIMATE CAUSE OF HIS INJURY, HE CANNOT RECOVER DAMAGES.— Articles 2179 and 2185 of the Civil Code on quasi-delicts apply in this case, *viz:* Article 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. Article 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. If the master is injured by the negligence of a third person and by the concurring contributory negligence of his own servant or agent, the latter's negligence is imputed to his superior and *will defeat the superior's action against the third person, assuming of course that the contributory negligence was the proximate cause of the injury* of which complaint is made.

2. ID.; ID.; ID.; PROXIMATE CAUSE, DEFINED; CASE AT BAR.— Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. x x x If Aquilino heeded the MMDA prohibition against crossing Katipunan Avenue from Rajah Matanda, the accident would not have happened. This specific untoward event is exactly what the MMDA prohibition was intended for. Thus, a prudent and intelligent person who resides within the vicinity where the accident occurred, Aquilino had reasonable ground to expect that the accident would be a natural and probable result if he crossed Katipunan Avenue

since such crossing is considered dangerous on account of the busy nature of the thoroughfare and the ongoing construction of the Katipunan-Boni Avenue underpass. It was manifest error for the Court of Appeals to have overlooked the principle embodied in Article 2179 of the Civil Code, that when the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Ramon U. Ampil for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The issue for resolution is whether petitioner can be held solidarily liable with his driver, Rodel Ilustrisimo, to pay respondent C.O.L. Realty the amount of ₱51,994.80 as actual damages suffered in a vehicular collision.

The facts, as found by the appellate court, are as follows:

On or about 10:40 o'clock in the morning of 8 March 2004, along Katipunan (Avenue), corner Rajah Matanda (Street), Quezon City, a vehicular accident took place between a Toyota Altis Sedan bearing Plate Number XDN 210, owned by petitioner C.O.L. Realty Corporation, and driven by Aquilino Larin ("Aquilino"), and a Ford Expedition, owned by x x x Lambert Ramos (Ramos) and driven by Rodel Ilustrisimo ("Rodel"), with Plate Number LSR 917. A passenger of the sedan, one Estela Maliwat ("Estela") sustained injuries. She was immediately rushed to the hospital for treatment.

(C.O.L. Realty) averred that its driver, Aquilino, was slowly driving the Toyota Altis car at a speed of five to ten kilometers per hour along Rajah Matanda Street and has just crossed the center lane of Katipunan Avenue when (Ramos') Ford Espedition (sic) violently rammed against the car's right rear door and fender. With the force of the impact, the sedan turned 180 degrees towards the direction where it came from.

Upon investigation, the Office of the City Prosecutor of Quezon City found probable cause to indict Rodel, the driver of the Ford Expedition, for Reckless Imprudence Resulting in Damage to Property. In the meantime, petitioner demanded from respondent reimbursement for the expenses incurred in the repair of its car and the hospitalization of Estela in the aggregate amount of ₱103,989.60. The demand fell on deaf ears prompting (C.O.L. Realty) to file a Complaint for Damages based on quasi-delict before the Metropolitan Trial Court of Metro Manila (MeTC), Quezon City, docketed as Civil Case No. 33277, and subsequently raffled to Branch 42.

As could well be expected, (Ramos) denied liability for damages insisting that it was the negligence of Aquilino, (C.O.L. Realty's) driver, which was the proximate cause of the accident. (Ramos) maintained that the sedan car crossed Katipunan Avenue from Rajah Matanda Street despite the concrete barriers placed thereon prohibiting vehicles to pass through the intersection.

(Ramos) further claimed that he was not in the vehicle when the mishap occurred. He asserted that he exercised the diligence of a good father of a family in the selection and supervision of his driver, Rodel.

Weighing the respective evidence of the parties, the MeTC rendered the Decision dated 1 March 2006 exculpating (Ramos) from liability, thus:

> "WHEREFORE, the instant case is DISMISSED for lack of merit. The Counterclaims of the defendant are likewise DISMISSED for lack of sufficient factual and legal basis.
>
> SO ORDERED."

The aforesaid judgment did not sit well with (C.O.L. Realty) so that he (sic) appealed the same before the RTC of Quezon City, raffled to Branch 215, which rendered the assailed Decision dated 5 September 2006, affirming the MeTC's Decision. (C.O.L. Realty's) Motion for Reconsideration met the same fate as it was denied by the RTC in its Order dated 5 June 2007.[1]

C.O.L. Realty appealed to the Court of Appeals which affirmed the view that Aquilino was negligent in crossing Katipunan Avenue

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[1] *Rollo*, pp. 31-32.

from Rajah Matanda Street since, as per Certification of the Metropolitan Manila Development Authority (MMDA) dated November 30, 2004, such act is specifically prohibited. Thus:

> This is to certify that as per records found and available in this office **the crossing of vehicles at Katipunan Avenue from Rajah Matanda Street to Blue Ridge Subdivision, Quezon City has (sic) not allowed since January 2004 up to the present in view of the ongoing road construction at the area**.[2] (Emphasis supplied)

Barricades were precisely placed along the intersection of Katipunan Avenue and Rajah Matanda Street in order to prevent motorists from crossing Katipunan Avenue. Nonetheless, Aquilino crossed Katipunan Avenue through certain portions of the barricade which were broken, thus violating the MMDA rule.[3]

However, the Court of Appeals likewise noted that at the time of the collision, Ramos' vehicle was moving at high speed in a busy area that was then the subject of an ongoing construction (the Katipunan Avenue-Boni Serrano Avenue underpass), then smashed into the rear door and fender of the passenger's side of Aquilino's car, sending it spinning in a 180-degree turn.[4] It therefore found the driver Rodel guilty of contributory negligence for driving the Ford Expedition at high speed along a busy intersection.

Thus, on May 28, 2008, the appellate court rendered the assailed Decision,[5] the dispositive portion of which reads, as follows:

> WHEREFORE, the Decision dated 5 September 2006 of the Regional Trial Court of Quezon City, Branch 215 is hereby MODIFIED in that respondent Lambert Ramos is held solidarily liable with Rodel Ilustrisimo to pay petitioner C.O.L. Realty Corporation the amount of ₱51,994.80 as actual damages. Petitioner

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[2] *Id*. at 34.

[3] *Id*.

[4] *Id*. at 35.

[5] *Id*. at 30-37; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Mario L. Guariña III and Romeo F. Barza.

C.O.L. Realty Corporation's claim for exemplary damages, attorney's fees and cost of suit are DISMISSED for lack of merit.

SO ORDERED.

Petitioner filed a Motion for Reconsideration but it was denied. Hence, the instant petition, which raises the following sole issue:

THE COURT OF APPEALS' DECISION IS CONTRARY TO LAW AND JURISPRUDENCE, AND THE EVIDENCE TO SUPPORT AND JUSTIFY THE SAME IS INSUFFICIENT.

We resolve to GRANT the petition.

There is no doubt in the appellate court's mind that Aquilino's violation of the MMDA prohibition against crossing Katipunan Avenue from Rajah Matanda Street was the **proximate cause** of the accident. Respondent does not dispute this; in its Comment to the instant petition, it even conceded that petitioner was guilty of mere contributory negligence.[6]

Thus, the Court of Appeals acknowledged that:

The *Certification* dated 30 November 2004 of the Metropolitan Manila Development Authority (MMDA) evidently disproved (C.O.L. Realty's) barefaced assertion that its driver, Aquilino, was not to be blamed for the accident –

"TO WHOM IT MAY CONCERN:

This is to certify that as per records found and available in this office the crossing of vehicles at Katipunan Avenue from Rajah Matanda Street to Blue Ridge Subdivision, Quezon City has (sic) not allowed since January 2004 up to the present in view of the ongoing road construction at the area.

This certification is issued upon request of the interested parties for whatever legal purpose it may serve."

(C.O.L. Realty) admitted that there were barricades along the intersection of Katipunan Avenue and Rajah Matanda Street. The barricades were placed thereon to caution drivers not to pass through the intersecting roads. This prohibition stands even if, as (C.O.L.

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[6] *Id*. at 161.

Realty) claimed, the "barriers were broken" at that point creating a small gap through which any vehicle could pass. What is clear to Us is that Aquilino recklessly ignored these barricades and drove through it. Without doubt, his negligence is established by the fact that he violated a traffic regulation. This finds support in Article 2185 of the Civil Code –

> "Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation."

Accordingly, there ought to be no question on (C.O.L. Realty's) negligence which resulted in the vehicular mishap.[7]

However, it also declared Ramos liable vicariously for Rodel's **contributory negligence** in driving the Ford Expedition at high speed along a busy intersection. On this score, the appellate court made the following pronouncement:

As a professional driver, Rodel should have known that driving his vehicle at a high speed in a major thoroughfare which was then subject of an on-going construction was a perilous act. He had no regard to (sic) the safety of other vehicles on the road. Because of the impact of the collision, (Aquilino's) sedan made a 180-degree turn as (Ramos') Ford Expedition careened and smashed into its rear door and fender. We cannot exculpate Rodel from liability.

Having thus settled the contributory negligence of Rodel, this created a presumption of negligence on the part of his employer, (Ramos). For the employer to avoid the solidary liability for a tort committed by his employee, an employer must rebut the presumption by presenting adequate and convincing proof that in the selection and supervision of his employee, he or she exercises the care and diligence of a good father of a family. Employers must submit concrete proof, including documentary evidence, that they complied with everything that was incumbent on them.

(Ramos) feebly attempts to escape vicarious liability by averring that Rodel was highly recommended when he applied for the position of family driver by the Social Service Committee of his parish. A certain Ramon Gomez, a member of the church's livelihood program, testified that a background investigation would have to be made before

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[7] *Id*. at 34-35.

an applicant is recommended to the parishioners for employment. (Ramos) supposedly tested Rodel's driving skills before accepting him for the job. Rodel has been his driver since 2001, and except for the mishap in 2004, he has not been involved in any road accident.

Regrettably, (Ramos') evidence which consisted mainly of testimonial evidence remained unsubstantiated and are thus, barren of significant weight. There is nothing on the records which would support (Ramos') bare allegation of Rodel's 10-year unblemished driving record. He failed to present convincing proof that he went to the extent of verifying Rodel's qualifications, safety record, and driving history.

So too, (Ramos) did not bother to refute (C.O.L. Realty's) stance that his driver was texting with his cellphone while running at a high speed and that the latter did not slow down albeit he knew that Katipunan Avenue was then undergoing repairs and that the road was barricaded with barriers. The presumption *juris tantum* that there was negligence in the selection of driver remains unrebutted. As the employer of Rodel, (Ramos) is solidarily liable for the quasi-delict committed by the former.

Certainly, in the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. In the supervision of employees, the employer must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for the breach thereof. These, (Ramos) failed to do.[8]

Petitioner disagrees, arguing that since Aquilino's willful disregard of the MMDA prohibition was the sole proximate cause of the accident, then respondent alone should suffer the consequences of the accident and the damages it incurred. He argues:

20. It becomes apparent therefore that the only time a plaintiff, the respondent herein, can recover damages is if its negligence was only contributory, and such contributory negligence was the proximate cause of the accident. It has been clearly established in this case, however, that respondent's negligence was not merely contributory, but the ***sole proximate cause*** of the accident.

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

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22. As culled from the foregoing, respondent was the sole proximate cause of the accident. Respondent's vehicle should not have been in that position since crossing the said intersection was prohibited. Were it not for the obvious negligence of respondent's driver in crossing the intersection that was prohibited, the accident would not have happened. The crossing of respondent's vehicle in a prohibited intersection unquestionably produced the injury, and without which the accident would not have occurred. On the other hand, petitioner's driver had the right to be where he was at the time of the mishap. As correctly concluded by the RTC, the petitioner's driver could not be expected to slacken his speed while travelling along said intersection since nobody, in his right mind, would do the same. Assuming, however, that petitioner's driver was indeed guilty of any contributory negligence, such was not the proximate cause of the accident considering that again, if respondent's driver did not cross the prohibited intersection, no accident would have happened. No imputation of any lack of care on Ilustrisimo's could thus be concluded. It is obvious then that petitioner's driver was not guilty of any negligence that would make petitioner vicariously liable for damages.

23. As the sole proximate cause of the accident was respondent's own driver, respondent cannot claim damages from petitioner.[9]

On the other hand, respondent in its Comment merely reiterated the appellate court's findings and pronouncements, conceding that petitioner is guilty of mere contributory negligence, and insisted on his vicarious liability as Rodel's employer under Article 2184 of the Civil Code.

Articles 2179 and 2185 of the Civil Code on quasi-delicts apply in this case, *viz*:

Article 2179.When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

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[9] *Id*. at 12-13.

Article 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

If the master is injured by the negligence of a third person and by the concurring contributory negligence of his own servant or agent, the latter's negligence is imputed to his superior and *will defeat the superior's action against the third person, assuming of course that the contributory negligence was the proximate cause of the injury* of which complaint is made.[10]

Applying the foregoing principles of law to the instant case, Aquilino's act of crossing Katipunan Avenue via Rajah Matanda constitutes negligence because it was prohibited by law. Moreover, it was the proximate cause of the accident, and thus precludes any recovery for any damages suffered by respondent from the accident.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[11]

If Aquilino heeded the MMDA prohibition against crossing Katipunan Avenue from Rajah Matanda, the accident would

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[10] Am. Jur. 2d, Volume 58, Negligence, Section 464; cited in *Ford Philippines, Inc. v. Citibank, N.A.*, G.R. No. 128604, January 29, 2001, 350 SCRA 446.

[11] *McKee v. Intermediate Appellate Court*, G.R. No. 68102, July 16, 1992, 211 SCRA 517.

not have happened. This specific untoward event is exactly what the MMDA prohibition was intended for. Thus, a prudent and intelligent person who resides within the vicinity where the accident occurred, Aquilino had reasonable ground to expect that the accident would be a natural and probable result if he crossed Katipunan Avenue since such crossing is considered dangerous on account of the busy nature of the thoroughfare and the ongoing construction of the Katipunan-Boni Avenue underpass. It was manifest error for the Court of Appeals to have overlooked the principle embodied in Article 2179 of the Civil Code, that when the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages.

Hence, we find it unnecessary to delve into the issue of Rodel's contributory negligence, since it cannot overcome or defeat Aquilino's recklessness which is the immediate and proximate cause of the accident. Rodel's contributory negligence has relevance only in the event that Ramos seeks to recover from respondent whatever damages or injuries he may have suffered as a result; it will have the effect of mitigating the award of damages in his favor. In other words, an assertion of contributory negligence in this case would benefit only the petitioner; it could not eliminate respondent's liability for Aquilino's negligence which is the proximate result of the accident.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated May 28, 2008 in CA-G.R. SP No. 99614 and its Resolution of October 13, 2008 are hereby *REVERSED and SET ASIDE*. The Decision of the Regional Trial Court of Quezon City, Branch 215 dated September 5, 2006 dismissing for lack of merit respondent's complaint for damages is hereby *REINSTATED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 181999 & 182001-04. September 2, 2009]

OFELIA C. CAUNAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,** *respondents.*

[G.R. Nos. 182020-24. September 2, 2009]

JOEY P. MARQUEZ, *petitioner, vs.* **THE SANDIGANBAYAN-FOURTH DIVISION and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); CORRUPT PRACTICES OF PUBLIC OFFICERS; ENTERING ON BEHALF OF THE GOVERNMENT INTO CONTRACT MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT; ELEMENTS.— Section 3(g) of R.A. No. 3019 provides: Section 3. *Corrupt practices of public officers.*— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x (g) Entering on behalf of the Government, into any contract or transaction, manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby. For a charge under Section 3(g) to prosper, the following elements must be present: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

2. ID.; ID.; ID.; ID.; ABSENCE OF REQUISITE PUBLIC BIDDING IN PROCUREMENTS DOES NOT AUTOMATICALLY EQUATE TO MANIFEST AND GROSS DISADVANTAGE TO THE GOVERNMENT.— We are not unmindful of the fact that petitioners failed to conduct the requisite public bidding for the questioned procurements. However, the lack of public

bidding alone does not automatically equate to a manifest and gross disadvantage to the government. As we had occasion to declare in *Nava v. Sandiganbayan*, the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. However, this does not satisfy the third element of the offense charged, because the law requires that the disadvantage must be manifest and gross. After all, penal laws are strictly construed against the government.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT REQUIRED IN CRIMINAL CASES.— In criminal cases, to justify a conviction, the culpability of an accused must be established by proof beyond a reasonable doubt. The burden of proof is on the prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence. The court, in ascertaining the guilt of an accused, must, after having marshaled the facts and circumstances, reach a moral certainty as to the accused's guilt. Moral certainty is that degree of proof which produces conviction in an unprejudiced mind. Otherwise, where there is reasonable doubt, the accused must be acquitted.

APPEARANCES OF COUNSEL

Efren I. Dizon and *Malaya Sanchez Francisco Añover and Añover Law Office* for Joey P. Marquez.

M.B. Tomacruz and Associates Law Offices for Ofelia C. Caunan.

The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J.*:

At bar are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court which assail the Decision[1]

[1] Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada, concurring; *rollo* (G.R. No. 182020-24), pp. 106-135.

dated August 30, 2007 and Resolution[2] dated March 10, 2008 of the Sandiganbayan in Criminal Case Nos. 27944, 27946, 27952, 27953, & 27954, finding petitioners Joey P. Marquez (Marquez) and Ofelia C. Caunan (Caunan) guilty of violation of Section 3(g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Marquez and Caunan, along with four (4) other local government officials of Parañaque City[3] and private individual Antonio Razo (Razo), were charged under five (5) Informations, to wit:

The Information in Criminal Case No. 27944 states:

That on January 11, 1996 or thereabout, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with the members of the aforesaid Committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget Officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with the accused private individual **ANTONIO RAZO**, the owner and proprietor of ZARO Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with said ZARO Trading, for the purchase of 5,998 pieces of "*walis ting-ting*" at ₱25 per piece as per Disbursement Voucher No. 101-96-12-8629 in the total amount of ONE HUNDRED FORTY-NINE THOUSAND NINE HUNDRED FIFTY PESOS (₱149,950.00), without complying with the Commission on Audit

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[2] *Id.* at 136-183.

[3] Used to be a municipality and became an incorporated city on February 15, 1998.

(COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "*walis ting-ting*" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱14.00 per piece or a total overpriced amount of EIGHTY THREE THOUSAND NINE HUNDRED SEVENTY TWO PESOS (₱83,972.00), thus, causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27946 states:

That on June 30, 1997 or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 23,334 pieces of "*walis ting-ting*" at ₱15.00 per piece as per Disbursement Voucher No. 101-98-02-447 in the total amount of THREE HUNDRED FIFTY THOUSAND TEN PESOS (₱350,010.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "*walis ting-ting*" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱4.00 per piece or a total overpriced amount of NINETY THREE THOUSAND THREE HUNDRED THIRTY SIX PESOS

(₱93,336.00), thus causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27952 states:

That [in] September 1997, or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 8,000 pieces of "*walis ting-ting*" at ₱15.00 per piece as per Disbursement Voucher No. 101-98-02-561 in the total amount of ONE HUNDRED TWENTY THOUSAND PESOS (₱120,000.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "*walis ting-ting*" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱4.00 per piece or a total overpriced amount of THIRTY TWO THOUSAND PESOS (₱32,000.00), thus causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27953 states:

That during the period from February 11, 1997 to February 20, 1997, or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together

with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA,** the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advance of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 10,100 pieces of "*walis ting-ting*" on several occasions at ₱25.00 per piece without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on procurement and Public Bidding and which purchases are hereunder enumerated as follows:

Date of Transaction	Voucher No.	Amount	Quantity
February 20, 1997	101-97-04-1755	₱ 3,000.00	120 pcs.
February 12, 1997	101-97-04-1756	₱100,000.00	4,000 pcs.
February 11, 1997	101-97-04-1759	₱149,500.00	5,980 pcs.

in the total amount of TWO HUNDRED FIFTY TWO THOUSAND PESOS (₱252,000.00), and which transactions were clearly overpriced as the actual cost per piece of the "*walis ting-ting*" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱14.00 per piece or a total overpriced amount of ONE HUNDRED FORTY ONE THOUSAND FOUR HUNDRED PESOS (₱141,400.00), thus, causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27954 states:

That during the period from October 15, 1996 to October 18, 1996 or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY**

P. MARQUEZ, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 8,000 pieces of "walis ting-ting" on several occasions at ₱25.00 per piece without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on procurement and Public Bidding and which purchases are hereunder enumerated as follows:

Date of Transaction	Voucher Number	Amount	Quantity
October 15, 1996	101-96-11-7604	₱ 100,000.00	4,000 pcs.
October 18, 1996	101-96-11-7605	₱ 100,000.00	4,000 pcs.

in the total amount of TWO HUNDRED THOUSAND PESOS (₱200,000.00), and which transactions were clearly grossly overpriced as the actual cost per piece of the "*walis ting-ting*" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱14.00 per piece or a total overpriced amount of ONE HUNDRED TWELVE THOUSAND PESOS (₱112,000.00), thus, causing damage and prejudice to the government in the aforesaid sum.[4]

The five (5) Informations were filed based on the findings of the Commission on Audit (COA) Special Audit Team that there

[4] *Rollo* (G.R. No. 182020-24), pp. 106-110.

was overpricing in certain purchase transactions of Parañaque City. In March 1999, a Special Audit Team composed of Fatima Bermudez (Bermudez), Carolina Supsup, Gerry Estrada, and Yolando Atienza, by virtue of Local Government Audit Office Assignment Order No. 99-002, audited selected transactions of Parañaque City for the calendar years 1996 to 1998, including the *walis tingting* purchases.

In connection with the *walis tingting* purchases audit, the audit team gathered the following evidence:

1. Documents furnished by the Office of the City Mayor of Parañaque City upon request of the audit team;

2. Sample *walis tingting* with handle likewise submitted by the Office of the City Mayor of Parañaque City;

3. Samples of *walis tingting* without handle actually utilized by the street sweepers upon ocular inspection of the audit team;

4. Survey forms accomplished by the street sweepers containing questions on the *walis tingting*;

5. Evaluation by the Technical Services Department[5] of the reasonableness of the *walis tingting* procurement compared to current prices thereof;

6. A separate canvass by the audit team on the prices of the *walis tingting*, including purchases thereof at various merchandising stores;[6] and

7. Documents on the conduct and process of procurement of *walis tingting* by the neighboring city of Las Piñas.

Parenthetically, to ascertain the prevailing price of *walis tingting* for the years 1996 to 1998, the audit team made a canvass of

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[5] A department in the Commission on Audit tasked to monitor prices of goods procured by the different agencies of the government.

[6] (i) SM Sta. Mesa Branch, (ii) Welcome Supermarket (Welcome Rotanda), (iii) Shopwise Makati, (iv) Celina Store in Fairview Wet and Dry Market, (v) Edith Store (Parañaque), and (vi) Central Parañaque Construction Supply and General Merchandise.

the purchase prices of the different merchandise dealers of Parañaque City. All, however, were reluctant to provide the team with signed quotations of purchase prices for *walis tingting*. In addition, the audit team attempted to purchase *walis tingting* from the named suppliers of Parañaque City. Curiously, when the audit team went to the listed addresses of the suppliers, these were occupied by other business establishments. Thereafter, the audit team located, and purchased from, a lone supplier that sold *walis tingting*.

As previously adverted to, the audit team made a report which contained the following findings:

1. The purchase of *walis tingting* was undertaken without public bidding;

2. The purchase of *walis tingting* was divided into several purchase orders and requests to evade the requirement of public bidding and instead avail of personal canvass as a mode of procurement;

3. The purchase of *walis tingting* through personal canvass was attended with irregularities; and

4. There was glaring overpricing in the purchase transactions.

Consequently, the COA issued Notices of Disallowance Nos. 01-001-101 (96) to 01-006-101 (96), 01-001-101 (97) to 01-011-101 (97), and 01-001-101 (98) to 01-004-101 (98) covering the overpriced amount of ₱1,302,878.00 for the purchases of 142,612 *walis tingting*, with or without handle, by Parañaque City in the years 1996-1998.[7]

Objecting to the disallowances, petitioners Marquez and Caunan, along with the other concerned local government officials of Parañaque City, filed a request for reconsideration with the audit team which the latter subsequently denied in a letter to petitioner Marquez.

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[7] *Rollo*, p. 566.

Aggrieved, petitioners and the other accused appealed to the COA which eventually denied the appeal. Surprisingly, on motion for reconsideration, the COA excluded petitioner Marquez from liability for the disallowances based on our rulings in *Arias v. Sandiganbayan*[8] and *Magsuci v. Sandiganbayan*.[9]

On the other litigation front, the criminal aspect subject of this appeal, the Ombudsman found probable cause to indict petitioners and the other local government officials of Parañaque City for violation of Section 3(g) of R.A. No. 3019. Consequently, the five (5) Informations against petitioners, *et al.* were filed before the Sandiganbayan.

After trial and a flurry of pleadings, the Sandiganbayan rendered judgment finding petitioners Caunan and Marquez, along with Silvestre de Leon and Marilou Tanael, guilty of violating Section 3(g) of R.A. No. 3019. As for accused Flocerfida Babida, Ailyn Romea and private individual Razo, the Sandiganbayan acquitted them for lack of sufficient evidence to hold them guilty beyond reasonable doubt of the offenses charged. The Sandiganbayan ruled as follows:

1. The prosecution evidence, specifically the testimony of Bermudez and the Special Audit Team's report, did not constitute hearsay evidence, considering that all the prosecution witnesses testified on matters within their personal knowledge;

2. The defense failed to question, and timely object to, the admissibility of documentary evidence, such as the Las Piñas City documents and the Department of Budget and Management (DBM) price listing downloaded from the Internet, which were certified true copies and not the originals of the respective documents;

3. The Bids and Awards Committee was not properly constituted; the accused did not abide by the prohibition against splitting of orders; and Parañaque City had not been afforded

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[8] G.R. No. 81563, December 19, 1989, 180 SCRA 309.

[9] G.R. No. 101545, January 3, 1995, 240 SCRA 13.

the best possible advantage for the most objective price in the purchase of *walis tingting* for failure to observe the required public bidding;

4. The contracts for procurement of *walis tingting* in Parañaque City for the years 1996-1998 were awarded to pre-selected suppliers; and

5. On the whole, the transactions undertaken were manifestly and grossly disadvantageous to the government.

Expectedly, the remaining accused, Caunan, Marquez and Tanael, moved for reconsideration of the Sandiganbayan decision. Caunan and Tanael, represented by the same counsel, collectively filed a Motion for Reconsideration (with Written Notice of Death of Accused Silvestre S. de Leon). Marquez filed several motions,[10] including a separate Motion for Reconsideration.

All the motions filed by Marquez, as well as Caunan's motion, were denied by the Sandiganbayan. However, with respect to Tanael, the Sandiganbayan found reason to reconsider her conviction.

Hence, these separate appeals by petitioners Marquez and Caunan.

Petitioner Caunan posits the following issues:

1. [WHETHER] THE PROSECUTION'S PROOF OF OVERPRICING [IS] HEARSAY.

2. [WHETHER THE] RESPONDENT SANDIGANBAYAN [ERRED] IN ADMITTING WITNESS FATIMA V. BERMUDEZ' TESTIMONY DESPITE THE FACT THAT ITS SOURCES ARE THEMSELVES ADMITTEDLY AND PATENTLY HEARSAY.

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[10] (i) Motion for New Trial and Motion for Reconsideration *Ad Cautelam*;
(ii) Supplement to the Motion for New Trial and Motion for Reconsideration *Ad Cautelam*;
(iii) Motion to Recuse;
(iv) Manifestation and Motion to Adopt Motion to Recuse;
(v) Motion to Reopen Proceedings; and
(vi) Motion for Reconsideration.

3. [WHETHER THE] RESPONDENT SANDIGANBAYAN GRAVELY [ERRED] IN APPLYING AN EXCEPTION TO THE HEARSAY RULE[.] UNDER THIS EXCEPTION, "PUBLIC DOCUMENTS CONSISTING OF ENTRIES IN PUBLIC RECORDS, ETC.," x x x ARE *PRIMA FACIE* EVIDENCE OF THE FACTS STATED THEREIN.

4. CONSEQUENTLY, [WHETHER] RESPONDENT SANDIGANBAYAN GRAVELY ERRED IN NOT ACQUITTING [CAUNAN].[11]

For his part, petitioner Marquez raises the following:

1. WHETHER [MARQUEZ] MUST BE ACQUITTED FROM THE SUBJECT CRIMINAL CASES BASED ON THE DOCTRINES LAID DOWN IN THE ARIAS AND MAGSUCI CASES EARLIER DECIDED BY THIS HONORABLE COURT AND THE PERTINENT PROVISIONS OF THE LOCAL GOVERNMENT CODE AND OTHER EXISTING REGULATIONS[;]

2. WHETHER [MARQUEZ] MUST BE ACQUITTED FROM THE SUBJECT CRIMINAL CASES SINCE HE WAS ALREADY EXCLUDED FROM LIABILITY BY THE COMMISSION ON AUDIT[;]

3. WHETHER THE ACQUITTAL OF CO-ACCUSED 1) SUPPLIER ANTONIO RAZO WHO WAS THE OTHER PARTY TO, AND RECEIVED THE TOTAL AMOUNT OF, THE QUESTIONED CONTRACTS OR TRANSACTIONS, 2) CITY ACCOUNTANT MARILOU TANAEL WHO PRE-AUDITED THE CLAIMS AND SIGNED THE VOUCHERS, 3) CITY BUDGET OFFICER FLOCERFIDA M. BABIDA, AND 4) HEAD OF STAFF AILYN ROMEA CASTS A BIG CLOUD OF DOUBT ON THE FINDING OF [MARQUEZ'S] GUILT BY THE SANDIGANBAYAN – FOURTH DIVISION[;]

4. WHETHER [MARQUEZ] CAN BE CONVICTED ON PLAIN HEARSAY, IF NOT DUBIOUS EVIDENCE OF OVERPRICING OR ON MERE CIRCUMSTANTIAL EVIDENCE THAT DO NOT AMOUNT TO PROOF OF GUILT BEYOND REASONABLE DOUBT IN THE SUBJECT CRIMINAL CASES[;]

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[11] Petition in G.R. Nos. 181999 and 182001-04, *rollo*, p. 22.

5. WHETHER THE ALLEGED OVERPRICING WHICH WAS THE BASIS FOR CLAIMING THAT THE CONTRACTS OR TRANSACTIONS ENTERED INTO BY [MARQUEZ] IN BEHALF OF PARAÑAQUE CITY WERE MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT WAS ASCERTAINED OR DETERMINED WITH REASONABLE CERTAINTY IN ACCORDANCE WITH THE REQUIREMENTS OR PROCEDURES PRESCRIBED UNDER COA MEMORANDUM NO. 97-012 DATED MARCH 31, 1997[;]

6. WHETHER THE QUANTUM OF PROSECUTION EVIDENCE HAS OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE WHICH [MARQUEZ] ENJOYS IN THE SUBJECT CRIMINAL CASES[;]

7. WHETHER THE RIGHT OF [MARQUEZ] TO DUE PROCESS WAS VIOLATED WHEN THE CHAIRMAN (JUSTICE GREGORY ONG) OF THE SANDIGANBAYAN – FOURTH DIVISION REFUSED TO INHIBIT DESPITE SERIOUS CONFLICT OF INTEREST[;]

8. WHETHER [MARQUEZ] IS ENTITLED TO THE REOPENING OF THE SUBJECT CRIMINAL CASES[;]

9. WHETHER THE RIGHT OF [MARQUEZ] TO BE INFORMED OF THE NATURE OF THE ACCUSATION AGAINST HIM WAS VIOLATED WHEN INSTEAD OF ONLY ONE OFFENSE, SEVERAL INFORMATION HAD BEEN FILED IN THE TRIAL COURT ON THE THEORY OF OVERPRICING IN THE PROCUREMENT OF BROOMSTICKS (*WALIS TINGTING*) BY WAY OF SPLITTING CONTRACTS OR PURCHASE ORDERS[; and]

10. WHETHER [MARQUEZ] IS ENTITLED TO NEW TRIAL SINCE HIS RIGHT TO AN IMPARTIAL TRIAL WAS VIOLATED IN THE SUBJECT CRIMINAL CASES WHEN THE CHAIRMAN (JUSTICE GREGORY ONG) REFUSED TO INHIBIT DESPITE THE EXISTENCE OF SERIOUS CONFLICT OF INTEREST RAISED BY THE FORMER BEFORE THE JUDGMENT BECAME FINAL.[12]

In a Resolution dated February 23, 2009, we directed the consolidation of these cases. Thus, we impale petitioners' issues for our resolution:

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[12] Memorandum of petitioner in G.R. Nos. 182020-24; *rollo,* pp. 915-916.

1. First and foremost, whether the Sandiganbayan erred in finding petitioners guilty of violation of Section 3(g) of R.A. No. 3019.

2. Whether the testimony of Bermudez and the report of the Special Audit Team constitute hearsay and are, therefore, inadmissible in evidence against petitioners.

3. Whether petitioner Marquez should be excluded from liability based on our rulings in *Arias v. Sandiganbayan*[13] and *Magsuci v. Sandiganbayan*.[14]

Both petitioners insist that the fact of overpricing, upon which the charge against them of graft and corruption is based, had not been established by the quantum of evidence required in criminal cases, *i.e.*, proof beyond reasonable doubt.[15] Petitioners maintain that the evidence of overpricing, consisting of the report of the Special Audit Team and the testimony thereon of Bermudez, constitutes hearsay and, as such, is inadmissible against them. In addition, petitioner Marquez points out that the finding of overpricing was not shown to a reliable degree of certainty as required by COA Memorandum No. 97-012 dated March 31, 1997.[16] In all, petitioners asseverate that, as the overpricing was not sufficiently established, necessarily, the last criminal element of Section 3(g) of R.A. No. 3019 — *a contract or*

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[13] *Supra* note 8.

[14] *Supra* note 9.

[15] *See* RULES OF COURT, Rule 133, Sec. 2.

[16] Items 3.1 and 3.2 respectively read:

3.1) When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in par. 2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial findings to a reliable degree of certainty.

3.2) To firm up the findings to a reliable degree of certainty, initial findings of overpricing based on market price indicators mentioned in par. 2.1 above have to be supported with canvass sheets and/or price quotations indicating:

a) The identities/names of the suppliers or sellers;

b) The availability of stock sufficient in quantity to meet the requirements of the procuring agency;

transaction grossly and manifestly disadvantageous to the government — was not proven.

Section 3(g) of R.A. No. 3019 provides:

> Section 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (g) Entering on behalf of the Government, into any contract or transaction, manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

For a charge under Section 3(g) to prosper, the following elements must be present: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[17]

The presence of the first two elements of the crime is not disputed. Hence, the threshold question we should resolve is whether the *walis tingting* purchase contracts were grossly and manifestly injurious or disadvantageous to the government.

We agree with petitioners that the fact of overpricing is embedded in the third criminal element of Section 3 (g) of R.A. No. 3019. Given the factual milieu of this case, the subject contracts would be grossly and manifestly disadvantageous to the government if characterized by an overpriced procurement. However, the gross and manifest disadvantage to the government was not sufficiently shown because the conclusion of overpricing was erroneous since it was not also adequately proven. Thus, we grant the petitions.

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c) The specifications of the items which should match those involved in the finding of overpricing; and

The purchase/contract terms and conditions which should be the same as those of the questioned transaction.

[17] *Dans, Jr. v. People*, G.R. Nos. 127073 and 126995, January 29, 1998, 285 SCRA 504; *Luciano v. Estrella*, No. L-31622, August 31, 1970, 34 SCRA 769.

In criminal cases, to justify a conviction, the culpability of an accused must be established by proof beyond a reasonable doubt.[18] The burden of proof is on the prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence.[19] The court, in ascertaining the guilt of an accused, must, after having marshaled the facts and circumstances, reach a moral certainty as to the accused's guilt. Moral certainty is that degree of proof which produces conviction in an unprejudiced mind.[20] Otherwise, where there is reasonable doubt, the accused must be acquitted.

In finding that the *walis tingting* purchase contracts were grossly and manifestly disadvantageous to the government, the Sandiganbayan relied on the COA's finding of overpricing which was, in turn, based on the special audit team's report. The audit team's conclusion on the standard price of a *walis tingting* was pegged on the basis of the following documentary and object evidence: (1) samples of *walis tingting* without handle actually used by the street sweepers; (2) survey forms on the *walis tingting* accomplished by the street sweepers; (3) invoices from six merchandising stores where the audit team purchased *walis tingting*; (4) price listing of the DBM Procurement Service; and (5) documents relative to the *walis tingting* purchases of Las Piñas City. These documents were then compared with the documents furnished by petitioners and the other accused relative to Parañaque City's *walis tingting* transactions.

Notably, however, and this the petitioners have consistently pointed out, the evidence of the prosecution did not include a signed price quotation from the *walis tingting* suppliers of Parañaque City. In fact, even the *walis tingting* furnished the audit team by petitioners and the other accused was different from the *walis tingting* actually utilized by the Parañaque City street sweepers at the time of ocular inspection by the

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[18] *Supra* note 14.

[19] *See* Rule 131, Sec. 1, in relation to Rule 133, Sec. 2; Rule 115, Sec. 2(a); CONSTITUTION, Art. III, Sec. 14(2).

[20] *Supra* note 14.

audit team. At the barest minimum, the evidence presented by the prosecution, in order to substantiate the allegation of overpricing, should have been identical to the *walis tingting* purchased in 1996-1998. Only then could it be concluded that the *walis tingting* purchases were disadvantageous to the government because only then could a determination have been made to show that the disadvantage was so manifest and gross as to make a public official liable under Section 3(g) of R.A. No. 3019.

On the issue of hearsay, the Sandiganbayan hastily shot down petitioners' arguments thereon, in this wise:

> We find no application of the hearsay rule here. In fact, all the witnesses in this case testified on matters within their personal knowledge. The prosecution's principal witness, Ms. Bermudez, was a State Auditor and the Assistant Division Chief of the Local Government Audit Office who was tasked to head a special audit team to audit selected transactions of Parañaque City. The report which she identified and testified on [was] made by [the] Special Audit Team she herself headed. The disbursement vouchers, purchase orders, purchase requests and other documents constituting the supporting papers of the team's report were public documents requested from the City Auditor of Parañaque and from the accused Mayor Marquez. Such documents were submitted to the Special Audit Team for the specific purpose of reviewing them. The documents were not executed by Ms. Bermudez or by any member of the Special Audit Team for the obvious reason that, as auditors, they are only reviewing acts of others. The Special Audit Team's official task was to review the documents of the *walis tingting* transactions. In the process of [the] review, they found many irregularities in the documentations —violations of the Local Government Code and pertinent COA rules and regulations. They found that the transactions were grossly overpriced. The findings of the team were consolidated in a report. The same report was the basis of Ms. Bermudez's testimony. x x x.[21]

The reasoning of the Sandiganbayan is specious and off tangent. The audit team reached a conclusion of gross overpricing based

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[21] *Rollo* (G.R. Nos. 182020-24), p. 121.

on documents which, at best, would merely indicate the present market price of *walis tingting* of a **different specification,** purchased from a **non-supplier** of Parañaque City, and the price of *walis tingting* purchases **in Las Piñas City**. Effectively, the prosecution was unable to demonstrate the requisite burden of proof, *i.e.*, proof beyond reasonable doubt, in order to overcome the presumption of innocence in favor of petitioners.

As pointed out by petitioner Caunan, not all of the contents of the audit team's report constituted hearsay. Indeed, as declared by the Sandiganbayan, Bermudez could very well testify thereon since the conclusions reached therein were made by her and her team. However, these conclusions were based on incompetent evidence. Most obvious would be the market price of *walis tingting* in Las Piñas City which was used as proof of overpricing in Parañaque City. The prosecution should have presented evidence of the actual price of the particular *walis tingting* purchased by petitioners and the other accused at the time of the audited transaction or, at the least, an approximation thereof. Failing in these, there is no basis to declare that there was a glaring overprice resulting in gross and manifest disadvantage to the government.

We are not unmindful of the fact that petitioners failed to conduct the requisite public bidding for the questioned procurements. However, the lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government. As we had occasion to declare in *Nava v. Sandiganbayan*,[22] the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. However, this does not satisfy the third element of the offense charged, because the law requires that the disadvantage must be manifest and gross. After all, penal laws are strictly construed against the government.

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[22] *Nava v. Palattao*, G.R. No. 160211, August 28, 2006, 499 SCRA 745, 772.

With the foregoing disquisition, we find no necessity to rule on the applicability of our rulings in *Arias* and *Magsuci* to petitioner Marquez. Nonetheless, we wish to reiterate herein the doctrines laid down in those cases. We call specific attention to the sweeping conclusion made by the Sandiganbayan that a conspiracy existed among petitioners and the other accused, most of whom were acquitted, particularly private individual Razo, the proprietor of Zaro Trading.

Our ruling in *Magsuci*, citing our holding in *Arias*, should be instructive, *viz*.:

> The Sandiganbayan predicated its conviction of [Magsuci] on its finding of conspiracy among Magsuci, Ancla and now deceased Enriquez.
>
> There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence therefore must reasonably be strong enough to show a community of criminal design.
>
> x x x x x x x x x
>
> Fairly evident, however, is the fact that the actions taken by Magsuci involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all that he had foreknowledge of any irregularity committed by either or both Engr. Enriquez and Ancla. Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the part of cohorts.

In *Arias v. Sandiganbayan*, this Court, aware of the dire consequences that a different rule could bring, has aptly concluded:

> "We would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent

> subordinates, overwork, multiple assignments or positions, or plain incompetence—is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.
>
> x x x x x x x x x
>
> "x x x. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. x x x. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or department is even more appalling."[23]

WHEREFORE, premises considered, the Decision dated August 30, 2007 and Resolution dated March 10, 2008 of the Sandiganbayan in Criminal Case Nos. 27944, 27946, 27952, 27953, & 27954 are *REVERSED* and *SET ASIDE*. Petitioners Joey P. Marquez in G.R. Nos. 182020-24 and Ofelia C. Caunan in G.R. Nos. 181999 and 182001-04 are *ACQUITTED* of the charges against them. Costs *de oficio*.

SO ORDERED.

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

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[23] *Magsuci v. Sandiganbayan*, *supra* note 9, at 17-19. (Citations omitted.)

EN BANC

[A.M. No. P-09-2685. September 3, 2009]
(OCA-IPI No. 08-2839-P)

P/SUPT. RENE MACALING ORBE, *complainant, vs.* **MARCOS U. DIGANDANG, Process Server, Regional Trial Court, Branch 14, Cotabato City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; RULE THAT NO PERSON UNDER DETENTION BY LEGAL PROCESS SHALL BE RELEASED EXCEPT UPON ORDER OF THE COURT OR WHEN ADMITTED TO BAIL; VIOLATED IN CASE AT BAR.—It is undisputed that accused were charged with a non-bailable offense; that they were released from detention on the basis merely of the Custody Receipt signed by the respondent, which was a clear violation of Section 3, Rule 114 of the Rules of Court which explicitly provides that "no person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail." As a court employee, respondent is cognizant of this requirement as in fact he admitted in his Comment that a motion for temporary release should have been filed in court.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; GRAVE MISCONDUCT; CIRCUMVENTING THE LAW TO FAVOR AN ACCUSED-RELATIVE, A CASE OF; PROPER PENALTY.— Where the accused under detention for a non bailable offense were released on the basis merely of the Custody Receipt signed by the respondent process server, an infraction had been committed and the accused's return to incarceration does not extinguish the violation. As a court employee, respondent is expected to follow the law and the rules and procedures prescribed by the Court. The facts in this case clearly indicate that respondent deliberately circumvented the law to favor his accused-relatives. This is a grave misconduct which merits the penalty of dismissal.

D E C I S I O N

PER CURIAM:

The issue for resolution is whether respondent Marcos U. Digandang, Process Server of the Regional Trial Court, Branch 14 of Cotabato City, is guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service for illegally releasing the accused in the case of *People of the Philippines v. Ombudsman Indag*.[1]

On February 14, 2008, the operatives of the Philippine Drug Enforcement Agency-Autonomous Region of Muslim Mindanao (PDEA-ARMM) arrested Abdulsalam Indag and Baida Manabilang for alleged violation of Sections 5, 11 and 15 of Republic Act (R.A.) No. 9165 or The Dangerous Drugs Act of 2002, and were thus committed to the provincial jail.

On February 15, 2008, the accused were released from the custody of the Officer-in-Charge (OIC) Provincial Warden, Laman P. Malikol, on the basis of the Custody Receipt signed by the respondent.

In his complaint, Police Superintendent Rene Macaling Orbe, Acting Regional Director of PDEA-ARMM, alleges that the release was illegal because the accused were charged with a non-bailable offense.

Respondent admits in his Comment that the accused were his relatives and that he interceded for their release because they allegedly needed medical attention. After their medical check up, they were immediately brought back to their detention cell. He also claims that he did not file a motion for temporary release, since he could not secure the services of a lawyer, it being a Friday and it was already past 3:00 p.m.

Laman P. Malikol, the OIC-Provincial Warden, likewise admitted that he temporarily relinquished custody over the accused to herein respondent for humanitarian reasons.

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[1] Docketed as Criminal Case No. 2008-2963.

In its Report dated September 19, 2008, the Office of the Court Administrator (OCA) found respondent guilty as charged and recommended his dismissal from service effective immediately with forfeiture of all benefits, except accrued leave credits, with prejudice to his re-employment in any branch or instrumentality of the government, including government- owned or controlled corporation. The case against the OIC Provincial Warden was recommended to be forwarded to the Department of Justice for appropriate action.

We adopt the findings and recommendation of the OCA.

It is undisputed that accused were charged with a non-bailable offense; that they were released from detention on the basis merely of the Custody Receipt signed by the respondent, which was a clear violation of Section 3, Rule 114 of the Rules of Court which explicitly provides that "no person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail." As a court employee, respondent is cognizant of this requirement as in fact he admitted in his Comment that a motion for temporary release should have been filed in court.

We cannot lend credence to respondent's allegation that he was unable to file the motion because he could not immediately avail of the services of a lawyer as it was a Friday and already past 3:00 p.m. Assuming that he could not immediately hire the services of a private lawyer, he could always go to the Public Attorney's Office (PAO) for legal assistance. At 3:00 p.m., it is inconceivable that no PAO lawyer would be available.

The contention that respondent interceded for the release of his accused-relatives for humanitarian reasons is self-serving and deserves no consideration. As correctly noted by the OCA, no medical certificate was presented to substantiate the claim that the accused needed immediate medical attention. Moreover, the fact that the accused were returned to their detention cell soon after the medical check up does not justify respondent's culpability or mitigate his liability. Neither could it be considered

a badge of good faith. An infraction had been committed and the accused's return to incarceration does not extinguish the violation.

As a court employee, respondent is expected to follow the law and the rules and procedures prescribed by the Court. The facts in this case clearly indicate that respondent deliberately circumvented the law to favor his accused-relatives. This is a grave misconduct which merits the penalty of dismissal.

WHEREFORE, the Court finds respondent Marcos U. Digandang, Process Server, Regional Trial Court, Branch 14, Cotabato City, *GUILTY* of *GRAVE MISCONDUCT* and is hereby sentenced to suffer the penalty of *DISMISSAL* from service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. The case against Laman P. Malikol, OIC-Provincial Warden, Maguindanao Provincial Jail, is *FORWARDED* to the Department of Justice for appropriate action.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 132826. September 3, 2009]

ROLANDO SAA, *petitioner, vs.* **INTEGRATED BAR OF THE PHILIPPINES, COMMISSION ON BAR DISCIPLINE, BOARD OF GOVERNORS, PASIG CITY and ATTY. FREDDIE A. VENIDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED.— Grave abuse of discretion refers to a capricious, whimsical, arbitrary or despotic exercise of judgment by reason of passion or personal hostility as is equivalent to lack of jurisdiction. It must be so patent and gross as to amount to an evasion or a virtual refusal to perform the duty enjoined or to act in contemplation of law. A decision is not deemed tainted with grave abuse of discretion simply because a party affected disagrees with it.

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO FOLLOW LEGAL ORDERS AND PROCESSES; DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE; VIOLATED IN CASE AT BAR.— We strongly disapprove of Atty. Venida's blatant refusal to comply with various court directives. As a lawyer, he had the responsibility to follow legal orders and processes. Yet, he disregarded this very important canon of legal ethics when he filed only a partial comment on January 26, 1993 or 11 months after being directed to do so in the February 17, 1992 resolution. Worse, he filed his complete comment only on June 14, 1995 or a little over three years after due date. In both instances, he managed to delay the resolution of the case, a clear violation of Canon 12 and Rules 1.03 and 12.04 of the Code of Professional Responsibility.

3. ID.; WHEN A MEMBER OF THE BAR MAY BE DISBARRED OR SUSPENDED.— A member of the bar may be 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. We reiterate our ruling in *Catu v. Atty. Rellosa*: Indeed, a lawyer who disobeys the law disrespects it. In so doing, he disregards legal ethics and disgraces the dignity of the legal profession. Public confidence in the law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Every lawyer should act and comport himself in a manner that promotes public confidence in the integrity of the legal profession.

APPEARANCES OF COUNSEL

Commissioner George S. Briones for respondent.

R E S O L U T I O N

CORONA, *J.*:

Petitioner Rolando Saa filed a complaint for disbarment against respondent Atty. Freddie A. Venida on December 27, 1991 in this Court. In his complaint, Saa stated that Atty. Venida's act of filing two cases[1] against him was oppressive and constituted unethical practice.[2]

In a resolution dated February 17, 1992,[3] Atty. Venida was required to comment on the complaint against him. In his belated

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[1] One was a criminal case filed in the then Office of the Tanodbayan docketed as OMB 1-90-1118 captioned *Freddie A. Venida v. Rolando Saa, et al.* for violation of Section 3-A, RA 3019. In this case, respondent Atty. Freddie Venida alleged that complainant induced and connived with the Postmaster of Capalonga, Camarines Norte, in affixing only ₱2 worth of stamps on each of the two pieces of registered mail, instead of ₱2.20 worth of stamps for each letter as required, to the damage and prejudice of the public. The other was an administrative case filed in this Court for dishonesty, among others. The case was docketed as A.C. P-90-513 captioned *Atty. Freddie Venida v. Rolando Saa*. The administrative case alleged the same facts as the Tanodbayan case. *Rollo*, pp. 13-14.

[2] *Id.*, p. 14.

[3] *Id.*, p. 21.

and partial compliance[4] with the February 17, 1992 resolution, Atty. Venida averred that Saa did not specifically allege his supposed infractions. He asked to be furnished a copy of the complaint. He also prayed for the dismissal of the complaint.

Despite receipt of a copy of the complaint,[5] Atty. Venida still did not file his complete comment within 10 days as required in the February 17, 1992 resolution. Consequently, we issued the June 14, 1995 resolution[6] requiring Atty. Venida to show cause why he should not be disciplinarily dealt with or held in contempt for failure to comply with the February 17, 1992 resolution.

Finally, Atty. Venida filed his full comment[7] on September 4, 1995 which, without doubt, was a mere reiteration of his partial comment. Atty. Venida also added that he was merely performing his duty as counsel of Saa's adversaries.[8]

The matter was thereafter referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In a report dated August 14, 1997, Commissioner George S. Briones recommended the dismissal of the complaint for lack of merit.[9] It found no evidence that the two cases filed by Atty. Venida against Saa were acts of oppression or unethical practice.[10]

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[4] Filed on January 26, 1993. In paragraph 1 thereof, Atty. Venida claimed he did not receive a copy of the complaint. In paragraph 4, he claimed to have misplaced the resolution dated February 17, 1992. *Id.*, pp. 22-26.

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

[6] *Id.*

[7] *Id.*, pp. 28-30.

[8] Atty. Venida was the counsel of Saa's adversaries in CA G.R. No. UDR 68 captioned *Rosario Quintela, et al. v. The Presiding Judge, Branch 38, RTC, Daet, Camarines Norte, and Rolando Saa*. The case was dismissed in a resolution dated February 28, 1990, against Atty. Venida's clients. *Id.*, p. 83.

[9] *Id.*, p. 16.

[10] *Id.*, p. 14.

The Board of Governors of the IBP resolved to adopt and approve the investigating commissioner's report and dismissed the complaint.[11] Saa filed a motion for reconsideration but was denied.[12]

Saa now questions the resolution of the IBP in this petition for *certiorari*.[13] He ascribes grave abuse of discretion to the IBP when it adopted and affirmed the report of the investigating commissioner dismissing his complaint. According to him, the investigating commissioner's report did not at all mention the dismissal of OMB 1-90-1118 and A.C. P-90-513, even if the existence of both cases was admitted by the parties. The dismissal of his complaint for disbarment was therefore grounded entirely on speculations, surmises and conjectures.

We disagree.

Grave abuse of discretion refers to a capricious, whimsical, arbitrary or despotic exercise of judgment by reason of passion or personal hostility as is equivalent to lack of jurisdiction.[14] It must be so patent and gross as to amount to an evasion or a virtual refusal to perform the duty enjoined or to act in contemplation of law.[15] A decision is not deemed tainted with grave abuse of discretion simply because a party affected disagrees with it.

There was no grave abuse of discretion in this case. There was in fact a dearth of evidence showing oppressive or unethical behavior on the part of Atty. Venida. Without convincing proof that Atty. Venida was motivated by a desire to file baseless legal actions, the findings of the IBP stand.

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[11] *Id.*, p. 11.

[12] *Id.*, p. 37.

[13] Filed under Rule 65 of the Rules of Court.

[14] *Marohomsalic v. Cole*, G.R. No. 169918, 27 February 2008, 547 SCRA 98, 105-106 citing *Solidum v. Hernandez*, 117 Phil. 340 (1963).

[15] *Id.*

Nonetheless, we strongly disapprove of Atty. Venida's blatant refusal to comply with various court directives. As a lawyer, he had the responsibility to follow legal orders and processes.[16] Yet, he disregarded this very important canon of legal ethics when he filed only a partial comment on January 26, 1993 or 11 months after being directed to do so in the February 17, 1992 resolution. Worse, he filed his complete comment only on June 14, 1995 or a little over three years after due date. In both instances, he managed to delay the resolution of the case, a clear violation of Canon 12[17] and Rules 1.03[18] and 12.04[19] of the Code of Professional Responsibility.

Yet again, Atty. Venida failed to file a memorandum within the period required in our May 17, 2004 resolution.[20] Despite the 30-day deadline to file his memorandum,[21] he still did not comply. As if taunting authority, he continually ignored our directives for him to show cause and comply with the May 17, 2004 resolution.[22]

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

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

[18] Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

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

[20] *Rollo*, p. 163. The period for filing the memorandum expired on June 2, 2005.

[21] *Id.*, p. 167.

[22] On December 5, 2005, we ordered Atty. Venida to show cause why he should not be disciplinarily dealt with for his failure to comply with the May 17, 2004 resolution. He was likewise directed to comply and file his memorandum. In the March 13, 2006 resolution, we gave Atty. Venida a 30-day extension from January 13, 2006 to file his memorandum. The 30-day period expired on February 12, 2006 without him filing his memorandum, thereby necessitating the issuance of the July 19, 2006 resolution requiring him to show cause why he should not be disciplinarily dealt with. He was required

Atty. Venida apologized for the late filing of both his partial and full comments. But tried to exculpate himself by saying he inadvertently misplaced the complaint and had a heavy workload (for his partial comment). He even had the temerity to blame a strong typhoon for the loss of all his files, the complaint included (for his full comment). His excuses tax the imagination. Nevertheless, his apologies notwithstanding, we find his conduct utterly unacceptable for a member of the legal profession. He must not be allowed to evade accountability for his omissions.

A member of the bar may be 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.[23] We reiterate our ruling in *Catu v. Atty. Rellosa*:[24]

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to comply within 10 days from receipt of the resolution. On March 7, 2007, we imposed upon him a fine of ₱1,000 for his failure to comply with the July 19, 2006 resolution. We also reiterated the May 17, 2004 resolution.

In view of Atty. Venida's continued inaction, we issued the August 29, 2007 resolution where we imposed an additional fine of ₱1,000, and again reiterating the directive to comply with the May 17, 2004 resolution, to no avail. We were thus constrained to issue the March 26, 2008 resolution ordering his arrest and detention for five days. However, he was not located in his last known address. On July 21, 2008, we finally dispensed with his memorandum. *Id.*, pp. 163-189.

[23] RULES OF COURT, Rule 138, Sec. 27: "SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefore.* – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, **or any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court**, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice." (emphasis supplied)

[24] A.C. 5378, 19 February 2008, 546 SCRA 209.

Indeed, a lawyer who disobeys the law disrespects it. In so doing, he disregards legal ethics and disgraces the dignity of the legal profession.

Public confidence in the law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Every lawyer should act and comport himself in a manner that promotes public confidence in the integrity of the legal profession.

WHEREFORE, the petition is hereby *GRANTED IN PART*. The charge of oppressive or unethical behavior against respondent is dismissed. However, for violation of Canons 1 and 12 and Rules 1.03 and 12.04 of the Code of Professional Responsibility, as well as the lawyer's oath, Atty. Freddie A. Venida is hereby *SUSPENDED* from the practice of law for one (1) year, effective immediately from receipt of this resolution. He is further *STERNLY WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this resolution be furnished the Office of the Bar Confidant and entered into the records of respondent Atty. Freddie A. Venida. The Office of the Court Administrator shall furnish copies to all the courts of the land for their information and guidance.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 148444. September 3, 2009]

ASSOCIATED BANK (now UNITED OVERSEAS BANK [PHILS.]), *petitioner, vs.* **SPOUSES RAFAEL and MONALIZA PRONSTROLLER,** *respondents.*

SPOUSES EDUARDO and MA. PILAR VACA, *intervenors.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; TIME TO INTERVENE.— Section 2, Rule 19 of the Rules of Court, provides: **SEC. 2.** *Time to intervene.* – The motion to intervene may be filed *at* ***any time before rendition of judgment by the trial court.*** A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

2. ID.; ID.; PARTIES TO CIVIL ACTIONS; TRANSFER OF INTEREST; CASE AT BAR.— The purpose of intervention is to enable a stranger to an action to become a party to protect his interest, and the court, incidentally, to settle all conflicting claims. The spouses Vaca are not strangers to the action. Their legal interest in the litigation springs from the sale of the subject property by petitioner in their favor during the pendency of this case. As transferee *pendente lite*, the spouses Vaca are the successors-in-interest of the transferor, the petitioner, who is already a party to the action. Thus, the applicable provision is Section 19, Rule 3 of the Rules of Court, governing transfers of interest *pendente lite*. It provides: **SEC. 19.** *Transfer of interest.* – In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. In *Natalia Realty, Inc. v. Court of Appeals,* citing *Santiago Land Development Corporation v. Court of Appeals*, we have ruled that: [A] transferee *pendente lite* of the property in litigation does not have a right to intervene. We held that a transferee stands exactly

in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. It is not legally tenable for a transferee *pendente lite* to still intervene. Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee *pendente lite.*

3. ID.; ID.; NOTICE OF *LIS PENDENS*; EFFECT THEREOF IN CASE AT BAR.— That the Certificate of Title covering the subject property is in the name of the spouses Vaca is of no moment. It is noteworthy that a notice of *lis pendens* was timely annotated on petitioner's title. This was done prior to the sale of the property to the spouses Vaca, the cancellation of petitioner's title, and the issuance of the new Transfer Certificate of Title in the name of the spouses. By virtue of the notice of *lis pendens*, the spouses Vaca are bound by the outcome of the litigation subject of the *lis pendens*. Their interest is subject to the incidents or results of the pending suit, and their Certificate of Title will afford them no special protection.

APPEARANCES OF COUNSEL

Villanueva Caña & Associates Law Offices for petitioner.
Castillo Laman Pantaleon San Jose Law Offices for respondents.

R E S O L U T I O N

NACHURA, *J.*:

For resolution are the Motion for Reconsideration[1] filed by petitioner Associated Bank (now United Overseas Bank [Phils.]) and Motion for Leave to Intervene[2] filed by Spouses Eduardo and Ma. Pilar Vaca (spouses Vaca).

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[1] *Rollo*, pp. 1316-1340.

[2] *Id.* at 1278-1285.

After a thorough examination of petitioner's motion for reconsideration, together with its voluminous attachments, it is readily apparent that no new issues are raised and the arguments presented are a mere rehash of what have been discussed in its pleadings, all of which have been considered and found unmeritorious in the July 14, 2008 Decision.[3]

Be that as it may, we would like to reiterate that the second letter-agreement modified the first one entered into by petitioner, through Atty. Jose Soluta, Jr. (Atty. Soluta). In previously allowing Atty. Soluta to enter into the first letter-agreement without a board resolution expressly authorizing him, petitioner had clothed him with apparent authority to modify the same *via* the second letter-agreement.[4]

As early as June 1993, respondents already requested a modification of the earlier agreement such that the full payment should be made upon receipt of this Court's decision confirming petitioner's right to the subject property. Instead of acting on the request, the Board of Directors deferred action on it. It was only after one year and after the bank's reorganization that the board rejected respondents' request. We cannot, therefore, blame respondents for believing that the second letter-agreement signed by Atty. Soluta was petitioner's action on their request.[5]

We also would like to stress that the first letter-agreement was not rescinded by respondents' failure to deposit in escrow their full payment simply because the date of full payment had already been modified by the later agreement. Neither was the second letter-agreement rescinded by respondents' new offer because the offer was made only to demonstrate their capacity to purchase the subject property.[6]

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[3] *Id.* at 1258-1276.

[4] *Id.* at 1270.

[5] *Id.* at 1270-1271.

[6] *Id.* at 1272-1273.

In our Decision, we affirmed the factual findings of the Court of Appeals (CA) because they were amply supported by the evidence on record. Well-established is the rule that if there is no showing of error in the appreciation of facts by the CA, this Court treats them as conclusive. The conclusions of law that the appellate court drew from those facts are likewise accurate and convincing.[7]

Hence, we deny with finality petitioner's motion for reconsideration. No further pleadings will be entertained.

After the promulgation of the July 14, 2008 Decision, spouses Vaca filed a Motion for Leave to Intervene alleging that they are the registered owners of the subject property and are thus real parties-in-interest. They add that they stand to be deprived of their family home without having been given their day in court. They also contend that the Court should order petitioner to reimburse the spouses Vaca the amount received from the latter.

The Motion for Leave to Intervene must be denied.

Section 2, Rule 19 of the Rules of Court, provides:

SEC. 2. *Time to intervene.* – The motion to intervene may be filed ***at any time before rendition of judgment by the trial court***. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.[8]

Obviously, the spouses Vaca's motion for leave to intervene before this Court was belatedly filed.

The purpose of intervention is to enable a stranger to an action to become a party to protect his interest, and the court, incidentally, to settle all conflicting claims.[9] The spouses Vaca

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[7] *Heirs of Pael v. Court of Appeals*, 423 Phil. 67, 70 (2001).

[8] Emphasis supplied.

[9] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 27 (2002); *Santiago Land Dev't. Corp. v. CA*, 334 Phil. 741, 747-748 (1997).

are not strangers to the action. Their legal interest in the litigation springs from the sale of the subject property by petitioner in their favor during the pendency of this case. As transferee *pendente lite*, the spouses Vaca are the successors-in-interest of the transferor, the petitioner, who is already a party to the action. Thus, the applicable provision is Section 19, Rule 3 of the Rules of Court, governing transfers of interest *pendente lite*. It provides:

> **SEC. 19**. *Transfer of interest.* – In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

In *Natalia Realty, Inc. v. Court of Appeals*,[10] citing *Santiago Land Development Corporation v. Court of Appeals*,[11] we have ruled that:

> [A] transferee *pendente lite* of the property in litigation does not have a right to intervene. We held that a transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. It is not legally tenable for a transferee *pendente lite* to still intervene. Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee *pendente lite*.[12]

That the Certificate of Title covering the subject property is in the name of the spouses Vaca is of no moment. It is noteworthy that a notice of *lis pendens* was timely annotated on petitioner's title. This was done prior to the sale of the property to the spouses Vaca, the cancellation of petitioner's title, and the issuance of the new Transfer Certificate of Title

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[10] *Supra*.

[11] *Supra* note 9.

[12] Citations omitted.

in the name of the spouses. By virtue of the notice of *lis pendens*, the spouses Vaca are bound by the outcome of the litigation subject of the *lis pendens*. Their interest is subject to the incidents or results of the pending suit, and their Certificate of Title will afford them no special protection.[13]

Lastly, the spouses Vaca's claim for reimbursement, if any, must be ventilated in a separate action against petitioner. To allow the intervention would unduly delay and prejudice the rights especially of respondents who have been deprived of the subject property for so long.

IN LIGHT OF THE FOREGOING, we deny petitioner's motion for reconsideration and the Spouses Vaca's Motion for Intervention.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Brion,[*] and *Peralta,*[**] *JJ.,* concur.

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[13] *Seveses v. Court of Appeals*, 375 Phil. 64, 71 (1999).

[*] In lieu of Associate Justice Ruben T. Reyes (retired) per Raffle dated March 25, 2009.

[**] In lieu of Associate Justice Ma. Alicia Austria-Martinez (retired) per Raffle dated August 3, 2009.

FIRST DIVISION

[G.R. No. 150664. September 3, 2009]

VICENTE DACANAY, in his capacity as administrator of the Testate Estate of Tereso D. Fernandez, *petitioner, vs.* **HON. RAPHAEL YRASTORZA, SR., in his official capacity as Presiding Judge, Regional Trial Court of Cebu, Branch 14, LUISSA ANNABELLA TORRANO SAMACO, assisted by her husband Raul Samaco, ROBERTA I. KERSAW, assisted by her husband Bryan Kersaw and JOHNSON MERCADER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; HIERARCHY OF COURTS; VIOLATED WHEN PETITION FOR *CERTIORARI* WAS FILED DIRECTLY WITH THIS COURT INSTEAD OF THE COURT OF APPEALS.— At the outset, we note that petitioner filed his petition for *certiorari* directly in this Court. This is a violation of the doctrine of hierarchy of courts. He should have filed his petition in the CA before seeking relief from this Court. Thus, this petition can be dismissed outright for being procedurally infirm.

2. ID.; DOCTRINE OF FINALITY OF JUDGMENT.— Once a judgment attains finality, it becomes immutable and unalterable. A final and executory judgment 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 the highest court of the land. This is the doctrine of finality of judgment. It is grounded on fundamental considerations of public policy and sound practice that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law. Otherwise, there will be no end to litigations, thus negating the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

APPEARANCES OF COUNSEL

Felipe S. Velasquez for petitioner.
Rufino Remoreras, Jr. for Johnson Mercader.

R E S O L U T I O N

CORONA, *J.*:

On July 14, 1992, petitioner Vicente Dacanay, as administrator of the testate estate of Tereso D. Fernandez, filed in the Regional Trial Court (RTC) of Cebu City a case for recovery of real property against respondent spouses Luissa and Raul Samaco and Roberta and Bryan Kersaw.[1] On December 22, 1992, respondent spouses Samaco filed their answer with counterclaim.[2]

On May 12, 1993, petitioner amended his complaint to implead respondent Johnson Mercader.[3] On August 3, 1993, respondent Mercader filed his answer with counterclaim.[4] Respondent spouses Kersaw were declared in default[5] as they did not file an answer despite service of summons by publication.[6]

On May 15, 1994, petitioner filed his second amended complaint[7] which the court granted. On March 30, 1994, respondent spouses Samaco filed their answer with counterclaim,[8] while respondent Mercader filed his on May 30, 1994.[9]

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[1] Annex B of the petition; *rollo*, pp. 22-26.

[2] Annex C of the petition; *id.*, pp. 30-32.

[3] Annex D of the petition; *id.*, pp. 33-38.

[4] Annex E of the petition; *id.*, pp. 45-50.

[5] Annex G of the petition; *id.*, p. 56.

[6] Annex F of the petition; *id.*, pp. 51-55.

[7] Annex H of the petition; *id.*, pp. 57-64. The second amended complaint included the additional causes of action of cancellation of certificates of title and damages.

[8] Annex I of the petition; *id.*, pp. 72-73.

[9] Annex J of the petition; *id.*, pp. 74-75.

On December 12, 1995, the RTC dismissed[10] petitioner's complaint for lack of merit. Petitioner was likewise ordered to pay ₱70,000 to respondent spouses Samaco and respondent Mercader by way of attorney's fees,[11] litigation expenses[12] and moral damages.[13]

Not satisfied, petitioner appealed to the Court of Appeals (CA).[14] On October 27, 1999, the CA[15] affirmed the RTC *in toto*.

Petitioner then filed in the Supreme Court a motion for extension of time to file a petition for review on *certiorari*. His motion was denied in a minute resolution[16] because of procedural lapses[17] on his part. Petitioner's motion for reconsideration met the same fate.[18]

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[10] Decision penned by then Judge Renato C. Dacudao. Annex L of the petition; *id.*, pp. 78-83.

[11] ₱10,000 apiece.

[12] ₱5,000 apiece.

[13] ₱20,000 apiece.

[14] Annex M of the petition; *rollo*, p. 84.

[15] Decision penned by Justice Bernardo LL. Salas (retired) and concurred in by Justices Cancio C. Garcia (a retired member of the Supreme Court) and Candido V. Rivera (retired). Annex O of the petition; *id.*, pp. 87-102.

[16] Annex P of the petition; *id.*, p. 103.

[17] Petitioner's motion for extension of thirty days within which to file petition for review on *certiorari* was denied for his failure to a) serve a copy of the motion on the CA pursuant to Section 4, Rule 13 in relation to Sections 2 and 3, Rule 45 of the Rules of Court; b) show that he has not lost the fifteen-day reglementary period provided in Section 2, Rule 45 of the Rules of Court since he failed to state in the motion the material dates of receipt of the assailed CA decision and of filing of his motion for reconsideration of said decision and c) submit a written explanation on the non-personal filing of the motion in accordance with Section 11, Rule 13 of the Rules of Court. *Id*.

[18] Annex Q of the petition; *id.*, p. 105.

Consequently, the CA[19] and the Supreme Court[20] entered judgment on their rulings. Thus, the RTC decision dismissing petitioner's complaint and holding him personally liable for ₱70,000 to respondent spouses Samaco and respondent Mercader became final and executory.

On July 12, 2001, respondent Mercader filed a motion for execution[21] of the RTC decision. Petitioner opposed[22] the motion, contending that he should not be made personally liable for the amount awarded by the RTC. The RTC judgment should be considered as a claim against the estate of Tereso Fernandez. Thus, the writ of execution should be referred to the court where the estate of Tereso Fernandez was being settled.

On August 30, 2001, the RTC granted respondent Mercader's motion for execution.[23] According to the RTC, there was no impediment to the execution of its decision because it had already become final and executory. Moreover, considering that the decision sought to be executed "(did) not involve money claims,"[24] the writ of execution could not be directed against the estate of Tereso Fernandez.

Petitioner's motion for reconsideration[25] went unheeded.[26]

Refusing to give up, petitioner filed this petition for *certiorari*[27] in this Court. He reiterates his position that he should not be made personally liable to pay the ₱70,000 awarded by the RTC in favor of respondent spouses Samaco and respondent Mercader.

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[19] Annex R of the petition; *id.*, p. 108.

[20] Annex S of the petition; *id.*, pp. 109-110.

[21] Annex T of the petition; *id.*, pp. 111-112.

[22] Annex U of the petition; *id.*, p. 113.

[23] Annex W of the petition; *id.*, pp. 115-116.

[24] *Id.*, p. 115.

[25] Annex X of the petition; *id.*, pp. 117-118.

[26] Annex A of the petition; *id.*, p. 21.

[27] *Rollo*, pp. 3-20. Under Rule 65 of the Rules of Court.

At the outset, we note that petitioner filed his petition for *certiorari* directly in this Court. This is a violation of the doctrine of hierarchy of courts. He should have filed his petition in the CA before seeking relief from this Court.[28] Thus, this petition can be dismissed outright for being procedurally infirm.

Moreover, the petition lacks merit.

The RTC decision sought to be executed has long attained finality. Hence, petitioner can no longer question it.

Once a judgment attains finality, it becomes immutable and unalterable. A final and executory judgment may no longer be modified in any respect, even if the modification is meant to

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[28] This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, and with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writ was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy (*People v. Cuaresma*, G.R. No. 67787, 18 April 1989, 172 SCRA 415, 423-424).

The reason for the rule is two-fold, *i.e.*, 1) it would be an imposition upon the precious time of this Court; and 2) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts (*Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, 12 April 2005, 455 SCRA 460).

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 the highest court of the land.[29] This is the doctrine of finality of judgment. It is grounded on fundamental considerations of public policy and sound practice that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law.[30] Otherwise, there will be no end to litigations, thus negating the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[31]

The book of entries of judgment of the CA states that its decision in CA-G.R. CV No. 52731 on October 27, 1999 (which affirmed the RTC decision dismissing petitioner's complaint and awarding ₱70,000 to respondent spouses Samaco and respondent Mercader) became final on June 22, 2000.[32] On the other hand, the book of entries of judgment of the Supreme Court states that its resolution in G.R. No. 143713 on August 9, 2000 (which denied petitioner's motion for extension of time to file petition for review on *certiorari*) became final on February 14, 2001.[33] Thus, respondent Mercader properly moved for

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[29] *Ram's Studio and Photographic Equipment, Inc. v. CA*, G.R. No. 134888, 1 December 2000, 346 SCRA 691.

A judgment which has become final and executory can no longer be amended or corrected by the court except for clerical errors or mistakes. An executory and final decision cannot be lawfully altered or modified even by the court which rendered the same, especially where the alteration or modification is material or substantial. In such a situation, the trial court loses jurisdiction over the case except for execution of the final judgment. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose (*Filcon Manufacturing Corp. v. NLRC*, G.R. No. 78576, 31 July 1991, 199 SCRA 814).

[30] *Bañares II v. Balising*, G.R. No. 132624, 13 March 2000, 328 SCRA 36.

[31] *Gallardo-Corro v. Gallardo*, G.R. No. 136228, 30 January 2001, 350 SCRA 568.

[32] *See* note 19.

[33] *See* note 20.

the execution of the RTC decision on July 12, 2001. For the same reason, there was no legal impediment to the RTC's issuance of a writ of execution of its final and executory decision on August 30, 2001.

WHEREFORE, the petition is hereby *DISMISSED.*

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164205. September 3, 2009]

OLDARICO S. TRAVEÑO, ROVEL A. GENELSA, RUEL U. VILLARMENTE, ALFREDO A. PANILAGAO, CARMEN P. DANILA, ELIZABETH B. MACALINO, RAMIL P. ALBITO, REYNALDO A. LADRILLO, LUCAS G. TAMAYO, DIOSDADO A. AMORIN, RODINO C. VASQUEZ, GLORIA A. FELICANO, NOLE E. FERMILAN, JOSELITO B. RENDON, CRISTETA D. CAÑA, EVELYN D. ARCENAL and JEORGE M. NONO, *petitioners, vs.* **BOBONGON BANANA GROWERS MULTI-PURPOSE COOPERATIVE, TIMOG AGRICULTURAL CORPORATION, DIAMOND FARMS, INC., and DOLE ASIA PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; FAILURE TO SIGN VERIFICATION AND CERTIFICATION THEREOF; GUIDELINES.— Respecting the appellate court's dismissal of petitioners' appeal due to the failure of some of

them to sign the therein accompanying verification and certification against forum-shopping, the Court's guidelines for the bench and bar in *Altres v. Empleo*, which were culled "from jurisprudential pronouncements," are instructive: For the guidance of the bench and bar, the Court **restates** in capsule form the jurisprudential pronouncements already reflected above **respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:** 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping. 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) **Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.** 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." 5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case.** Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. The foregoing restated pronouncements were lost in the challenged

Resolutions of the appellate court. Petitioners' contention that the appellate court should have dismissed the petition only as to the non-signing petitioners or merely **dropped them as parties to the case** is thus in order.

2. ID.; ID.; APPEALS; FACTUAL QUESTIONS CONSIDERED TO AVOID FURTHER DELAY IN THE DISPOSITION OF CASE.— Instead of remanding the case to the appellate court, however, the Court deems it more practical to decide the substantive issue raised in this petition so as not to further delay the disposition of this case. And it thus resolves to deviate as well from the general rule that factual questions are not entertained in petitions for review on *certiorari* of the appellate court's decisions in order to write *finis* to this protracted litigation.

3. ID.; ID.; ID.; FACTUAL FINDINGS OF THE LABOR ARBITER, RESPECTED.— The Labor Code and its Implementing Rules empower the Labor Arbiter to be the trier of facts in labor cases. Much reliance is thus placed on the Arbiter's findings of fact, having had the opportunity to discuss with the parties and their witnesses the factual matters of the case during the conciliation phase. Just the same, a review of the records of the present case does not warrant a conclusion different from the Arbiter's, as affirmed by the NLRC, that the Cooperative is the employer of petitioners.

4. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; JOB CONTRACTING; NOT PRESENT AS BUSINESS PARTNERSHIP IN THE NATURE OF A JOINT VENTURE ENTERED INTO IN CASE AT BAR.— Job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. The present case does not involve such an arrangement. To the Court, the Contract between the Cooperative and DFI, far from being a job contracting arrangement, is in essence a business partnership that partakes of the nature of a joint venture. The rules on job contracting are, therefore, inapposite. The Court may not alter the intention of the contracting parties as gleaned from their stipulations without violating the *autonomy of contracts* principle under

Article 1306 of the Civil Code which gives the contracting parties the utmost liberality and freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good custom, public order or public policy.

5. ID.; ID.; FOUR STANDARDS TO DETERMINE PRESENCE OF EMPLOYMENT RELATIONSHIP.— Petitioners' claim of employment relationship with the Cooperative's herein co-respondents must be assessed on the basis of four standards, *viz*: (a) the manner of their selection and engagement; (b) the mode of payment of their wages; (c) the presence or absence of the power of dismissal; and (d) the presence or absence of control over their conduct. Most determinative among these factors is the so-called "*control test*."

6. ID.; ID.; ID.; ELEMENT OF CONTROL; ABSENCE THEREOF MEANS NO EMPLOYMENT RELATIONSHIP AND THUS, NO LIABILITY FOR ILLEGAL DISMISSAL AND MONEY CLAIMS IN CASE AT BAR.— The crucial element of control refers to the authority of the employer to control the employee not only with regard to the *result* of the work to be done, but also to the *means and methods* by which the work is to be accomplished. While it suffices that the power of control exists, albeit not actually exercised, there must be **some evidence** of such power. In the present case, petitioners did not present any. There being no employer-employee relationship between petitioners and the Cooperative's co-respondents, the latter are not solidarily liable with the Cooperative for petitioners' illegal dismissal and money claims. While the Court commiserates with petitioners on their loss of employment, especially now that the Cooperative is no longer a going concern, it cannot simply, by default, hold the Cooperative's co-respondents liable for their claims without any factual and legal justification therefor. The social justice policy of labor laws and the Constitution is not meant to be oppressive of capital.

APPEARANCES OF COUNSEL

Hapitan Law Office for petitioners.

Platon Martinez Flores San Pedro & Leaño for Dole Asia Philippines.

J.V. Yap Law Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

By the account of petitioner Oldarico Traveño and his 16 co-petitioners, in 1992, respondent Timog Agricultural Corporation (TACOR) and respondent Diamond Farms, Inc. (DFI) hired them to work at a banana plantation at Bobongon, Santo Tomas, Davao Del Norte which covered lands previously planted with rice and corn but whose owners had agreed to convert into a banana plantation upon being convinced that TACOR and DFI could provide the needed capital, expertise, and equipment. Petitioners helped prepare the lands for the planting of banana suckers and eventually carried out the planting as well.[1]

Petitioners asseverated that while they worked under the direct control of supervisors assigned by TACOR and DFI, these companies used different schemes to make it appear that petitioners were hired through independent contractors, including individuals, unregistered associations, and cooperatives; that the successive changes in the names of their employers notwithstanding, they continued to perform the same work under the direct control of TACOR and DFI supervisors; and that under the last scheme adopted by these companies, the nominal individual contractors were required to, as they did, join a cooperative and thus became members of respondent Bobongon Banana Growers Multi-purpose Cooperative (the Cooperative).[2]

Continued petitioners: Sometime in 2000, above-named respondents began utilizing harassment tactics to ease them out of their jobs. Without first seeking the approval of the Department of Labor and Employment (DOLE), they changed their compensation package from being based on a daily rate to a *pakyawan* rate that depended on the combined productivity

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[1] *Vide* Position Papers of Petitioners, NLRC records, Vol. I, pp. 37-54; 67-86.

[2] *Id*.

of the "gangs" they had been grouped into. Soon thereafter, they stopped paying their salaries, prompting them to stop working.[3]

One after another, three separate complaints for illegal dismissal were filed by petitioners, individually and collectively, with the National Labor Relations Commission (NLRC) against said respondents including respondent Dole Asia Philippines as it then supposedly owned TACOR,[4] for unpaid salaries, overtime pay, 13th month pay, service incentive leave pay, damages, and attorney's fees.[5]

DFI answered for itself and TACOR, which it claimed had been merged with it and ceased to exist as a corporation. Denying that it had engaged the services of petitioners,[6] DFI alleged that during the corporate lifetime of TACOR, it had an arrangement with several landowners in Santo Tomas, Davao Del Norte whereby TACOR was to extend financial and technical assistance to them for the development of their lands into a banana plantation on the condition that the bananas produced therein would be sold exclusively to TACOR; that the landowners worked on their own farms and hired laborers to assist them; that the landowners themselves decided to form a cooperative in order to better attain their business objectives; and that it was not in a position to state whether petitioners were working on the banana plantation of the landowners who had contracted with TACOR.[7]

The Cooperative failed to file a position paper despite due notice, prompting the Labor Arbiter to consider it to have waived its right to adduce evidence in its defense.

Nothing was heard from respondent Dole Asia Philippines.

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[3] *Id.*

[4] *Id.* at 38, 68.

[5] *Id.* at 1-13.

[6] *Id.* at 30-36.

[7] *Id.* at 119-134.

By consolidated Decision dated October 30, 2002,[8] the Labor Arbiter, found respondent Cooperative guilty of illegal dismissal. It dropped the complaints against DFI, TACOR and Dole Asia Philippines. Thus it disposed:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring respondent Bobongon Banana Growers Multi-purpose Cooperative guilty of illegal dismissal;
> 2. Ordering respondent Bobongon Banana Growers Multi-purpose Cooperative to pay complainants full backwages from the time of their illegal dismissal up to this promulgation, to be determined during the execution stage;
> 3. Ordering respondent Bobongon Banana Growers Multi-purpose Cooperative to reinstate complainants to their former positions without loss of seniority rights and if not possible, to pay them separation pay equivalent to 1/2 month pay for every year of service;
> 4. Ordering respondent Bobongon Banana Grower Cooperative [*sic*] to pay 10% of the total award as Attorney's fees;
> 5. All other respondents are hereby dropped as party-respondents for lack of merit. (Underscoring supplied)

In finding for petitioners, the Labor Arbiter relied heavily on the following Orders submitted by DFI which were issued in an earlier case filed with the DOLE, *viz*: (1) Order dated July 11, 1995 of the Director of DOLE Regional Office No. XI declaring the Cooperative as the employer of the 341 workers in the farms of its several members; (2) Order dated December 17, 1997 of the DOLE Secretary affirming the Order dated July 11, 1995 of the Director of DOLE Regional Office No. XI; and (3) Order dated June 23, 1998 of the DOLE Secretary denying the Cooperative's Motion for Reconsideration.

On partial appeal to the NLRC, petitioners questioned the Labor Arbiter's denial of their money claims and the dropping of their complaints against TACOR, DFI, and Dole Asia Philippines.

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[8] *Id.* at 103-115.

By Resolution dated July 30, 2003,[9] the NLRC sustained the Labor Arbiter's ruling that the employer of petitioners is the Cooperative, there being no showing that the earlier mentioned Orders of the DOLE Secretary had been set aside by a court of competent jurisdiction. It partially granted petitioners' appeal, however, by ordering the Cooperative to pay them their unpaid wages, wage differentials, service incentive leave pay, and 13th month pay. It thus remanded the case to the Labor Arbiter for computation of those awards.

Their Motion for Reconsideration having been denied by Resolution of September 30, 2003,[10] petitioners appealed to the Court of Appeals via *certiorari*.[11]

By Resolution dated February 20, 2004,[12] the appellate court dismissed petitioners' petition for *certiorari* on the ground that the accompanying verification and certification against forum shopping was defective, it having been signed by only 19 of the 22 therein named petitioners. Their Motion for Reconsideration having been denied by Resolution of May 13, 2004,[13] petitioners lodged the present Petition for Review on *Certiorari.*

Petitioners posit that the appellate court erred in dismissing their petition on a mere technicality as it should have, at most, dismissed the petition only with respect to the non-signing petitioners.

Dwelling on the merits of the case, petitioners posit that the Labor Arbiter and the NLRC disregarded evidence on record showing that while the Cooperative was their employer on paper, the other respondents exercised control and supervision over

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[9] NLRC records, Vol. II, pp. 89-93.

[10] *Id.* at 142.

[11] CA *rollo,* pp. 2-24.

[12] Penned by Associate Justice Eloy R. Bello, Jr., with the concurrence of Associate Justice Amelita G. Tolentino and then Associate Justice of the Court of Appeals, now Associate Justice of this Court, Arturo D. Brion; CA *rollo,* pp. 174-175.

[13] *Id.* at 187.

them; that the Cooperative was a labor-only contractor; and that the Orders of the DOLE Secretary relied upon by the Labor Arbiter and the NLRC are not applicable to them as the same pertained to a certification election case involving different parties and issues.[14]

DFI, commenting for itself and TACOR, maintains that, among other things, it was not the employer of petitioners; and that it cannot comment on their money claims because no evidence was submitted in support thereof.[15]

It appears that respondent Cooperative had been dissolved.[16]

As respondent Dole Asia Philippines failed to file a comment, the Court, by Resolution of November 29, 2006,[17] required it to (1) show cause why it should not be held in contempt for its failure to heed the Court's directive, and (2) file the required comment, within 10 days from notice.

Dole Philippines, Inc. (DPI) promptly filed an Urgent Manifestation[18] stating that, among other things, while its division located in Davao City received the Court's Resolution directing Dole Asia Philippines to file a comment on the present petition, DPI did not file a comment as the directive was addressed to "Dole Asia Philippines," an entity which is not registered at the Securities and Exchange Commission.

Commenting on DPI's Urgent Manifestation, petitioners contend that DPI cannot be allowed to take advantage of their lack of knowledge as to its exact corporate name, DPI having raised the matter for the first time before this Court notwithstanding its receipt of all pleadings and court processes from the inception of this case.[19]

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[14] *Vide* Petition, *rollo,* pp. 12-44.

[15] *Vide* Comment of DFI, *id.* at 231-235.

[16] *Id.* at 263-265.

[17] *Id.* at 265.

[18] *Id.* at 266-270.

[19] *Id.* at 276-279.

Upon review of the records, the Court finds that DPI never ever participated in the proceedings despite due notice. Its posturing, therefore, that the court processes it received were addressed to "Dole Asia Philippines," a non-existent entity, does not lie. That DPI is the intended respondent, there is no doubt.

Respecting the appellate court's dismissal of petitioners' appeal due to the failure of some of them to sign the therein accompanying verification and certification against forum-shopping, the Court's guidelines for the bench and bar in *Altres v. Empleo*,[20] which were culled "from jurisprudential pronouncements," are instructive:

> For the guidance of the bench and bar, the Court **restates** in capsule form the jurisprudential pronouncements already reflected above **respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping**:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> 3) **Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of

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[20] G.R. No. 180986, December 10, 2008.

"substantial compliance" or presence of "special circumstances or compelling reasons."

5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case.** Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (Emphasis and underscoring supplied)

The foregoing restated pronouncements were lost in the challenged Resolutions of the appellate court. Petitioners' contention that the appellate court should have dismissed the petition only as to the non-signing petitioners or merely **dropped them as parties to the case** is thus in order.

Instead of remanding the case to the appellate court, however, the Court deems it more practical to decide the substantive issue raised in this petition so as not to further delay the disposition of this case.[21] And it thus resolves to deviate as well from the general rule that factual questions are not entertained in petitions for review on *certiorari* of the appellate court's decisions in order to write *finis* to this protracted litigation.

The sole issue is whether DFI (with which TACOR had been merged) and DPI should be held solidarily liable with the Cooperative for petitioners' illegal dismissal and money claims.

The Labor Code and its Implementing Rules empower the Labor Arbiter to be the trier of facts in labor cases.[22] Much

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[21] *Vide Chan v. Secretary of Justice,* G.R. No. 147065, March 14, 2008, 548 SCRA 337, 351-352.

[22] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 159.

reliance is thus placed on the Arbiter's findings of fact, having had the opportunity to discuss with the parties and their witnesses the factual matters of the case during the conciliation phase.[23] Just the same, a review of the records of the present case does not warrant a conclusion different from the Arbiter's, as affirmed by the NLRC, that the Cooperative is the employer of petitioners.

To be sure, the matter of whether the Cooperative is an independent contractor or a labor-only contractor may not be used to predicate a ruling in this case. Job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[24] The present case does not involve such an arrangement.

DFI did not farm out to the Cooperative the performance of a specific job, work, or service. Instead, it entered into a Banana Production and Purchase Agreement[25] (Contract) with the Cooperative, under which the Cooperative would handle and fund the production of bananas and operation of the plantation covering lands owned by its members in consideration of DFI's commitment to provide financial and technical assistance as needed, including the supply of information and equipment in growing, packing, and shipping bananas. The Cooperative would hire its own workers and pay their wages and benefits, and sell exclusively to DFI all export quality bananas produced that meet the specifications agreed upon.

To the Court, the Contract between the Cooperative and DFI, far from being a job contracting arrangement, is in essence a business partnership that partakes of the nature of a joint

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[23] *Salazar v. Phil. Duplicators, Inc.*, G.R. No. 154628, December 6, 2006, 510 SCRA 288, 305.

[24] *Vide Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, November 11, 2005, 474 SCRA 656, 667.

[25] NLRC records, Vol. I, pp. 162-183.

venture.[26] The rules on job contracting are, therefore, inapposite. The Court may not alter the intention of the contracting parties as gleaned from their stipulations without violating the *autonomy of contracts* principle under Article 1306 of the Civil Code which gives the contracting parties the utmost liberality and freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good custom, public order or public policy.

Petitioners' claim of employment relationship with the Cooperative's herein co-respondents must be assessed on the basis of four standards, *viz*: (a) the manner of their selection and engagement; (b) the mode of payment of their wages; (c) the presence or absence of the power of dismissal; and (d) the presence or absence of control over their conduct. Most determinative among these factors is the so-called "*control test*."[27]

There is nothing in the records which indicates the presence of any of the foregoing elements of an employer-employee relationship.

The absence of the first requisite, which refers to selection and engagement, is shown by DFI's total lack of knowledge on who actually were engaged by the Cooperative to work in the banana plantation. This is borne out by the Contract between the Cooperative and DFI, under which the Cooperative was to hire its own workers. As TACOR had been merged with DFI, and DPI is merely alleged to have previously owned TACOR, this applies to them as well. Petitioners failed to prove the contrary. No employment contract whatsoever was submitted to substantiate how petitioners were hired and by whom.

On the second requisite, which refers to the payment of wages, it was likewise the Cooperative that paid the same. As reflected earlier, under the Contract, the Cooperative was to handle and

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[26] A joint venture is an association of persons or companies jointly undertaking some commercial enterprise; generally, all contribute assets and share risks. (*Kilosbayan v. Guingona,* G.R. No. 113375, May 5, 1994, 232 SCRA 110, 144)

[27] *De los Santos v. National Labor Relations Commission*, 423 Phil. 1020, 1029 (2001).

fund the production of bananas and operation of the plantation.[28] The Cooperative was also to be responsible for the proper conduct, safety, **benefits**, and general welfare of its members and workers in the plantation.[29]

As to the third requisite, which refers to the power of dismissal, and the fourth requisite, which refers to the power of control, both were retained by the Cooperative. Again, the Contract stipulated that the Cooperative was to be responsible for the proper conduct and general welfare of its members and workers in the plantation.

The crucial element of control refers to the authority of the employer to control the employee not only with regard to the *result* of the work to be done, but also to the *means and methods* by which the work is to be accomplished.[30] While it suffices that the power of control exists, albeit not actually exercised, there must be **some evidence** of such power. In the present case, petitioners did not present any.

There being no employer-employee relationship between petitioners and the Cooperative's co-respondents, the latter are not solidarily liable with the Cooperative for petitioners' illegal dismissal and money claims.

While the Court commiserates with petitioners on their loss of employment, especially now that the Cooperative is no longer a going concern, it cannot simply, by default, hold the Cooperative's co-respondents liable for their claims without any factual and legal justification therefor. The social justice policy of labor laws and the Constitution is not meant to be oppressive of capital.

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[28] *Vide* NLRC records, Vol. I, p. 169.

[29] *Id.* at 176.

[30] *Almeda v. Asahi Glass Philippines, Inc.*, G.R. No. 177785, September 3, 2008, 564 SCRA 115, 127-128.

En passant, petitioners are not precluded from pursuing any available remedies against the former members of the defunct Cooperative as their individual circumstances may warrant.

WHEREFORE, the petition is *DISMISSED.*

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Del Castillo,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 164815. September 3, 2009]

SR. INSP. JERRY C. VALEROSO, *petitioner, vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SECOND MOTION FOR RECONSIDERATION; PROHIBITED PLEADING ALLOWED IN THE INTEREST OF SUBSTANTIVE JUSTICE.— After considering anew Valeroso's arguments through his Letter-Appeal, together with the OSG's position recommending his acquittal, and keeping in mind that substantial rights must ultimately reign supreme over technicalities, this Court is swayed to reconsider. The Letter-Appeal is actually in the nature of a second motion for reconsideration. While a second motion for reconsideration is, as a general rule, a prohibited pleading, it is within the sound discretion of the Court to admit the same, provided it is filed with prior leave whenever substantive justice may be better served thereby.

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[*] Additional member vice Justice Arturo D. Brion, due to prior participation in the Court of Appeals.

2. ID.; ID.; ID.; ID.; SUPPORTING CASES.— This is not the first time that this Court is suspending its own rules or excepting a particular case from the operation of the rules. In *De Guzman v. Sandiganbayan*, despite the denial of De Guzman's motion for reconsideration, we still entertained his Omnibus Motion, which was actually a second motion for reconsideration. Eventually, we reconsidered our earlier decision and remanded the case to the Sandiganbayan for reception and appreciation of petitioner's evidence. In that case, we said that if we would not compassionately bend backwards and flex technicalities, petitioner would surely experience the disgrace and misery of incarceration for a crime which he might not have committed after all. Also in *Astorga v. People*, on a second motion for reconsideration, we set aside our earlier decision, re-examined the records of the case, then finally acquitted Benito Astorga of the crime of Arbitrary Detention on the ground of reasonable doubt. And in *Sta. Rosa Realty Development Corporation v. Amante,* by virtue of the January 13, 2004 *En Banc* Resolution, the Court authorized the Special First Division to suspend the Rules, so as to allow it to consider and resolve respondent's second motion for reconsideration after the motion was heard on oral arguments. After a re-examination of the merits of the case, we granted the second motion for reconsideration and set aside our earlier decision. Clearly, suspension of the rules of procedure, to pave the way for the re-examination of the findings of fact and conclusions of law earlier made, is not without basis. We would like to stress that rules of procedure are merely tools designed to facilitate the attainment of justice. They are conceived and promulgated to effectively aid the courts 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 to promote justice, it would always be within our power to suspend the rules or except a particular case from its operation.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; CONSTRUED.— The right against unreasonable searches and seizures is secured by Section 2, Article III of the Constitution which states: SEC. 2. The right

of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. From this constitutional provision, it can readily be gleaned that, as a general rule, the procurement of a warrant is required before a law enforcer can validly search or seize the person, house, papers, or effects of any individual. To underscore the significance the law attaches to the fundamental right of an individual against unreasonable searches and seizures, the Constitution succinctly declares in Article III, Section 3(2), that "any evidence obtained in violation of this or the preceding section shall be inadmissible in evidence for any purpose in any proceeding." Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary for public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for no enforcement of any statute is of sufficient importance to justify indifference to the basic principles of government. Those who are supposed to enforce the law are not justified in disregarding the rights of an individual in the name of order. Order is too high a price to pay for the loss of liberty.

4. ID.; ID.; ID.; ID.; INSTANCES WHERE SEARCHES AND SEIZURES ALLOWED EVEN WITHOUT WARRANT.— The following are the well-recognized instances where searches and seizures are allowed even without a valid warrant: 1. ***Warrantless search incidental to a lawful arrest*****;** 2. ***[Seizure] of evidence in "plain view."*** The elements are: a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; b) the evidence was inadvertently discovered by the police who have the right to be where they are; c) the evidence must be immediately apparent; and d) "plain view" justified mere seizure of evidence without further search; 3. ***Search of a moving vehicle*****.** Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly

reasonable suspicion amounting to probable cause that the occupant committed a criminal activity; 4. ***Consented warrantless search*****;** 5. ***Customs search*****;** 6. ***Stop and Frisk*****;** 7. ***Exigent and emergency circumstances.*** 8. ***Search of vessels and aircraft*****;** *[and]* 9. ***Inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations.*** In the exceptional instances where a warrant is not necessary to effect a valid search or seizure, what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.

5. ID.; ID.; ID.; ID.; SEARCHES AND SEIZURES INCIDENT TO LAWFUL ARRESTS; ELUCIDATED.— Searches and seizures incident to lawful arrests are governed by Section 13, Rule 126 of the Rules of Court, which reads: SEC. 13. *Search incident to lawful arrest.* – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. We would like to stress that the scope of the warrantless search is not without limitations. In *People v. Leangsiri*, *People v. Cubcubin, Jr.*, and *People v. Estella*, we had the occasion to lay down the parameters of a valid warrantless search and seizure as an incident to a lawful arrest. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapon that the latter might use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. Moreover, in lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either ***on the person of the one arrested or within the area of his immediate control.*** The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon

or destructible evidence. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested.

6. ID.; ID.; ID.; ID.; ID.; ID.; SEARCH IN CASE AT BAR EXCEEDED THE BOUNDS OF AN INCIDENT TO A LAWFUL ARREST.— In the present case, Valeroso was arrested by virtue of a warrant of arrest allegedly for kidnapping with ransom. At that time, Valeroso was sleeping inside the boarding house of his children. He was awakened by the arresting officers who were heavily armed. They pulled him out of the room, placed him beside the faucet outside the room, tied his hands, and then put him under the care of Disuanco. The other police officers remained inside the room and ransacked the locked cabinet where they found the subject firearm and ammunition. With such discovery, Valeroso was charged with illegal possession of firearm and ammunition. From the foregoing narration of facts, we can readily conclude that the arresting officers served the warrant of arrest without any resistance from Valeroso. They placed him immediately under their control by pulling him out of the bed, and bringing him out of the room with his hands tied. To be sure, the cabinet which, according to Valeroso, was locked, could no longer be considered as an "area within his immediate control" because there was no way for him to take any weapon or to destroy any evidence that could be used against him. The arresting officers would have been justified in searching the person of Valeroso, as well as the tables or drawers in front of him, for any concealed weapon that might be used against the former. But under the circumstances obtaining, there was no comparable justification to search through all the desk drawers and cabinets or the other closed or concealed areas in that room itself. It is worthy to note that the purpose of the exception (warrantless search as an incident to a lawful arrest) is to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach. The exception, therefore, should not be strained beyond what is needed to serve its purpose. In the case before us, search was made in the locked cabinet which cannot be said to have been within Valeroso's immediate control. Thus, the search exceeded the bounds of what may be considered as an incident to a lawful arrest.

7. ID.; ID.; ID.; ID.; ID.; PLAIN VIEW DOCTRINE; NOT APPLICABLE IN CASE AT BAR; APPLICATION.— The "plain view doctrine" may not be used to launch unbridled searches and indiscriminate seizures or to extend a general exploratory search made solely to find evidence of defendant's guilt. The doctrine is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. As enunciated in *People v. Cubcubin, Jr.* and *People v. Leangsiri:* What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which[,] he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification – whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused – and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. Indeed, the police officers were inside the boarding house of Valeroso's children, because they were supposed to serve a warrant of arrest issued against Valeroso. In other words, the police officers had a prior justification for the intrusion. Consequently, any evidence that they would inadvertently discover may be used against Valeroso. However, in this case, the police officers did not just accidentally discover the subject firearm and ammunition; they actually searched for evidence against Valeroso. Clearly, the search made was illegal, a violation of Valeroso's right against unreasonable search and seizure. Consequently, the evidence obtained in violation of said right is inadmissible in evidence against him.

8. ID.; ID.; ID.; ID.; VIOLATION OF RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; NOT TO BE COUNTENANCED BY ENTREATING THE DEFENSE OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS; EVIDENCE OBTAINED IN VIOLATION OF THE RIGHT FAILS TO CONVICT.— Because a warrantless search is in derogation of a constitutional right, peace officers who conduct it cannot invoke regularity in the performance

of official functions. The Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power. Without the illegally seized firearm, Valeroso's conviction cannot stand. There is simply no sufficient evidence to convict him. All told, the guilt of Valeroso was not proven beyond reasonable doubt measured by the required moral certainty for conviction. The evidence presented by the prosecution was not enough to overcome the presumption of innocence as constitutionally ordained. Indeed, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit. One final note. The Court values liberty and will always insist on the observance of basic constitutional rights as a condition *sine qua non* against the awesome investigative and prosecutory powers of the government.

APPEARANCES OF COUNSEL

P. A. Carpio & Associates Law Office and *Justice Nicolas P. Lapeña, Jr.* for petitioner.

The Solicitor General for respondents.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is the Letter-Appeal[1] of Senior Inspector (Sr. Insp.) Jerry C. Valeroso (Valeroso) praying that our February 22, 2008 Decision[2] and June 30, 2008 Resolution[3] be set aside and a new one be entered acquitting him of the crime of illegal possession of firearm and ammunition.

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[1] *Rollo*, pp. 229-232.

[2] *Id.* at 148-165.

[3] *Id.* at 227.

The facts are briefly stated as follows:

Valeroso was charged with violation of Presidential Decree No. 1866, committed as follows:

> That on or about the 10th day of July, 1996, in Quezon City, Philippines, the said accused without any authority of law, did then and there willfully, unlawfully and knowingly have in his/her possession and under his/her custody and control
>
> One (1) cal. 38 "Charter Arms" revolver bearing serial no. 52315 with five (5) live ammo.
>
> without first having secured the necessary license/permit issued by the proper authorities.
>
> CONTRARY TO LAW.[4]

When arraigned, Valeroso pleaded "not guilty."[5] Trial on the merits ensued.

During trial, the prosecution presented two witnesses: Senior Police Officer (SPO)2 Antonio Disuanco (Disuanco) of the Criminal Investigation Division of the Central Police District Command; and Epifanio Deriquito (Deriquito), Records Verifier of the Firearms and Explosives Division in Camp Crame. Their testimonies are summarized as follows:

On July 10, 1996, at around 9:30 a.m., Disuanco received a Dispatch Order from the desk officer directing him and three (3) other policemen to serve a Warrant of Arrest, issued by Judge Ignacio Salvador, against Valeroso for a case of kidnapping with ransom.[6]

After a briefing, the team conducted the necessary surveillance on Valeroso checking his hideouts in Cavite, Caloocan, and Bulacan. Eventually, the team members proceeded to the Integrated National Police (INP) Central Police Station in Culiat, Quezon City, where they saw Valeroso about to board a tricyle.

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[4] Records, p. 1.

[5] *Id.* at 33.

[6] *Rollo*, p. 149.

Disuanco and his team approached Valeroso. They put him under arrest, informed him of his constitutional rights, and bodily searched him. They found a Charter Arms revolver, bearing Serial No. 52315, with five (5) pieces of live ammunition, tucked in his waist.[7]

Valeroso was then brought to the police station for questioning. Upon verification in the Firearms and Explosives Division in Camp Crame, Deriquito presented a certification[8] that the subject firearm was not issued to Valeroso, but was licensed in the name of a certain Raul Palencia Salvatierra of Sampaloc, Manila.[9]

On the other hand, Valeroso, SPO3 Agustin R. Timbol, Jr. (Timbol), and Adrian Yuson testified for the defense. Their testimonies are summarized as follows:

On July 10, 1996, Valeroso was sleeping inside a room in the boarding house of his children located at Sagana Homes, Barangay New Era, Quezon City. He was awakened by four (4) heavily armed men in civilian attire who pointed their guns at him and pulled him out of the room.[10] The raiding team tied his hands and placed him near the faucet (outside the room) then went back inside, searched and ransacked the room. Moments later, an operative came out of the room and exclaimed, *"Hoy, may nakuha akong baril sa loob!"*[11]

Disuanco informed Valeroso that there was a standing warrant for his arrest. However, the raiding team was not armed with a search warrant.[12]

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[7] *Id.*

[8] Exh. "C", Folder of Exhibits.

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

[10] *Id.* at 39.

[11] Valeroso's testimony was corroborated by Yuson; *id.* at 151.

[12] *Rollo*, p. 152.

Timbol testified that he issued to Valeroso a Memorandum Receipt[13] dated July 1, 1993 covering the subject firearm and its ammunition, upon the verbal instruction of Col. Angelito Moreno.[14]

On May 6, 1998, the Regional Trial Court (RTC), Branch 97, Quezon City, convicted Valeroso as charged and sentenced him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day, as minimum, to six (6) years, as maximum. The gun subject of the case was further ordered confiscated in favor of the government.[15]

On appeal, the Court of Appeals (CA) affirmed[16] the RTC decision but the minimum term of the indeterminate penalty was lowered to four (4) years and two (2) months.

On petition for review, we affirmed[17] in full the CA decision. Valeroso filed a Motion for Reconsideration[18] which was denied with finality[19] on June 30, 2008.

Valeroso is again before us through this Letter-Appeal[20] imploring this Court to once more take a contemplative reflection and deliberation on the case, focusing on his breached constitutional rights against unreasonable search and seizure.[21]

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[13] Exh. "1", Folder of Exhibits.

[14] *Rollo*, p. 152.

[15] The decision was penned by Judge Oscar L. Leviste; *id.* at 38-45.

[16] Embodied in a decision dated May 4, 2004, penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Danilo B. Pine and Edgardo F. Sundiam, concurring; *rollo*, pp. 16-31.

[17] *Rollo*, pp. 148-165.

[18] *Id.* at 169-177.

[19] *Id.* at 227.

[20] *Supra* note 1.

[21] *Rollo*, p. 230.

Meanwhile, as the Office of the Solicitor General (OSG) failed to timely file its Comment on Valeroso's Motion for Reconsideration, it instead filed a Manifestation in Lieu of Comment.[22]

In its Manifestation, the OSG changed its previous position and now recommends Valeroso's acquittal. After a second look at the evidence presented, the OSG considers the testimonies of the witnesses for the defense more credible and thus concludes that Valeroso was arrested in a boarding house. More importantly, the OSG agrees with Valeroso that the subject firearm was obtained by the police officers in violation of Valeroso's constitutional right against illegal search and seizure, and should thus be excluded from the evidence for the prosecution. Lastly, assuming that the subject firearm was admissible in evidence, still, Valeroso could not be convicted of the crime, since he was able to establish his authority to possess the gun through the Memorandum Receipt issued by his superiors.

After considering anew Valeroso's arguments through his Letter-Appeal, together with the OSG's position recommending his acquittal, and keeping in mind that substantial rights must ultimately reign supreme over technicalities, this Court is swayed to reconsider.[23]

The Letter-Appeal is actually in the nature of a second motion for reconsideration. While a second motion for reconsideration is, as a general rule, a prohibited pleading, it is within the sound discretion of the Court to admit the same, provided it is filed with prior leave whenever substantive justice may be better served thereby.[24]

This is not the first time that this Court is suspending its own rules or excepting a particular case from the operation of the rules. In *De Guzman v. Sandiganbayan*,[25] despite the denial of

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[22] *Id.* at 239-270.

[23] See *De Guzman v. Sandiganbayan*, 326 Phil. 182 (1996).

[24] *Astorga v. People*, G.R. No. 154130, August 20, 2004, 437 SCRA 152, 155.

[25] *Supra* note 23.

De Guzman's motion for reconsideration, we still entertained his Omnibus Motion, which was actually a second motion for reconsideration. Eventually, we reconsidered our earlier decision and remanded the case to the Sandiganbayan for reception and appreciation of petitioner's evidence. In that case, we said that if we would not compassionately bend backwards and flex technicalities, petitioner would surely experience the disgrace and misery of incarceration for a crime which he might not have committed after all.[26] Also in *Astorga v. People*,[27] on a second motion for reconsideration, we set aside our earlier decision, re-examined the records of the case, then finally acquitted Benito Astorga of the crime of Arbitrary Detention on the ground of reasonable doubt. And in *Sta. Rosa Realty Development Corporation v. Amante*,[28] by virtue of the January 13, 2004 *En Banc* Resolution, the Court authorized the Special First Division to suspend the Rules, so as to allow it to consider and resolve respondent's second motion for reconsideration after the motion was heard on oral arguments. After a re-examination of the merits of the case, we granted the second motion for reconsideration and set aside our earlier decision.

Clearly, suspension of the rules of procedure, to pave the way for the re-examination of the findings of fact and conclusions of law earlier made, is not without basis.

We would like to stress that rules of procedure are merely tools designed to facilitate the attainment of justice. They are conceived and promulgated to effectively aid the courts 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 to promote justice, it would always be within our

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[26] *De Guzman v. Sandiganbayan*, *id.* at 191.

[27] *Supra* note 24.

[28] G.R. Nos. 112526 and 118838, March 16, 2005, 453 SCRA 432.

power to suspend the rules or except a particular case from its operation.[29]

Now on the substantive aspect.

The Court notes that the version of the prosecution, as to where Valeroso was arrested, is different from the version of the defense. The prosecution claims that Valeroso was arrested near the INP Central Police Station in Culiat, Quezon City, while he was about to board a tricycle. After placing Valeroso under arrest, the arresting officers bodily searched him, and they found the subject firearm and ammunition. The defense, on the other hand, insists that he was arrested inside the boarding house of his children. After serving the warrant of arrest (allegedly for kidnapping with ransom), some of the police officers searched the boarding house and forcibly opened a cabinet where they discovered the subject firearm.

After a thorough re-examination of the records and consideration of the joint appeal for acquittal by Valeroso and the OSG, we find that we must give more credence to the version of the defense.

Valeroso's appeal for acquittal focuses on his constitutional right against unreasonable search and seizure alleged to have been violated by the arresting police officers; and if so, would render the confiscated firearm and ammunition inadmissible in evidence against him.

The right against unreasonable searches and seizures is secured by Section 2, Article III of the Constitution which states:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

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[29] *Astorga v. People*, *supra* note 24, at 155-156.

From this constitutional provision, it can readily be gleaned that, as a general rule, the procurement of a warrant is required before a law enforcer can validly search or seize the person, house, papers, or effects of any individual.[30]

To underscore the significance the law attaches to the fundamental right of an individual against unreasonable searches and seizures, the Constitution succinctly declares in Article III, Section 3(2), that "any evidence obtained in violation of this or the preceding section shall be inadmissible in evidence for any purpose in any proceeding."[31]

The above proscription is not, however, absolute. The following are the well-recognized instances where searches and seizures are allowed even without a valid warrant:

1. ***Warrantless search incidental to a lawful arrest*;**
2. ***[Seizure] of evidence in "plain view."*** The elements are: a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; b) the evidence was inadvertently discovered by the police who have the right to be where they are; c) the evidence must be immediately apparent; and d) "plain view" justified mere seizure of evidence without further search;
3. ***Search of a moving vehicle***. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. ***Consented warrantless search***;
5. ***Customs search***;
6. ***Stop and Frisk***;
7. ***Exigent and emergency circumstances.***[32]

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[30] *People v. Sevilla*, 394 Phil. 125, 139 (2000).

[31] *Id.*

[32] *People v. Tudtud*, G.R. No. 144037, September 26, 2003, 412 SCRA 142,

8. ***Search of vessels and aircraft***; *[and]*

9. ***Inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations.***[33]

In the exceptional instances where a warrant is not necessary to effect a valid search or seizure, what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[34]

In light of the enumerated exceptions, and applying the test of reasonableness laid down above, is the warrantless search and seizure of the firearm and ammunition valid?

We answer in the negative.

For one, the warrantless search could not be justified as an incident to a lawful arrest. Searches and seizures incident to lawful arrests are governed by Section 13, Rule 126 of the Rules of Court, which reads:

> SEC. 13. *Search incident to lawful arrest.* – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

We would like to stress that the scope of the warrantless search is not without limitations. In *People v. Leangsiri*,[35] *People*

153-154; *Caballes v. Court of Appeals*, 424 Phil. 263, 277 (2002); *People v. Sevilla*, *supra* note 30, at 139-140; *People v. Aruta*, 351 Phil. 868, 879-880 (1998).

[33] Nachura, Antonio Eduardo B., *Outline Reviewer in Political Law*, 2009, pp. 139-142.

[34] *Caballes v. Court of Appeals*, *supra* note 32, at 278.

[35] 322 Phil. 226 (1996).

v. Cubcubin, Jr.,[36] and *People v. Estella*,[37] we had the occasion to lay down the parameters of a valid warrantless search and seizure as an incident to a lawful arrest.

When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapon that the latter might use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.[38]

Moreover, in lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's reach.[39] Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either ***on the person of the one arrested or within the area of his immediate control.***[40] The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence.[41] A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested.[42]

In the present case, Valeroso was arrested by virtue of a warrant of arrest allegedly for kidnapping with ransom. At that time, Valeroso was sleeping inside the boarding house of his children. He was awakened by the arresting officers who were

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[36] 413 Phil 249 (2001).

[37] 443 Phil. 669 (2003).

[38] *People v. Estella, id.* at 685.

[39] *People v. Cueno*, 359 Phil. 151, 163 (1998).

[40] *People v. Cubcubin, Jr.*, *supra* note 36, at 271; see *People v. Leangsiri*, *supra* note 35.

[41] *People v. Estella*, *supra* note 37, at 685.

[42] *Id.*

heavily armed. They pulled him out of the room, placed him beside the faucet outside the room, tied his hands, and then put him under the care of Disuanco.[43] The other police officers remained inside the room and ransacked the locked cabinet[44] where they found the subject firearm and ammunition.[45] With such discovery, Valeroso was charged with illegal possession of firearm and ammunition.

From the foregoing narration of facts, we can readily conclude that the arresting officers served the warrant of arrest without any resistance from Valeroso. They placed him immediately under their control by pulling him out of the bed, and bringing him out of the room with his hands tied. To be sure, the cabinet which, according to Valeroso, was locked, could no longer be considered as an "area within his immediate control" because there was no way for him to take any weapon or to destroy any evidence that could be used against him.

The arresting officers would have been justified in searching the person of Valeroso, as well as the tables or drawers in front of him, for any concealed weapon that might be used against the former. But under the circumstances obtaining, there was no comparable justification to search through all the desk drawers and cabinets or the other closed or concealed areas in that room itself.[46]

It is worthy to note that the purpose of the exception (warrantless search as an incident to a lawful arrest) is to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach. The exception, therefore, should not be strained beyond what is needed to serve its purpose.[47] In the case before us, search was made in

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[43] TSN, February 19, 1997, pp. 21-25.

[44] TSN, March 17, 1997, p. 27.

[45] *Id.* at 3.

[46] *People v. Estella*, *supra* note 37, at 685.

[47] *Id.*

the locked cabinet which cannot be said to have been within Valeroso's immediate control. Thus, the search exceeded the bounds of what may be considered as an incident to a lawful arrest.[48]

Nor can the warrantless search in this case be justified under the "plain view doctrine."

The "plain view doctrine" may not be used to launch unbridled searches and indiscriminate seizures or to extend a general exploratory search made solely to find evidence of defendant's guilt. The doctrine is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.[49]

As enunciated in *People v. Cubcubin, Jr.*[50] and *People v. Leangsiri:*[51]

> What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which[,] he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification – whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused – and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.[52]

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[48] *Id.* at 686.

[49] *People v. Cubcubin, Jr.*, *supra* note 40, at 271; *People v. Leangsiri*, *supra* note 35, at 249.

[50] *Supra* note 40.

[51] *Supra* note 35.

[52] *People v. Cubcubin, Jr.*, *supra* note 36, at 272; *People v. Leangsiri*, *supra* note 35, at 249-250.

Indeed, the police officers were inside the boarding house of Valeroso's children, because they were supposed to serve a warrant of arrest issued against Valeroso. In other words, the police officers had a prior justification for the intrusion. Consequently, any evidence that they would inadvertently discover may be used against Valeroso. However, in this case, the police officers did not just accidentally discover the subject firearm and ammunition; they actually searched for evidence against Valeroso.

Clearly, the search made was illegal, a violation of Valeroso's right against unreasonable search and seizure. Consequently, the evidence obtained in violation of said right is inadmissible in evidence against him.

Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary for public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for no enforcement of any statute is of sufficient importance to justify indifference to the basic principles of government. Those who are supposed to enforce the law are not justified in disregarding the rights of an individual in the name of order. Order is too high a price to pay for the loss of liberty.[53]

Because a warrantless search is in derogation of a constitutional right, peace officers who conduct it cannot invoke regularity in the performance of official functions.[54]

The Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power.[55]

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[53] *People v. Aruta*, *supra* note 32, at 895.

[54] *People v. Cubcubin, Jr.*, *supra* note 36, at 270-271.

[55] *People v. Tudtud*, *supra* note 32, at 168.

Without the illegally seized firearm, Valeroso's conviction cannot stand. There is simply no sufficient evidence to convict him.[56] All told, the guilt of Valeroso was not proven beyond reasonable doubt measured by the required moral certainty for conviction. The evidence presented by the prosecution was not enough to overcome the presumption of innocence as constitutionally ordained. Indeed, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit.[57]

With the foregoing disquisition, there is no more need to discuss the other issues raised by Valeroso.

One final note. The Court values liberty and will always insist on the observance of basic constitutional rights as a condition *sine qua non* against the awesome investigative and prosecutory powers of the government.[58]

WHEREFORE, in view of the foregoing, the February 22, 2008 Decision and June 30, 2008 Resolution are *RECONSIDERED* and *SET ASIDE*. Sr. Insp. Jerry Valeroso is hereby *ACQUITTED* of illegal possession of firearm and ammunition.

SO ORDERED.

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

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[56] *People v. Sarap*, 447 Phil. 642, 652 (2003).

[57] *Id.* at 652-653.

[58] *People v. Januario*, 335 Phil. 268, 304 (1997).

THIRD DIVISION

[G.R. No. 166516. September 3, 2009]

EMMA VER REYES and RAMON REYES, *petitioners, vs.* **IRENE MONTEMAYOR and THE REGISTER OF DEEDS OF CAVITE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS.— Rule 45 of the Rules of Court provides that only questions of law shall be raised in a Petition for Review before this Court. This rule, however, admits of certain exceptions, namely, (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED; EXCEPTION IS WHERE THE EVIDENCE SUPPORTS A DIFFERENT CONCLUSION.— While as a general rule appellate courts do not usually disturb the lower court's findings of fact, unless said findings are not supported by or are totally devoid of or inconsistent with the evidence on record, such finding must of necessity be modified to conform with the evidence if the reviewing tribunal were to arrive at the proper and just resolution of the controversy. Thus, although the findings of fact of the Court of Appeals are generally

conclusive on this Court, which is not a trier of facts, if said factual findings do not conform to the evidence on record, this Court will not hesitate to review and reverse the factual findings of the lower courts. In the instant case, the Court finds sufficient basis to deviate from the rule since the extant evidence and prevailing law support a finding different from the conclusion of the Court of Appeals and the RTC.

3. ID.; EVIDENCE; FORGERY; AUTHENTICITY OF HANDWRITING DETERMINED NOT ONLY BY EXPERT WITNESSES BUT ALSO BY THE JUDGES; FINDING OF FORGERY IN CASE AT BAR STANDS UNQUESTIONED.— It is true that a finding of forgery does not depend exclusively on the testimonies of expert witnesses and that judges must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting. However, it is important to note that in this case neither the RTC nor the Court of Appeals made any finding through an independent examination of Virginia's signatures. The RTC gave credence to Questioned Documents Report No. 548-795 of the NBI, but misread it as saying that the two specimen signatures given by Virginia were not written by the same person. Hence, Questioned Documents Report No. 548-795 of the NBI, finding that the signature of Virginia in the Deed of Absolute Sale dated 10 November 1992 is a forgery, stands unquestioned.

4. CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE; WHEN A CERTIFICATE OF TITLE IS CANCELLED, THE OWNER'S DUPLICATE MUST ALSO BE SURRENDERED TO THE REGISTER OF DEEDS FOR CANCELLATION; AMBIGUITY THEREOF ADD NEGATION TO SECOND SALE IN CASE AT BAR.— The circumstances surrounding the alleged second sale of the subject property by the spouses Cuevas to private respondent are sketchy at best. Vice Mayor Carungcong, who allegedly brokered the sale, had already died during the pendency of the case and was not presented as witness. It was not made clear whether he was duly authorized by the spouses Cuevas to broker such sale. Private respondent's witness, Jaime, did not claim to have been present during the negotiations or in any part of the sale transaction, and had not even met the spouses Cuevas. All he was able to testify on was that he verified with the

Register of Deeds that there was no encumbrance annotated on TCT No. T-58459 of the spouses Cuevas, and eventually, he was able to cause the cancellation of TCT No. T-58459 in the spouses Cuevas' names and the issuance of TCT No. T-369793 in private respondent's name based on the questionable Deed of Absolute Sale dated 10 November 1992. Similarly ambiguous was how Jaime was able to have TCT No. T-58459 of the spouses Cuevas cancelled when the Owner's Duplicate Copy thereof was with petitioners. When a certificate of title is cancelled, the owner's duplicate must also be surrendered to the Register of Deeds for cancellation, in accordance with Section 53 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended.

5. ID.; ID.; ID.; FRAUDULENT REGISTRATION OF LAND TITLE; KNOWLEDGE OF DUBIOUS TITLE FROM THE BEGINNING IS CONTRARY TO THE CONCEPT OF GOOD FAITH.— Private respondent's bad faith in registering the subject property in her name and her dishonest scheme in appropriating the land for herself are further evidenced by her own admissions in the Waiver and Quitclaim dated 15 January 1998, which she executed in favor of Engracia's heirs. Private respondent's unabashed confession that she knew of the dubiousness of her title from the very beginning is contrary to the concept of good faith. Good faith consists in the belief of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title.

6. ID.; ID.; ID.; FORGED DEED OF SALE CONVEYS NO TITLE; FRAUDULENT REGISTRATION OF LAND RENDERS THE HOLDER THEREOF A MERE TRUSTEE.— The Deed of Absolute Sale dated 10 November 1992, a forged deed, is a nullity and conveys no title. Paragraph 2 of Section 53 of Presidential Decree No. 1529 reads: In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or of a forged deed or other instrument, shall be null and void. Insofar as a person who fraudulently obtained a property is concerned, the

registration of the property in said person's name would not be sufficient to vest in him or her the title to the property. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility. A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.

7. ID.; ID.; PROPERTY WRONGFULLY REGISTERED IN ANOTHER'S NAME; REMEDY IS ACTION FOR RECONVEYANCE; JUDGMENT DIRECTING A PARTY TO DELIVER POSSESSION OF PROPERTY TO ANOTHER IS *IN PERSONAM*, BINDING TO THEIR SUCCESSOR IN INTEREST BY TITLE SUBSEQUENT TO THE COMMENCEMENT OF THE ACTION.— It has long been established that the sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is to bring an ordinary action in an ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages. "It is one thing to protect an innocent third party; it is entirely a different matter and one devoid of justification if deceit would be rewarded by allowing the perpetrator to enjoy the fruits of his nefarious deed." Reconveyance is all about the transfer of the property, in this case the title thereto, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right. Evidently, petitioners, being the rightful owners of the subject property, are entitled to the reconveyance of the title over the same. x x x An action for reconveyance is an action *in personam* available to a person whose property has been wrongfully registered under the Torrens system in another's name. Reconveyance is always available as long as the property has not passed to an innocent person for value. A judgment directing a party to deliver possession of a property to another is *in personam*; it is **binding** only against the parties and **their successors in interest** by title subsequent to the commencement of the action.

The Court may deem Engracia's heirs as private respondent's successors-in-interest, having acquired title to the subject property through private respondent after the commencement of petitioners' action for reconveyance of the same property.

8. ID.; ID.; ID.; NOMINAL DAMAGES AND ATTORNEY'S FEES, PROPER; EXEMPLARY DAMAGES NOT IMPOSED AS THE SAME IS NOT PRAYED FOR.— Since private respondent's fraudulent registration of the subject property in her name violated petitioners' right to remain in peaceful possession of the subject property, petitioners are entitled to nominal damages under Article 2221 of the Civil Code, which provides: Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. This Court finds that petitioners' prayer for nominal damages in the amount of ₱50,000.00 is proper and reasonable. The award of attorney's fees is also in order because private respondent acted in gross and evident bad faith in refusing to satisfy petitioners' plainly valid, just and demandable claim. Given the time spent on the present case, which lasted for more than 15 years, the extent of services rendered by petitioners' lawyers, the benefits resulting in favor of the client, as well as said lawyer's professional standing, the award of ₱100,000.00 is proper. However, exemplary damages cannot be imposed in this case, where petitioners only prayed for the award of nominal damages and attorney's fees, but not for moral, temperate, liquidated, or compensatory damages. Article 2229 of the Civil Code imposes exemplary damages only under the following circumstances: Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for public good, in addition to the moral, temperate, liquidated or compensatory damages.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.

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 20 May 2004, rendered by the Court of Appeals in CA-G.R. CV No. 54517, which affirmed the Decision[2] dated 7 October 1996, of the Regional Trial Court (RTC), Branch 21, of Imus, Cavite, in Civil Case No. 878-94, dismissing the Complaint for Reconveyance of petitioners, spouses Emma Ver-Reyes (Emma) and Ramon Reyes (Ramon), and declaring private respondent Irene Montemayor as the owner of the subject property.

On 18 February 1994, petitioners filed before the RTC a Complaint for Reconveyance[3] against private respondent and the Register of Deeds of Cavite. The Complaint was docketed as Civil Case No. 878-94. Petitioners alleged in their Complaint that they were the owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-58459[4] situated in Paliparan, Dasmariñas, Cavite (subject property). They bought the subject property from the previous owner, Marciano Cuevas (Marciano), as evidenced by a Deed of Absolute Sale dated 8 October 1976.[5] Thereafter, Marciano surrendered to petitioners the Owner's Duplicate Copy of TCT No. T-58459. Petitioners accordingly paid the taxes on the sale of the subject property. However, they were unable to register the sale and effect the transfer of the certificate of title to the subject property to their names.

Petitioners claimed that they had consistently paid the real estate taxes on the subject property since their acquisition of

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[1] Penned by Associate Justice Eliezer R. de los Santos with Associate Justices Conrado M. Vasquez, Jr. and Rosalinda Asuncion-Vicente, concurring. *Rollo,* pp. 44-48.

[2] Penned by Judge Roy S. del Rosario. *Rollo,* pp. 51-54.

[3] Records, pp. 1-6.

[4] *Id.* at 9.

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

the same in 1976 until 1991. In 1993, when they went to the Office of the Register of Deeds of Cavite to pay their real estate taxes for the years 1992 and 1993, they were informed that the subject property was sold by Marciano to private respondent on 10 November 1992, and TCT No. T-369793 covering it was issued in private respondent's name on 4 January 1993.

Petitioners asserted that private respondent was able to cause the issuance of TCT No. T-369793 in her name by presenting a simulated and fictitious Deed of Absolute Sale dated 10 November 1992. The signatures of the sellers, spouses Virginia (Virginia) and Marciano Cuevas (spouses Cuevas), were forged in the said Deed.[6]

Hence, petitioners prayed for the cancellation of TCT No. T-369793 in private respondent's name; the issuance of a new certificate of title in petitioners' names; the award of nominal damages of ₱50,000.00 and exemplary damages of ₱100,000.00, by reason of the fraud employed by private respondent in having the subject property registered in her name; the award of attorney's fees of not less than ₱50,000; and the costs of suit.[7]

On 18 April 1994, private respondent filed with the RTC her Answer with Counterclaim, wherein she denied petitioners' allegation that the signatures of the spouses Cuevas in the Deed of Absolute Sale dated 10 November 1992 were forged. Private respondent averred that the subject property was offered to her for sale, but she did not disclose who actually made the offer. She discovered that there was no adverse claim or any kind of encumbrance annotated on the certificate of title of the spouses Cuevas covering the subject property. She had purchased the subject property for value and in good faith and had been in possession thereof. Private respondent insisted that she had a better title to the subject property, since she was the first registrant of its sale. Private respondent thus prayed for the award of moral damages in the amount of not less than ₱100,000.00 for the mental anguish, serious anxiety, and

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

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

besmirched reputation she suffered by reason of the unjustified filing by petitioners of the case; the award of exemplary damages in the amount of ₱100,000.00 for petitioners' malicious filing of the case; and the award of attorney's fees, and costs of suit.[8]

After the conduct of pre-trial, petitioners offered the testimonies of Marciano, petitioner Emma, and Carolyn Moldez-Pitoy (Carolyn).

Marciano testified that he and his wife Virginia signed, on 8 October 1976, a Deed of Absolute Sale covering the subject property in petitioner Emma's favor. He denied selling the subject property to any other person, including private respondent. Marciano, when shown the Deed of Absolute Sale dated 10 November 1992, involving the same property, in private respondent's favor, flatly stated that the signatures found therein were not his or his wife's.[9]

Petitioner Emma personally confirmed that Marciano sold the subject property to her in 1976. She had faithfully paid the real property taxes on it from 1976 until 1993, when she learned that it had been registered in private respondent's name. Upon examining the Deed of Absolute Sale dated 10 November 1992, supposedly executed by the spouses Cuevas over the subject property in private respondent's favor, petitioner Emma observed that the spouses Cuevas' signatures found therein appeared to have been forged. She further claimed that after finding that the subject property had been registered in private respondent's name, she suffered from nervousness and the aggravation of her rheumatoid arthritis. She was compelled to engage the services of a lawyer to prosecute her case against private respondent, which could cost her ₱100,000.00 or more. During the cross-examination and re-direct examination, petitioner Emma explained that she had not been able to register the subject property in her name because of her diabetes and rheumatoid arthritis.[10]

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

[9] TSN, 18 August 1994, pp. 6-21.

[10] TSN, 2 February 1995, pp. 6-40.

Carolyn introduced herself as a Senior Document Examiner in the National Bureau of Investigation (NBI), performing, among her other duties, handwriting analysis. She admitted to preparing Questioned Documents Report No. 548-795, dated 18 July 1995.[11]

Questioned Documents Report No. 548-795, prepared by Carolyn, was submitted by petitioners as evidence and was marked as Exhibit "G".[12] They had obtained the report for the purpose of finding out whether (1) the signatures of the spouses Cuevas in the Deed of Absolute Sale dated 10 November 1992, which they purportedly executed in private respondent's favor; and (2) the signature of Escolastico Cuevas (Escolastico), Registrar of Deeds (ROD) of Cavite, in the Owner's Duplicate Copy of TCT No. T-58459, which Mariano surrendered to petitioners in 1972, were forged, by comparing them with the specimen signatures given by the spouses Cuevas and ROD Escolastico. As stated in her Report, Carolyn found that:

1. The questioned and the standard/specimen signatures VIRGINIA M. CUEVAS were not written by one and the same person.
2. The questioned and the standard/specimen signatures of ESCOLASTICO CUEVAS were written by one and the same person.
3. No definite opinion on MARCIANO CUEVAS per above stated findings no. 3.[13]

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[11] TSN, 29 September 1995, pp. 5-39.

[12] Records, pp. 155-158.

[13] *Id.* at 157. Finding No. 3 of the said report reads:

3. No definite opinion can be rendered on the questioned signature MARCIANO CUEVAS, due to lack of sufficient basis necessary for a scientific comparative examination. It is therefore suggested that additional standard/specimen signatures MARCIANO CUEVAS executed during or close to the date when the alleged questioned signature was written, and preferably executed in long hand style, be procured and be submitted to this Bureau for laboratory analysis.

On the other hand, private respondent offered the testimonies of Jaime Laudato (Jaime) and Angelina Cortez (Angelina) in support of her version of events.

Jaime disclosed that it was Vice-Mayor Lauro Carungcong (Carungcong) of Dasmariñas who supposedly brokered the sale of the subject property, and who instructed Jaime to verify with the Register of Deeds the existence of the Original Copy of TCT No. T-58459, and to check for any encumbrances thereon. Three weeks thereafter, Vice-Mayor Carungcong gave Jaime a copy of the Deed of Absolute Sale dated 10 November 1992 executed by the spouses Cuevas over the subject property in private respondent's favor, and directed Jaime to pay the obligatory taxes and to register the subject property in private respondent's name. On cross-examination, Jaime admitted that he had never met nor was he acquainted with either of the spouses Cuevas, the alleged vendors of the subject property.[14]

Angelina, employed as a Deeds Examiner in the Register of Deeds of Cavite, was tasked, as part of her duties, to examine the documents related to the transfer of the subject property in private respondent's name before issuing the corresponding certificate of title. However, she admitted during cross-examination that she was not in a position to determine the authenticity of the documents presented to her.[15]

The RTC rendered a Decision[16] in Civil Case No. 878-94 on 7 October 1996, dismissing petitioners' Complaint. The RTC found that the statements of their witness Marciano and the results of Questioned Documents Report No. 548-795 issued by the NBI were contradictory. The RTC noted that Marciano testified that the signatures found in the Deed of Absolute Sale dated 8 October 1976 and the *Kasunduan sa Bilihan ng Lupa*[17]

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[14] TSN, 15 February 1996, pp. 4-44.

[15] TSN, 3 May 1996, pp. 4-23.

[16] *Rollo*, pp. 51-54.

[17] This document is a contract of sale of another parcel of land located in Parañaque, between petitioners and the Spouses Cuevas, whose signatures appear therein.

dated 15 June 1971 were Virginia's; but the NBI Report stated that "the questioned and the standard/specimen signatures VIRGINIA M. CUEVAS were not written by one and the same person." The RTC also gave little credence to Marciano's denial of the sale of the subject property to private respondent, on the ground that it was self-serving. Although the RTC did observe differences in Marciano's signature in the *Kasunduan ng Bilihan ng Lupa* dated 15 June 1971 and the Deed of Absolute Sale dated 10 November 1992, the trial court dismissed the same as mere changes in a person's penmanship or signature that could occur over the years. The RTC concluded that Civil Case No. 878-94 involved a double sale of the subject property, wherein private respondent, an innocent purchaser for value who first registered the property in her name, should be adjudged to have a better title. The dispositive part of the RTC Decision dated 7 October 1996 reads:

> WHEREFORE, judgment is hereby rendered dismissing this case and declaring that the true and lawful owner of the subject property as described in, and covered by, TCT No. T-369793 is [herein respondent] Irene Montemayor.
>
> All other claims of the parties are dismissed for inadequate substantiation.[18]

On 11 July 1997, petitioners filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 54517, which challenged the afore-mentioned RTC judgment.

During the pendency of CA-G.R. CV No. 54517, petitioners filed with the Court of Appeals an Urgent Manifestation[19] on 20 October 1998. According to them, they obtained information that private respondent's TCT No. T-369793 covering the subject property had already been canceled; that a new certificate of title, TCT No. T-784707, had been issued in the name of another person, Engracia Isip (Engracia); and that a mortgage was constituted on the subject property. It began with private

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[18] *Rollo,* p. 54.

[19] *Id.* at 363-366.

respondent executing a Waiver and Quitclaim on 15 January 1998, wherein she confessed to obtaining TCT No. T-369793 over the subject property in bad faith. In the same document, private respondent recognized Engracia's title to the subject property and, thus, private respondent relinquished her right over it to Engracia and the latter's heirs and successors-in-interest. The Register of Deeds, impleaded as a party in CA-G.R. CV No. 54517, canceled TCT No. T-369793 in private respondent's name; issued TCT No. T-784707 in the names of Engracia's heirs; and annotated on the latest certificate of title private respondent's Waiver and Quitclaim dated 15 January 1998.

On 18 November 1998, Perfecto Dumay-as, Deputy ROD of Trece Martires City, Cavite, filed a Comment/Manifestation stating that Civil Case No. 878-94 was not inscribed on private respondent's TCT No. T-369793, since the case before the RTC had already been resolved in favor of private respondent, thus, the presentation of the owner's original certificate of title along with the Waiver/Quitclaim, dated 15 January 1998, complied with the requirements of a voluntary transaction, justifying the issuance of TCT No. T-784707 in the name of Engracia's heirs.[20]

In its Decision dated 20 May 2004 in CA-G.R. CV No. 54517, the Court of Appeals denied petitioners' appeal and affirmed the RTC Decision dated 7 October 1996 in Civil Case No. 878-94. The appellate court held that petitioners were negligent in failing to register the subject property in their names. And, just like the RTC, the Court of Appeals declared Marciano's denial of the sale of the subject property in private respondent's favor as self-serving. The appellate court also pointed out that the findings of the NBI were not definite as regards the alleged forgery of Marciano's signature in the Deed of Absolute Sale dated 10 November 1992. Lastly, the Court of Appeals took judicial notice of the Comment/Manifestation of Perfecto Dumay-as, Deputy ROD of Trece Martires City, Cavite, stating that Civil Case No. 878-94 was not inscribed on private respondent's TCT No. T-369793, since the case before the RTC had already been

[20] CA *rollo*, p. 166.

resolved in favor of private respondent, and the acquisition by Engracia's heirs of the subject property and TCT No. T-784707 over the same was in good faith and, therefore, valid. The Court of Appeals decreed:

> WHEREFORE, premises considered, the appealed Decision dated October 7, 1996 of the Regional Trial Court of Cavite is hereby **AFFIRMED**.[21]

Petitioners filed a Motion for Reconsideration[22] of the foregoing Decision on 25 June 2004, which the Court of Appeals denied in a Resolution[23] dated 28 December 2004.

Hence, the present Petition, where petitioners made the following assignment of errors:

I

RESPONDENT COURT COMMITTED SERIOUS ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION IN COMPLETE DISREGARD OF LAW AND JURISPRUDENCE BY SUSTAINING THE ORDER OF THE REGIONAL TRIAL COURT (BRANCH 21) OF CAVITE NOTWITHSTANDING THE CLEAR AND AUTHENTIC RECORDS PRESENTED DURING TRIAL WHICH NEGATE AND CONTRADICT ITS FINDINGS.

II

RESPONDENT COURT COMMITED GRAVE AND REVERSIBLE ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION IN VIOLATION OF LAW AND JURISPRUDENCE BY SUSTAINING THE ORDER OF THE REGIONAL TRIAL COURT (BRANCH 21) OF CAVITE THEREBY IGNORING THE EVIDENCE ON RECORD SHOWING THE PETITIONERS' CLEAR RIGHTS OF OWNERSHIP OVER THE SUBJECT PROPERTY.

III

RESPONDENT COURT COMMITTED SERIOUS ERROR IN AFFIRMING THAT THE TRUE AND LAWFUL OWNER OVER (sic)

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[21] *Rollo*, pp. 44-48.

[22] CA *rollo*, pp. 205-213.

[23] *Rollo*, p. 50.

THE SUBJECT PROPERTY AS DESCRIBED IN AND COVERED BY TCT NO. T-369793 IS PRIVATE RESPONDENT IRENE MONTEMAYOR DESPITE DOCUMENTARY AND TESTIMONIAL EVIDENCE TO THE CONTRARY.[24]

The fundamental issue for resolution of this Court in this case is who has better right to the subject property. Before the Court can settle the same, it must first determine the question of whether there was a double sale of the subject property to both petitioners and private respondent, which is essentially a question of fact requiring the Court to review, examine and evaluate, or weigh the probative value of the evidence presented by the parties.

Rule 45 of the Rules of Court provides that only questions of law shall be raised in a Petition for Review before this Court. This rule, however, admits of certain exceptions, namely, (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misappreciation of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[25]

While as a general rule appellate courts do not usually disturb the lower court's findings of fact, unless said findings are not

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[24] *Id.* at 338-339.

[25] *Uy v. Villanueva*, G.R. No. 157851, 29 June 2007, 526 SCRA 73, 83-84; *Malison v. Court of Appeals*, G.R. No. 147776, 10 July 2007, 527 SCRA 109, 117; *Buenaventura v. Republic*, G.R. No. 166865, 2 March 2007, 517 SCRA 271, 282.

supported by or are totally devoid of or inconsistent with the evidence on record, such finding must of necessity be modified to conform with the evidence if the reviewing tribunal were to arrive at the proper and just resolution of the controversy.[26] Thus, although the findings of fact of the Court of Appeals are generally conclusive on this Court, which is not a trier of facts, if said factual findings do not conform to the evidence on record, this Court will not hesitate to review and reverse the factual findings of the lower courts. In the instant case, the Court finds sufficient basis to deviate from the rule since the extant evidence and prevailing law support a finding different from the conclusion of the Court of Appeals and the RTC.[27]

Contrary to the findings of both the Court of Appeals and the RTC, the evidence on record reveals that the spouses Cuevas, the previous owners of the subject property, did not sell the said property to private respondent.

Marciano's explicit statements, made under oath before the trial court, that he did not sell the subject property to anyone other than petitioners, and that the signatures of the vendors appearing in the Deed of Absolute Sale dated 10 November 1992 were not made by him and his wife, were not refuted. Private respondent's witness, Jaime, who was tasked to verify if there was no encumbrance on the spouses Cuevas' title to the subject property and to register it in private respondent's name after the alleged sale, admitted that he had never met the supposed vendors of the subject property and, thus, could not competently testify on whether it was actually the spouses Cuevas who executed the Deed of Absolute Sale dated 10 November 1992 in private respondent's favor.

The pronouncement of the RTC, affirmed by the Court of Appeals, that Marciano's testimony was self-serving was utterly baseless. Neither the RTC nor the Court of Appeals explained how Marciano's confirmation of the sale of the subject property

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[26] *Aznar v. Garcia*, 102 Phil. 1055, 1067 (1958).

[27] See *Gener v. De Leon*, 419 Phil. 920, 933 (2001).

to petitioners, and his renunciation of the supposed sale of the same property to private respondent, would accrue to Marciano's benefit. In giving such a testimony in 1994, Marciano did not stand to gain back the subject property, which he had already admitted to selling to petitioners 18 years prior, in 1976. On the other hand, if Marciano falsely testified in open court that he and his wife did not sell the subject property to private respondent, Marciano was risking prosecution for the crime of perjury and liability for damages.

Additionally, although Questioned Documents Report No. 548-795 of the NBI did not make a definitive finding on whether Marciano's purported signature on the Deed of Sale dated 10 November 1992 was actually his or a forgery, the same Report did unqualifiedly state that the signature that Virginia supposedly affixed to the said Deed and the specimen signatures that she provided the NBI were not written by the same person. Clearly, Questioned Documents Report No. 548-795 of the NBI established that her purported signature in the Deed of Absolute Sale dated 10 November 1992 was forged.

It is true that a finding of forgery does not depend exclusively on the testimonies of expert witnesses and that judges must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting.[28] However, it is important to note that in this case neither the RTC nor the Court of Appeals made any finding through an independent examination of Virginia's signatures. The RTC gave credence to Questioned Documents Report No. 548-795 of the NBI, but misread it as saying that the two specimen signatures given by Virginia were not written by the same person. Hence, Questioned Documents Report No. 548-795 of the NBI, finding that the signature of Virginia in the Deed of Absolute Sale dated 10 November 1992 is a forgery, stands unquestioned.

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[28] *Belgica v. Belgica*, G.R. No.149738, 28 August 2007, 531 SCRA 331, 338.

That at least one of the signatures of the alleged vendors was indubitably established as a forgery should have already raised serious doubts as to the authenticity and validity of the Deed of Absolute Sale dated 10 November 1992. This, taken together with Marciano's candid and categorical testimony that he and his wife did not sell the subject property to private respondent or executed any deed to evidence the same, strongly militates against the existence of a second sale of the subject property to private respondent.

In comparison, the circumstances surrounding the alleged second sale of the subject property by the spouses Cuevas to private respondent are sketchy at best. Vice Mayor Carungcong, who allegedly brokered the sale, had already died during the pendency of the case and was not presented as witness. It was not made clear whether he was duly authorized by the spouses Cuevas to broker such sale. Private respondent's witness, Jaime, did not claim to have been present during the negotiations or in any part of the sale transaction, and had not even met the spouses Cuevas. All he was able to testify on was that he verified with the Register of Deeds that there was no encumbrance annotated on TCT No. T-58459 of the spouses Cuevas, and eventually, he was able to cause the cancellation of TCT No. T-58459 in the spouses Cuevas' names and the issuance of TCT No. T-369793 in private respondent's name based on the questionable Deed of Absolute Sale dated 10 November 1992. Similarly ambiguous was how Jaime was able to have TCT No. T-58459 of the spouses Cuevas cancelled when the Owner's Duplicate Copy thereof was with petitioners. When a certificate of title is cancelled, the owner's duplicate must also be surrendered to the Register of Deeds for cancellation, in accordance with Section 53[29] of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended.

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[29] Section 53. *Presentation of owner's duplicate upon entry of new certificate*. No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

Other than the forged Deed of Absolute Sale dated 10 November 1992, private respondent's bad faith in registering the subject property in her name and her dishonest scheme in appropriating the land for herself are further evidenced by her own admissions in the Waiver and Quitclaim dated 15 January 1998, which she executed in favor of Engracia's heirs, to wit:[30]

1. That, I am the holder of Transfer Certificate of Title No. 369793 covering a parcel of land (Lot No. 6961-N) with an area of Forty One Thousand Eight Hundred and Thirty Seven square meters (41, 837 sq. m.) situated in Barangay Paliparan, Dasmariñas, Cavite and declared for taxation purposes under Tax Declaration No. 151746 Dasmariñas, Cavite;

2. **That, I know (sic) from the very beginning the dubiousness of my title to the above described roperty (sic);**

3. That, I have neither legal or equitable title to the said property as the previous document (Deed of Conveyance) which is the basis of immediate transfer from OCT No. 1002 is of questionable origin;

4. That, all documents relative to the issuance of subsequent transfer certificate of titles including TCT No. 369793 under my name were in reality, entirely simulated and fictitious;

5. That, I am recognizing the genuineness of Transfer Certificate of Title No. 769357-3911 in the name of ENGRACIA ISIP with Tax Declaration No. 151745, which has been transferred to her heirs, APOLONIA I.R. ALCARAZ, ELIZA I. REYES-GLORIA, VICTOR ISIP REYES and EPITACIO ISIP REYES, covered by TCT. No. T-784707;

6. That, in the light of the foregoing, I do hereby waive and renounce, now and forever, all claims of whatever nature to the said property in favor of the said ENGRACIA ISIP, her heirs, executors, administrator or assigns.

Private respondent's unabashed confession that she knew of the dubiousness of her title from the very beginning is contrary to the concept of good faith. Good faith consists in the belief

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[30] CA *rollo,* p.138.

of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title.[31]

Based on the foregoing, the preponderance of evidence in this case is in petitioners' favor. The spouses Cuevas only sold the subject property to them in 1976, and did not sell it a second time to private respondent in 1992. As a consequence, the rules on the double sale of registered property are not relevant herein. The Court then proceeds to rule on the consequence of private respondent's fraudulent registration of the subject property in her name.

The Deed of Absolute Sale dated 10 November 1992, a forged deed, is a nullity and conveys no title.[32] Paragraph 2 of Section 53 of Presidential Decree No. 1529 reads:

> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or of a forged deed or other instrument, shall be null and void.

Insofar as a person who fraudulently obtained a property is concerned, the registration of the property in said person's name would not be sufficient to vest in him or her the title to the property. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility.[33] A Torrens title does not furnish a shield for

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[31] *Domingo v. Reed*, G.R. No.157701, 9 December 2005, 477 SCRA 227, 241.

[32] *Fudot v. Cattleya Land, Inc.*, G.R. No. 171008, 13 September 2007, 533 SCRA 350, 361.

[33] *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 765 (1998).

fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.[34]

It has long been established that the sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is to bring an ordinary action in an ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages. "It is one thing to protect an innocent third party; it is entirely a different matter and one devoid of justification if deceit would be rewarded by allowing the perpetrator to enjoy the fruits of his nefarious deed."[35] Reconveyance is all about the transfer of the property, in this case the title thereto, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right.[36] Evidently, petitioners, being the rightful owners of the subject property, are entitled to the reconveyance of the title over the same.

However, as a further demonstration of private respondent's continuing bad faith and persistent effort to unlawfully deprive petitioners of the subject property, private respondent executed the Waiver and Quitclaim dated 15 January 1998, in which she admitted that her title to the said property was void and, instead, recognized the title of Engracia, who owned the subject property prior to the spouses Cuevas. Pursuant to said Waiver and Quitclaim, the Register of Deeds cancelled TCT No. T-369793 in private respondent's name and issued TCT No. T-784707 in the names of Engracia's heirs.

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[34] *Pagkatipunan v. Intermediate Appellate Court,* G.R. No. 70722, 3 July 1991, 198 SCRA 719, 731.

[35] *Alvarez v. Intermediate Appellate Court,* G.R. No. 68053, 7 May 1990, 185 SCRA 8, 18.

[36] *Amerol v. Bagumbaran,* G.R. No. L-33261, 30 September 1987, 154 SCRA 396, 404.

It must be stressed that Engracia, whose TCT No. T-13105 over the subject property was already cancelled on 26 April 1965, had never filed a case questioning the cancellation of said certificate of title during her lifetime.[37] There is also nothing in the records that would show that after Engracia's death in 1981, her heirs attempted to recover title to the subject property.

The Waiver and Quitclaim dated 15 January 1998 deserves little evidentiary weight as to the truth or veracity of the statements contained therein, considering that they were unilaterally made by private respondent. There is no independent evidence that **all certificates of title** subsequent to OCT No. 1002 covering the subject property were **simulated and fictitious**. In fact, private respondent contradicted herself by acknowledging in the very same document that **Engracia's title**, which was transferred to her heirs, was **genuine**. The only fact that said Waiver and Quitclaim established was private respondent's bad faith in having the subject property registered in her name. For the Court to make such finding of bad faith on private respondent's part, it need not actually be true that all titles to the subject property, prior to private respondent's, were simulated and fictitious, only, private respondent believed them to be so, but still persisted in acquiring and registering in her name what she already knew was a dubious title.

What is apparent to this Court is that private respondent executed the Waiver and Quitclaim dated 15 January 1998 so as to effect the transfer of the subject property to third persons, *i.e.*, Engracia's heirs, and defeat any judgment granting the petitioners the remedy of reconveyance of the subject property.

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[37] CA *rollo*, pp. 151-155. TCT No. T-13105 was issued in the name of Engracia Isip on 23 April 1965 and was cancelled a few days later on 26 April 1965 upon the issuance of TCT No. T-13113 in the name of Rosalinda Puspos. Thereafter, TCT No. T-45574 was issued on 22 July 1970 in the name of Belen Carungcong. This was cancelled on 28 February 1972 when TCT No. T-57845 was issued to Aurelia de la Cruz. Finally, TCT No. T-58459, dated 3 April 1972 was issued in the name of Marciano and Virginia Cuevas.

In connection therewith, this Court expresses its disfavor over the cavalier attitude of the Register of Deeds of Cavite in canceling TCT No. T-369793 in private respondent's name and issuing TCT No. T-784707 in the names of Engracia's heirs, on the sole basis of the Waiver and Quitclaim dated 15 January 1998, executed by private respondent. The Register of Deeds of Cavite, who was a party to petitioners' case for reconveyance, and was undoubtedly aware of the issues involved in the said case and the pendency of the same. Yet it blindly allowed the registration of the alleged title to the subject property of Engracia and her heirs, in effect, reviving a title that had already been cancelled way back in 1965, and disregarding all other titles issued in between, based entirely on the unilateral claims of a self-confessed fraud. Moreover, in placing its faith in the unsupported statements of the private respondent, who had confessed to having acquired and registered the property in bad faith, against the presumed good faith of the former owners, the Register of Deeds acted in a manner that was highly irregular.

This having been said, an action for reconveyance is an action *in personam* available to a person whose property has been wrongfully registered under the Torrens system in another's name. Reconveyance is always available as long as the property has not passed to an innocent person for value.[38]

Engracia's heirs cannot be considered "innocent" persons or persons who acquired the subject property "for value." Engracia's heirs "re-acquired" the subject property by virtue of the private respondent's Waiver and Quitclaim dated 15 January 1998. That the said document was executed by private respondent, who admitted to holding a dubious title to the subject property, should be sufficient to put Engracia's heirs on notice and to cause the latter to investigate the other transfers and titles issued for the subject property. The Waiver and Quitclaim dated 15 January 1998 also does not establish that the subject property was transferred to Engracia's heirs for value, it appearing to

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[38] *Heirs of Eugenio Lopez, Sr. v. Enriquez*, 490 Phil. 74, 90 (2005); *Abejaron v. Nabasa*, 411 Phil. 552, 564 (2001).

have been executed by private respondent in favor of Engracia's heirs without any consideration at all. Hence, the cancellation of TCT No. T-369793 in private respondent's name and the issuance of TCT No. T-784707 in the names of Engracia's heirs cannot bar the reconveyance of the subject property to petitioners.

A judgment directing a party to deliver possession of a property to another is *in personam*; it is **binding** only against the parties **and their successors in interest** by title subsequent to the commencement of the action.[39] The Court may deem Engracia's heirs as private respondent's successors-in-interest, having acquired title to the subject property through private respondent after the commencement of petitioners' action for reconveyance of the same property.

Since private respondent's fraudulent registration of the subject property in her name violated petitioners' right to remain in peaceful possession of the subject property, petitioners are entitled to nominal damages under Article 2221 of the Civil Code, which provides:

> Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

This Court finds that petitioners' prayer for nominal damages in the amount of ₱50,000.00 is proper and reasonable.

The award of attorney's fees is also in order because private respondent acted in gross and evident bad faith in refusing to satisfy petitioners' plainly valid, just and demandable claim.[40] Given the time spent on the present case, which lasted for more than 15 years, the extent of services rendered by petitioners'

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[39] *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 86 (2002).

[40] Civil Code, Art. 2208(5); *MCC Industrial Sales Corporation v. Ssangyong Corporation*, G.R. No. 170633, 17 October 2007, 536 SCRA 408, 470.

lawyers, the benefits resulting in favor of the client, as well as said lawyer's professional standing, the award of ₱100,000.00 is proper.[41]

However, exemplary damages cannot be imposed in this case, where petitioners only prayed for the award of nominal damages and attorney's fees, but not for moral, temperate, liquidated, or compensatory damages. Article 2229 of the Civil Code imposes exemplary damages only under the following circumstances:

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for public good, in addition to the moral, temperate, liquidated or compensatory damages.

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. The assailed Decision dated 20 May 2004 of the Court of Appeals in CA-G.R. CV No. 54517 is *REVERSED* and *SET ASIDE*. The Register of Deeds is *ORDERED* to (1) *CANCEL* TCT No. T-784707 over the subject property in the name of Engracia's heirs, which was derived, not in good faith or for value, but from the fraudulently procured TCT No. T-369793 in private respondent's name; and (2) *ISSUE* a new certificate of title over the subject property in the name of petitioners, the rightful owners thereof. Private respondent is *ORDERED* to *PAY* petitioners nominal damages in the amount of ₱50,000.00 and attorneys fees in the amount of ₱100,000.00. Costs against private respondent.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[41] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, 11 September 2006, 501 SCRA 419, 431-435.

FIRST DIVISION

[G.R. No. 170072. September 3, 2009]

JOAQUIN P. OBIETA, *petitioner, vs.* **EDWARD CHEOK,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DECISION THAT IS FINAL CAN NO LONGER BE MODIFIED.— The petition cannot be granted. It seeks a review of a matter that has been settled with finality by the trial court. Settled is the rule that once a decision acquires finality, it becomes immutable and unalterable. Thus, despite containing erroneous conclusions of fact or law, it can no longer be modified. The appeal of the September 6, 2001 decision of the RTC (holding petitioner solidarily liable with REDECO for the judgment obligation) was never perfected. Furthermore, neither REDECO nor petitioner assailed the orders dismissing the notice of appeal. Thus, the said decision became final and executory.

APPEARANCES OF COUNSEL

Corporate Counsels, Philippines Law Offices for petitioner.
Cruz Durian Alday & Cruz-Matters for respondent.

R E S O L U T I O N

CORONA, *J.*:

The present controversy sprung from an intra-corporate dispute[1] filed by respondent Edward Cheok against Republic Resources

[1] Complaint for issuance of fully-paid certificates of stock resulting from reclassification or conversion.

The complaint was filed in the Securities and Exchange Commission and docketed as SEC-SICD Case No. 06-97-5669. However, in view of the enactment of Republic Act 8799, it was transferred to the Regional Trial Court (RTC) of Manila, Branch 46 and re-docketed as Civil Case No. 01-99668.

and Development Corporation (REDECO)[2] and petitioner Joaquin P. Obieta in his capacity as its corporate secretary seeking the issuance of certificate of stocks at the new par value[3] in lieu of his four REDECO street certificates.[4]

REDECO and petitioner, on the other hand, claimed that respondent did not present any proof that the street certificates had been endorsed or assigned to him. Furthermore, considering the issuance of those certificates was not reflected in the corporation's stock and transfer book, they validly denied respondent's request.

Because REDECO admitted issuing the street certificates to respondent's stockbrokers, the Regional Trial Court (RTC) of Manila, Branch 46 held that those certificates were genuine. Thus, petitioner acted negligently in refusing respondent's request.

In a decision dated September 6, 2001,[5] the RTC held:

> WHEREFORE, judgment is hereby rendered ordering [REDECO and petitioner] to pay [respondent] **jointly and severally** the following amounts:
>
> 1. ₱695,873 plus interest at legal rate from the filing of the complaint on June 6, 1997 until fully paid, said amount being the market value of [respondent's] new 85,000 shares at the prevailing average price of [₱8.17] per share in March 1997 at the Philippine Stock Exchange;

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[2] Renamed Wellex Industries, Inc.

[3] In 1995, REDECO's board of directors authorized a 5:1 reverse stock split.

[4] The following street certificates were issued to respondent's stockbrokers, R.L. Investments, Inc. and David Go Securities Co.:

Certificate No.	Date of Issuance	No. of Shares
JT5520	April 29, 1974	1,000,000
JT11922	January 8, 1975	500,000
JT29256	January 8, 1993	5,000,000
JT14092	January 28, 1993	2,000,000
TOTAL		8,500,000

[5] Penned by Judge Artemio S. Tipon. *Rollo,* pp. 48-52.

2. Attorney's fees equivalent to 25% of the amount due as stated in the paragraph immediately preceeding [and]

3. cost of suit.

SO ORDERED. (emphasis supplied)

Inasmuch as the appeal of REDECO and petitioner was not perfected,[6] the September 6, 2001 decision became final and executory.[7] Thus, on respondent's motion, the RTC issued a writ of execution on January 9, 2002.[8] It ordered petitioner to deliver his Valley Golf and Country Club (VGCC) stock certificate no. 1577 to the branch sheriff so that it may be sold in public auction.[9] Petitioner refused; hence, he was cited for contempt of court.[10]

On July 19, 2004, petitioner assailed the aforementioned orders of the RTC (citing him for contempt) via a petition for *certiorari* and prohibition[11] in the Court of Appeals (CA). He argued that the RTC erred in ordering him to deliver his VGCC stock certificate no. 1577 since a corporate officer should not be held personally liable for a corporate obligation. Furthermore, Section 9(b), Rule 39 of the Rules of Court[12] did not require the judgment

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[6] REDECO and petitioner filed a notice of appeal but it was dismissed by the RTC in an order dated October 2, 2001.

[7] REDECO and petitioner moved for reconsideration of the October 2, 2001 order but it was denied in an order dated November 19, 2001.

[8] *Rollo*, pp. 53-54.

[9] Order dated January 23, 2004. *Id.*, p. 57.

[10] Orders dated March 9, 2004 and May 6, 2004. *Id.*, pp. 59-60 and 61-62, respectively.

[11] Under Rule 65 of the Rules of Court. Docketed as CA-G.R. SP No. 85205. With application for the issuance of a temporary restraining order and/or writ of preliminary injunction.

[12] RULES OF COURT, Rule 39, Sec. 9(b) provides:

Section 9. *Execution of judgments for money, how enforced.*—

x x x x x x x x x

(b) Satisfaction by levy. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment

obligor to surrender levied property to the sheriff. The RTC therefore had no legal basis for ordering him to surrender his stock certificate. Consequently, it committed grave abuse of discretion in citing him for contempt.

In a decision dated February 4, 2005,[13] the CA set aside the September 6, 2001 decision and the assailed orders of the RTC. It found that petitioner did not act in bad faith or with gross negligence in performing his duties as corporate secretary. Thus, there was no reason to disregard the separate juridical personality of REDECO and hold petitioner personally liable for the corporation's judgment obligation. Furthermore, the CA noted that, inasmuch as what was being enforced was a money judgment, the RTC had no legal basis for compelling petitioner to deliver his own VGCC stock certificate to the sheriff. In view thereof, the CA held that the RTC committed grave abuse of discretion in issuing patently erroneous orders. Petitioner therefore justifiably refused compliance and could not be held liable for contempt.

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acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effects as under a writ of attachment.

x x x x x x x x x

[13] Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Elizer de los Santos and Arturo D. Brion (now a member of this Court) of the Third Division of the Court of Appeals. *Rollo,* pp. 100-119.

On reconsideration, however, the CA noted that the September 6, 2001 decision of the RTC had already become final and executory. It explained:

> It can be gleaned from the RTC decision that there was [a] finding of gross negligence on the part of the [petitioner] due to his failure to act on the letter-request of [respondent]. **Such finding of the trial court, albeit may be erroneous, does not *ipso facto* render the judgment void.**
>
> A judgment contrary to the express provision of a statute is of course erroneous, but it is not void; and if it becomes final and executory, it becomes as binding and effective as any valid judgment; and though erroneous, will henceforth be treated as valid, and will be enforced in accordance with its terms and dispositions. (emphasis supplied)

Thus, the CA reversed the February 4, 2005 decision insofar as it held that petitioner was not solidarily liable with REDECO.[14]

Petitioner moved for reconsideration but it was denied.[15] Hence, this recourse[16] with petitioner insisting that a corporate officer cannot be held solidarily liable with the corporation for a corporate obligation.

Unfortunately, the petition cannot be granted. It seeks a review of a matter that has been settled with finality by the trial court. Settled is the rule that once a decision acquires finality, it becomes immutable and unalterable. Thus, despite containing erroneous conclusions of fact or law, it can no longer be modified.[17]

The appeal of the September 6, 2001 decision of the RTC (holding petitioner solidarily liable with REDECO for the judgment obligation) was never perfected. Furthermore, neither REDECO nor petitioner assailed the orders dismissing the notice of appeal. Thus, the said decision became final and executory.

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[14] Resolution dated May 10, 2005. *Id.*, pp. 35-41.

[15] Resolution dated May 10, 2005. *Id.*, pp. 42-43.

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

[17] *Coloso v. Garilao*, G.R. No. 129165, 30 October 2006, 506 SCRA 25, 50 citing *Sacdalan v. Court of Appeals*, G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179213. September 3, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NICOLAS GUTIERREZ *y* LICUANAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF *SHABU*; ELEMENTS.— Under Section 5, Article II of R.A. No. 9165, the elements necessary in a prosecution for the illegal sale of *shabu* are: the identity of the buyer and the seller; the object and the consideration; and the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti* — the body or substance of the crime which establishes the fact that a crime has actually been committed.

2. ID.; ID.; EXISTENCE OF THE NARCOTIC SUBSTANCE MUST BE ESTABLISHED.— In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti.* The "chain of custody" rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

3. ID.; ID.; "CHAIN OF CUSTODY"; DEFINED.— Section 1 (b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows: b. "Chain of Custody" means the **duly recorded authorized movements and custody** of seized drugs or controlled chemicals or plants source of dangerous drugs or laboratory equipment at each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

4. ID.; ID.; ID.; HOW THE CHAIN OF CUSTODY OF THE SEIZED EVIDENCE IS TO BE MAINTAINED.— In *Malillin v. People,* the Court explained how it expects the chain of custody or "movement" of the seized evidence to be maintained: As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not really identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility,

alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule. The Court reiterates that on account of the built-in danger of abuse that a buy-bust operation carries, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of persons under criminal investigation and of the accused facing a criminal charge are safeguarded. In *People v. Tan*, the Court expressed this concern as it recognized that "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, it exhorted courts to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

5. ID.; ID.; PROCEDURAL REQUIREMENTS WITH RESPECT TO CUSTODY AND DISPOSITION OF CONFISCATED DRUGS; VIOLATED IN CASE AT BAR MAKING ADVERSE THE PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTY.— The Court notes another lapse of the members of the buy-bust team – their failure to comply with the procedural requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165 with respect to custody and disposition of confiscated drugs. There was no physical inventory and photograph of the *shabu* allegedly confiscated from appellant. There was likewise no explanation offered for the non-observance of the rule. Coupled with the failure to prove that the integrity and evidentiary value of the items adduced were not tainted, the buy bust team's disregard of the requirements of Section 21 is fatal. It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing on record suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.

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.*:

Assailed in the present appeal is the April 30, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01991 affirming that of Branch 267 of the Regional Trial Court of Pasig City in Criminal Case No. 12514-D finding Nicolas Gutierrez *y* Licuanan *alias* Nick (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with illegal sale of 0.05 gram of *shabu* and illegal possession of paraphernalia "fit or intended for smoking . . . or introducing any dangerous drug into the body" by two separate Informations, both dated June 19, 2003, reading:

First Information

The Prosecution, through the undersigned Public Prosecutor, charges **Nicolas Gutierrez *y* Licuanan** with the crime of violation of Section 5, Art. II of R.A. 9165 (SC-AM 99-1-13), committed as follows:

> On or about June 16, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Michael P. Espares, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing five centigrams (0.05 grams) [*sic*] of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.[1] (Underscoring supplied)

[1] Records, p. 1.

x x x x x x x x x

Second Information

The Prosecution, through the undersigned Public Prosecutor, charges **Nicolas Gutierrez *y* Licuanan** with the crime of violation of Section 12, Art. II of R.A. No. 9165, committed as follows:

> On or about June 16, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control the following paraphernalias fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body, to wit:
>
> a. one (1) unsealed transparent plastic sachet containing traces of white crystalline substance marked as Exh-B;
>
> b. one (1) pair of scissors marked as Exh.-C; and
>
> c. one (1) transparent plastic sachet containing five (5) empty transparent plastic sachets marked as Exh-D.
>
> x x x x x x x x x
>
> specimen marked as Exh-B was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.[2] (Underscoring supplied)

On arraignment, appellant pleaded not guilty.[3] The trial court, after trial, acquitted appellant of the charge subject of the second Information (illegal possession of paraphernalia), hence, this Decision shall dwell only on the review of appellant's conviction of selling *shabu*.

From the testimonies of three members of the team which conducted a buy-bust transaction that spawned the filing of the Informations – PO1 Michael Espares (PO1 Espares),[4] SPO3

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[2] *Id.* at 13.

[3] *Id.* at 23.

[4] TSN of March 15, 2004, *id.* at 92-122.

Leneal Matias (SPO3 Matias),[5] and PO1 Allan Mapula (PO1 Mapula),[6] the following version of the prosecution is gathered:

At around 5:00 p.m. on June 16, 2003, while on duty at the Drug Enforcement Unit of the Pasig City Police Force, SPO3 Matias received information via telephone from a concerned citizen that a certain *alias* "Nick", later identified to be appellant, was peddling *shabu* along San Agustin Street, Barangay Palatiw, Pasig City. On the instructions of SPO3 Matias, PO1 Espares and PO1 Mapula proceeded to, and surveilled, the area and confirmed the information.

SPO3 Matias thus formed a buy-bust team, which he headed, with PO1 Espares as poseur-buyer, and PO1 Mapula and PO1 Michael Familara (PO1 Familara) as members. Five marked twenty-peso bills were given to PO1 Espares as buy-bust money. The team thereafter went to the target area and met with a confidential asset who was to assist them in the operation.

While the other members of the team were strategically positioned, the asset, accompanied by PO1 Espares, approached appellant and asked him "*Pare, meron ka ba diyan? Bibili kami. Bibili ako ng piso.*" Apparently not having heard the entire utterances, appellant replied, "*Magkano ba bibilhin mo?*" (How much are you buying?), to which PO1 Espares replied "*Piso lang, eto pera*" at the same time tendering the buy-bust money which appellant took and placed in his right front pocket.

Appellant then drew from his pants' back pocket a black plastic case, opened it and took one plastic sachet containing a white crystalline substance which he handed to PO1 Espares. PO1 Espares thereupon executed the pre-arranged signal, apprehended appellant, and confiscated the black plastic case which appellant was holding. The case yielded a pair of scissors, an unsealed plastic sachet containing traces of white crystalline substance, and five empty plastic sachets.

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[5] TSN of June 16, 2004, *id.* at 123-132.

[6] TSN of August 4, 2004, *id.* at 133-147.

Heeding the pre-arranged signal, the other members of the team closed in to assist PO1 Espares who then marked all the seized items including the plastic sachet containing the substance subject of the sale. Appellant was brought to the police station wherein the confiscated items were surrendered to an investigator.

Appellant, for his part, presented the following version:[7]

At about 7:30 p.m. on June 16, 2003, while he was at home having dinner with his wife Josephine, daughter Jennifer and her husband, someone kicked open the door of their house. Four armed men in civilian clothes immediately entered, handcuffed and frisked him, and confiscated his wallet. On asking them what his offense was, he was simply told to explain at the police station. Jennifer, too, asked the armed men what the offense of appellant was, but she received no answer.

He was thereafter brought to the Pariancillo police precinct where a police officer showed him a plastic sachet and threatened that a case would be filed against him unless he paid ₱20,000. He failed to pay, however, hence, he was detained and subsequently charged.

Appellant's wife Josephine and daughter Jennifer corroborated appellant's tale on the circumstances surrounding his arrest.[8]

Appellant's neighbor Jose de Guzman, who also took the witness stand, stated that at about 7:45 p.m. on June 16, 2003, he saw appellant come out of his house handcuffed and escorted by four persons who all boarded an owner-type jeep.[9]

By Decision of January 18, 2006,[10] the trial court convicted appellant of illegal sale of *shabu*. As reflected earlier, appellant was exonerated of the charge of illegal possession of paraphernalia. Thus, the trial court disposed:

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[7] TSN of September 12, 2005, *id.* at 164-178.

[8] *Vide* TSN of April 5, 2005, *id.* at 157-163; TSN of February 9, 2005, *id.* at 151-156.

[9] *Vide* TSN of November 7, 2005, *id.* at 179-185.

[10] *Id.* at 188-199.

WHEREFORE, in view of the foregoing considerations, the prosecution having proven the guilt of the accused beyond reasonable doubt, this Court, acting as a Special Drug Court in the above-captioned case, hereby finds NICOLAS GUTIERREZ *y* LICUANAN, GUILTY as charged and is hereby sentenced in Criminal Case No. 12514-D for *Violation of Section 5, Republic Act No. 9165,* to suffer **LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (Php 500,000.00)**

In so far as Criminal Case No. 12515-D for *Violation of Section 12, Republic Act No. 9165*, considering that the prosecution failed to prove the guilt of the accused NICOLAS GUTIERREZ *y* LICUANAN of the said crime, the latter is hereby acquitted thereof. (Italics in the original; emphasis and underscoring supplied)

In convicting appellant of illegal sale of *shabu*, the trial court found that the prosecution sufficiently established the *corpus delicti* consisting of the buy-bust money paid to appellant and the *shabu* purchased from him. It added that appellant's defense of frame-up was not supported by clear and convincing evidence.

On appeal, the Court of Appeals affirmed appellant's conviction by Decision of April 30, 2007,[11] hence, the present appeal.

Appellant argues that he was a victim of an invalid warrantless search and arrest. He maintains that he was merely having dinner with his family when four unidentified armed men barged into their house. He cites an inconsistency in the testimonies of PO1 Espares and SPO3 Matias that he claims destroys their credibility, *viz*: PO1 Espares declared that the pre-arranged signal at the buy-bust operation was that he would light a cigarette, while SPO3 Matias stated that PO1 Espares was to flick the sachet containing *shabu*.[12]

The Solicitor General counters that since appellant was caught *in flagrante* in a buy-bust operation, the police officers were not only authorized but were also obligated to effect a warrantless

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[11] Penned by Associate Justice Portia Aliño-Hormachuelos, with the concurrence of Associate Justices Edgardo F. Sundiam and Monina Arevalo Zenarosa, CA *rollo,* pp. 95-110.

[12] *Vide* Brief for Appellant, *id.* at 36-49.

arrest and seizure, adding that frame-up is a common and standard line of defense which appellant failed to support with clear and convincing evidence.[13]

The appeal is impressed with merit.

Under Section 5, Article II of R.A. No. 9165,[14] the elements necessary in a prosecution for the illegal sale of *shabu* are: the identity of the buyer and the seller; the object and the consideration; and the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti* — the body or substance of the crime which establishes the fact that a crime has actually been committed.[15]

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[16] Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*.[17] The "chain of custody" rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[18]

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[13] *Vide* Brief for Appellee, *id.* at 68-89.

[14] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy, regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. . .

[15] *Vide People v. Del Mundo,* G.R. No. 169141, December 6, 2006, 510 SCRA 554, 562.

[16] *Vide People v. Simbahon,* G.R. No. 132371, April 9, 2003, 401 SCRA 94, 99.

[17] *People v. Kimura,* G.R. No. 130805, April 27, 2004, 428 SCRA 51, 70.

[18] *Malillin v. People,* G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

Section 1 (b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002[19] which implements R.A. No. 9165 defines "chain of custody" as follows:

> b. "Chain of Custody" means the **duly recorded authorized movements and custody** of seized drugs or controlled chemicals or plants source of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. (Emphasis and underscoring supplied)

In *Malillin v. People*,[20] the Court explained how it expects the chain of custody or "movement" of the seized evidence to be maintained:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain

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[19] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the Implementing Rules and Regulations of R.A. No. 9165 in relation to Section 81 (b), Article IX of R.A. No. 9165; adopted and approved on October 18, 2002.

[20] *Supra* note 19 at 632-633.

of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not really identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule. (Underscoring supplied)

The Court finds that the evidence for the prosecution failed to establish the chain of custody of the allegedly seized *shabu*. That the defense stipulated on these matters, *viz*: that the specimen exists, that a request has been made by the arresting officers for examination thereof, that a forensic chemist examined it, and that it tested positive for methylamphetamine hydrochloride has no bearing on the question of chain of custody. These stipulations, which merely affirm the existence of the specimen, and the request for laboratory examination and the results thereof, were entered into during pre-trial only in order to dispense with the testimony of the forensic chemist and abbreviate the proceedings. That such is the intention of the parties is clear from the additional stipulations that the forensic chemist had no personal knowledge as to the source of the alleged specimen; and that the defense was reserving its right to object to the pieces of evidence marked by the prosecution.[21] Clearly, the stipulations do not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left her possession.

To interpret the stipulations as an admission that appellant was the source of the specimen would be to bind him to an unceremonious withdrawal of his plea of not guilty – a reading not supported by the records which creates a dangerous precedent.

The nagging question, therefore, remains whether the object evidence subjected to laboratory examination and presented in court is the same object allegedly seized from appellant.

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[21] *Vide* Pre-Trial Order, records, pp. 39-40.

While alleged poseur-buyer PO1 Espares testified on the marking and eventual turnover of the allegedly seized sachet of substance to the investigator, no explanation was given regarding its custody in the interim – from the time it was turned over to the investigator to its turnover for laboratory examination. Such want of explanation bares a significant gap in the chain of custody of the allegedly seized item. Having merely substantially echoed the testimony of PO1 Espares, SPO3 Matias and PO1 Mapula did not fill in this gap.

And what happened to the allegedly seized *shabu* between the turnover by the chemist to the investigator and its presentation in court, the records do not show.

The Court made it clear in *Malillin* that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it is offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The totality of the prosecution evidence does not meet this standard. It bears no account of the precautions taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof.

The Court reiterates that on account of the built-in danger of abuse that a buy-bust operation carries, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of persons under criminal investigation[22] and of the accused facing

[22] Article III (Bill of Rights), Section 12 (1) of the Constitution reads: Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

a criminal charge[23] are safeguarded. In *People v. Tan*,[24] the Court expressed this concern as it recognized that "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, it exhorted courts to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

At this juncture, the Court notes another lapse of the members of the buy-bust team – their failure to comply with the procedural requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165[25] with respect to custody and disposition of confiscated

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[23] Article III (Bill of Rights), Section 14 (2) of the Constitution reads: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. *Vide* also Rule 115 (Rights of Accused), Rules of Court.

[24] G.R. No. 133001, December 14, 2000, 348 SCRA 116, 126-127.

[25] Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

drugs. There was no physical inventory and photograph of the *shabu* allegedly confiscated from appellant. There was likewise no explanation offered for the non-observance of the rule. Coupled with the failure to prove that the integrity and evidentiary value of the items adduced were not tainted, the buy bust team's disregard of the requirements of Section 21 is fatal.

It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing on record suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[26]

WHEREFORE, the assailed decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Appellant, Nicolas Gutierrez *y* Licuanan, is *ACQUITTED* of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is *ORDERED* to cause the immediate release of appellant unless he is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[26] *People v. Obmiranis,* G.R. No. 181492, December 16, 2008.

THIRD DIVISION

[G.R. No. 179583. September 3, 2009]

JIMMY BARNES *a.k.a.* JAMES L. BARNES, *petitioner, vs.* **TERESITA C. REYES, ELIZABETH PASION, MA. ELSA C. GARCIA, IMELDA C. TRILLO, MA. ELENA C. DINGLASAN, and RICARDO P. CRISOSTOMO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; DISQUALIFICATION OF JUDICIAL OFFICERS; DISQUALIFICATION OF JUDGES; CONSTRUED.— Section 1, Rule 137 of the Rules of Court provides that— Section 1. *Disqualification of judges*.— No judge or judicial officers shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. The first paragraph of the section relates to the mandatory inhibition of judges; the second, to their voluntary inhibition.

2. ID.; ID.; ID.; THAT A JUDGE MAY, BY PERSONAL SOUND DISCRETION AND FOR VALID REASON, DISQUALIFY SELF FROM SITTING IN A CASE; ELUCIDATED.— The discretion referred to in the second paragraph is a matter of conscience and is addressed primarily to the judges' sense of fairness and justice. Indeed, as this Court has held in *Pimentel v. Salanga*, judges may not be legally prohibited from sitting in a litigation. However, when suggestion is made of record that they might be induced to act with bias or prejudice against a litigant arising out of circumstances reasonably capable of

inciting such a state of mind, they should conduct a careful self-examination. Magistrates should exercise their discretion in a way that the people's faith in the courts of justice is not impaired. They should, therefore, exercise great care and caution before making up their minds to act or withdraw from a suit. If, after reflection, they resolve to voluntarily desist from sitting in a case in which their motives or fairness might be seriously impugned, their action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137 of the Rules of Court. Nonetheless, while the rule allows judges, in the exercise of sound discretion, to voluntarily inhibit themselves from hearing a case, it provides that the inhibition must be based on just or valid reasons. In prior cases interpreting this rule, the most recent of which is *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi, etc., et al.*, the Court noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. Stated differently, the bare allegations of the judge's partiality will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough. Let it be further noted that the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression.

3. ID.; ID.; ID.; ALLEGATION OF PARTIALITY; NOT PRESENT BY MERE ADVERSE RULING MADE AGAINST A PARTY, ABSENT ANY EXTRINSIC EVIDENCE OF MALICE OR BAD FAITH.— In this case, the fact that Judge Quijano-Padilla ruled adversely against petitioner in the resolution of the motion to dismiss, which this Court later reversed in G.R. No. 160753, is not enough reason, absent any extrinsic evidence of malice or bad faith, to conclude that the judge was biased and partial against petitioner. As this Court has emphasized in *Webb v.*

People, the remedy of erroneous interlocutory rulings in the course of a trial is not the outright disqualification of a judge, for there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err, for we all err. Finally, the Court notes that if it were to affirm the inhibitory order in this case, then it would be opening the floodgates to a form of forum-shopping, in which litigants would be allowed to shop for a judge more sympathetic to their causes.

APPEARANCES OF COUNSEL

Mariano L. Ordoñez II for petitioner.
R.A.S. Dizon Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the June 28, 2007 Decision[1] and the September 18, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 94016. The relevant antecedent facts and proceedings follow.

In 1999, petitioner filed before the Regional Trial Court (RTC) of Quezon City, Branch 215 a complaint for specific performance with damages docketed as Civil Case No. Q-99-37219. On motion of respondents, the complaint was dismissed. The appellate court later affirmed the dismissal in CA-G.R. SP No. 69573. This Court, however, in its decision in G.R. No. 160753 on September 30, 2004, reversed and set aside the order of dismissal and remanded the case to the trial court with the instruction that the same be heard and tried with deliberate dispatch.[3] On

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr., concurring; *rollo*, pp. 150-158.

[2] *Id.* at 172-173.

[3] *Rollo*, pp. 28-42.

June 28, 2005, the Court denied with finality the motion for the reconsideration of the said decision.[4]

RTC, Branch 215, of Quezon City, thus, proceeded to hear Civil Case No. Q-99-37219. On February 23, 2006, however, petitioner filed his motion for the inhibition[5] of the presiding judge, Ma. Luisa C. Quijano-Padilla, allegedly to preclude doubts or apprehensions of partiality and to give the parties breathing space and peace of mind in the course of the adjudication of the proceedings.

After respondents filed their opposition, the RTC judge issued the March 7, 2006 Order[6] declaring that she was voluntarily inhibiting herself from hearing the case and that she was granting the motion in order to dispel any doubt and perception of bias, and so that the faith and confidence in the justice system would not be eroded.

Disagreeing with the trial judge, respondents, on April 10, 2006, filed before the CA their Petition for *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction.[7] Respondents contended in the main that there was no sufficient ground for the trial judge to inhibit herself from hearing the case.

On June 28, 2007, the CA rendered the assailed Decision[8] granting the petition for *mandamus*, reversing and setting aside the inhibitory order issued by the trial court, and directing the said court to hear and decide the civil case with deliberate dispatch. It ruled, among others, that the allegations of preconceived bias and partiality thrown against the trial judge were more imaginary than real; that the records bore no suspicious circumstances that would create doubt on the impartiality, fairness and objectivity

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[4] *Id.* at 99-111.

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

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

[7] *Id.* at 50-62.

[8] *Supra* note 1.

of the trial judge; that no extrinsic evidence appeared on the records to establish that the trial judge acted with bad faith, malice or corrupt purpose all throughout the proceedings; and that there was no just and valid cause for the disqualification of the trial judge from presiding over the case.

The appellate court, in the further assailed September 18, 2007 Resolution,[9] denied petitioner's motion for reconsideration. Aggrieved, petitioner brought the matter to this Court via the instant Rule 45 petition.

The Court denies the petition.

Section 1, Rule 137 of the Rules of Court provides that—

> Section 1. *Disqualification of judges.*— No judge or judicial officers shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The first paragraph of the section relates to the mandatory inhibition of judges; the second, to their voluntary inhibition.

The discretion referred to in the second paragraph is a matter of conscience and is addressed primarily to the judges' sense of fairness and justice.[10] Indeed, as this Court has held in *Pimentel v. Salanga*,[11] judges may not be legally prohibited from sitting in a litigation. However, when suggestion is made of record

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[9] *Supra* note 2.

[10] *Gochan v. Gochan*, 446 Phil. 433, 447 (2003).

[11] No. L-27934, September 18, 1967, 21 SCRA 160.

that they might be induced to act with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, they should conduct a careful self-examination. Magistrates should exercise their discretion in a way that the people's faith in the courts of justice is not impaired. They should, therefore, exercise great care and caution before making up their minds to act or withdraw from a suit. If, after reflection, they resolve to voluntarily desist from sitting in a case in which their motives or fairness might be seriously impugned, their action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137 of the Rules of Court.[12]

Nonetheless, while the rule allows judges, in the exercise of sound discretion, to voluntarily inhibit themselves from hearing a case, it provides that the inhibition must be based on just or valid reasons. In prior cases interpreting this rule, the most recent of which is *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi, etc., et al.,*[13] the Court noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself.[14] Stated differently, the bare allegations of the judge's partiality will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not

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[12] *Id.* at 167-168.

[13] G.R. No. 171137, June 5, 2009.

[14] *Id. see*, however, *Gutang v. Court of Appeals*, G.R. No. 124760, July 8, 1998, 292 SCRA 76, in which the Court considered as a just and valid reason for voluntary inhibition the distrust and skepticism that may possibly cloud the decision, order or resolution the judge will render.

enough.[15] Let it be further noted that the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression.[16]

In the case at bar, petitioner, aside from his bare allegations, has not shown that Judge Quijano-Padilla had been biased and partial against a particular party in the proceedings in Civil Case No. Q-99-37219. The judge even acknowledged in the inhibitory order that the motion for her disqualification contained no statement of specific act or acts that would show her partiality or bias in the treatment of the case. Her voluntary inhibition was only on account of dispelling any doubt and perception of bias on the part of petitioner. Clearly, therefore, no just and valid reason supports the inhibition of Judge Quijano-Padilla.

The fact that Judge Quijano-Padilla ruled adversely against petitioner in the resolution of the motion to dismiss, which this Court later reversed in G.R. No. 160753, is not enough reason, absent any extrinsic evidence of malice or bad faith, to conclude that the judge was biased and partial against petitioner. As this Court has emphasized in *Webb v. People*,[17] the remedy of erroneous interlocutory rulings in the course of a trial is not the outright disqualification of a judge, for there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err, for we all err.

Finally, the Court notes that if it were to affirm the inhibitory order in this case, then it would be opening the floodgates to a form of forum-shopping, in which litigants would be allowed to shop for a judge more sympathetic to their causes.[18]

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[15] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, G.R. No. 160966, October 11, 2005, 472 SCRA 355, 362.

[16] *Dumo v. Espinas*, G.R. No. 141962, January 25, 2006, 480 SCRA 53, 68.

[17] G.R. No. 127262, July 24, 1997, 276 SCRA 243, 255-256.

[18] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, *supra* note 15, at 362-363.

WHEREFORE, premises considered, the petition is *DENIED*. The June 28, 2007 Decision and the September 18, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 94016 are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179862. September 3, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF ASUNCION AÑONUEVO *VDA. DE* SANTOS, HEIRS OF LOURDES SANTOS, RAMON A. SANTOS, JOSE ANTONIO SANTOS, TERESITA SANTOS-FLORENTINO, BRENDA SANTOS-REYES and CLARISSA SANTOS-REYES, represented by their Attorney-In-Fact, TERESITA SANTOS-FLORENTINO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; P.D. NO. 27, EXECUTIVE ORDER NO. 228 AND THE COMPREHENSIVE AGRARIAN REFORM LAW (CARL) ON RICE AND CORN LANDS.— Presidential Decree No. 27 proclaimed the "emancipation of all tenant-farmers from the bondage of the soil and transferring to them the land they were tilling effective 21 October 1972." Presidential Decree No. 27 covers private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease tenancy. Executive Order No. 228 provides the following formula for the valuation of rice and corn lands

covered by Presidential Decree No. 27: LV = AGP x 2.5 x ₱31.00 Where: LV = Land Value, AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, Series of 1973, ₱31.00 = Government Support Price for corn on October 21, 1972 pursuant to EO 228. On the other hand, the CARL was enacted to promote social justice to the landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of the landowners to just compensation and to the ecological needs of the nation." The CARL shall cover public and private agricultural lands including other lands of the public domain suitable for agriculture, which, as we have explained in *Land Bank of the Philippines v. Court of Appeals*, embrace even rice and corn lands under Presidential Decree No. 27.

2. ID.; CARL; DETERMINATION OF JUST COMPENSATION FOR LANDS ACQUIRED UNDER P.D. NO. 27 BUT NOT PAID TILL AFTER THE EFFECTIVITY OF THE CARL; CASES OF *LBP V. NATIVIDAD* AND *LUBRICA V. LBP,* CITED.— In several cases, we have, for reason of equity, applied the CARL in determining just compensation for lands acquired under Presidential Decree No. 27 and before the effectivity of CARL on 15 June 1988. In *Land Bank of the Philippines v. Natividad,* the parcels of agricultural land were acquired from their owners for purposes of agrarian reform on 21 October 1972, the very day Presidential Decree No. 27 took effect. As late as 1993, however, the landowners were not yet paid the value of their lands. Hence, the landowners filed a petition with the trial court for the determination of just compensation. When the case was appealed before us, we ruled that CARL should be applied in determining the just compensation of landowners, to wit: Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals,* we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation. Under the factual circumstances of this case, the agrarian reform process

is still incomplete as the just compensation to be paid private respondents has yet to be settled. **Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche.* x x x It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.** In this case, the trial court arrived at the just compensation due private respondents for their property, taking into account its nature as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce. This Court is convinced that the trial court correctly determined the amount of just compensation due private respondents in accordance with, and guided by, RA 6657 and existing jurisprudence. In *Lubrica v. Land Bank of the Philippines*, the lands were acquired from their owners on 21 October 1972, pursuant to Presidential Decree No. 27, but they remained unpaid until the year 2003. This prompted the landowners to file separate petitions for determination of just compensation for their lands. Upon appeal to us, we held that the just compensation should be determined under the CARL.

3. ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR.— The case before us involves circumstances closely similar to *Natividad* and *Lubrica*. The DAR acquired the subject property in 1972 under the Operation Land Transfer Program of Presidential Decree No. 27. The subject property was already divided and distributed to the farmer-beneficiaries from 1988-1990, thereby depriving respondents of its use. Withal, the full payment of just compensation due respondents was yet to be made by petitioner. As we found in *Natividad* and *Lubrica*, the CARL is the applicable law in the present case,

with Presidential Decree No. 27 and Executive Order No. 228 having only suppletory effect. Equity precludes us from computing just compensation for the subject property, using the values at the time of its taking in 1972, as prescribed by Presidential Decree No. 27 and Executive Order No. 228, given that the just compensation was left undetermined and unpaid for a considerable length of time since then. The agrarian reform process remains incomplete until payment of just compensation. Taking into account the passage of the CARL before the completion of said process, the just compensation should be determined and the process concluded under the said law. This is in keeping with the dictate that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.

4. ID.; ID.; ID.; CARL ON THE DETERMINATION OF JUST COMPENSATION TO COMPENSATE LANDOWNER.— Section 18 of the CARL mandates that petitioner shall compensate the landowner in such amount as may be agreed upon by the landowner, DAR, and petitioner, or as may be finally determined by the court, as the just compensation for the land. In determining just compensation, Section 17 of the CARL enumerates the factors to be considered in the determination of just compensation, namely, the cost of acquisition of the land; the current value of like properties; its nature, actual use and income; the sworn valuation by the owner; the tax declarations; and the assessment made by government assessors. The social and economic benefits contributed by the farmers and the farm workers and by the government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its value.

APPEARANCES OF COUNSEL

Legal Services Group (LBP) for petitioner.
Euclides G. Forbes for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court[1] seeking to reverse the Decision[2] dated 17 April 2007 and Resolution[3] dated 25 September 2007 of the Court of Appeals in CA-G.R. SP No. 90976, which affirmed *in toto* the Decision[4] dated 28 June 2005 and Order[5] dated 28 July 2005 of the Regional Trial Court, acting as a Special Agrarian Court (SAC), of Lucena City, in Case No. 98-68.

The facts gathered from the records are as follows:

Respondents are the registered owners of 122.3408 hectares of agricultural land located in Casay, Mulanay, Quezon, and covered by Transfer Certificate of Title (TCT) No. T-209393. In 1972, a portion of the said land, measuring 117.3854 hectares, planted with corn (subject property), was placed by the Department of Agrarian Reform (DAR) under its Operation Land Transfer Program, pursuant to Presidential Decree No. 27.[6]

On 15 June 1988, Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988 (CARL), took effect.

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[1] *Rollo,* pp. 25-65.

[2] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring; *rollo*, pp. 66-77.

[3] *Rollo,* pp. 79-80.

[4] *Id.* at 189-193.

[5] *Id.* at 194-195.

[6] Entitled as "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THEM THE INSTRUMENTS AND MECHANISM THEREFOR," and took effect on 21 October 1972; *rollo*, pp. 31-33, 135-153.

Thereafter, from the years 1988 to 1990, DAR subdivided and distributed the subject property to farmer-beneficiaries.[7]

Based on the formula for computation of just compensation embodied in Executive Order No. 228,[8] petitioner Land Bank of the Philippines valued the subject property at ₱241,070.45. On 17 August 1992, DAR offered the said amount as compensation for the subject property, but respondents rejected the same for being "cheap, unjust and atrociously low." Petitioner, then, upon the instruction of DAR, deposited the ₱241,070.45 in the name and for the account of respondents on 16 October 1992.[9]

On 17 March 1998, respondents filed with the SAC a Complaint against petitioner and DAR for the fixing of just compensation for the subject property, docketed as Case No. 98-68. Respondents beseeched the SAC to render judgment fixing the just compensation for the subject property at ₱19,717.50 per hectare,[10] or a total of ₱2,314,546.62 for the entire 117.3854 hectares.

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[7] *Id.* at 75, 192.

[8] Entitled "DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER-BENEFICIARIES COVERED BY PD 27; DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT OF PD 27; AND **PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER-BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER**," and signed into law on 17 July 1987; EO 228, *SEC. 2.* – Henceforth, the **valuation of rice and corn lands covered by PD 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973 and related issuances and regulation of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by** Thirty-Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of *palay* on October 21, 1972, or **Thirty-One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.**

[9] *Rollo*, pp. 31-33, 135-153.

[10] *Id.* at 154-158.

Subsequently, petitioner filed with the SAC its Answer contending that since the subject property was acquired under Presidential Decree No. 27, its valuation of the subject property was correct as it was based on the formula prescribed by Executive Order No. 228. Thus, petitioner sought the dismissal of respondents' Complaint.[11]

After trial, the SAC rendered a Decision in Case No. 98-68 on 28 June 2005, fixing the just compensation for the subject property at ₱1,730,211.21. In arriving at said valuation, the SAC considered the pertinent provisions of the CARL, as well as the testimonial and documentary evidence presented by respondents regarding the market value of the subject property, and the price of corn in the year 1990. Petitioner was ordered to pay the respondents the just compensation of ₱1,730,211.21 in cash and bonds.[12]

The SAC denied the Motion for Reconsideration of petitioner in an Order dated 28 July 2005.[13] Aggrieved, petitioner filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 90976.

In a Decision dated 17 April 2007, the Court of Appeals dismissed the appeal of petitioner and affirmed *in toto* the SAC Decision dated 28 June 2005 and Order dated 28 July 2005 in Case No. 98-68. In a Resolution dated 25 September 2007, the Court of Appeals denied the Motion for Reconsideration of petitioner.

Hence, petitioner lodged the instant Petition before us raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN APPLYING [the CARL] IN THE DETERMINATION OF JUST COMPENSATION OF RESPONDENTS' CORNLAND COVERED AND ACQUIRED UNDER THE OPERATION LAND TRANSFER PURSUANT TO PD [No.] 27 AND EO [No.] 228;

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[11] *Id.* at 161-165.

[12] *Id.* at 189-193.

[13] *Id.* at 194-195.

II.

WHETHER OR NOT [the CARL] CAN BE GIVEN RETROACTIVE APPLICATION TO COVER PD [No.] 27 ACQUIRED RICE/CORN LAND TAKEN AS OF 21 OCTOBER 1972; AND

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN SUSTAINING THE SAC THAT THE GSP FOR CORN SHALL BE ₱225.00/CAVAN FOR THE YEAR 1990 IN LIEU OF THE LEGISLATED GSP OF ₱31.00/CAVAN UNDER PD [No.] 27/EO [No.] 228 ON THE DATE OF TAKING IN 1972.[14]

Petitioner claims that the subject property was acquired pursuant to Presidential Decree No. 27 and Executive Order No. 228. Hence, the just compensation for said property should be computed in accordance with the formula prescribed in the same laws. Petitioner argues that the CARL is not applicable in the present case because it operates distinctly from Presidential Decree No. 27 and Executive Order No. 228. The CARL covers all public and private agricultural lands suitable for agriculture, while Presidential Decree No. 27 and Executive Order No. 228 cover rice and corn lands tenanted as of 21 October 1972. Further, the CARL applies prospectively and not retroactively, and cannot be applied to lands acquired on 21 October 1972, prior to its effectivity.[15]

The instant Petition is bereft of merit.

Presidential Decree No. 27 proclaimed the "emancipation of all tenant-farmers from the bondage of the soil and transferring to them the land they were tilling effective 21 October 1972." Presidential Decree No. 27 covers private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease tenancy. Executive Order No. 228 provides the following formula for the valuation of rice and corn lands covered by Presidential Decree No. 27:

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

[15] *Id.* at 37-61.

LV = AGP x 2.5 x ₱31.00

Where:

LV = Land Value,
AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, Series of 1973,

₱31.00 = Government Support Price for corn on October 21, 1972 pursuant to EO 228.[16]

On the other hand, the CARL was enacted to promote social justice to the landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of the landowners to just compensation and to the ecological needs of the nation."[17] The CARL shall cover public and private agricultural lands including other lands of the public domain suitable for agriculture,[18] which, as we have explained in *Land Bank of the Philippines v. Court of Appeals*,[19] embrace even rice and corn lands under Presidential Decree No. 27:

> We cannot see why Sec. 18 of RA 6657 should not apply to rice and corn lands under PD 27. Section 75 of RA 6657 clearly states that the provisions of PD 27 and EO 228 shall only have a suppletory effect. Section 7 of the Act also provides –
>
> Sec. 7. *Priorities*. – The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all agricultural lands through a period of (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
>
> Phase One: *Rice and Corn lands under P.D. 27*; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform; x x x and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years.

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[16] *Id.* at 75, 92.

[17] Republic Act No. 6657, Section 2.

[18] Section 4.

[19] 378 Phil. 1248, 1260-1261 (1999).

This eloquently demonstrates that RA 6657 includes PD 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Secs. 16, 17 and 18 of the Act should be adhered to. In *Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform* this Court applied the provisions of RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD 27 lands through the different modes stated in Sec. 18.

In several cases, we have, for reason of equity, applied the CARL in determining just compensation for lands acquired under Presidential Decree No. 27 and before the effectivity of CARL on 15 June 1988.

In *Land Bank of the Philippines v. Natividad*,[20] the parcels of agricultural land were acquired from their owners for purposes of agrarian reform on 21 October 1972, the very day Presidential Decree No. 27 took effect. As late as 1993, however, the landowners were not yet paid the value of their lands. Hence, the landowners filed a petition with the trial court for the determination of just compensation. When the case was appealed before us, we ruled that CARL should be applied in determining the just compensation of landowners, to wit:

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.
>
> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. **Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the**

[20] 497 Phil. 738, 746-748 (2005).

process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.

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It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.

In this case, the trial court arrived at the just compensation due private respondents for their property, taking into account its nature as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce. This Court is convinced that the trial court correctly determined the amount of just compensation due private respondents in accordance with, and guided by, R.A. 6657 and existing jurisprudence. (Emphasis ours.)

In *Lubrica v. Land Bank of the Philippines*,[21] the lands were acquired from their owners on 21 October 1972, pursuant to Presidential Decree No. 27, but they remained unpaid until the year 2003. This prompted the landowners to file separate petitions for determination of just compensation for their lands. Upon appeal to us, we held that the just compensation should be determined under the CARL, *viz*:

Petitioners insist that the determination of just compensation should be based on the value of the expropriated properties at the time of payment. Respondent LBP, on the other hand, claims that the value of the realties should be computed as of October 21, 1972 when P.D. No. 27 took effect.

The petition is impressed with merit.

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[21] G.R. No. 170220, 20 November 2006, 507 SCRA 415, 421-425.

The *Natividad* case reiterated the Court's ruling in *Office of the President v. Court of Appeals* that the expropriation of the landholding did not take place on the effectivity of P.D. No. 27 on October 21, 1972 but seizure would take effect on the payment of just compensation judicially determined.

Likewise, in the recent case of *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, we held that expropriation of landholdings covered by R.A. No. 6657 take place, not on the effectivity of the Act on June 15, 1988, but on the payment of just compensation.

In the instant case, petitioners were deprived of their properties in 1972 but have yet to receive the just compensation therefor. The parcels of land were already subdivided and distributed to the farmer-beneficiaries thereby immediately depriving petitioners of their use. Under the circumstances, it would be highly inequitable on the part of the petitioners to compute the just compensation using the values at the time of the taking in 1972, and not at the time of the payment, considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof have not yet been transferred in their names. Petitioners were deprived of their properties without payment of just compensation which, under the law, is a prerequisite before the property can be taken away from its owners. The transfer of possession and ownership of the land to the government are conditioned upon the receipt by the landowner of the corresponding payment or deposit by the DAR of the compensation with an accessible bank. Until then, title remains with the landowner.

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We also note that the expropriation proceedings in the instant case was initiated under P.D. No. 27 but the agrarian reform process is still incomplete considering that the just compensation to be paid to petitioners has yet to be settled. Considering the passage of R.A. No. 6657 before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, R.A. No. 6657 is the applicable law, with P.D. No. 27 and E.O. No. 228 having only suppletory effect.

x x x x x x x x x

Petitioners were deprived of their properties way back in 1972, yet to date, they have not yet received just compensation. **Thus, it would certainly be inequitable to determine just compensation based on the guideline provided by P.D. No. 227 and E.O. No. 228 considering the failure to determine just compensation for a considerable length of time. That just compensation should be determined in accordance with R.A. No. 6657 and not P.D. No. 227 or E.O. No. 228, is important considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.** (Emphases ours.)

The case before us involves circumstances closely similar to *Natividad* and *Lubrica*. The DAR acquired the subject property in 1972 under the Operation Land Transfer Program of Presidential Decree No. 27. The subject property was already divided and distributed to the farmer-beneficiaries from 1988-1990, thereby depriving respondents of its use. Withal, the full payment of just compensation due respondents was yet to be made by petitioner. As we found in *Natividad* and *Lubrica*, the CARL is the applicable law in the present case, with Presidential Decree No. 27 and Executive Order No. 228 having only suppletory effect. Equity precludes us from computing just compensation for the subject property, using the values at the time of its taking in 1972, as prescribed by Presidential Decree No. 27 and Executive Order No. 228, given that the just compensation was left undetermined and unpaid for a considerable length of time since then. The agrarian reform process remains incomplete until payment of just compensation. Taking into account the passage of the CARL before the completion of said process, the just compensation should be determined and the process concluded under the said law. This is in keeping with the dictate that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[22]

Section 18 of the CARL mandates that petitioner shall compensate the landowner in such amount as may be agreed

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[22] *Land Bank of the Philippines v. Natividad, supra* note 20.

upon by the landowner, DAR, and petitioner, or as may be finally determined by the court, as the just compensation for the land. In determining just compensation, Section 17 of the CARL enumerates the factors to be considered in the determination of just compensation, namely, the cost of acquisition of the land; the current value of like properties; its nature, actual use and income; the sworn valuation by the owner; the tax declarations; and the assessment made by government assessors. The social and economic benefits contributed by the farmers and the farm workers and by the government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its value.

In the case at bar, the SAC arrived at the just compensation due respondents for their subject property by taking into account the market value of the subject property, the tax declaration of respondents, the actual use of and income from the subject property, the assessor's valuation, and the volume and value of its produce;[23] and factors specifically mentioned under Section 17 of the CARL. The Court of Appeals affirmed *in toto* the determination of just compensation by the SAC. There being no allegation or evidence that the determination of just compensation for the subject property by the SAC, as affirmed by the appellate court, was not in conformity with or was in violation of the provisions of the CARL, the applicable law, then we have no reason to disturb the same.

WHEREFORE, the instant Petition is hereby *DENIED*. The Decision dated 17 April 2007, and Resolution dated 25 September 2007, of the Court of Appeals in CA-G.R. SP No. 90976, are hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[23] *Rollo,* pp. 189-193.

SECOND DIVISION

[G.R. Nos. 180478-79. September 3, 2009]

THE HERITAGE HOTEL MANILA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, RUFINO C. RAÑON II, and ISMAEL C. VILLA,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC) 2005 REVISED RULES OF PROCEDURE; RULE RESPECTING MOTIONS TO REDUCE APPEAL BONDS; EXCEPTIONS.— Section 6, Rule VI of the 2005 Revised Rules of Procedure of the National Labor Relations Commission states the rule respecting motions to reduce appeal bonds. No motion to reduce bond shall be entertained **except** on meritorious grounds, **and** only upon the posting of a bond in a reasonable amount in relation to the monetary award. The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. This rule, however, admits exceptions. *Sy v. ALC Industries, Inc.* reflects so: **Although the NLRC Rules of Procedure may be liberally construed in the determination of labor disputes, there is, however, a caveat to this policy. Liberal construction of the NLRC rules is allowed only in meritorious cases, where there is substantial compliance with the NLRC Rules of Procedure or where the party involved demonstrates a willingness to abide by the rules by posting a partial bond.** In *Bunagan v. Sentinel Watchman and Protective Agency, Inc.*, we held: Although the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the interpretation of the rules in deciding labor cases, such liberality should not be applied where it would render futile the very purpose for which the principle of liberality is adopted; the liberal interpretation stems from the mandate that a workingman's welfare should be the primordial and paramount consideration. Respondents have not shown any reason to

warrant a liberal interpretation of the NLRC Rules of Procedure. For one, their failure to post an appeal bond during the reglementary period was directly violative of Article 223 of the Labor Code. **In a long line of cases, we have ruled that the payment of the appeal bond is a jurisdictional requisite for the perfection of an appeal to the NLRC. The lawmakers intended to make the posting of a cash or surety bond by the employer the exclusive means by which an employer's appeal may be perfected.** The rationale for this rule is: The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employers'appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employee's just and lawful claims.

APPEARANCES OF COUNSEL

Suarez & Narvasa Law Firm for petitioner.
Edsel E. Ocson for Rufino C. Rañon II.
Quintin C. Mendoza for Ismael C. Villa.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondents Rufino C. Rañon II (Rañon) and Ismael C. Villa (Villa) were hired by the Thai Training and Manpower Services (Thai Training [formerly Jyca Training and Manpower Services]) and were deployed to work as extra-waiters at the food and beverage section of the Casino Gaming Area of Heritage Hotel Manila (petitioner).

On January 8, 1998, respondents filed a complaint[1] for illegal dismissal against petitioner, alleging as follows:

On or before each month ends, the employees of the hotel are regularly informed of their next month shift assignment in appropriate

[1] NLRC records, p. 2.

memoranda posted in the hotel's bulletin boards for their guidance and compliance.

RUFINO RAÑON II (Raffy) who already knew of his shift assignment for December 1997 contracted a boil (*piksa*) on November 28, 1997 and went to see Mr. Tony Co, Food and Beverage Casino Service Manager, to secure permission to go on leave. On this occasion, RAFFY DISCOVERED that his schedule for December which has been previously posted was cancelled. Alarmed greatly, he inquired from Mr. Co, and the latter said, the cancellation was management decision. Undaunted, he still managed to talk with General Manager Richard Teo who conforted [*sic*] him saying "I'LL CALL FOR YOU AFTER WORKING FOR YOUR STAY" and got his telephone number. Nothing more came in connection with his promise to work for his stay. He attempted to several times [to] reach Mr. Richard Teo but could not because of tight security. So he filed this case on January 8, 1998.

ISMAEL C. VILLA (Allan) was likewise dismissed in a similar manner – without previous formal written notice and investigation. He discovered to [his] amazement that his name was no longer included in the December 1997 assignment schedule of the Hotel. Having learned from RAFFY of his unfruitful efforts to be included in the December schedule, he joined Raffy to file the instant complaint in this Office.[2] (Underscoring supplied)

Petitioner, in its Position Paper, denied the existence of an employer-employee relationship with respondents,[3] alleging that their employer is Thai Training.

By Decision[4] of May 27, 1999, the Labor Arbiter, finding that there was an employer-employee relationship between petitioner and respondents, held that respondents were illegally dismissed and accordingly ordered petitioner to reinstate them and pay them backwages, unpaid service charges, and attorney's fees.

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[2] *Id.* at 11-12.

[3] *Id.* at 21-22.

[4] *Id.* at 106-113.

In compliance with the Labor Arbiter's decision, petitioner reinstated respondents. In the meantime, it appealed on June 22, 1999 to the National Labor Relations Commission (NLRC)[5] and filed on June 28, 1999 a Motion for Reduction of Appeal Bond.[6]

By Resolution[7] of September 30, 1999, the NLRC dismissed the appeal for petitioner's failure to post a cash or surety bond. Petitioner's Motion for Reconsideration having been denied,[8] it filed a petition for *certiorari* before the Court of Appeals, docketed as CA-G.R. No. 56218.[9]

Respondent Rañon later manifested before the Labor Arbiter that he was not reinstated to his former position in the Casino Gaming Area food and beverage section, but to the hotel's Riviera Restaurant which to him entailed a diminution of his benefits.[10] He thus moved to be restored to his former position. By Order[11] of September 10, 2001, the Labor Arbiter ordered petitioner to immediately reinstate Rañon to his former position. Petitioner appealed this Order to the NLRC[12] which denied the same[13] as it did petitioner's Motion for Reconsideration,[14] prompting petitioner to file a petition for certiorari before the Court of Appeals.[15] The petition was docketed as CA G.R. No. 73836 which petition was consolidated with CA-G.R. No. 56218.

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[5] *Id.* at 127-134.

[6] *Id.* at 168.

[7] *Id.* at 194-196.

[8] *Id.* at 197-201.

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

[10] NLRC records, pp. 208-215.

[11] *Id.* at 347-349.

[12] *Id.* at 353-379.

[13] *Id.* at 415-418.

[14] *Id.* at 431-432.

[15] CA *rollo*, pp. 2-12.

By Consolidated Decision[16] of March 5, 2007, the Court of Appeals dismissed both petitions, drawing petitioner to file the present petition for review on *certiorari*[17] which faults the appellate court in upholding the NLRC dismissal of the appeal for failure to post a cash or surety bond in CA-G.R. No. 56218, and in affirming the rulings of both the Labor Arbiter and the NLRC directing it to reinstate Rañon to his former position.

Petitioner contends that it timely filed before the NLRC its appeal of the Labor Arbiter's Decision subject of CA-G.R. SP No. 56218, and that it later filed a Motion for Reduction of Bond as it was "suffering from the effects of financial recessions (*sic*)" and was in fact questioning the computation of the monetary award upon which the amount of the bond was based. It thus posits that the NLRC should have just resolved said motion, instead of summarily dismissing its appeal, and it was thus error for the appellate court to have affirmed the dismissal.

Respecting the issue of Rañon's reinstatement to his former position, petitioner faults both the NLRC and the appellate court in holding that he and his co-respondent Villa were entitled to reinstatement and the other benefits claimed. It maintains that no employer-employee relationship existed between it and the two, insisting that they were employees of Thai Training as shown by the documentary evidence it submitted to the labor tribunal.

The petition is bereft of merit.

Section 6, Rule VI of the 2005 Revised Rules of Procedure of the National Labor Relations Commission states the rule respecting motions to reduce appeal bonds.

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

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[16] Penned by Court of Appeals Associate Justice Celia C. Librea-Leagogo, with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Regalado E. Maambong. *Rollo*, pp. 36-53.

[17] *Id.* at 10-34.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. (Emphasis and underscoring supplied)

This rule, however, admits exceptions. *Sy v. ALC Industries, Inc.*[18] reflects so:

Although the NLRC Rules of Procedure may be liberally construed in the determination of labor disputes, there is, however, a caveat to this policy. Liberal construction of the NLRC rules is allowed only in meritorious cases, where there is substantial compliance with the NLRC Rules of Procedure or where the party involved demonstrates a willingness to abide by the rules by posting a partial bond. In *Bunagan v. Sentinel Watchman and Protective Agency, Inc.*, we held:

> Although the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the interpretation of the rules in deciding labor cases, such liberality should not be applied where it would render futile the very purpose for which the principle of liberality is adopted; the liberal interpretation stems from the mandate that a workingman's welfare should be the primordial and paramount consideration.

Respondents have not shown any reason to warrant a liberal interpretation of the NLRC Rules of Procedure. For one, their failure to post an appeal bond during the reglementary period was directly violative of Article 223 of the Labor Code. **In a long line of cases, we have ruled that the payment of the appeal bond is a jurisdictional requisite for the perfection of an appeal to the NLRC. The lawmakers intended to make the posting of a cash or surety bond by the employer the exclusive means by which an employer's appeal may be perfected.** The rationale for this rule is:

> The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employers' appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employee's just and lawful claims. (Emphasis and underscoring supplied; citations omitted)

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[18] G.R. No. 168339, October 10, 2008, 568 SCRA 367, 372.

From the immediately quoted pronouncement of the Court in *Sy*, petitioner's mere filing of the Motion for Reduction of Bond did not suffice to perfect his appeal. As correctly found by the appellate court, petitioner filed a Motion for Reduction of Bond dated June 24, 1999 (which was received by the appellate court on June 28, 1999) alleging financial constraints without showing "substantial compliance with the Rules" or demonstrating a willingness to abide by the [R]ules by posting a partial bond." That petitioner questioned the computation of the monetary award – basis of the computation of the amount of appeal bond did not excuse it from posting a bond in a reasonable amount or what it believed to be the correct amount.

Since no exceptional circumstances obtain in the present case warranting the relaxation of the Rules, the Labor Arbiter's Decision had become final and executory. This leaves it unnecessary to still pass on the issue of whether employer-employee relationship existed between petitioner and respondents.

As to the propriety of the appellate court's ruling respecting Rañon's reinstatement to his former position, the same has become moot and academic, Rañon having in the meantime resigned.[19]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[19] *Vide rollo,* pp. 73-74.

FIRST DIVISION

[A.C. No. 6672. September 4, 2009]

PEDRO L. LINSANGAN, *complainant, vs.* **ATTY. NICOMEDES TOLENTINO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; MANNER BY WHICH LAWYER'S SERVICES ARE TO BE MADE KNOWN; PROHIBITION AGAINST ADVERTISING TALENT OR SKILL.— Canons of the Code of Professional Responsibility (CPR) are rules of conduct all lawyers must adhere to, including the manner by which a lawyer's services are to be made known. Thus, Canon 3 of the CPR provides: CANON 3 – A LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OR STATEMENT OF FACTS. Time and time again, lawyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares. To allow a lawyer to advertise his talent or skill is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called.

2. ID.; ID.; PROHIBITION AGAINST SOLICITING CASES FOR PURPOSE OF GAIN.— Rule 2.03 of the CPR provides: RULE 2.03. A LAWYER SHALL NOT DO OR PERMIT TO BE DONE ANY ACT DESIGNED PRIMARILY TO SOLICIT LEGAL BUSINESS. Hence, lawyers are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers. Such actuation constitutes malpractice, a ground for disbarment. Rule 2.03 should be read in connection with Rule 1.03 of the CPR which provides: RULE 1.03. A LAWYER SHALL NOT, FOR ANY CORRUPT MOTIVE OR INTEREST, ENCOURAGE ANY SUIT OR PROCEEDING OR DELAY ANY MAN'S CAUSE. This rule proscribes "ambulance chasing" (the solicitation of almost any kind of legal business by an attorney,

personally or through an agent in order to gain employment) as a measure to protect the community from barratry and champerty.

3. ID.; ID.; ID.; VIOLATED IN CASE AT BAR.— Complainant presented substantial evidence (consisting of the sworn statements of the very same persons coaxed by Labiano and referred to respondent's office) to prove that respondent indeed solicited legal business as well as profited from referrals' suits. Although respondent initially denied knowing Labiano in his answer, he later admitted it during the mandatory hearing. Through Labiano's actions, respondent's law practice was benefited. Hapless seamen were enticed to transfer representation on the strength of Labiano's word that respondent could produce a more favorable result. Based on the foregoing, respondent clearly solicited employment violating Rule 2.03, and Rule 1.03 and Canon 3 of the CPR and Section 27, Rule 138 of the Rules of Court. x x x As previously mentioned, any act of solicitation constitutes malpractice which calls for the exercise of the Court's disciplinary powers. Violation of anti-solicitation statutes warrants serious sanctions for initiating contact with a prospective client for the purpose of obtaining employment. Thus, in this jurisdiction, we adhere to the rule to protect the public from the Machiavellian machinations of unscrupulous lawyers and to uphold the nobility of the legal profession.

4. ID.; ID.; THAT A LAWYER SHOULD NOT STEAL ANOTHER LAWYER'S CLIENT; VIOLATION MANIFESTED IN CASE AT BAR.— With regard to respondent's violation of Rule 8.02 of the CPR, settled is the rule that a lawyer should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services. Again the Court notes that respondent never denied having these seafarers in his client list nor receiving benefits from Labiano's "referrals." Furthermore, he never denied Labiano's connection to his office. Respondent committed an unethical, predatory overstep into another's legal practice. He cannot escape liability under Rule 8.02 of the CPR.

5. ID.; ID.; THAT A LAWYER SHALL NOT LEND MONEY TO HIS CLIENT.— By engaging in a money-lending venture with

his clients as borrowers, respondent violated Rule 16.04: Rule 16.04 – A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client. The rule is that a lawyer shall not lend money to his client. The only exception is, when in the interest of justice, he has to advance necessary expenses (such as filing fees, stenographer's fees for transcript of stenographic notes, cash bond or premium for surety bond, *etc*.) for a matter that he is handling for the client. The rule is intended to safeguard the lawyer's independence of mind so that the free exercise of his judgment may not be adversely affected. It seeks to ensure his undivided attention to the case he is handling as well as his entire devotion and fidelity to the client's cause. If the lawyer lends money to the client in connection with the client's case, the lawyer in effect acquires an interest in the subject matter of the case or an additional stake in its outcome. Either of these circumstances may lead the lawyer to consider his own recovery rather than that of his client, or to accept a settlement which may take care of his interest in the verdict to the prejudice of the client in violation of his duty of undivided fidelity to the client's cause.

6. ID.; ID.; LAWYER'S BEST ADVERTISEMENT; PROPER PROFESSIONAL CALLING CARDS.— A final word regarding the calling card presented in evidence by petitioner. A lawyer's best advertisement is a well-merited reputation for professional capacity and fidelity to trust based on his character and conduct. For this reason, lawyers are only allowed to announce their services by publication in reputable law lists or use of simple professional cards. Professional calling cards may only contain the following details: (a) lawyer's name; (b) name of the law firm with which he is connected; (c) address; (d) telephone number and (e) special branch of law practiced. Labiano's calling card contained the phrase "**with financial assistance.**" The phrase was clearly used to entice clients (who already had representation) to change counsels with a promise of loans to finance their legal actions. Money was dangled to lure clients away from their original lawyers, thereby taking advantage of their financial distress and emotional vulnerability.

This crass commercialism degraded the integrity of the bar and deserved no place in the legal profession.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for complainant.

R E S O L U T I O N

CORONA, *J.*:

This is a complaint for disbarment[1] filed by Pedro Linsangan of the Linsangan Linsangan & Linsangan Law Office against Atty. Nicomedes Tolentino for solicitation of clients and encroachment of professional services.

Complainant alleged that respondent, with the help of paralegal Fe Marie Labiano, convinced his clients[2] to transfer legal representation. Respondent promised them financial assistance[3] and expeditious collection on their claims.[4] To induce them to hire his services, he persistently called them and sent them text messages.

To support his allegations, complainant presented the sworn affidavit[5] of James Gregorio attesting that Labiano tried to prevail upon him to sever his lawyer-client relations with complainant and utilize respondent's services instead, in exchange for a loan of ₱50,000. Complainant also attached "respondent's" calling card:[6]

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[1] Complaint dated February 1, 2005. *Rollo*, pp. 1-7.

[2] Overseas seafarers Cenen Magno, Henry Dy, James R. Gregorio and Noel Geronimo. *Id.*, pp. 2-3, 9-14.

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

[4] Involved benefits and disability collection cases. *Id.*, pp. 2-3.

[5] Complaint, Annex "D". *Id.*, pp. 12-14.

[6] Complaint, Annex "A". *Id.*, p. 8.

Front

NICOMEDES TOLENTINO
LAW OFFFICE (sic)
CONSULTANCY & MARITIME SERVICES
W/ FINANCIAL ASSISTANCE

Fe Marie L. Labiano
Paralegal

1st MIJI Mansion, 2nd Flr. Rm. M-01 Tel: 362-7820
6th Ave., cor M.H. Del Pilar Fax: (632) 362-7821
Grace Park, Caloocan City Cel.: (0926) 2701719

Back

SERVICES OFFERED:
CONSULTATION AND ASSISTANCE
TO OVERSEAS SEAMEN
REPATRIATED DUE TO ACCIDENT,
INJURY, ILLNESS, SICKNESS, DEATH
AND INSURANCE BENEFIT CLAIMS
ABROAD.
(emphasis supplied)

Hence, this complaint.

Respondent, in his defense, denied knowing Labiano and authorizing the printing and circulation of the said calling card.[7]

The complaint was referred to the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[8]

Based on testimonial and documentary evidence, the CBD, in its report and recommendation,[9] found that respondent had encroached on the professional practice of complainant, violating

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[7] Answer dated April 26, 2005. *Id.*, pp. 20-23.

[8] Resolution dated August 15, 2005. *Id.*, p. 24.

[9] Report and recommendation penned by Commissioner Lolita Quisumbing dated March 2, 2006. *Id.*, pp. 106-111.

Rule 8.02[10] and other canons[11] of the Code of Professional Responsibility (CPR). Moreover, he contravened the rule against soliciting cases for gain, personally or through paid agents or brokers as stated in Section 27, Rule 138[12] of the Rules of Court. Hence, the CBD recommended that respondent be reprimanded with a stern warning that any repetition would merit a heavier penalty.

We adopt the findings of the IBP on the unethical conduct of respondent but we modify the recommended penalty.

The complaint before us is rooted on the alleged intrusion by respondent into complainant's professional practice in violation of Rule 8.02 of the CPR. And the means employed by respondent in furtherance of the said misconduct themselves constituted distinct violations of ethical rules.

Canons of the CPR are rules of conduct all lawyers must adhere to, including the manner by which a lawyer's services are to be made known. Thus, Canon 3 of the CPR provides:

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[10] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 8.02 provides:

A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

[11] Rule 1.01; Canon 2; Rule 2.03; Canon 3; Rule 3.01; Canon 7; Rule 7.03; Canon 8; Rule 8.01; Canon 9; and Rule 9.01 of the Code of Professional Responsibility. *Rollo*, p. 110.

[12] RULES OF COURT, Rule 138, Section 27 provides:

Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. **The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.** (emphasis supplied)

CANON 3 – A LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OR STATEMENT OF FACTS.

Time and time again, lawyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares.[13] To allow a lawyer to advertise his talent or skill is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called.[14]

Rule 2.03 of the CPR provides:

RULE 2.03. A LAWYER SHALL NOT DO OR PERMIT TO BE DONE ANY ACT DESIGNED PRIMARILY TO SOLICIT LEGAL BUSINESS.

Hence, lawyers are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers.[15] Such actuation constitutes malpractice, a ground for disbarment.[16]

Rule 2.03 should be read in connection with Rule 1.03 of the CPR which provides:

RULE 1.03. A LAWYER SHALL NOT, FOR ANY CORRUPT MOTIVE OR INTEREST, ENCOURAGE ANY SUIT OR PROCEEDING OR DELAY ANY MAN'S CAUSE.

This rule proscribes "ambulance chasing" (the solicitation of almost any kind of legal business by an attorney, personally or through an agent in order to gain employment)[17] as a measure to protect the community from barratry and champerty.[18]

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[13] *In Re: Tagorda*, 53 Phil. 37 (1933).

[14] Agpalo, *LEGAL AND JUDICIAL ETHICS*, 7TH Edition (2002), p. 109.

[15] Rule 138, Section 27 of the Rules of Court. See *supra* note 12.

[16] *Supra* note 13.

[17] Agpalo, *Supra* note 14, p. 72.

[18] *McCloskey v. Tobin*, 252 US 107, 64 L Ed 481, 40 S Ct 306 (1920).

Complainant presented substantial evidence[19] (consisting of the sworn statements of the very same persons coaxed by Labiano and referred to respondent's office) to prove that respondent indeed solicited legal business as well as profited from referrals' suits.

Although respondent initially denied knowing Labiano in his answer, he later admitted it during the mandatory hearing.

Through Labiano's actions, respondent's law practice was benefited. Hapless seamen were enticed to transfer representation on the strength of Labiano's word that respondent could produce a more favorable result.

Based on the foregoing, respondent clearly solicited employment violating Rule 2.03, and Rule 1.03 and Canon 3 of the CPR and Section 27, Rule 138 of the Rules of Court.

With regard to respondent's violation of Rule 8.02 of the CPR, settled is the rule that a lawyer should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services.[20] Again the Court notes that respondent never denied having these seafarers in his client list nor receiving benefits from Labiano's "referrals." Furthermore, he never denied Labiano's connection to his office.[21] Respondent committed an unethical, predatory overstep into another's legal practice. He cannot escape liability under Rule 8.02 of the CPR.

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[19] Or evidence which a reasonable mind might accept as adequate to support a conclusion even if other equally reasonable minds might opine otherwise (*Portuguez v. GSIS Family Savings Bank*, G.R. No. 169570, 2 March 2007, 517 SCRA 309; *Bautista v. Sula*, A.M. No. P-04-1920, 17 August 2007, 530 SCRA 406; *ePacific Global Contact Center, Inc. v. Cabansay*, G.R. No. 167345, 23 November 2007, 538 SCRA 498). Moreover, in *In re: Improper Solicitation of Court Employees – Rolando H. Hernandez, Executive Assistant 1, Office of the Court Administrator*, A.M. No. 2008-12-SC, 24 April 2009, the Court adopted the OCA's evaluation which relied on the sworn statements to support its conclusion that illegal acts were committed by respondents in this case.

[20] *Supra* note 14, p. 101.

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

Moreover, by engaging in a money-lending venture with his clients as borrowers, respondent violated Rule 16.04:

> Rule 16.04 – A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

The rule is that a lawyer shall not lend money to his client. The only exception is, when in the interest of justice, he has to advance necessary expenses (such as filing fees, stenographer's fees for transcript of stenographic notes, cash bond or premium for surety bond, *etc.*) for a matter that he is handling for the client.

The rule is intended to safeguard the lawyer's independence of mind so that the free exercise of his judgment may not be adversely affected.[22] It seeks to ensure his undivided attention to the case he is handling as well as his entire devotion and fidelity to the client's cause. If the lawyer lends money to the client in connection with the client's case, the lawyer in effect acquires an interest in the subject matter of the case or an additional stake in its outcome.[23] Either of these circumstances may lead the lawyer to consider his own recovery rather than that of his client, or to accept a settlement which may take care of his interest in the verdict to the prejudice of the client in violation of his duty of undivided fidelity to the client's cause.[24]

As previously mentioned, any act of solicitation constitutes malpractice[25] which calls for the exercise of the Court's disciplinary powers. Violation of anti-solicitation statutes warrants serious sanctions for initiating contact with a prospective client for the purpose of obtaining employment.[26] Thus, in this

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[22] Agpalo, *supra* note 14, p. 240 *citing* comments of the IBP Committee that drafted the CPR, p. 90.

[23] *Id.*

[24] *Id.*

[25] *Supra* notes 10 and 12.

[26] *State Bar v. Kilpatrick*, 874 SW2d 656 (1994, Tex). In this case, the

jurisdiction, we adhere to the rule to protect the public from the Machiavellian machinations of unscrupulous lawyers and to uphold the nobility of the legal profession.

Considering the myriad infractions of respondent (including violation of the prohibition on lending money to clients), the sanction recommended by the IBP, a mere reprimand, is a wimpy slap on the wrist. The proposed penalty is grossly incommensurate to its findings.

A final word regarding the calling card presented in evidence by petitioner. A lawyer's best advertisement is a well-merited reputation for professional capacity and fidelity to trust based on his character and conduct.[27] For this reason, lawyers are only allowed to announce their services by publication in reputable law lists or use of simple professional cards.

Professional calling cards may only contain the following details:

a) lawyer's name;
b) name of the law firm with which he is connected;
c) address;
d) telephone number and
e) special branch of law practiced.[28]

Labiano's calling card contained the phrase "**with financial assistance**." The phrase was clearly used to entice clients (who already had representation) to change counsels with a promise of loans to finance their legal actions. Money was dangled to lure clients away from their original lawyers, thereby taking advantage of their financial distress and emotional vulnerability. This crass commercialism degraded the integrity of the bar and deserved no place in the legal profession. However, in the absence of substantial evidence to prove his culpability, the Court is not prepared to rule that respondent was personally and directly responsible for the printing and distribution of Labiano's calling cards.

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lawyer was disbarred.

[27] *Ulep v. Legal Clinic, Inc.*, B.M. No. 553, 17 June 1993, 223 SCRA 378.

[28] *Id.*, p. 408.

WHEREFORE, respondent Atty. Nicomedes Tolentino for violating Rules 1.03, 2.03, 8.02 and 16.04 and Canon 3 of the Code of Professional Responsibility and Section 27, Rule 138 of the Rules of Court is hereby *SUSPENDED from the practice of law for a period of one year* effective immediately from receipt of this resolution. He is *STERNLY WARNED* that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be made part of his records in the Office of the Bar Confidant, Supreme Court of the Philippines, and be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator to be circulated to all courts.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 7547. September 4, 2009]

GREGORY U. CHAN, *complainant, vs.* **NLRC COMMISSIONER ROMEO L. GO and ATTY. JOSE RAULITO E. PARAS,** *respondents.*

SYLLABUS

LEGAL ETHICS; LAWYERS; DISBARMENT PROCEEDINGS; CASE MUST BE ESTABLISHED WITH CLEAR, CONVINCING EVIDENCE; NOT PRESENT IN CASE AT BAR.— The duty of the Court towards members of the bar is not only limited to the administration of discipline to those found culpable of misconduct but also to the protection of the reputation of those frivolously or maliciously charged. In

disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the complainant establishes his case by clear, convincing and satisfactory evidence. After a careful study of the instant case, we find no sufficient evidence to support complainant's claim. Except for complainant's bare allegations, there is no proof that respondents engaged in influence peddling, extortion, or in any unlawful, dishonest, immoral, or deceitful conduct. It is axiomatic that he who alleges the same has the onus of validating it.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for complainant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

In a verified Complaint[1] dated June 5, 2007, complainant Gregory U. Chan prayed for the disbarment or imposition of proper disciplinary sanctions upon respondents Commissioner Romeo Go of the National Labor Relations Commission (NLRC) and Atty. Jose Raulito E. Paras for perpetrating acts unbecoming and degrading to the legal profession, in violation of the Code of Professional Responsibility,[2] Canons of Professional Ethics,[3] and the Rules of Court.[4]

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[1] *Rollo*, pp. 1-27.

[2] CODE OF PROFESSIONAL RESPONSIBILITY:

Canon 1 – a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law of and legal processes.

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

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 6.02 – A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

Complainant alleged that respondents are influence peddlers who pride themselves in being able to direct the outcome of cases pending before the NLRC; that respondents belittled and denigrated the nobility of the legal profession by indicating that decisions of the NLRC are merely drafted by humble secretaries

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Canon 7 – a lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

Canon 13 – a lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court.

[3] CANONS OF PROFESSIONAL ETHICS, Canon 32 – The lawyer's duty in its last analysis:

No client corporate or individual, however, powerful nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the laws whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advice his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

[4] RULES OF COURT, Rule 138, Sec. 27:

Attorneys removed or suspended by Supreme Court on what grounds. – A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

or clerks who write in accordance to their mandate; and that respondents attempted to extort money from him.

The present controversy stemmed from an illegal dismissal case[5] filed by Susan Que Tiu against complainant and his companies. On July 18, 2003, the labor arbiter[6] ruled in favor of Tiu and ordered her employers to pay backwages, separation pay, unpaid commissions, and 10% attorney's fees.[7] Pending resolution of their appeal before the NLRC, complainant alleged that respondents Go and Paras attempted to extort money from him in behalf of Tiu. He narrated that respondent Go arranged for meetings at expensive restaurants to *wit*:

- First Meeting on September 16, 2003
  at Yuraken Japanese Restaurant, Diamond Hotel, Manila

  Complainant alleged that it was during this dinner when respondents were first introduced to him, his wife Jenny, his brother Glenn, and the latter's mother-in-law Mrs. Ban Ha; that respondent Go claimed that he is a very powerful "high ranking" commissioner at the NLRC; that respondents were personally overseeing the developments of the labor case although it was pending before another division; that it was merely respondent Go's secretary or clerk who would be drafting the decision of the said case; and that respondents told him to simply give in to Tiu's demands.[8]

- Second Meeting on September 26, 2003
  at Akiga Japanese Restaurant, Mandaluyong

  Complainant alleged that respondents brought with them a certain Mr. Alfredo Lim, a former schoolmate of respondent Go and a godfather of Tiu; that Lim demanded the settlement of Tiu's claims; that he illustrated he is not a bad employer Tiu painted him to be as the latter even invited him to her

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[5] *Susan Que Tiu v. MCC Industrial Sales, Corp., Sanyo Seiki Industrial Sales, Corp., and/or Gregory Chan*, NLRC-NCR Case No. 30-04-01895-01.

[6] Teresita D. Castillon-Lora.

[7] *Rollo*, pp. 279-294.

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

wedding; that respondent Go offered him the services of respondent Paras as legal counsel; and that respondents asked him to give them pertinent documents relating to the labor case in their next meeting.[9]

- Third Meeting on October 20, 2003
at Korean Village Restaurant, Manila

  Complainant alleged that his group brought their company accountant Ms. Leah Pascual, while respondents brought Atty. Jessie Andres who was introduced to be connected with then Senator Noli De Castro; that he showed the group the company documents proving payment to Tiu of her sales commission; that respondents did not bother expressing interest in examining the documents; that respondent Go left the dinner early for another business commitment; and that the remaining people instead discussed his possible support for Sen. De Castro's campaign.[10]

- Fourth Meeting on December 2, 2003
at Akiga Japanese Restaurant, Mandaluyong

  Complainant alleged that he did not personally attend the meeting to avoid a confrontation with Tiu; that Jenny, Glenn, and Pascual met with respondents, Lim, Tiu, and her husband; that respondent Go dismissed the documents presented by Jenny and claimed that it was his tactic for Tiu to submit a sur-rejoinder with photo-attachments[11] showing MCC Industrial Sales, Corp. and Sanyo Seiki Industrial Sales, Corp. conducting business in one office; that respondent Go goaded Jenny to give in to Tiu's demands as the latter was suffering from cancer; that Jenny refused the demands, prompting her to lose her appetite and walk out to regain her composure; and that respondent and his companions simply enjoyed their free sumptuous meals.[12]

- Fifth Meeting on February 24, 2004
at California Pizza Kitchen, Shangri-La Plaza Mall, Mandaluyong

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[9] *Id.* at 8-11.

[10] *Id.* at 11-13.

[11] *Id.* at 40-42.

[12] *Id.* at 13-15.

Complainant alleged that his wife Jenny again met with respondent Go, Mr. Lim, Ms. Que Tiu and her husband; that Tiu lowered the settlement amount to ₱450,000.00; that Jenny insisted that Tiu's claim should not exceed ₱198,000.00; and that respondent Go prevented Jenny from walking out of their meeting with assurances that he will further convince Tiu.[13]

- Sixth Meeting on March 3, 2004
  at Palm Court Café, Diamond Hotel, Manila

  Complainant alleged that he, together with his wife Jenny, and brother Glenn met with respondents Paras and Go and his wife; and that respondent Go assured them that it's going to be their last meeting and Tiu will just settle for ₱300,000.00.[14]

- Seventh Meeting on October 4, 2004
  at Una Mas, Greenhills

  Complainant alleged that respondent Paras asked for another dinner appointment to which he sent his brother Glenn to attend; that respondent Paras disclosed during the meeting that the matter was no longer in their hands as they decided not to push through with the deal with Tiu; that Glenn was shocked at respondent's fraudulent duplicity that he left the restaurant in a huff after paying the bill.[15]

As proof of these meetings, complainant attached receipts[16] for the meals ordered at the above-mentioned establishments and affidavits of Jenny Chan,[17] Leah Pascual,[18] and Glenn Chan,[19] recounting the matters that transpired therein.

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[13] *Id.* at 16.

[14] *Id.* at 17-18.

[15] *Id.* at 18.

[16] *Id.* at 30-27.

[17] *Id.* at 43-45.

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

[19] *Id.* at 46-47.

On September 10, 2004, the NLRC affirmed the Labor Arbiter's Decision, but removed the award of separation pay and ordered complainant to reinstate Tiu to her former position without loss of seniority rights and privileges.[20] On July 12, 2005, the NLRC denied the parties' Motions for Reconsideration and sustained its earlier Resolution.[21]

On June 5, 2007, or simultaneously with the filing of the present administrative complaint, complainant filed a case for Grave Misconduct[22] against respondents Go and Paras with the Office of the Ombudsman, alleging the same set of facts in the administrative case.

Previously, complainant also filed an Estafa case[23] against Susan Que Tiu, Ramon Givertz, and Zed Metal and Construction Corporation. However, it was dismissed by the Office of the City Prosecutor of Manila in a Resolution[24] dated May 22, 2006, for insufficiency of evidence.

Thereafter, in April 2007, respondent Paras filed a complaint against complainant Chan for Grave Oral Slander, Serious Slander by Deed, Grave Threats, and Alarms and Scandals[25] with the Office of the City Prosecutor of Mandaluyong. He alleged that without provocation, complainant suddenly pushed his left shoulder and hurled insults and invectives when his group bumped onto him on March 31, 2007 at Fish and Co. restaurant in Shangri-La Mall at Mandaluyong City.

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[20] *Id.* at 531-543; NLRC Resolution, penned by Commissioner Tito F. Genilo, concurred in by Commissioners Lourdes C. Javier and Ernesto C. Verceles.

[21] *Id.* at 549.

[22] OMB-C-A-07-0301-F.

[23] I.S. No. 06B-02382.

[24] *Rollo*, pp. 339-342, penned by Assistant City Prosecutor Mea D. Llavore, approved by Second Assistant City Prosecutor Antonio M. Israel and City Prosecutor Jhosep Y. Lopez.

[25] I.S. No. 07-71604-D.

On July 9, 2007, complainant filed a Manifestation[26] stating that he received death threats[27] about two weeks after filing the present complaint.

On July 23, 2007, the Court of Appeals affirmed the Resolutions of the NLRC, with modification that the total monetary award should be ₱737,757.41.[28] Complainant and his companies thus filed a Petition for Review on *Certiorari* with this Court which is still pending resolution.[29]

In his Comment,[30] respondent Paras alleged that the present complaint, like the Ombudsman case for Grave Misconduct, was filed by complainant to gain leverage against him for the criminal case (I.S. No. 07-71604-D) he filed against the latter. Paras denied conspiring with Go in the commission of the acts complained of. He likewise denied knowing Tiu or the labor case. As for the enumerated meetings, respondent Paras alleged that he was not present on September 16, 2003, December 2, 2003, and February 24, 2004; that he merely fetched respondent Go at the meeting on September 26, 2003; that he was present during the October 20, 2003 meeting, but deemed the same to be social dinner rather than a conciliation/mediation for settlement; that during the March 3, 2004 meeting, he merely accompanied respondent Go and his wife because they previously came from an earlier dinner; that it was complainant's brother Glenn who asked for an appointment on October 4, 2004 and offered to secure his services as their counsel for the labor case against Tiu; and that days later, Glenn even asked for his services regarding a collection case which he declined because it was his law firm's policy not to accept simple collection cases.

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[26] *Rollo*, pp. 49-53.

[27] *Id.* at 54-62.

[28] *Id.* at 505-525; CA Decision, penned by Associate Justice Mariflor P. Punzalan Castillo, concurred in by Associate Justices Marina L. Buzon and Rosmari D. Carandang.

[29] *MCC Industrial Sales Corp. v. Court of Appeals*, G.R. No. 171093.

[30] *Id.* at 750-759.

Respondent Paras also alleged that complainant's charge of violation of Rule 6.02, Canon 6 of the Code of Professional Responsibility is misplaced as he was not a lawyer in the government service at the time material to the acts complained of.

Meanwhile, respondent Go labelled as blatant lies the allegations of Chan in his complaint. He alleged that he met Chan, Jenny, and Glenn, through his mother's close friends Yek Ti L. Chua and Ban Ha; that he came to know of the labor case of Susan Que Tiu during a casual bridge session with the latter's godfather Alfredo Lim; that it was complainant who organized the meetings and persisted in asking his help regarding the said labor case; that he refused to help complainant because he would not want to influence his colleagues in the NLRC to reverse their judgments; that he did not impress upon complainant and his family that he is engaged in influence peddling; that when he relayed to Lim complainant's intention to amicably settle the case, Lim agreed to be introduced to complainant; that he never introduced respondent Paras as his associate; that he only assisted the parties during the conciliation meetings but never coerced complainant to give in to the demands of Lim; and that he did not extort money from complainant.

To substantiate his claim, Go submitted affidavits of Yek Ti L. Chua;[31] Evangeline C. Apanay[32] and Marina R. Taculao,[33] both of whom are administrative personnel assigned at his office in the NLRC.

The duty of the Court towards members of the bar is not only limited to the administration of discipline to those found culpable of misconduct but also to the protection of the reputation of those frivolously or maliciously charged. In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the

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[31] *Id.* at 476.

[32] *Id.* at 477.

[33] *Id.* at 478.

complainant establishes his case by clear, convincing and satisfactory evidence.[34]

After a careful study of the instant case, we find no sufficient evidence to support complainant's claim. Except for complainant's bare allegations, there is no proof that respondents engaged in influence peddling, extortion, or in any unlawful, dishonest, immoral, or deceitful conduct. It is axiomatic that he who alleges the same has the onus of validating it.[35]

We note that the labor case of Tiu has already been decided in the latter's favor prior the alleged meetings. Even after the said meetings, the NLRC still affirmed the decision of the labor arbiter which was adverse to herein complainant and his companies. If respondent Go really agreed to influence the outcome of the case, then the results would have been otherwise.

In addition, the receipts presented by complainant do not necessarily prove the presence of respondents in said meetings. They only show that certain persons went to the aforenamed restaurants to eat and meet. However, it could not be said with certainty that respondents were among them – based only on the receipts presented.

Moreover, the alleged representations by respondent Go regarding the drafting of NLRC decisions were refuted by the affidavits executed by Apanay and Taculao. Also, no proof was presented in support of the allegation regarding the belittling or denigration of the legal profession and the NLRC.

Significantly, the present complaint was filed only after the lapse of almost four years since the alleged extortion was made or two years since the resolution of the labor case by the NLRC. Complainant did not offer any reason for the belated filing of the case thus giving the impression that it was filed as a leverage against the case for Grave Oral Slander, Serious Slander by Deed, Grave Threats, and Alarms and Scandals (I.S. No. 07-71604-D) filed by Paras against complainant.

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[34] *Aquino v. Villamar-Mangaoang*, 469 Phil. 613, 618 (2004).

[35] *Urban Bank, Inc. v. Peña*, 417 Phil. 70, 78 (2001).

Also, the ruling of the labor arbiter was favorable to Tiu; hence, there was no need for respondents to get in touch with complainant to settle the case in Tiu's behalf. In contrast, complainant who was the defeated party in the labor case has more reason to seek avenues to convince Tiu to accept a lower settlement amount. This Court is thus convinced that it was the complainant who arranged to meet with respondent Go and not the contrary as he averred.

We cannot lend credence to complainant's allegation that he or his group met with respondents six or seven times. Complainant and his group were allegedly angered, insulted, and offended by respondents yet they still agreed to foot the bills for the meals. Even after the denial by the NLRC of their motion for reconsideration, with nothing more to discuss, complainants still allegedly met with respondents. These actions are not in accord with human behavior, logic, and common sense. At this time, complainant would have known that respondents could not deliver on their alleged promises to influence the outcome of the case in his favor; that they were only trying to extort money from him, and abusing him for free meals. As such, he should have stopped meeting them, or immediately filed criminal and/or administrative charges against them, or at the least, refused to foot the bill for their meals.

This Court agrees with respondent Paras that complainant's charge of violation of Rule 6.02, Canon 6 of the Code of Professional Responsibility is misplaced because he was not a government lawyer at the time material to the acts complained of. This fact is certified[36] by the Training and Administrative Manager[37] of Lepanto Consolidated Mining Co. where respondent Paras was employed as Assistant Manager, then as Manager for Legal Services and Government Affairs from July 31, 2000 to March 31, 2004.

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[36] *Rollo*, p. 127.

[37] Atty. Crisanto O. Martinez.

WHEREFORE, the complaint against respondents Atty. Jose Raulito E. Paras and NLRC Commissioner Romeo Go is *DISMISSED* for lack of merit.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

EN BANC

[A.M. No. 2009-04-SC. September 4, 2009]

Re: Complaint of Atty. Wilhelmina D. Geronga against Mr. Ross C. Romero, Driver, Shuttle Bus No. 5, for Reckless Driving.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CIRCULAR NO. 30-2004 (RULES ON THE OPERATION OF THE SC COURT SHUTTLE BUSES); DUTIES OF BUS DRIVER.— Administrative Circular No. 30-2004, *Prescribing the Rules and Regulations on the Operation of the Supreme Court Shuttle Buses*, states: Sec. 10. *Duties of bus driver*. – The bus driver shall have the following duties: x x x (7) To perform and discharge their duties with utmost courtesy to the bus riders, their fellow motorist, traffic enforcers and the general public; avoid any act of recklessness which may unnecessarily put in danger not only their respective buses, but more importantly, the lives and limbs of passengers, and to avoid any act of impropriety which may tarnish the image of the court. Romero, as a professional driver, is expected to be well-aware of his responsibilities to his passengers. His primordial concern is their safety. He should ensure the safety of his passengers while they are boarding the bus, during the trip, and when they are alighting from the bus.

2. ID.; ID.; ID.; ID.; DUTY TO ENSURE SAFETY OF PASSENGER ALIGHTING FROM THE BUS; VIOLATED IN CASE AT BAR.— The sworn statement of Alma Cortez, who was on the front seat nearest the door of the bus, confirmed Romero's negligent act, which was complained of by Atty. Geronga. Cortez testified that she saw Atty. Geronga's hand still holding on to the side portion of the bus when Romero accelerated the said bus. Likewise, the testimony of Cortez that the bus had already run a considerable distance from where Atty. Geronga alighted negate the claim of Romero that he slowly drove the bus forward after Atty. Geronga alighted. Cherrylyn Pasco confirmed the occurrence of the startling incident when she testified that she was awakened from slumber by the shout of Cortez, who saw the bus move when Atty. Geronga had not completely alighted from the bus. Moreover, even the letters of Romero did not at all mention any precaution or due care that he exercised when Atty. Geronga was getting off the shuttle bus, specifically during the incident complained of, although he claimed that he always saw to it that his passengers had safely boarded and disembarked from the bus. Romero even admitted that he did not notice that Atty. Geronga was still holding on to the door of the bus. We agree with the OAS that even assuming that the position of Atty. Geronga could not be seen through the rear view mirror above the driver's seat, it can be safely concluded that he too did not check or look at the right side mirror, which should have given him a view of where Atty. Geronga was situated. Romero's failure to do so showed his wanton disregard of the physical safety of his passenger. The Court also takes into consideration the testimony of Pasco regarding the experiences of other passengers who she claimed, were nearly caught by the closing of the door of the shuttle bus, if not for their constant, timely calls to catch the attention of Romero. In fact, Pasco claimed that on January 27, 2009 (a day before she gave her testimony), a similar incident took place.

3. ID.; ID.; GROSS NEGLIGENCE; GROSS RECKLESSNESS IN DRIVING SHUTTLE BUS, NOT MODIFIED BY MITIGATING CIRCUMSTANCES; TERMINATION PROPER IN CASE AT BAR.— Indeed, Romero's gross negligence in driving the shuttle bus is evident. Gross negligence has been defined as the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of persons or property. It evinces a thoughtless

disregard of consequences without exerting any effort to avoid them. In A.M. No. 2008-13-SC, the Court ruled that "a government employee holding a casual or temporary employment cannot be terminated within a period of his employment except for cause." We sustain the recommendation of the OAS that there is a sufficient cause to terminate Romero's employment, his gross recklessness in driving the shuttle bus having been established by substantial evidence. Moreover, the presence of mitigating circumstances, such as his length of service or this being his first offense, should not be taken into account considering that the paramount concern in this case is the need to safeguard the lives and limbs of the shuttle bus passengers.

D E C I S I O N

PER CURIAM:

This administrative matter arose from a letter-complaint dated January 15, 2009 filed with the Supreme Court (SC) Shuttle Bus Committee by Atty. Wilhelmina D. Geronga, Chief of Office, Legal Division, Office of the Court Administrator (OCA), against Ross C. Romero, Driver, Shuttle Bus No. 5, for Reckless Driving.

Atty. Geronga alleged:

I am a regular rider of Shuttle Bus No. 5 and I have on many occassion witnessed the reckless driving of Ross.

Yesterday afternoon, January 14, 2009, before I completely alighted from the shuttle bus, it immediately accelerated. My left foot was already on the pavement while my right foot was still on the last step (stairs) of the bus with my hands holding tightly a portion of the bus to support my descent (I was facing the south side while the bus was northbound). If not for my presence of mind and my luck that I was able to balance my body, I would have fallen and hit the back of my head on the pavement. The driver did not even bother to stop and check if I was alright.

Atty. Geronga added that other riders of Shuttle Bus No. 5 have their own stories of Romero's reckless driving, and that she was filing the complaint before other employees would sustain physical harm.

In its Memorandum dated January 16, 2009, Atty. Carina M. Cunanan, Chairperson, SC Shuttle Bus Committee, directed Romero to submit his explanation on Atty. Geronga's letter-complaint within three (3) days from receipt thereof.

In his Comment dated January 19, 2009, Romero expressed his apologies to Atty. Geronga for whatever infraction he had committed against the latter. He claimed that "upon reaching her (Atty. Geronga) destination, she alighted the bus, to the best of my knowledge, unharmed. After checking the right side mirror and ascertaining that Atty. Geronga was already out of the bus, I slowly drove forward." He added that he was surprised by the call of the bus coordinator, Alma Cortez, so he stopped the bus. He averred that he wanted to check on Atty. Geronga, but was allegedly reassured by Cortez that Atty. Geronga was fine. He narrated that he did not see whether Atty. Geronga was still holding on to the bus when he drove forward; neither did he see if the pavement she stepped on was uneven. He also said that if he only knew that she was still there, he would not have driven the bus forward. He assured the committee and the bus riders that that kind of incident would not happen again.

In her letter of even date, Atty. Geronga declared that Romero's statement was contrary to the text message that he had sent to her on that very same day the incident took place. The text message reads:

Gud pm atty. I m vry sori po abt kanina dko npo nkita kc nung nsa stribo kau ng pinto. Pcnsya npo nsaktan po b kau.

Atty. Geronga alleged that several instances had occurred in the past when Romero would start accelerating the bus even if she was still standing on the stairs and about to take a step to go down from the bus.

The complaint, together with Romero's explanation and Atty. Geronga's opposition (treated as reply), was endorsed to the Complaint and Investigation Division, Office of the Administrative Services (CID-OAS), this office, for appropriate action.

The OAS, which has the initiatory authority to discipline a shuttle bus driver,[1] issued a Memorandum dated January 23, 2009 requesting Alma Cortez, assigned Coordinator, and Cherrylyn F. Pasco, assigned Assistant Coordinator of Shuttle Bus No. 5 to appear before the OAS on January 30 and January 29, 2009, respectively. The OAS also required Romero to submit his rejoinder to the above reply.

In his letter (treated as a rejoinder) dated February 11, 2009, Romero stated that he never intended the incident to happen. He claimed that he was always careful and was never reckless in his driving, and that he always saw to it that his passengers would arrive safely in their destinations. However, in that particular incident, he admitted that he drove the bus without noticing that Atty. Geronga was still holding on to the side portion of the bus. He reiterated his plea for understanding and once again apologized to her. He vowed that he would remain very cautious in his driving to ensure the safety of his passengers. A portion of his letter reads:

Noong araw ng aksidente, sa hindi pong inaasahang pangyayari ay napatakbo ko po ang bus ng di namalayan na si Atty. Wilhelmina Geronga ay nakahawak pa sa pintuan ng bus. Tulad po ng dati ay naunang bumababa po si Atty. Vicky na kasunod po si Atty. Geronga. Akin pa pong napansin na natigilan si Atty. Vicky sa pagtawid patungo ng sidewalk dahil sa isang motorsiklo na pilit na sumiksik sa kanang bahagi ng aming bus. Pagkalipas po ng ilang sandali ay aking dahan-dahang inabante ang bus at bigla po akong sinabihan ng aming bus coordinator na si Ma'am Alma na nasa gilid pa daw po ng bus si Atty. Geronga. Akin pong agarang pinigil ang bus. Hindi ko po napansin na si Atty. Geronga ay nasa gilid po pala ng aming bus. Inantabayan ko na lamang po na siya ay nakalapit kay Atty. Vicky at maayos na makalakad pauwi. Hindi ko na po nagawang bumaba at lapitan si Atty. Geronga upang matiyak na siya ay nasa ayos dahil na rin sa

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[1] Sec. 12 of Administrative Circular No. 30-2004

Sec. 12. *Disciplinary Authority*. – The Office of the Administrative Services has the initiatory authority to discipline shuttle bus drivers. It may recommend to the Court early termination or non-renewal of their appointment or the imposition of other disciplinary sanction.

pinaghalong kaba at kahihiyan sa naganap na aksidente. Sinabihan na lamang po ako ni Ma'am Alma na tumuloy na po sa biyahe dahil maayos na pong nakatawid sina Atty. Geronga.

x x x x x x x x x

Nais ko rin pong bigyang linaw na akin pong kinikilala ang naganap na aksidente at ako po ay patuloy na humihingi ng paumanhin. Hindi ko po intension na ipagwalang-bahala o itatwa ang nangyari. x x x

In its Memorandum dated March 3, 2009 addressed to the Chief Justice through Atty. Ma. Luisa D. Villarama, Atty. Candelaria, Deputy Clerk of Court and Chief Administrative Officer of the Court, summarizes the testimony of Cortez and Pasco, as follows:

x x x. Ms. Cortez stated that she blurted in surprise when Mr. Romero started driving the bus because she clearly saw that Atty. Geronga was right down the bus holding the corner portion of the door. She further testified that Mr. Romero stopped the bus at a distance which she approximately stated as around ten (10) meters from where Atty. Geronga got off. She recalled that it was her reaction which prompted Mr. Romero to stop the bus. She stated that Ms. Cherilyn Pasco, HRMO II, Leave Division, the designated Assistant Coordinator of Shuttle Bus No. 5, this Office, from the view at her seat saw that Atty. Geronga and Atty. Vicky Ignacio, another passenger who alighted ahead of Atty. Geronga, were already talking to each other. When that information was relayed to her, she then assented to proceed with their trip. However, she disclaimed Mr. Romero's assertion that it was her who assured him that Atty. Geronga was already all right.

On the other hand, Ms. Pasco narrated that she was asleep when the incident happened, and was awakened by the sudden reaction of Ms. Cortez. She stated that she immediately looked down towards the door and saw Atty. Geronga was still right there. She guessed something must have happened that is why Mr. Romero stopped the bus. However, she claimed that shortly thereafter the bus also departed since Ms. Cortez gave her consent to Mr. Romero to leave. In recalling what exactly happened, Ms. Pasco positively stated that she recalled seeing Atty. Geronga's hand holding the bus.

Ms. Pasco also mentioned experiences of other passengers whom she claimed had been nearly caught by the closing door of the shuttle bus. She stated that if not for the timely call by the coordinators of Mr. Romero's attention, passengers would have been injured by the door. In fact, she stated that just before that day, there was a similar incident.

On the allegation that the right foot of Atty. Geronga was still at the last door step of the bus, Ms. Pasco opined that it seemed to her to be impossible since if that was the case, she would really have completely fallen, but just as it was, this did not happen.

In a preliminary conference held on February 24, 2004, the investigating officer informed both parties that the purpose of the said conference was to determine if Atty. Geronga was willing to have the case settled. It was likewise emphasized that the withdrawal of the complaint would not necessarily result in the cessation of the administrative disciplinary action against the erring employee.

In the said conference, Atty. Geronga declared that in three (3) different instances, Romero personally approached her, but she told him that her compassion toward him did not necessarily mean that she would be withdrawing the complaint. As nothing more was added to what they had already stated in their pleadings, the case was submitted for evaluation.

After a thorough evaluation, the OCA gives credence to the allegations of Atty. Geronga, who was not motivated by any ill motive and who would not have lodged the said complaint if she had not been through what she believed was a perilous situation for her. The OCA also recommended the immediate termination from employment of Romero, a casual employee. It also informed the Court that Romero had a pending administrative case docketed as A.M. 2008-24-SC for engaging in a fist fight with Edilberto Idulsa, also a shuttle bus driver of the SC.

After our own evaluation of the record, and taking into account the report and recommendation submitted by the OCA, the court is convinced that Romero failed to observe due diligence as a driver and, thus, deserves to be administratively sanctioned.

Administrative Circular No. 30-2004, *Prescribing the Rules and Regulations on the Operation of the Supreme Court Shuttle Buses*, states:

Sec. 10. *Duties of bus driver*. – The bus driver shall have the following duties:

x x x x x x x x x

(7) To perform and discharge their duties with utmost courtesy to the bus riders, their fellow motorist, traffic enforcers and the general public; avoid any act of recklessness which may unnecessarily put in danger not only their respective buses, but more importantly, the lives and limbs of passengers, and to avoid any act of impropriety which may tarnish the image of the court.

Romero, as a professional driver, is expected to be well-aware of his responsibilities to his passengers. His primordial concern is their safety. He should ensure the safety of his passengers while they are boarding the bus, during the trip, and when they are alighting from the bus.

The sworn statement of Alma Cortez, who was on the front seat nearest the door of the bus, confirmed Romero's negligent act, which was complained of by Atty. Geronga. Cortez testified that she saw Atty. Geronga's hand still holding on to the side portion of the bus when Romero accelerated the said bus. Cortes recounted the incident, thus:

Atty. Taw
Q *Halimbawa dito, heto ang door ng bus, Saan kayo nakaupo?*
A *Eto ang door, dito ang driver. Dito po kami nakaupo.* (Witness pointing their seat location at the 1st row, right side of the shuttle bus which is near the door) *Dito ako, dito si Cherry sa may bintana.*

Q *Saan ang babaan ng bus*?
A *Dito po ang babaan. Ang door ng shuttle ay salamin, siyempre nakatingin ako sa salamin at nakita ko pa ang kamay ni Atty. Geronga na talagang nakahawak pa sa body ng shuttle tapos umandar na kaya ako naman ay napasigaw. Syempre medyo malayo na ang natakbo*

naming parang malapit-lapit pa din pero parang nakatakbo na ng ilang metro.

Q *Nakakapit pa si Atty. Geronga sa may pinto?*
A *Opo. Nakita ko po nakahawak pa siya sa body ng shuttle.*

Q *Pero in-alleged kasi ni Atty. Geronga na talagang hindi pa siya completely nakakababa.*
A *Ang nakita ko lang talaga ay nakahawak pa siya sa body ng shuttle. Yun lang po ang nakita ko sa salamin kasi makikita mo sa salamin.*

x x x x x x x x x

Q *Napasigaw ka?*
A *Opo kaya huminto ang shuttle.*

Q *Di ba napasigaw ka? Bago 'yun, nakaandar na ba ang bus noon?*
A *Opo. Umandar na pero huminto.*

Q *Gaano kalayo na from Atty. Geronga?*
A *Siguro po ganito . . . dito po kasi siya bumababa kanto po 'yan dito naman Tandang Sora. Bago pa po dumating ng Tandang Sora Avenue, dito banda. Kasi kapag umandar hindi naman kaagad nakakahinto.*

Q *Mga ilang metro?*
A *Mga 15 metro.*

Q *Malayo na?*
A *Kasi nga po syempre hindi naman kaagad nakaka-*break *para huminto. Pero nakikita pa po naming si Atty. Geronga kasi sabi ni Cherry lumingon daw siya nakita nya si Atty. Geronga na nag-uusap sila ni Atty. Vicki.*[2]

Likewise, the above testimony of Cortez that the bus had already run a considerable distance from where Atty. Geronga alighted negate the claim of Romero that he slowly drove the bus forward after Atty. Geronga alighted. Cherrylyn Pasco also confirmed the occurrence of the startling incident when she testified that she was awakened from slumber by the shout

[2] Sworn Statement of Alma O. Cortez dated January 30, 2009, pp. 3-4.

of Cortez, who saw the bus move when Atty. Geronga had not completely alighted from the bus.[3]

Moreover, even the letters dated February 11, 2009 and May 19, 2009 of Romero did not at all mention any precaution or due care that he exercised when Atty. Geronga was getting off the shuttle bus, specifically during the incident complained of, although he claimed that he always saw to it that his passengers had safely boarded and disembarked from the bus. Romero even admitted that he did not notice that Atty. Geronga was still holding on to the door of the bus.

We agree with the OAS that even assuming that the position of Atty. Geronga could not be seen through the rear view mirror above the driver's seat, it can be safely concluded that he too did not check or look at the right side mirror, which should have given him a view of where Atty. Geronga was situated. Romero's failure to do so showed his wanton disregard of the physical safety of his passenger. We have once said:

> A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise his own person, rights and property, all those of his fellow-beings, would ever be exposed to all manner of danger and injury.[4]

The Court also takes into consideration the testimony of Pasco regarding the experiences of other passengers who she claimed, were nearly caught by the closing of the door of the shuttle bus, if not for their constant, timely calls to catch the attention of Romero. In fact, Pasco claimed that on January 27, 2009 (a day before she gave her testimony), a similar incident took place.[5]

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[3] Sworn Statement of Cherrylyn Pasco dated January 28, 2009, pp. 3-4.

[4] *Abueva v. Prople*, G.R. No. 134387, September 27, 2002, 390 SCRA 62, 73, citing *People v. De los Santos*, G.R. No. 131588, 355 SCRA 415, 430.

[5] Sworn Statement of Cherrylyn Pasco dated January 28, 2009, pp. 5-6.

Indeed, Romero's gross negligence in driving the shuttle bus is evident. Gross negligence has been defined as the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of persons or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[6]

In A.M. No. 2008-13-SC,[7] the Court ruled that "a government employee holding a casual or temporary employment cannot be terminated within a period of his employment except for cause." We sustain the recommendation of the OAS that there is a sufficient cause to terminate Romero's employment, his gross recklessness in driving the shuttle bus having been established by substantial evidence. Moreover, the presence of mitigating circumstances, such as his length of service or this being his first offense, should not be taken into account considering that the paramount concern in this case is the need to safeguard the lives and limbs of the shuttle bus passengers. Incidentally, it appears that Romero is the respondent in another case docketed as A.M. No. 2008-24-SC.

WHEREFORE, Ross C. Romero, Driver, Shuttle Bus No. 5 of this Court is ordered *TERMINATED* from the service, effective immediately without prejudice to the outcome of A.M. No. 2008-24-SC.

SO ORDERED.

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

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[6] *Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union*, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 219-220.

[7] A.M. No. 2008-13-SC, November 19, 2008.

EN BANC

[A.M. No. CTA-05-2. September 4, 2009]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CONCEPCION G. ESPINEDA, Cashier, COURT OF TAX APPEALS,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DISHONESTY AND GRAVE MISCONDUCT; PROPER PENALTY.— Dishonesty and grave misconduct are classified as grave offenses. Under Section 22(a), (b) and (c) of Rule XIV of the *Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws*, the penalty for these offenses is dismissal, even if committed for the first time. Respondent's employment record of more than 24 years would not serve to mitigate her liability. On the contrary, it even serves to aggravate the same because with her long years of service in the judiciary, she is presumed to be familiar and conversant with the Court's circulars particularly with regard to the handling of judiciary funds. Yet, by her acts, she disregarded these guidelines and circulars which contributed to the erosion of the public's faith in the Judiciary.

D E C I S I O N

PER CURIAM:

This case stemmed from the report of Court of Tax Appeals (CTA) Presiding Justice Ernesto D. Acosta on certain irregularities in the reporting and handling of legal fees in the possession of respondent cashier. An initial investigation was conducted and a discrepancy of more than ₱2 million was discovered. Thus, herein respondent was relieved of her collecting and disbursing functions and was temporarily assigned in the Administrative Division of the CTA.

Acting on the report of CTA Presiding Justice Acosta, a financial audit in the CTA was conducted on November 9-19, 2004, covering the period July 1993 to October 2004. The audit team evaluated the internal control on cash management to determine whether the policies and procedures adopted by the CTA provide adequate security over handling of government money and property. The audit team also verified whether collections were correctly and completely recorded in the books of the Accountable Officer and the Subsidiary Ledger maintained by the Accounting Division of the Supreme Court and whether they have been timely deposited with the Land Bank. The accuracy of the computations of the legal fees was likewise determined.

It appears that during the conduct of the financial audit, herein respondent submitted a handwritten letter dated November 12, 2004 stating thus:

Ako si CONCEPCION G. ESPINEDA may asawa at apat na anak nagtatrabaho bilang CASHIER III ng Court of Tax Appeals na ako lahat ang may hawak ng Official Receipts at tumatanggap lahat ng mga nagbabayad ng lahat ng legal fees para sa Court of Tax Appeals.

Na inaamin ko na ako and (sic) *gumawa ng mga resibo na tampered na iba ang amount sa original kay sa duplicate. Ako rin po and* (sic) *gumagawa ng mga report of collection na pinapadala sa Supreme Court. Ako rin po and* (sic) *nagcertify sa sariling kong report at hindi ko pinacertify kahit kanino. Nagawa ko po itong pagkakasala dahil may nakilala akong kaibigan na ang pangalan po ay si MYRNA CASTRO at inalok ako ng NET WORKING daw na negosyo na hindi ko alam na isang PYRAMID pala. Na hypnotize po siguro ako kung kayat malaking halaga ang nakuha sa akin at it* (sic) *ay umabot siguro sa halagang Dalawang Milyon at kalahati.*

Humihingi po ako ng pangalawang pagkakataon para maitama ko kung ano mang mali kong nagawa. Nakahanda po ako magbalik ng halagang nakuha ko sa pamamagitan ng paghulog buwan-buwan sa loob ng isang taon.

Umaasa po ako na diringgin nyo ang aking mga paki-usap sapagkat ako po ay nasa serbisyo ng Court of Tax Appeals sa loob ng dalawamput apat na taon. Ito po lang and opisina na pinagtrabahuan mula po ako ng makatapos sa kolehiyo. Wala

po akong masamang record kahit kanino man kayo magtanong sa aking pagkatao.

Ang mga pahayag na ito ay kusa kong ginawa para maipaliwanag ang mga pangyayari na kinasasangkutan ko sa opisina.

Maraming salamat po at binigyan nyo ako ng pagkakataon na makapagpaliwanag.

(Sgd).
November 12, 2004 CONCEPCION G. ESPINEDA
BLOCK-17 LOT-26
EXCISE ST. BIR HOUSING
WEST FAIRVIEW QC

On November 16, 18, 2004, and December 16, 2004, respondent restituted the amounts of ₱55,601.00, 25,000.00 and 20,000.00, respectively, or a total of ₱100,601.00.

On February 4, 2005, the audit team submitted its Partial Report which found that there were (a) unaccounted checks; (b) unaccounted official receipts; (c) unreported collections for the Judiciary Development Fund (JDF); and (d) undeposited collections for the JDF. The audit team likewise noted that the procedures and practices in the Cashier's Office did not provide adequate control over financial transactions.

The audit team's findings are herein reproduced as follows:

1. **Unaccounted checks on hand during cash count**

During the cash count on November 9, 2004, the Acting Cashier, Mr. Adrian P. Manaois presented to the Team the amount turned over by the former Cashier. Included in the cash are checks which cannot be traced to collections from the date of turn over to the date of cash count. Hence, we cannot immediately determine if there is a shortage or overage in the collection. We advised the immediate deposit of the cash and checks presented to us as follows:

FUND	OR NOS.	TOTAL ACCOUNTABILITY (Oct. 28 – Nov. 9, 2004)	CASH AND CHECKS PRESENTED	SHORTAGE (Overage)
		A	B	A-B
JDF	18938618	52,823.00	46,753.25	6,069.75

	to 18938636			
SAJ	9726506 to 9726525	5,800.00	5,800.00	0
LRF	1466001 to 1466002	484.09	484.25	(0.16)
VCF	4046155 to 4046180	130.00	130.00	0
Sub-total		59,237.09	53,167.50	6,069.59
Unaccounted checks			1,398,310.40	(1,398,310.40)
TOTAL CASH AND CASH ITEMS PRESENTED			1,451,477.90	

2. **Unaccounted Official Receipts**

There are series of official receipts which were not presented to the Audit Team. Review of case folders reveals the following improper use of official receipts:

a) Triplicate copies of official receipts were blank but included in the Monthly Report of Collections and Deposits. Although the amount reported is the same as that of the amount indicated in the case folders, the following official receipts were not prepared in triplicate copies as prescribed, hence, the amount indicated is of doubtful validity.

10655001	₱17,183.00
10655002	50,000.00
10655003	70.00
10655005	29,769.00
10655008	18.00

b) The following series of official receipts were reported as cancelled or missing but when traced to case folders, they were validly issued, resulting to unreported and undeposited collections.

10655637	₱34,099.74	10655880	₱ 96.00
10655009	195.00	10655884	52,801.83
10655800	53,083.62	10655930	4,800.00

10655803	50,300.00	10655961	5,626.19
10655840	33,739.51	10655964	19,022.34
10655855	37,491.93	10655976	5,299.63

c) Triplicate copies of the following official receipts were missing from the booklet and not included in the Monthly Report of Collections but when traced to case folders, they were validly issued, resulting to unreported and undeposited collections.

10655659	₱ 78.00
10655758	113,600.44
18937582	18,461.97

d) Official Receipt was used twice. Both issuances were not reported.

10655762	₱60.00 Per triplicate OR issued to ACCRA Law Office	52,300 Per case folder issued to El Greco Ship Manning

e) Official receipts were part of the series issued for JDF collections but not included in the Monthly Report of Collections. The undetermined amounts collected were not also deposited. (See Annex A for the serial numbers of official receipts)

PERIOD	NO. OF OR's
2002	42
2003	81
TOTAL	123

f) The following series of official receipts contains the same petitioner, with the same case number and amount of legal fees. The first series of official receipts (column A) were presented to the Audit Team and included in the report submitted to the SC Accounting Division. The same were not traced to the case folders. The triplicate copies of the second series of official receipts (column B) were not presented to

the audit team and not included in the monthly report prepared by the Cashier. However, we were able to trace them in the case folders. The amounts (column C) were based on the amounts indicated on the case folders. Hence, we cannot determine the actual collections using these sets of official receipts.

	PETITIONER	CASE NO.	DATE	OFFICAL RECEIPTS Reported in Acctg. but did not appear in case folders	OFFICAL RECEIPTS Not reported in Accounting but indicated in case folders as payment for the particular case	AMOUNT
				(A)	(B)	(C)
1.	Tropitek Int'l.	6499	6-28-02	10655251	10655207	13,383.00
2.	Sumisitshu	6500	6-28-02	10655252	10655208	28,005.00
3.	Dunlop Slazenger	6501	6-24-02	10655253	10655209	7,705.00
4.	Ironcorn Builders	6502	6-28-02	10655254	10655210	49,800.00
5.	Tekenaka Corp. Phil.	6503	7-01-02	10655255	10655212	6,983.00
6.	Metropolitan Bank	6504	7-02-02	10655262	10655218	49,800.00
7.	Allied Banking	6505	7-03-02	10655263	10655219	49,800.00
8.	Pilipinas Shell Petroleum	6506	7-08-02	10655265	10655221	49,800.00
9.	Hyatt of Hongkong	6507	7-17-12	10655272	10655228	39,975.00
10.	Bristo Myers	6508	7-18-02	10655274	10655230	49,800.00
11.	ECW Joint Ventures	6509	7-18-02	10655275 ₱890	10655231	49,800.00
12.	Antam Pawnshop	6510	7-18-02	10655276 ₱1,002.00	10655232	2,425.00
13.	PNB	6511	7-18-02	10655277	10655233	41,060.00
14.	UCPB	6512	7-22-02	10655284	10655240	49,800.00
15.	Applied Food Ingredients	6513	7-23-02	10655285	10655241	49,800.00
16.	Marubeni Phil. Inc.	6514	7-24-02	10655289	10655245	48,415.00
17.	Mirant Phil. Energy	6515	7-24-02	10655290	10655246	49,800.00

18.	Metroplitan Bank	6516	7-12-02	10655291	10655247	4,939.00
19.	Unilever Phils.	6517	7-25-02	10655293	10655249	49,800.00
20.	Gov't. of Singapore	6745	8-11-03	18937401	18937253	31,368.33
21.	St. Lukes Medical	6746	8-11-03	18937404	18937254	118,363.12
22.	Estate of Fidel Reyes	6747	8-12-03	18937407	18937257	51,114.18
23.	Agencia Exquisite	6748	8-14-03	18937413	18937265	1,425.00
24.	Public Estate	6750	8-15-03	18937415	18937268	161,466.62
25.	Takenaka Corp.	6752	8-20-03	18937417	18937272	88,155.38
26.	Lancaster Phil.	6753	8-21-03	18937418	18937275	53,062.46
27.	Alabang Comml.	6754	8-21-03	18937419	18937276	17,043.56
28.	Prudential Bank	6756	8-21-03	18937420	18937278	63,563.14
29.	Orca Energy, Inc.	6757	8-21-03	18937421	18937279	51,958.13
30.	Oakwook Mgt. Service	6758	8-21-03	18937422	18937281	1,526.00
31.	South African Airways	6760	8-28-03	18937428	18937281	16,630.35
32.	Exquisite Pawnshop	6755	8-21-03	18937423	18937282	25,874.24
33.	South African Airways	6759	8-26-03	18937425	18937284	8,363.72
34.	Air New Zealand	6761	8-28-03	18937429	18937288	2,425.00
35.	Takenaka Corp.	6762	8-29-03	18937430	18937289	100,032.97
36.	United Overseas	6764	9-10-03	18937438	18937297	45,050.73
37.	Metropolitan Bank	6765	9-10-03	18937440	18937299	34,877.41
38.	Quezon Power Limited	6769	9-10-03	18937442	18937351	136,171.98
39.	Mem-Mara Phil. Corp.	6770	9-12-03	18937443 18937452	18937352	66,361.32
40.	Dow Chemical, Inc.	6768	9-12-03	18937444	18937353	99,940.43
41.	Dinagat Elec. Corp.	6766	9-12-03	18937446	18937355	4,800.00
42.	Siargao Electric Corp.	6767	9-12-03	18937447	18937356	18,081.14
43.	Texas Instrument	6771	9-15-03	18937449 18937458	18937358	30,915.19
44.	V.Y. Domingo Agencia	6772	9-15-03	18937460 ₱998.00	18937360	61,450.55
45.	TFS Pawnshop	6773	9-17-03	18937464	18937364	53,887.59
46.	Prulife of UK	6774	9-19-03	18937469	18937369	38,094.21
47.	Pilipinas Shell	6775	9-19-03	18937470	18937370	70,364.93
48.	Tambunting Pawnshop	6776	9-19-03	18937472	18937372	22,654.07
49.	PEA Tollway Corp.	6777	9-19-03	18937474	18937374	171,396.10
50.	Philex Mining Corp.	6778	9-22-03	18937478	18937378	53,187.12
51.	Philex Gold	6779	9-22-03	18937479	18937379	1,425.00
52.	Philex Mining Corp.	6780	9-22-03	18937480	18937380	813,503.81

53.	Bicolandia Drug	6783	9-25-03	18937483 ₱1,025.00	18937383	14,754.91
54.	Correa Zenitaka	6784	9-26-03	18937486	18937385	51,081.14
55.	Schneider Elec. Industries	6786	9-29-03	18937490	18937389	29,394.39
56.	Mindanao Geothermal	6787		18937493		22,555.86
57.	Mindanao Geothermal	6788	9-30-03	18937497	18937393	28,722.67
58.	CBK Power Co. Ltd.	6789	9-30-03	18937495	18937394	28,467.47
59.	Visayas Geothermal Power	6790	9-30-03	18937496	18937395	5,798.86
60.	CE Cebu Geothermal Power	6791	9-30-03	18937497	18937396	4,800.00
61.	CE Luzon	6792	9-30-03	18937498	18937397	18,247.60

3. **Evaluation of procedures and practices in the Cashier's Office did not provide adequate control over financial transactions. We have noted the following deficiencies:**

a. The relieved Cashier, Ms. Concepcion G. Espineda performed the collecting, recording and reporting of financial transactions of the court. She also acted as the Disbursing Officer of the Court.

   Good internal control over cash requires that the collection, disbursement and recording functions should not be performed by one employee. It weakens the effectiveness of check and balance resulting to non-detection of errors in collection and remittance.

b. Some computations of legal fees were previously done over the telephone by the Records Division so that petitioners are ready with their check payment upon filing of their petitions. After payment, the details of legal fees paid are indicated on the first page of the petitions using the original copies of the official receipts as reference.

   We reviewed the computations of legal fees in each case folder presented to the Team and compare the details of payment indicated on the petitions and the amount paid per triplicate official receipts. There are several cases of discrepancies resulting to underpayment of legal fees, the details of which are found in our finding relative to the accountability of the Cashier.

c. Cash payments in big amounts were received by the Cashier which could have led her or tempted her to use her collections for personal gain. Thus, payments in check for filing fees exceeding ₱5,000 should be firmly implemented to lessen the amount of cash held by the cashier. For payment of ₱50,000.00 and above, only manager's or cashier's check should be accepted. There should be a written guidelines or procedures to be followed if the private checks are dishonored by the bank for insufficiency of funds or for any other reason.

d. The Cashier did not report cancellations of official receipts properly. We have traced several official receipts reported as cancelled and/or missing but were validly issued. Hence, there are collections which were not reported to SC Accounting Division and not deposited to the JDF depository account.

Monthly Report of Accountability for Accountable Forms detailing the series of official receipts received, issued and balances should be submitted to the Accounting Division, Supreme Court. Likewise, a report of cancelled official receipts should be prepared and submitted with the photocopies of the cancelled official receipts. All copies of the cancelled official receipts must be attached to the receipt booklet for proper inventory and audit purposes.

The Presiding Justice issued a Memorandum regarding Internal Control for Cashier's Office and other related offices dated November 11, 2004. Among the issues addressed is the designation of the Acting Cashier as the Collecting Officer and the Cash Clerk as the Disbursing Officer. Also included is the preparation of the Computation Sheet where the details of the assessment are shown *vis-à-vis* the legal fees paid. It further requires the Executive Clerk of Court or any of her two deputies to verify the computation of the filing fees.

4. **Unreported Collections for the Judiciary Development Fund (JDF)**

Monthly Report of Collections and Deposits must be regularly prepared and submitted within ten (10) days after the end of every month to the Chief Accountant, Supreme Court with the duplicate copies of the official receipts and validated deposit slips. This report is the basis of recording in the Subsidiary

Ledger which keeps track of the accountability of the accountable officer. Hence, its accuracy is of prime importance. To determine whether all collections are completely and accurately recorded, we compared the total collections per audited triplicate copies of official receipts and the total collections per accounting records. The amounts in the triplicate official receipts were confirmed with the case folder of the particular payment. The audit reveals unreported collections of **SEVEN MILLION EIGHT HUNDRED SEVENTY FOUR THOUSAND SIX HUNDRED TWENTY EIGHT PESOS AND 77/100 (₱7,874,628.77).** Per our review, there are series of official receipts which were reported as missing or cancelled but when traced in the triplicate OR's or case folder, the official receipts were validly issued. Some amounts were altered. Others were erroneously reported. Table I summarizes the amount unreported, the details of which are shown in Annex B.

The reports were prepared by the Cashier alone. Nobody reviewed or certified its correctness before its transmittal to the Supreme Court.

TABLE I

PERIOD	AMOUNT PER AUDIT	AMOUNT PER SUBSIDIARY LEDGER	UNREPORTED COLLECTIONS
1994	1,493,610.00	1,493,610.00	
1995	1,430,046.00	1,430,046.00	
1996	1,278,112.85	1,277,512.85	600.00
1997	1,147,233.93	1,147,233.93	
1998	2,812,466.14	2,792,666.94	19,799.20
1999	6,591,007.47	6,590,302.47	705.00
2000	7,659,617.82	7,315,834.82	343,783.00
2001	4,724,224.50	4,840,904.50	(116,680.00)
2002	8,832,323.50	7,227,613.56	1,604,709.94
2003	24,490,052.44	21,268,085.74	3,221,966.70
2004	96,726,670.46	93,926,925.53	2,799,744.93
TOTAL	**157,185,365.11**	**149,310,736.34**	**7,874,628.77**

5. **Undeposited Collections for the Judiciary Development Fund**

Collections were not deposited intact. For the CY 1985 to 1993, where deposit slips were not presented to us, comparison of the amount of collections and deposits as recorded in the SC Accounting Division, show a balance of ₱343,302.53 accumulated as follows:

TABLE II

PERIOD	COLLECTIONS PER ACCOUNTING RECORDS	DEPOSITS PER ACCOUNTING RECORDS	BALANCE
1986	91,070.00	90,995.00	75.00
1987	299,942.00	274,277.00	25,655.00
1988	194,601.00	163,786.00	30,815.00
1989	258,890.00	199,110.00	59,780.00
1990	329,667.00	94,174.50	235,492.50
1991	3,243,923.75	3,245,263.72	(1,339.97)
1992	1,675,057.99	1,670,237.99	4,820.00
1993	1,177,826.00	1,197,086.00	(19,260.00)
TOTAL	**7,474,354.74**	**7,131,312.21**	**343,302.53**

For CY 1994 to August 2004, comparison of the amount in the triplicate copies of the official receipts and the amount deposited as recorded in the Accounting Division, Supreme Court shows a balance of ₱8,351,276.03.

TABLE III

PERIOD	AMOUNT PER AUDIT	DEPOSITS PER SUBSIDIARY LEDGER	UNREPORTED COLLECTIONS
1994	1,493,610.00	1,495,710.00	(2,100.00)
1995	1,430,046.00	1,404,391.00	25,655.00
1996	1,278,112.85	1,294,372.85	(16,260.00)
1997	1,147,233.93	1,148,266.93	(1,033.00)
1998	2,812,466.14	2,450,332.14	362,134.00
1999	6,591,007.47	6,766,294.47	(175,287.00)

2000	7,659,617.82	7,480,666.02	178,951.80
2001	4,724,224.50	4,892,042.50	(167,818.00)
2002	8,832,323.50	7,172,273.94	1,660,049.56
2003	24,490,052.44	20,643,853.45	3,846,198.99
2004	96,726,670.46	94,085,885.78	2M640,784.68
TOTAL	**157,185,365.11**	**148,834,089.08**	**8,351,276.03**

The totals of Table II and III amounting to **EIGHT MILLION SIX HUNDRED NINETY FOUR THOUSAND FIVE HUNDRED SEVENTY EIGHT AND 56/100 (₱8,694,578.56)** represent the undeposited collections for the Judiciary Development Fund. This amount also includes the unreported collections we mentioned in the preceding finding.

The Presiding Justice and other concerned personnel of the Court of Tax Appeals have been apprised of these discrepancies during the Exit Conference held on November 19, 2004 for purposes of getting their comments to our preliminary observations. Prior to this, in an affidavit prepared by the former Cashier on November 12, 2004 (Annex C) Ms. Concepcion G. Espineda admitted sole responsibility of the infractions committed above. She then restituted the partial amount of ONE HUNDRED THOUSAND SIX HUNDRED ONE PESOS (₱100,601.00) on three occasions as evidenced by the acknowledgment receipts of the Acting Cashier and validated deposit slips (See Annex D). The amount was deposited to the Judiciary Development Fund. The Presiding Justice temporarily assigned Ms. Espineda in the Administrative Division of the Court. However, she did not report for work since her relief as Cashier, thus, incurring absences without pay.

Acting on the findings and recommendation of the audit team and the Office of the Court Administrator, the Court issued on February 14, 2005, a Resolution resolving to:

(a) ***DOCKET*** the subject partial report of the Financial Audit conducted on the book of accounts of the Court of Tax Appeals as a regular administrative matter against Cashier Concepcion G. Espineda;

(b) ***DIRECT*** Cashier Espineda to: (1) **EXPLAIN** in writing within ten (10) days from notice hereof, her failure to deposit her collections on time; her falsely reporting that an Official Receipt has been cancelled or missing when in fact and in truth it has not been so cancelled or missing, thereby resulting to unreported and undeposited collections; for issuing two sets of official receipts for sixty one (61) payments of filing fees thus concealing the true amounts of court collections; and for issuing one official receipt in two transactions and not reporting the amount collected in both instances; (2) ***RESTITUTE*** within ten (10) days from notice, the amount of ₱8,593,977.56 representing the net collections in the JDF which were not remitted (₱8,694,578.56 less restitutions of ₱100,601.00) by depositing the amount to JDF Account No. 0591-0116-34 with the Land Bank of the Philippines and furnish the Court, thru the Office of the Court Administrator, with machine validated deposit slips as proof of such deposits; and (3) ***ACCOUNT*** within ten (10) days from notice, for the missing Official Receipts which are part of the series issued for the JDF found in Annex A;

(c) ***SUSPEND*** Ms. Concepcion G. Espineda from Office pending resolution of this administrative matter;

(d) ***ISSUE*** a Hold Departure Order against Cashier Concepcion G. Espineda to prevent her from leaving the country;

(e) ***DIRECT*** Presiding Justice Ernesto D. Acosta to strictly monitor the financial transactions of the Cashier of the Court of Tax Appeals if the guidelines prescribed by the Court in handling funds are properly implemented and see to it that the responsibility of collecting, recording and reporting of financial transactions shall not be left alone to one (1) personnel; and

(f) ***DIRECT*** the Legal Office to file appropriate criminal charges against Ms. Concepcion G. Expineda.

Pursuant to the above Resolution, the Court on February 24, 2005, directed the Commissioner of the Bureau of Immigration and Deportation and the Secretary of the Department of Foreign Affairs to include in their *Hold Departure List* herein respondent Espineda effective immediately and to enjoin her departure from the country until further orders of the Court.

On March 16, 2005, the Court noted the undated *Reply* of respondent where she requested for copies of the audit reports to be used as reference in the preparation of her explanation. She also requested that the 10-day period within which to file her explanation be reckoned from the time of her receipt of said copies of audit reports.

In a Resolution dated June 6, 2005, the Court (a) directed the Court Management Office to furnish respondent with all the pertinent schedules and documents relative to said office's initial findings as a result of its financial audit in the books of accounts of the CTA; (b) granted the request of respondent for a period of 10 days within which to explain in writing all the charges against her, counted from receipt of all the requested copies of the audit reports and schedules; and (c) directed said respondent to fully comply with all the directives of the Court in the February 14, 2005 Resolution. The filing of the criminal action against herein respondent was deferred until after the determination of her administrative liability based on the final financial report that will be submitted by the Court Management Office.

In a letter dated October 25, 2005, respondent acknowledged receipt of copies of all pertinent schedules and documents relative to the audit findings furnished her by the Court Management Office. At the same time, she requested for the Office of the Court Administrator to order a review of all the material entries in the audit findings in her presence. She also asked for another extension of 30 days within which to comply with the Court's directives.

On November 23, 2005, the Court granted respondent's request for an extension of 30 days to comply with the directives contained in the February 14, 2005 Resolution of the Court. However, in a letter dated January 31, 2006, respondent against requested for an extension of 30 days within which to review/re-examine the audit findings.

On March 6, 2006, the Court allowed respondent to review/ re-examine the material entries in the audit findings. At the same time, she was directed to coordinate with the Fiscal Monitoring Division of the Court Management Office – OCA to facilitate her re-examination of the audit report.

On March 26, 2006, respondent's request for an extension of 30 days within which to review/re-examine the audit findings was again granted by the Court. Notwithstanding said extensions, respondent still failed to coordinate with the Fiscal Monitoring Division of the Court Management Office – OCA. Worse, on June 7, 2006, she again requested for another extension of 30 days.

Consequently, on January 24, 2007, the Court required respondent to show cause why she should not be held in contempt for failure to comply with the Court's directives. At the same time, she was directed to comply with the February 14, 2005 Resolution within five days.

Instead of complying with the show cause order, respondent requested for another 30-day extension which the Court denied considering that she had been given sufficient time to comply. The Court also imposed upon her a fine of ₱1,000 or a penalty of imprisonment of five days if said fine is not paid. She was likewise directed to comply with the February 14, 2005 Resolution.

On June 1, 2007, respondent paid the ₱1,000 fine. In a Resolution dated April 9, 2008, the Court required respondent to submit an explanation relative to the accusations against her. Still, respondent did not comply. Instead, she asked for another extension of 30 days which the Court granted but this time with warning that no further extension will be given.

As of March 9, 2009, respondent has failed to submit her explanation hence the Court resolved to deem respondent to have waived the filing of an explanation and to resolve the case on the basis of the pleadings/records already filed and submitted.

Gleaned from the foregoing, it is clear that respondent wasted all the opportunities given to her by this Court to submit an explanation. Despite her unsubstantiated and self-serving assertion of deteriorating health condition and constant bout of hypertension, the Court still showed its benevolence towards her plight by providing her sufficient time to answer the charges against her. However, respondent did not take advantage of this opportunity; instead, she stretched this Court's patience to the limit.

We find respondent guilty of misappropriating judiciary funds – which act constitutes dishonesty and grave misconduct. Respondent did not deny committing the irregularities imputed against her or submit an explanation thereof despite several opportunities given her. In her letter dated November 12, 2004, respondent acknowledged sole responsibility over said infractions and admitted using the missing judiciary funds for her personal gain; she even offered to restitute the undeposited collections. Respondent's offer to restitute the whole amount would not serve to exonerate her from administrative liability; much more in this case where out of the total missing amount of ₱8,694,578.56, respondent only returned the measly sum of ₱100,601.00. The infraction had been committed; it could not be erased by mere offer of restitution.

Dishonesty and grave misconduct are classified as grave offenses. Under Section 22(a), (b) and (c) of Rule XIV of the *Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws*, the penalty for these offenses is dismissal, even if committed for the first time. Respondent's employment record of more than 24 years would not serve to mitigate her liability. On the contrary, it even serves to aggravate the same because with her long years of service in the judiciary, she is presumed to be familiar and conversant with the Court's circulars particularly with regard to the handling of judiciary funds. Yet, by her acts, she disregarded these guidelines and circulars which contributed to the erosion of the public's faith in the Judiciary.

WHEREFORE, premises considered, the Court finds respondent Concepcion G. Espineda, Cashier III, Court of Tax Appeals, *GUILTY* of dishonesty and grave misconduct. She is hereby ordered *DISMISSED* from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to reemployment in any government office, including government owned and controlled corporations. She is further ordered to *RESTITUTE* within thirty (30) days from notice, the amount of ₱8,593,977.56 representing the net collections in the Judiciary Development Fund which were not remitted.

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

Finally, the Legal Office of the Office of the Court Administrator is *AUTHORIZED* to file the appropriate criminal charges against respondent Concepcion G. Espineda.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-07-2332. September 4, 2009]
(Formerly OCA I.P.I. No. 07-2511-P)

DR. SALOME U. JORGE, *complainant, vs.* **CARLOS P. DIAZ, Deputy Sheriff, RTC, Branch 20, Tacurong, Sultan Kudarat,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFF; SIMPLE NEGLECT OF DUTY; FAILURE TO COMPLY WITH THE MANDATE ON RETURN OF THE WRIT OF EXECUTION; PENALTY FOR FIRST OFFENSE.— In a Decision rendered in Civil Case

No. 356 against the therein defendants Carlos T. Jorge and his wife-herein complainant Salome U. Jorge, Branch 30 of the Regional Trial Court (RTC) of Tacurong City orders the latter to pay jointly and severally the plaintiffs spouses Antonio dela Cruz and Elena dela Cruz [the money judgment]. Carlos P. Diaz, Deputy Sheriff, herein respondent, in implementation of the Writ of Execution issued following the finality of the Decision, garnished the ₱14,279.50 mid-year bonus of complainant without issuing any receipt therefor. x x x In his Comment, respondent, virtually admitting not issuing a receipt to complainant for garnishing the proceeds of her mid-year bonus, explained that he signed the payroll reflecting the grant and receipt of the bonus after receiving the cash proceeds thereof in the presence of the complainant. x x x It is with respect to respondent's receipt of the proceeds of complainant's bonus in June 2006 that this Court, as did the OCA, faults respondent for being remiss in his duties in failing to submit a return of the writ. While respondent belatedly executed a Sheriff's Report dated May 13, 2008, the same fails to comply with the mandate of Section 14 of Rule 39 reading: Section 14. *Return of writ of execution* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof **promptly** furnished the parties. In fine, respondent is indeed guilty of *simple neglect of duty*. Under Rule IV, Section 52 (B) (1) of the Uniform Rules on Administrative Cases in the Civil Service, the first offense of simple neglect of duty is penalized with suspension for one month and one day to six months.

D E C I S I O N

CARPIO MORALES, *J.*:

In a Decision rendered in Civil Case No. 356 against the therein defendants Carlos T. Jorge and his wife-herein complainant Salome U. Jorge, Branch 30 of the Regional Trial Court (RTC) of Tacurong City disposed as follows:

> ACCORDINGLY, the Court orders defendants Carlos T. Jorge and Dra. Salome U. Jorge to pay jointly and severally the plaintiffs spouses Antonio dela Cruz and Elena dela Cruz, the following:
>
> a) ₱100,000.00, as principal obligation with legal interest from January 8, 1993 until full settlement thereof;
>
> b) ₱20,000.00 as exemplary damages;
>
> c) ₱20,000.00 as attorney's fees; and
>
> d) Cost of the suit.
>
> SO ORDERED.[1] (Underscoring supplied).

Carlos P. Diaz, Deputy Sheriff, herein respondent, in implementation of the Writ of Execution issued following the finality of the Decision, garnished the ₱14,279.50 mid-year bonus of complainant without issuing any receipt therefor.

In connection with another case, Civil Case No. 703, "*Heirs of Francisca Penera represented by Dr. Salome U. Jorge, Sabina M. Urlanda, Cornelia Urlanda and Orlando P. Urlanda v. Rural Bank of Tacurong, Inc. represented by its president Jose Lagon and Armando Lagon*," in which complainant was the representative of the therein plaintiff, complainant alleged that respondent escorted the President of the therein defendant Rural Bank of Tacurong, Inc., along with others, in forcibly entering her farm and thereafter burning the kitchen of the farmhouse, taking some personal items, and destroying some fruit-bearing trees.

Hence, spawned complainant's filing of the present administrative complaint against respondent.

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[1] *Rollo*, p. 87.

In his Comment, respondent, virtually admitting not issuing a receipt to complainant for garnishing the proceeds of her mid-year bonus, explained that he signed the payroll reflecting the grant and receipt of the bonus after receiving the cash proceeds thereof in the presence of the complainant.

Respecting his questioned acts in connection with Civil Case No. 703, respondent found the same undocumented, hence, they may not hold ground.

After evaluating the complaint, the Office of the Court Administrator (OCA) came up with the following observations:

> Respondent sheriff categorically denies all the accusations charged against him. However, the best evidence to prove that he was not remiss in his duties was the return of the writ. x x x
>
> x x x x x x x x x
>
> It appears that respondent has not submitted his return on the garnishment of complainant's mid-year bonus. Such failure amounts to **simple neglect of duty** which has been defined as failure of an employee to give one's attention to the task expected of him, which signifies a disregard of a duty resulting from carelessness or indifference.
>
> On the other hand, the charge of **oppression** regarding the destruction of the farm trees and the taking of her farmhands' beds was not substantiated with any evidence.
>
> The burden is on the complainant to substantiate the allegations stated in the complaint. Hence, if the same were unfounded, the respondent is not required to raise his defenses.[2] (Emphasis and underscoring supplied)

The OCA thereupon recommended that the administrative complaint be re-docketed as a regular administrative matter, and that respondent be fined ₱1,000 for simple neglect of duty with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely.[3]

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

[3] *Id.* at 3.

On July 2, 2007, this Court noted the Complaint and the Comment, re-docketed the Complaint as a regular administrative matter, and required the parties to manifest within ten days from notice whether they were willing to submit the matter for resolution on the basis of the pleadings on file.[4]

In the meantime or on April 29, 2008, complainant filed another administrative complaint against respondent with the following charges:

1. DISHONESTY – Sheriff IV Carlos P. Diaz, RTC, Branch 20, Tacurong City, Province of Sultan Kudarat, collected from me a total of ₱165,781.00 to satisfy the writ of execution against me and my late husband Carlos T. Jorge dated March 1, 2004 x x x.

2. GRAVE ABUSE OF AUTHORITY – Even after Sheriff IV Carlos P. Diaz already collected the total amount of ₱165,781.00 to satisfy the judgment against me in Civil Case No. 356, he again executed the writ of execution in the same case. In connection therewith, he again took my bonuses including PIB in the amount of ₱72,000.00 from the municipal treasurer of Columbio, Sultan Kudarat, to satisfy the judgment in the same Civil Case No. 356.

3. SHERIFF IV CARLOS P. DIAZ should be charge[d] of [*sic*] the crime of Estafa through perjury for making untruthful statements of fact relative to his enforcement of the writ of execution in Civil Case No. 356 and collecting therefor excess [*sic*] amount from the accounts of the undersigned in the office of the municipal treasurer of Columbio, Sultan Kudarat last December, 2007, although the judgment obligation of the undersigned had already been overpaid.[5]

Complainant in fact sent a letter-complaint of October 2, 2008 addressed to the Deputy Ombudsman for Mindanao reiterating her charge that respondent had illegally collected her

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[4] *Id.* at 56.

[5] *Id.* at 60.

bonus in excess of the judgment debt in Civil Case No. 356,[6] which letter the Deputy Ombudsman endorsed to the OCA.[7]

In a still subsequent letter of February 9, 2009, complainant informed the OCA that respondent again garnished her mid-year, year-end, and extra bonuses for 2008,[8] albeit she did not state the amounts thereof.

In his March 12, 2009 Comment on these subsequent complaints, respondent claimed that the amounts taken from complainant's bonuses – which, as of March 12, 2009, totaled ₱218,000 – represented partial satisfaction of the judgment debt.[9]

The Court notes from the copy of the sheriff's report submitted by complainant that respondent had collected a total of ₱149,485.50 from 2006-2007.[10] From the earlier-quoted dispositive portion of the judgment rendered against complainant, the principal obligation of ₱100,000 was to bear legal interest from January 8, 1993. Twelve percent of ₱100,000 for every year[11] since January 8, 1993 or ₱12,000 every year up to this

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[6] *Id.* at 74.

[7] *Id.* at 73.

[8] *Id.* at 116-117.

[9] *Id.* at 148-149.

[10] *Id.* at 75.

[11] With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code;

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when

year, 2009, would yield ₱192,000. Adding this amount of interest to the ₱100,000 principal obligation, plus the ₱20,000 exemplary damages, and ₱20,000 attorney's fees, would yield a total of ₱332,000 as of this year, excluding costs of suit. Respondent cannot thus be said to have collected amounts in excess of the judgment debt inclusive of interest, exemplary damages, and attorney's fees.

From a copy of a Manifestation complainant submitted to the trial court itemizing the amount she had paid as of January 27, 2007 totalling ₱165,781,[12] the Court notes that the itemized amounts include some checks dated 1995, which could not have been in settlement of the 2003 judgment debt.

At all events, considering respondent's own information in his Comment to the supplemental/subsequent complaints that the total garnished amounts as of January 16, 2009 was ₱218,000,[13] the same still falls short of the total judgment debt of ₱332,000 as of this year.

It is with respect to respondent's receipt of the proceeds of complainant's bonus in June 2006 that this Court, as did the OCA, faults respondent for being remiss in his duties in failing

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or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of the legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. (Citations omitted). (*Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97).

[12] *Id.* at. 77-78.

[13] *Id.* at 148.

to submit a return of the writ. While respondent belatedly executed a Sheriff's Report dated May 13, 2008, the same fails to comply with the mandate of Section 14 of Rule 39 reading:

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

In fine, respondent is indeed guilty of *simple neglect of duty*. Under Rule IV, Section 52 (B) (1) of the Uniform Rules on Administrative Cases in the Civil Service, the first offense of simple neglect of duty is penalized with suspension for one month and one day to six months.

As did the OCA, the Court finds, too, that the charge for oppression against respondent was unsubstantiated and should thus be dismissed.

WHEREFORE, respondent Deputy Sheriff Carlos P. Diaz of the Regional Trial Court of Tacurong City is found guilty of Simple Neglect of Duty and is *SUSPENDED* for one month and one day, with *WARNING* that a repetition of the same or similar offense will be dealt with more severely. The charge for oppression is *DISMISSED*.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-08-2570. September 4, 2009]
(Formerly A.M. OCA IPI No. 07-2547-P)

LETICIA L. SALES, *complainant, vs.* **ARNEL JOSE A. RUBIO, Sheriff IV, RTC-OCC, Naga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; VIOLATION OF RULE ON LEGAL FEES; PROPER PENALTY.— The Court finds well-taken too the evaluation and recommendation of the OCA on the charge of discourtesy. The Court finds well-taken too the evaluation and recommendation of the OCA on respondent's failure to comply with the requirements of Rule 141, Section 10 of the Rules of Court. In *Danao v. Franco, Jr.*, the therein respondent who violated the same Section 10 of Rule 141 was faulted for *Simple Misconduct* – a less grave offense – and was penalized with suspension for two months without pay. In *Villarico v. Javier* which also involved a violation of the same Rule, the Court faulted the therein respondent for "*Conduct Unbecoming a Court Employee*" and imposed on him a fine of ₱2,000. And in *Guilas-Gamis v. Beltran,* the Court, without characterizing the similar offense committed, imposed on the therein respondent a fine of ₱2,000. In light of its rulings in the immediately-cited cases, the Court finds respondent liable for violation of Section 10, Rule 141 of the Rules of Court, which is penalized, under Rule IV, Section 52(B) (4) of the Uniform Rules on Administrative Cases in the Civil Service, with suspension for one month and one day to six months on the first offense.

2. ID.; ID.; ID.; DISCOURTESY COMMITTED IS CONSIDERED AN AGGRAVATING CIRCUMSTANCE.— As for respondent's commission of discourtesy in the course of the performance of official duties, it is penalized with reprimand on the first offense. Rule IV, Section 55 of the Uniform Rules on Administrative Cases in the Civil Service provides that "[i]f the respondent is found guilty of two or more charges or counts,

the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances." Discourtesy should thus, in the present case, be considered as an aggravating circumstance.

D E C I S I O N

CARPIO MORALES, *J.*:

In Civil Case No. 1289, the Municipal Circuit Trial Court (MCTC) of Magarao-Canaman, Camarines Sur rendered judgment in favor of the therein plaintiff-herein complainant Leticia L. Sales. The decision in favor of herein complainant having become final and executory, a writ of execution was issued which was implemented by herein respondent Sheriff IV Arnel Jose A. Rubio by seizing personal properties of the judgment debtor.

It appears that complainant and respondent engaged in an argument over the failure of respondent to seize some other personal property of the judgment debtor, as well as over the demand from complainant by respondent of the amount of ₱5,000, said to represent expenses for the implementation of the writ. In the course of the argument, respondent employed discourteous words.

The scheduled sale at public auction on October 6, 2006 of the seized properties did not push through, complainant and respondent proffering different reasons therefor.

Hence, spawned the filing by complainant of the present administrative complaint against respondent,[1] by letter of November 21, 2006, for dishonesty, bribery, inefficiency, incompetence in the performance of official functions, gross discourtesy, and violation of Republic Act No. 6713[2] Rule VI Section 4(a) in relation to Civil Case No. 1289.

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[1] *Rollo,* pp. 6-7.

[2] AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE

After respondent filed his Comment-Answer denying the charges and giving his side of the case, the Court, on recommendation of the Office of the Court Administrator (OCA), referred the case to the Executive Judge of the Regional Trial Court (RTC), Naga City, for investigation, report and recommendation.[3]

The Executive Judge found the charges for dishonesty, bribery, and inefficiency and incompetence in the performance of official duties unsubstantiated.[4] He, however, found respondent liable for discourtesy, with the recommendation that he be reprimanded, and that he be "sternly warned to [observe] the SC circular directing sheriffs to submit an estimated itemized expense before proceeding with the implementation of the writ."

The Investigating Judge also recommended that respondent and Patricia de Leon, Clerk, Office of the Clerk of Court, Regional Trial Court, Naga City, be formally administratively charged for Conduct Prejudicial to the Best Interest of the Service for collecting the amount of ₱3,000.00 from complainant, purportedly representing sheriff's expense in the implementation of the writ, without issuing any receipt therefor.[5]

The OCA, after evaluating the Complaint and respondent's Answer *vis-a-vis* the Report and Recommendation of the Investigating Judge, sustained the finding that respondent committed discourtesy, but modified the rest of the findings and recommendations, *viz*:

On the charges of **Inefficiency** and **Incompetence** in the Performance of Official Duties, the evidence presented during the investigation show[s] that the **respondent Sheriff failed to follow the rules** on the proper implementation of the subject writ of execution.

BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

[3] *Rollo*, p. 57.

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

[5] *Id.* at 134.

With regard to the **recommended penalty of "warning"** for the failure of the respondent Sheriff to comply with the provisions of the Rules of Court, specifically on the duty of the sheriff to submit to the court the itemized expenses for implementing the writ of execution, we find the same **too light**.

As an officer of the court, the respondent Sheriff should be fully aware of Sec. 10(j) , Rule 141 of the Rules of Court, *to wit*:

"Sec. 10. Sheriffs, and other persons serving processes.

x x x x x x x x x

(j) For levying on execution on personal or real property, THREE HUNDRED (₱300.00) pesos;

With regard to sheriff's expenses in executing the writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fee, warehousing and similar charges, the interested party shall pay said expenses in an amount **estimated** by the sheriff, **subject to the approval of the court**. Upon approval of said estimated expenses, the interested party shall **deposit such amount** with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, **subject to liquidation** within the same period for rendering a return on the process. The liquidation shall be **approved by the court**. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor." (Underscoring supplied by OCA; emphasis supplied)

As correctly pointed out by the Investigating Judge, the respondent Sheriff failed to strictly observe the requirements prescribed by Section 10, Rule 141 as amended by Supreme Court Resolution No. 04-2-04 dated 16 August 2004, the resolution amending Rule 141 (Legal Fees) of the Rules of Court. It even appears that he deliberately ignored the rules. The respondent Sheriff's explanation that his failure to submit the estimated sheriff's expenses to the court was due to the complainant's desire for the hasty implementation of the said writ does not justify his actuations. The respondent Sheriff should be cited for inefficiency and incompetence in the performance of his duties.

Anent **the allegation that the respondent Sheriff demanded ~~₱~~5,000 from the complainant** for the expenses to be incurred in the enforcement of the writ of execution, the Supreme Court has ruled that a Sheriff who demands and agrees to receive money from a party for the implementation of the Writ of Execution is liable for **Conduct Unbecoming of an Officer of the Court**.[6]

However, no evidence was submitted indicating that the respondent Sheriff received the aforesaid money [of ~~₱~~5,000] from the complainant for which reason he should be exonerated on the charge of bribery.

Be that as it may, it is worth stressing that the respondent Sheriff **incurred delay in implementing the writ of execution**. This can be deduced from his own admission that he waited for the filing of the Affidavit of Third-Party Claimant on 10 October 2006 when he should have been conducting the sale of the levied properties as early as 6 October 2006.[7]

Sheriffs do not exercise discretionary power with respect to the implementation of a writ of execution.

x x x x x x x x x

The foregoing considered, we submit that the appropriate penalties for the two (2) charges in the instant case are ***Suspension for Six (6) months and One (1) day to One (1) year*** for Inefficiency and Incompetence in the Performance of Official Duties, and ***Reprimand*** for discourtesy in the course of official duties. Noteworthy is the provision that:

> "if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered aggravating circumstances."

IN VIEW OF THE FOREGOING, we respectfully submit for consideration of the Honorable Court our recommendations that (1) the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter; and (2) respondent Arnel Jose A. Rubio, Sheriff IV, RTC-OCC, Naga City be held liable for Inefficiency and

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[6] *Villarico v. Javier*, A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 224.

[7] *Vide rollo*, p. 184 (TSN, February 18, 2008, p. 16).

Incompetence in the Performance of Official Duties and Discourtesy in the course of official duties, respectively. Consequently, the respondent should be meted the penalty of **SUSPENSION** for a period of **Six (6) months without pay** and **STERNLY WARNED** that a repetition of the same infractions in the future shall be dealt with more severely.[8] (Citations omitted) (Italics in the original; emphasis and underscoring partly in the original, partly supplied)

Thus, aside from faulting respondent for discourtesy, the OCA also faulted respondent for Inefficiency and Incompetence in the Performance of Official Duties.

The Court finds well-taken the evaluation and recommendation of the OCA on the charge for discourtesy.

The Court finds well-taken too the evaluation and recommendation of the OCA on respondent's failure to comply with the requirements of Rule 141, Section 10 of the Rules of Court. It finds the OCA's characterization of such failure as "Inefficiency and Incompetence in the Performance of Official Duties" – a grave offense – too harsh, however.

In *Danao v. Franco, Jr.*,[9] the therein respondent who violated the same Section 10 of Rule 141 was faulted for *Simple Misconduct* – a less grave offense – and was penalized with suspension for two months without pay. In *Villarico v. Javier*[10] which also involved a violation of the same Rule, the Court faulted the therein respondent for "*Conduct Unbecoming a Court Employee*" and imposed on him a fine of ₱2,000.[11] And in *Guilas-Gamis v. Beltran*,[12] the Court, without characterizing the similar offense committed, imposed on the therein respondent a fine of ₱2,000.

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[8] *Id.* at 246-249.

[9] A.M. No. P-02-1569, November 13, 2002, 391 SCRA 515, 520-521.

[10] A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 225.

[11] *Id.* at 224-225.

[12] A.M. No. P-06-2184, September 27, 2007, 534 SCRA 175, 180.

In light of its rulings in the immediately-cited cases, the Court finds respondent liable for violation of Section 10, Rule 141 of the Rules of Court, which is penalized, under Rule IV, Section 52(B) (4) of the Uniform Rules on Administrative Cases in the Civil Service, with suspension for one month and one day to six months on the first offense.[13] As for respondent's commission of discourtesy in the course of the performance of official duties, it is penalized with reprimand on the first offense.[14]

Rule IV, Section 55 of the Uniform Rules on Administrative Cases in the Civil Service provides that "[i]f the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances." Discourtesy should thus, in the present case, be considered as an aggravating circumstance.

WHEREFORE, respondent, Sheriff IV Arnel Jose Rubio of the Municipal Circuit Trial Court of Magarao-Canaman, Camarines Sur, is found *GUILTY* of violation of Rule 141, Section 10 and of Discourtesy, and is *SUSPENDED* for Six Months without pay, with a stern *WARNING* that a repetition of the same or similar offense or offenses shall be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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

[14] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (C) (1).

SECOND DIVISION

[G.R. No. 151969. September 4, 2009]

VALLE VERDE COUNTRY CLUB, INC., ERNESTO VILLALUNA, RAY GAMBOA, AMADO M. SANTIAGO, JR., FORTUNATO DEE, AUGUSTO SUNICO, VICTOR SALTA, FRANCISCO ORTIGAS III, ERIC ROXAS, in their capacities as members of the Board of Directors of Valle Verde Country Club, Inc., and JOSE RAMIREZ, *petitioners, vs.* **VICTOR AFRICA,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; TERM OF OFFICE; DEFINED AND CONSTRUED.— The word "term" has acquired a definite meaning in jurisprudence. In several cases, we have defined ***"term"*** as **the time during which the officer may claim to hold the office *as of right,*** and fixes the interval after which the several incumbents shall succeed one another. **The term of office is not affected by the holdover.** The term is fixed by statute and it does not change simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify. Term is distinguished from tenure in that an officer's ***"tenure"*** **represents the term during which the incumbent *actually holds office*.** The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent. Based on the above discussion, when Section 23 of the Corporation Code declares that "the board of directors . . . shall hold office for one (1) year until their successors are elected and qualified," we construe the provision to mean that the **term of the members of the board of directors shall be only for *one year;*** their term expires one year after election to the office. The holdover period – that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification – is ***not*** part of the

director's original *term* of office, nor is it a new term; the holdover period, however, constitutes part of his *tenure*. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that **the office has a fixed term*, which has expired,*** and the incumbent is holding the succeeding term.

2. ID.; ID.; ID.; POWERS AND FUNCTIONS.— The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to themselves the powers of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of corporate affairs. The underlying policy of the Corporation Code is that the business and affairs of a corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only in that way can the directors' continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over properties that they do not own.

3. ID.; ID.; ID.; AUTHORITY OF THE STOCKHOLDERS TO FILL IN A VACANCY CAUSED BY THE EXPIRATION OF A MEMBER'S TERM; SUSTAINED.— This theory of delegated power of the board of directors similarly explains why, under Section 29 of the Corporation Code, in cases where the vacancy in the corporation's board of directors is caused not by the expiration of a member's term, the successor "so elected to fill in a vacancy shall be elected ***only for the unexpired term*** of his predecessor in office." The law has authorized the remaining members of the board to fill in a vacancy only in specified instances, so as not to retard or impair the corporation's operations; yet, in recognition of the stockholders' right to elect the members of the board, it limited the period during which the successor shall serve only to the "*unexpired term* of his predecessor in office." While the Court in *El Hogar* approved of the practice of the directors to fill

vacancies in the directorate, we point out that this ruling was made before the present Corporation Code was enacted and before its Section 29 limited the instances when the remaining directors can fill in vacancies in the board, *i.e.*, when the remaining directors still constitute a quorum and when the vacancy is caused for reasons other than by removal by the stockholders or by expiration of the term. It also bears noting that the vacancy referred to in Section 29 contemplates a **vacancy occurring *within the director's term of office.*** When a vacancy is created by the expiration of a term, logically, there is no more unexpired term to speak of. Hence, Section 29 declares that it shall be the corporation's stockholders who shall possess the authority to fill in a vacancy caused by the expiration of a member's term. As correctly pointed out by the RTC, when remaining members of the VVCC Board elected Ramirez to replace Makalintal, there was no more unexpired term to speak of, as Makalintal's one-year term had already expired. Pursuant to law, the authority to fill in the vacancy caused by Makalintal's leaving lies with the VVCC's stockholders, not the remaining members of its board of directors.

APPEARANCES OF COUNSEL

Santiago & Santiago for petitioners.

D E C I S I O N

BRION, *J.*:

In this petition for review on *certiorari*,[1] the parties raise a legal question on corporate governance: Can the members of a corporation's board of directors elect another director to fill in a vacancy caused by the resignation of a hold-over director?

THE FACTUAL ANTECEDENTS

On February 27, 1996, during the Annual Stockholders' Meeting of petitioner Valle Verde Country Club, Inc. (*VVCC*), the following

[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 11-23.

were elected as members of the VVCC Board of Directors: Ernesto Villaluna, Jaime C. Dinglasan (*Dinglasan*), Eduardo Makalintal (*Makalintal*), Francisco Ortigas III, Victor Salta, Amado M. Santiago, Jr., Fortunato Dee, Augusto Sunico, and Ray Gamboa.[2] In the years 1997, 1998, 1999, 2000, and 2001, however, the requisite quorum for the holding of the stockholders' meeting could not be obtained. Consequently, the above-named directors continued to serve in the VVCC Board in a hold-over capacity.

On September 1, 1998, Dinglasan resigned from his position as member of the VVCC Board. In a meeting held on October 6, 1998, the remaining directors, still constituting a quorum of VVCC's nine-member board, elected Eric Roxas (*Roxas*) to fill in the vacancy created by the resignation of Dinglasan.

A year later, or on November 10, 1998, Makalintal also resigned as member of the VVCC Board. He was replaced by Jose Ramirez (*Ramirez*), who was elected by the remaining members of the VVCC Board on March 6, 2001.

Respondent Africa (*Africa*), a member of VVCC, questioned the election of Roxas and Ramirez as members of the VVCC Board with the Securities and Exchange Commission (*SEC*) and the Regional Trial Court (*RTC*), respectively. The SEC case questioning the validity of Roxas' appointment was docketed as SEC Case No. 01-99-6177. The RTC case questioning the validity of Ramirez' appointment was docketed as Civil Case No. 68726.

In his nullification complaint[3] before the RTC, Africa alleged that the election of Roxas was contrary to Section 29, in relation to Section 23, of the Corporation Code of the Philippines (*Corporation Code*). These provisions read:

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[2] Also co-petitioners of VVCC in the present petition.

[3] Africa's complaint before the RTC was denominated as "Nullification of the 'Election' of a 'New Regular/Hold-Over (?) Director' and Damages"; *rollo*, pp. 31-46.

Sec. 23. ***The board of directors or trustees.*** – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the **board of directors** or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who **shall hold office for one (1) year until their successors are elected and qualified.**

x x x x x x x x x

Sec. 29. ***Vacancies in the office of director or trustee.*** – **Any vacancy occurring in the board of directors or trustees** ***other than by removal by the stockholders or members or by expiration of term,*** **may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum;** ***otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose.*** A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office. x x x. [Emphasis supplied.]

Africa claimed that a year after Makalintal's election as member of the VVCC Board in 1996, his [Makalintal's] term – as well as those of the other members of the VVCC Board – should be considered to have already expired. Thus, according to Africa, the resulting vacancy should have been filled by the stockholders in a regular or special meeting called for that purpose, and not by the remaining members of the VVCC Board, as was done in this case.

Africa additionally contends that for the members to exercise the authority to fill in vacancies in the board of directors, Section 29 requires, among others, that there should be an *unexpired term* during which the successor-member shall serve. Since Makalintal's term had already expired with the lapse of the one-year term provided in Section 23, there is no more "unexpired term" during which Ramirez could serve.

Through a partial decision[4] promulgated on January 23, 2002, the RTC ruled in favor of Africa and declared the election of

[4] *Id.,* pp. 28-30.

Ramirez, as Makalintal's replacement, to the VVCC Board as null and void.

Incidentally, the SEC issued a similar ruling on June 3, 2003, nullifying the election of Roxas as member of the VVCC Board, *vice* hold-over director Dinglasan. While VVCC manifested its intent to appeal from the SEC's ruling, no petition was actually filed with the Court of Appeals; thus, the appellate court considered the case closed and terminated and the SEC's ruling final and executory.[5]

THE PETITION

VVCC now appeals to the Court to assail the RTC's January 23, 2002 partial decision for being contrary to law and jurisprudence. VVCC made a direct resort to the Court *via* a petition for review on *certiorari,* claiming that the sole issue in the present case involves a purely legal question.

As framed by VVCC, the issue for resolution is ***whether the remaining directors of the corporation's Board, still constituting a quorum, can elect another director to fill in a vacancy caused by the resignation of a hold-over director.***

Citing law and jurisprudence, VVCC posits that the power to fill in a vacancy created by the resignation of a hold-over director is expressly granted to the remaining members of the corporation's board of directors.

Under the above-quoted Section 29 of the Corporation Code, a vacancy occurring in the board of directors caused by the expiration of a member's term shall be filled by the corporation's stockholders. Correlating Section 29 with Section 23 of the same law, VVCC alleges that **a member's term shall be for one year *and* until his successor is elected and qualified;** otherwise stated, a member's term expires only when his successor to the Board is elected and qualified. Thus, "until such time as [a successor is] elected or qualified in an annual election where

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[5] CA Resolution dated August 27, 2003; *id.*, p. 124.

a quorum is present," VVCC contends that "the term of [a member] of the board of directors has yet *not* expired."

As the vacancy in this case was caused by Makalintal's resignation, not by the expiration of his term, VVCC insists that the board rightfully appointed Ramirez to fill in the vacancy.

In support of its arguments, VVCC cites the Court's ruling in the 1927 *El Hogar*[6] case which states:

> **Owing to the failure of a quorum at most of the general meetings since the respondent has been in existence, it has been the practice of the directors to fill in vacancies in the directorate by choosing suitable persons from among the stockholders.** This custom finds its sanction in Article 71 of the By-Laws, which reads as follows:
>
> Art. 71. The directors shall elect from among the shareholders members to fill the vacancies that may occur in the board of directors until the election at the general meeting.
>
> x x x x x x x x x
>
> Upon failure of a quorum at any annual meeting the directorate naturally holds over and continues to function until another directorate is chosen and qualified. Unless the law or the charter of a corporation expressly provides that an office shall become vacant at the expiration of the term of office for which the officer was elected, the general rule is to allow the officer to hold over until his successor is duly qualified. Mere failure of a corporation to elect officers does not terminate the terms of existing officers nor dissolve the corporation. The doctrine above stated finds expression in Article 66 of the by-laws of the respondent which declares in so many words that directors shall hold office "for the term of one year or until their successors shall have been elected and taken possession of their offices." x x x.
>
> It results that **the practice of the directorate of filling vacancies by the action of the directors themselves is valid.** Nor can any exception be taken to the personality of the individuals chosen by the directors to fill vacancies in the body. [Emphasis supplied.]

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[6] *Government of the Philippine Islands v. El Hogar Filipino*, 50 Phil. 399 (1927).

Africa, in opposing VVCC's contentions, raises the same arguments that he did before the trial court.

THE COURT'S RULING

We are not persuaded by VVCC's arguments and, thus, find its petition unmeritorious.

To repeat, the issue for the Court to resolve is ***whether the remaining directors of a corporation's Board, still constituting a quorum, can elect another director to fill in a vacancy caused by the resignation of a hold-over director.*** The resolution of this legal issue is significantly hinged on the determination of what constitutes a director's term of office.

The holdover period is not part of the term of office of a member of the board of directors

The word "term" has acquired a definite meaning in jurisprudence. In several cases, we have defined ***"term"*** as **the time during which the officer may claim to hold the office *as of right,*** and fixes the interval after which the several incumbents shall succeed one another.[7] **The term of office is not affected by the holdover.**[8] The term is fixed by statute and it does not change simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify.

Term is distinguished from tenure in that an officer's ***"tenure"*** **represents the term during which the incumbent *actually holds office***. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent.

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[7] See *Topacio Nueno v. Angeles*, 76 Phil. 12, 21-22 (1946); *Alba v. Evangelista*, 100 Phil. 683, 694 (1957); *Paredes v. Abad*, 155 Phil. 494 (1974); *Aparri v. Court of Appeals*, No. L-30057, January 31, 1984, 127 SCRA 231.

[8] *Gaminde v. Commission on Audit*, G.R. No. 140335, December 13, 2000, 347 SCRA 655.

Based on the above discussion, when Section 23[9] of the Corporation Code declares that "the board of directors…shall hold office for one (1) year until their successors are elected and qualified," we construe the provision to mean that the **term of the members of the board of directors shall be only for *one year;*** their term expires one year after election to the office. The holdover period – that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification – is ***not*** part of the director's original *term* of office, nor is it a new term; the holdover period, however, constitutes part of his *tenure*. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that **the office has a fixed term, *which has expired,*** and the incumbent is holding the succeeding term.[10]

After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold

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[9] The full text of which reads:

Sec. 23. *The board of directors or trustees.* – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

[10] Words & Phrases, Vol. 19, p. 576.

office until his resignation on November 10, 1998. This holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.

With the expiration of Makalintal's term of office, a vacancy resulted which, by the terms of Section 29[11] of the Corporation Code, must be filled by the stockholders of VVCC in a regular or special meeting called for the purpose. To assume – as VVCC does – that the vacancy is caused by Makalintal's resignation in 1998, not by the expiration of his term in 1997, is both illogical and unreasonable. His resignation as a holdover director did not change the nature of the vacancy; the vacancy due to the expiration of Makalintal's term had been created long before his resignation.

The powers of the corporation's board of directors emanate from its stockholders

VVCC's construction of Section 29 of the Corporation Code on the authority to fill up vacancies in the board of directors, in relation to Section 23 thereof, effectively weakens the stockholders' power to participate in the corporate governance by electing their representatives to the board of directors. The board of directors is the directing and controlling body of the

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[11] The full text of which reads:

Sec. 29. ***Vacancies in the office of director or trustee.*** – Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only or the unexpired term of his predecessor in office.

A directorship or trusteeship to be filled by reason of an increase in the number of directors or trustees shall be filled only by an election at a regular or at a special meeting of stockholders or members duly called for the purpose, or in the same meeting authorizing the increase of directors or trustees if so stated in the notice of the meeting.

corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to themselves the powers of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of corporate affairs.[12]

The underlying policy of the Corporation Code is that the business and affairs of a corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only in that way can the directors' continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over properties that they do not own.[13]

This theory of delegated power of the board of directors similarly explains why, under Section 29 of the Corporation Code, in cases where the vacancy in the corporation's board of directors is caused not by the expiration of a member's term, the successor "so elected to fill in a vacancy shall be elected ***only for the unexpired term*** of his predecessor in office." The law has authorized the remaining members of the board to fill in a vacancy only in specified instances, so as not to retard or impair the corporation's operations; yet, in recognition of the stockholders' right to elect the members of the board, it limited the period during which the successor shall serve only to the "*unexpired term* of his predecessor in office."

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[12] *Legarda v. La Previsora Filipina*, 66 Phil. 173 (1938), citing *Angeles v. Santos*, 64 Phil. 697 (1937).

[13] *Comac Partners, L.P., et al. v. Ghaznavi, et al.*, Del. Ch., 793 A.2d 372 (2001), citing *Bentas v. Haseotes*, Del. Ch., 769 A.2d 70, 76 (2000) and *Blasius Indus., Inc. v. Atlas Corp., Del. Ch.*, 564 A.2d 651, 659 (1988).

While the Court in *El Hogar* approved of the practice of the directors to fill vacancies in the directorate, we point out that this ruling was made before the present Corporation Code was enacted[14] and before its Section 29 limited the instances when the remaining directors can fill in vacancies in the board, *i.e.*, when the remaining directors still constitute a quorum and when the vacancy is caused for reasons other than by removal by the stockholders or by expiration of the term.

It also bears noting that the vacancy referred to in Section 29 contemplates a **vacancy occurring *within the director's term of office.*** When a vacancy is created by the expiration of a term, logically, there is no more unexpired term to speak of. Hence, Section 29 declares that it shall be the corporation's stockholders who shall possess the authority to fill in a vacancy caused by the expiration of a member's term.

As correctly pointed out by the RTC, when remaining members of the VVCC Board elected Ramirez to replace Makalintal, there was no more unexpired term to speak of, as Makalintal's one-year term had already expired. Pursuant to law, the authority to fill in the vacancy caused by Makalintal's leaving lies with the VVCC's stockholders, not the remaining members of its board of directors.

WHEREFORE, we *DENY* the petitioners' petition for review on *certiorari*, and *AFFIRM* the partial decision of the Regional Trial Court, Branch 152, Manila, promulgated on January 23, 2002, in Civil Case No. 68726. Costs against the petitioners.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

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[14] The Corporation Code or *Batas Pambansa Blg.* 68 was enacted on May 1, 1980.

SECOND DIVISION

[G.R. No. 154720. September 4, 2009]

JUAN BALBUENA and TEODULFO RETUYA, *petitioners, vs.* **LEONA APARICIO SABAY, DOROTEO SABAY, SEVERINO SABAY, DESDICHADO SABAY, LEONARDA SABAY, VIRGILIO SABAY and NAPOLEON SABAY,** *respondents.*

SYLLABUS

1. CIVIL LAW; SALES; PURCHASER AT PUBLIC AUCTION; ACQUIRES ONLY THE IDENTICAL INTEREST POSSESSED BY THE JUDGMENT DEBTOR; SUSTAINED.— Nothing is more settled than that a judgment creditor (or more accurately, the purchaser at an auction sale) only acquires at an execution sale the identical interest possessed by the judgment debtor in the auctioned property; in other words, the purchaser takes the property subject to all existing equities applicable to the property in the hands of the debtor. The fact, too, that the judgment debtor is in possession of the land to be sold at public auction, and that the purchaser did not know that a third-party had acquired ownership thereof, does not protect the purchaser, because he is not considered a third-party, and the rule of *caveat emptor* applies to him. Thus, if it turns out that the judgment debtor has no interest in the property, the purchaser at an auction sale also acquires no interest therein. These are doctrines that we have long followed in our jurisdiction and are fully applicable to the present case whose factual antecedents developed at almost the same time the antecedents of *Panizales* did. Significantly, the Rules of Court is proof of the enduring validity of these doctrines, as its Section 33, Rule 39 provides: Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given*. – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the

last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it. Upon the expiration of the right of redemption, **the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy.** The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

2. ID.; ID.; STIPULATION ON THE RIGHT TO REPURCHASE, VALID; EXEMPLIFIED.— Good faith is always presumed, and upon him who alleges bad faith rests the burden of proof. Bad faith is defined in jurisprudence as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will or for ulterior purpose. We believe and so hold that we cannot, under this evidentiary and jurisprudential standard, draw an inference of David Sabay's bad faith from the cited contract stipulations. The stipulations appear to us to be conditions in the contract that do not affect the issue of David Sabay's good or bad faith. Quite the contrary, the stipulations simply mean: (1) David Sabay was prepared to buy a property that he might lose if the stated contingency would happen; and (2) the parties have agreed to incorporate in their contract the implementation of one of the warranties usually implied in a contract of sale – the warranty against eviction. We note with significance, too, that it is not clear in the records whether David Sabay eventually lost the lands because Leoncia lost the case alluded to in the contract – the situation that would have paved the way for the implementation of the reimbursement stipulation. Apparently, he did not. Additionally, that Leoncia was given a right to repurchase the property does not militate against David Sabay's acquisition of full ownership rights over the lands. If at all, this is a limited right that the petitioners have acquired when they purchased the lands at public auction. This right is however irretrievably lost for Leoncia and the petitioners' failure to exercise it within

the agreed period. Neither is the presence of the right to purchase indicative of bad faith, as this is a stipulation allowed under the Civil Code.

3. REMEDIAL LAW; APPEALS; ISSUES OR GROUNDS NOT RAISED BELOW CANNOT BE RESOLVED ON REVIEW BY THE SUPREME COURT.— The well-settled rule is that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play justice and due process. x x x The petitioners' argument that the two contracts taken together were fictitious which involves questions of fact is beyond the review that the present Rule 45 petition covers. Suffice it to state that the petitioners presented no evidence on these issues before the lower court, as this is a claim made for the first time, belatedly at that, in this case. All these lead to the conclusion that the respondents have indeed acquired a superior right to the lands. On the whole therefore, we find no reversible error of law in the decision of the Court of Appeals.

APPEARANCES OF COUNSEL

Lorenzo S. Paylado for petitioners.
Adelino B. Sitoy for respondents.

D E C I S I O N

BRION, *J.*:

The present petition[1] seeks the reversal of the decision of the Court of Appeals (*CA*) in CA-G.R. No. 37507,[2] declaring respondents Leona Aparicio Sabay, Doroteo Sabay, Severino Sabay, Desdichado Sabay, Leonarda Sabay, Virgilio Sabay and Napoleon Sabay (the *respondents*) the true and lawful owners of the lands subject of the complaint. The assailed CA decision

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 10-75.

[2] Decision penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Perlita J. Tria-Tirona and Associate Justice Eliezer R. Delos Santos, concurring.

granted the respondents' appeal from the decision of the Regional Trial Court (*RTC*), Branch 9, Cebu City, that in turn declared petitioners Juan Balbuena and Teodulfo Retuya (the *petitioners*) the true owners of the lands.

THE ANTECEDENTS

The case originated from a complaint filed on March 11, 1972 by the petitioners with the RTC for ownership and recovery of possession, with damages, of three parcels of agricultural land situated in Barrio Kaduldolan Manga, Municipality of Tuburan, Cebu (the *lands*). **In their complaint, the petitioners described the disputed lands to be covered by tax declarations.** The petitioners alleged that Leoncia Sabay (*Leoncia*) originally owned the lands which they acquired *via* an execution sale in a civil case where Leoncia was the losing party. They further alleged that they took possession of the lands after the Provincial Sheriff of Cebu issued a Definite Deed of Sale; they were subsequently deprived of possession by the respondents by means of force and intimidation, threat, stealth and strategy. The respondents' possession, on the other hand, was interrupted by a writ of injunction issued by the Municipal Trial Court of Tuburan, Cebu, and after the lands were placed under receivership.

In their Answer, the respondents (heirs of David Sabay) denied the petitioners' alleged possession, claiming that the late David Sabay was the possessor of the lands from 1947 to 1956. They also claimed that the Definite Deed of Sale was void as it conveyed lands that, at the time of sale, did not belong to Leoncia; the lands had been sold to David Sabay on June 14, 1947. They denied the other material allegations of the complaint.

The respondents then asked for leave of court to file and admit a third-party complaint against the *Ex-Officio* Provincial Sheriff of Cebu and the sureties in the Sheriff's Indemnity Bond – Tomas Figueroa and Lucrecia Tabotabo. The court granted leave and admitted the third-party complaint despite the petitioners' opposition. In their Answer, the third-party defendants asserted prescription – no one can legally contest the more than

20-year old acts of the Provincial Sheriff which are already *fait accompli* and, therefore, had *res adjudicata* effects.

At the trial of the case, the parties proceeded to prove their respective claims, presenting testimonial and documentary evidence. The petitioners presented all documents to prove their acquisition of the lands *via* an execution sale. The respondents, on the other hand, presented: (1) the June 14, 1947 document of sale[3] between Leoncia and David Sabay, which pertinently described one of the lots then being sold to be subject of litigation and awaiting court decision and which stipulated that the sale was burdened with the condition that if Leoncia should lose the case, she would reimburse David Sabay with the purchase price of the lot; and (2) the December 31, 1950 deed of sale[4] between Leoncia and David Sabay that provided for a *pacto de retro* clause, that Leoncia can buy back the lands within 4 years from the signing of the deed of sale.

As it turned out (also during the trial), one of the three parcels of land was covered by a Torrens certificate of title – a fact not alleged in the respondents' answer. The RTC thus ordered the amendment of the Answer. The respondents complied with the RTC order and claimed in their Amended Answer with counterclaim that one of the disputed lands formed part of a larger tract covered by Transfer Certificate of Title (*TCT*) No. 19704 and was registered in the name of Felix C. Aves. They further claimed that Felix C. Aves sold the land covered by TCT No. 19704 to Leoncia, who in turn sold the land to David Sabay.

The RTC Decision

As mentioned above, the RTC rendered a decision in the petitioners' favor. It based its conclusion that the petitioners have a better right to the lands on the finding that the petitioners acquired the lands in good faith. To the RTC, the petitioners' purchase of the lands in good faith created a right that is superior

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[3] *Rollo*, p. 72.

[4] *Id.*, p. 73.

to the unrecorded earlier sale of the lands to David Sabay. The RTC cited the familiar rule that *where there was nothing in the title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore farther than what the Torrens title upon its face indicates in quest of any hidden defect or inchoate right that may subsequent defeat his right thereto*. On this basis, the trial court considered the petitioners purchasers in good faith.

The RTC mentioned that while *Lanci v. Yangco*[5] holds that the purchaser at an auction sale only acquires the identical interest in the property of the judgment debtor or conveyances or alienation made by a judgment debtor *via* lawful contract before levy will be valid as against the purchaser at the auction sale, the conveyance and/or encumbrance of registered properties, however, must still be indicated or inscribed in the certificate of title. *Lanci*, the RTC said, was after all decided under a special circumstance – the earlier filing (prior to the execution sale) of a third-party claim by persons claiming to have already bought the property effectively charged the purchaser at public auction with actual notice of the prior sale. *Lanci* too, the RTC claims, has been reversed and revoked by the Supreme Court in *Philippine National Bank v. Camus*[6] where we ruled that, under Section 50 of Act No. 496, instruments executed by the owners purporting to transfer or encumber registered land shall operate only as evidence or authority for the Register of Deeds to effect registration; it is the act of registration that shall be the operative act to convey and affect the land. This ruling is now purportedly strengthened with the amendment of Sections 50 and 51 of Act No. 496 by Sections 51 and 52 of Presidential Decree No. 1529.

In short, the RTC concluded that the Sheriff's Definite Deed of Sale vested the petitioners with absolute right of ownership over the lands, as the law and jurisprudence in force at the time

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[5] 52 Phil. 563 (1928).

[6] 70 Phil. 289 (1940).

of the sale to David Sabay require the inscription of conveyances on the titles of lands to be binding and effective.

The CA Decision

As previously stated, the CA reversed the RTC decision on appeal. The CA pointed out that the RTC overlooked an important and determinative circumstance of the case – the Torrens titles of the lands were not in the name of the judgment debtor, Leoncia; they were still in the names of Felix Aves, Enrique Reroma and Hacienda Laurel from whom Leoncia bought the lands.

With this finding, the CA rejected the application of the RTC's cited doctrine that the person who buys from a registered owner need not inquire farther than what the certificate of title indicates. The protection accorded a purchaser in good faith, according to the CA, applies only to one who purchased the property from the registered owner, not to a person who bought the property from someone who could not show any title or evidence of his capacity to transfer the land; utmost caution and a higher degree of prudence are required when one buys from a person who is not a registered owner.

Thus, according to the CA, the petitioners should have been placed on guard, for they purchased the lands from a non-registered owner. With their admission that they examined the lands' papers in the Municipality of Tuburan, Cebu before participating in the public auction, the petitioners should be deemed to be in bad faith for failing to exercise caution in acquiring the lands.

The CA thus considered the RTC's declaration that the petitioners were purchasers in good faith to be without factual and legal basis. It accordingly ruled that the petitioners only acquired, at the auction sale, whatever interest the judgment debtor, Leoncia, had on the subject properties. In so ruling, the CA concluded, too, that the respondents' right over the lands – based on a prior unregistered sale – is superior to that of the petitioners who purchased the lands at an auction sale. As the petitioners failed to exercise due diligence in ascertaining the

right, interest and claim of the judgment-debtor, Leoncia, to the lands at the time of the levy, they are bound to recognize the adverse rights and claims to the lands existing prior to the levy.

Unsuccessful at the CA, the petitioners are now before us, asking us to decide the following:

ISSUES

I. THE HONORABLE COURT OF APPEALS, SPECIAL ELEVENTH DIVISION, GRAVELY ABUSED ITS DISCRETION WHEN IT REVERSED THE DECISION OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH 9, BY HOLDING THAT THE COURT *A QUO'S* DECLARATION THAT PETITIONERS WERE PURCHASERS IN GOOD FAITH HAS NO FACTUAL AND LEGAL BASIS.

II. BY TOTALLY IGNORING THE ADMISSION OF RESPONDENTS THAT THEIR PREDECESSORS-IN-INTEREST HAVE AGREED TO THE CONDITION IN THE DEED OF SALE THAT HE BE REFUNDED OF THE CONSIDERATION IF THE VENDOR LOST HER CASE, THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT RESPONDENTS RIGHT OVER THE SUBJECT PROPERTIES, AS A RESULT OF A PRIOR UNREGISTERED SALE, IS FAR MORE SUPERIOR TO PETITIONERS RIGHT AS PURCHASER AT AN AUCTION SALE.

OUR RULING

We find the petition devoid of merit.

As a preliminary matter, we note that the respondents' first objection to the present petition is that it did not properly raise issues of law and should therefore fail given that a Rule 45 petition requires that the appeal raise only questions of law.[7]

We disagree with this position, as our reading of the whole petition – setting aside and glossing over the petitioners' use of

[7] *Rollo*, pp. 76-77.

the phrase "grave abuse of discretion" in defining the issues – shows that the petition does not involve any factual issue. The facts when the case reached us were neither disputed nor challenged. We are, therefore, concerned with the legal issue, based on established facts, of **which of the competing property rights of the parties – those of the purchaser at an execution sale or those derived from a sale or disposition prior to the levy on execution – shall prevail.**

The issue raised in the petition is not entirely novel, as we have previously ruled on the same issue in *Panizales v. Palmares.*[8] Briefly, the facts of this cited case are as follows: (1) on March 19, 1958, Geronimo Panizales bought the disputed lot in a private sale from the transferee of the original owner thereof; (2) on March 16, 1961, Valerio Palmares bought the same lot at the public auction sale conducted pursuant to a writ of execution issued at the instance of the judgment creditor who was the prevailing party in a suit against the original owner, the judgment debtor; and (3) when Panizales brought suit to vindicate his right, the lower court decided in his favor. In upholding the lower court, we ruled:

> Deference to authoritative, pronouncements of this Tribunal as to what property may be levied on in execution calls for the affirmance of the appealed decision. **From the stipulation of facts, it is undisputed that as far back as March 19, 1958, the lot in question had been disposed of. It ceased therefore as of that date to form part of the property of the judgment debtor.** There is a strong intimation in the brief of appellant that such a sale could be objected to as having been made in fraud of creditors. If such indeed were the case, defendants ought to have introduced evidence to that effect. Good faith is presumed. After the express admission that such a transaction did take place, although there was no categorical proof that the judgment creditor was aware of such a sale, it was not unreasonable for the lower court to consider that the property, now the object of the suit, could not be levied upon. It could not close its eyes to what was so stipulated. Since only questions of law may appropriately be raised before us, there would seem to be an obstacle to the reversal sought.

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[8] G.R. No. L-32143, October 31, 1972, 47 SCRA 376.

The ruling in *Potenciano v. Dinero*, the opinion being penned by Justice Alex Reyes is illuminating. Thus: **'The Rules of Court provide that a purchaser of real property at an execution sale 'shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto.'** (Rule 39, Section 24.) **In other words, the purchaser acquires only such right or interest as the judgment debtor had on the property at the time of the sale.** x x x It follows that if at that time the judgment debtor had no more right to or interest in the property because he had already sold it to another then the purchaser acquires nothing." One of the cases cited in the above opinion, *Barrido v. Barreto*, speaks to this effect: "*Este Tribunal, en varias decisiones ha sentado la doctrina de que un acreedor Judicial, como lo era el aqui apelante solo adquiere en una venta en virtud de una ejecucion un derecho identico al del deudor judicial – en este caso, Francisco Cuenca – sobre los bienes que son objeto de la venta en subasta publica*." The Barrido decision in turn makes reference to *Lanci v. Yangco*, where Justice Street, speaking for this Court, stated: "It is established doctrine that a judgment creditor only acquires at an execution sale the identical interest possessed by the judgment debtor in the property which is the subject of the sale. He therefore takes the property subject to all existing equities to which the property would have been subject in the hands of the debtor. It results, therefore, that, if the deed of the judgment debtor Agcaoili created a right enforceable against himself, that right can be enforced against the judgment creditor Yangco, and Ansaldo who stands in Yangco's shoes. It is true that in Section 50 of the Land Registration Law (Act No. 496) it is declared that the inscription is the act that gives validity to the transfer or creates a lien upon the land, but this is no obstacle to the giving due effect to anterior obligations, as between the parties and their successors other than bona fide purchasers for value." As a matter of fact, in *Laxamana v. Carlos*, which was likewise cited in the Barrido opinion, this Court, through Justice Villareal, affirmed "that the fact that the judgment debtor is in possession of the land upon which he holds rights which are to be sold at public auction, and that the purchaser did not know that a third party had acquired ownership thereof, does not protect the purchaser, because he is not considered a third party, and the rule of *caveat emptor* is applicable to him." The prevailing doctrine therefore, as set forth in *Isidro v. Dagdag*, through Justice Ozaeta, remains. As thus succinctly summarized: **"Under the jurisprudence established by this Court a *bona fide* sale and transfer of real property, although not**

recorded, is good and valid against a subsequent attempt to levy execution on the same property by a creditor of the vendor." To repeat then, the right of plaintiff Geronimo Panizales to the disputed lot in question must be recognized. In thus ruling, the lower court committed no error.

Nothing is more settled than that a judgment creditor (or more accurately, the purchaser at an auction sale) only acquires at an execution sale the identical interest possessed by the judgment debtor in the auctioned property; in other words, the purchaser takes the property subject to all existing equities applicable to the property in the hands of the debtor.[9] The fact, too, that the judgment debtor is in possession of the land to be sold at public auction, and that the purchaser did not know that a third-party had acquired ownership thereof, does not protect the purchaser, because he is not considered a third-party, and the rule of *caveat emptor* applies to him.[10] Thus, if it turns out that the judgment debtor has no interest in the property, the purchaser at an auction sale also acquires no interest therein.[11]

These are doctrines that we have long followed in our jurisdiction and are fully applicable to the present case whose factual antecedents developed at almost the same time the antecedents of *Panizales* did. Significantly, the Rules of Court is proof of the enduring validity of these doctrines, as its Section 33, Rule 39 provides:

Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given*. – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one

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[9] *Lanci v. Yangco*, 52 Phil. 563 (1928).

[10] *Laxamana v. Carlos*, 57 Phil. 722 (1932).

[11] *Pacheco v. CA*, G.R. No. L-48689, August 31, 1987, 153 SCRA 382.

(1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, **the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy.** The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

In the present case, Leoncia's earlier sale of the lands to David Sabay *via* the two deeds was never disputed; the existence, genuineness and due execution of the two documents of sale are therefore facts considered established and uncontroverted.

For the first time, the petitioners ask us in their petition to consider new facts in their attempt to obtain a reversal of the CA decision. They assert in their petition that (1) the fact that the lands were mentioned in the first document of sale to be the subject of litigation and (2) that there was a related stipulation on reimbursement in case a decision adverse to Leoncia was rendered, commonly indicate David Sabay's bad faith when he acquired the lands. To the petitioners, David Sabay's bad faith should be appreciated in determining who, between them and the respondents, have superior rights over the property given that David Sabay acquired limited rights over the lands under the document of sale. This also holds true, according to the petitioners, with respect to the second deed of sale which provided for Leoncia's right of repurchase. The petitioners further claim in this regard that these documents of sale might have been fictitiously made to deprive a winning creditor of the remedy of going after the properties of the judgment debtor. Reverting back to their theory, the petitioners claim that David Sabay and his heirs' bad faith deprived them of the protection the law gives to a holder of a certificate of title; the law, they posit, should not be used as a shield for fraud.

The newly-alleged facts obviously give rise to issues that were never raised in the proceedings before the RTC and the CA, and should not therefore be allowed to be raised at this stage of litigation. The well-settled rule is that issues or grounds not raised below cannot be resolved on review by the Supreme Court, for to allow the parties to raise new issues is antithetical to the sporting idea of fair play, justice and due process.[12]

Despite this conclusion, we nevertheless look at the petitioners' belatedly-raised issues if only to complete our consideration of the case and definitely close it.

Good faith is always presumed, and upon him who alleges bad faith rests the burden of proof.[13] Bad faith is defined in jurisprudence as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will or for ulterior purpose.[14]

We believe and so hold that we cannot, under this evidentiary and jurisprudential standard, draw an inference of David Sabay's bad faith from the cited contract stipulations. The stipulations appear to us to be conditions in the contract that do not affect the issue of David Sabay's good or bad faith. Quite the contrary, the stipulations simply mean: (1) David Sabay was prepared to buy a property that he might lose if the stated contingency would happen; and (2) the parties have agreed to incorporate in their contract the implementation of one of the warranties usually implied in a contract of sale – the warranty against eviction.[15] We note with significance, too, that it is not clear in the records whether David Sabay eventually lost the lands because Leoncia lost the case alluded to in the contract – the situation that would have paved the way for the implementation of the reimbursement stipulation. Apparently, he did not.

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[12] *Cuenco v. Talisay Tourists Sports Complex,* G.R. No. 174154, July 30, 2009.

[13] CIVIL CODE, Article 527.

[14] *Air France v. Carrascoso,* G.R. No. L-21438, September 28, 1966, 18 SCRA 166.

[15] *See* CIVIL CODE, Articles 1547(1), 1548-1560.

Additionally, that Leoncia was given a right to repurchase the property does not militate against David Sabay's acquisition of full ownership rights over the lands. If at all, this is a limited right that the petitioners have acquired when they purchased the lands at public auction. This right is however irretrievably lost for Leoncia and the petitioners' failure to exercise it within the agreed period.[16] Neither is the presence of the right to purchase indicative of bad faith, as this is a stipulation allowed under the Civil Code.[17]

Finally, the petitioners' argument that the two contracts taken together were fictitious which involves questions of fact is beyond the review that the present Rule 45 petition covers. Suffice it to state that the petitioners presented no evidence on these issues before the lower court, as this is a claim made for the first time, belatedly at that, in this case.

All these lead to the conclusion that the respondents have indeed acquired a superior right to the lands. On the whole therefore, we find no reversible error of law in the decision of the Court of Appeals.

WHEREFORE, premises considered, the petition is hereby *DENIED* for lack of merit.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

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[16] *See* the cited *Laxamana* case; *supra* note 10.

[17] *See* CIVIL CODE, Article 1601.

SECOND DIVISION

[G.R. No. 156164. September 4, 2009]

SPS. LEONARDO and MILAGROS CHUA, *petitioners, vs.* **HON. JACINTO G. ANG, DENNIS R. PASTRANA, IN THEIR CAPACITIES AS CITY AND ASSISTANT PROSECUTOR OF PASIG, RESPECTIVELY, FERDINAND T. SANTOS, ROBERT JOHN L. SOBREPEÑA, NOEL M. CARIÑO, ROBERTO S. ROCO, ALICE ODCHIQUE-BONDOC,[*] ROMULO T. SANTOS and ENRIQUE A. SOBREPEÑA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PRIOR MOTION FOR RECONSIDERATION IS UNNECESSARY.— The rules on prior recourse to these available remedies are not without exceptions, nor is the observance of the judicial hierarchy of courts an inflexible rule; the peculiarity, uniqueness and unusual character of the factual and circumstantial settings of a case may allow the flexible application of these established legal principles to achieve fair and speedy dispensation of justice. A prior motion for reconsideration is unnecessary: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner;** (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and **there is an extreme urgency for relief;** (f) where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; (g) where the proceedings

[*] Spelled as "Alice Odchigue-Bondoc" in other parts of the record.

in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; or (i) **where the issue raised is one purely of law or where public interest is involved.**

2. **ID.; ID.; ID.; WHEN PRIOR EXHAUSTION OF ADMINISTRATIVE REMEDIES MAY BE DISPENSED WITH.—** Prior exhaustion of administrative remedies may be dispensed with and judicial action may be validly resorted to immediately: (a) when there is a violation of due process; (b) **when the issue involved is purely a legal question;** (c) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (d) when there is estoppel on the part of the administrative agency concerned; (e) when there is irreparable injury; (f) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter; (g) **when to require exhaustion of administrative remedies would be unreasonable;** (h) when it would amount to a nullification of a claim; (i) when the subject matter is a private land in land case proceedings; (j) when the rule does not provide a plain, speedy and adequate remedy; or (k) **when there are circumstances indicating the urgency of judicial intervention.**

3. **ID.; ID.; ID.; WHEN STRICT OBSERVANCE OF THE PRINCIPLE OF HIERARCHY OF COURTS MAY BE RELAXED.—** On the non-observance of the principle of hierarchy of courts, it must be remembered that this rule generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought immediately before us as we are not triers of facts. A *strict application* of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright.

4. **ID.; ID.; ID.; QUESTION OF LAW; DEFINED.—** A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of

the probative value of the evidence presented, the truth or falsehood of facts being admitted.

5. CIVIL LAW; P.D. NO. 957 (THE SUBDIVISION AND CONDOMINIUM BUYERS PROTECTIVE DECREE); HOUSING AND LAND USE REGULATORY BOARD (HLURB); POWERS AND FUNCTIONS; EXPLAINED.— At stake in this case is shelter – a basic human need and to remand the case to the DOJ for a determination of the merits of the parties' jurisdictional tug-of-war would not serve any purpose other than to further delay its resolution. Thus, the *practicality of the situation* and *the need for the speedy administration of justice* justify a departure from the strict application of procedural rules. Besides, the issue before us presents no special difficulty, and we feel it should be decided now, without going through the procedural formalities that shall anyway end up with this Court. *Fourth*, the petition is meritorious. The public respondents committed grave abuse of discretion in dismissing the criminal complaints for violation of P.D. No. 957 on the ground that jurisdiction lies with the HLURB. Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating and defining the terms of the agency's mandate. **P.D. No. 1344** 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 of its quasi-judicial authority, on the other hand, is defined by the terms of **P.D. No. 957** whose Section 3 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 provisions of P.D No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was to provide for an appropriate government agency, the HLURB, to which all parties – buyers and sellers of subdivision and condominium units – may seek remedial recourse. The law recognized, too, that subdivision and condominium development involves public interest and welfare and should be brought to a body, like the HLURB, that has technical expertise. In the exercise of its powers, the HLURB, on the other hand, is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts. This ancillary power, generally judicial, is now no longer with the regular courts to the extent that the pertinent HLURB laws provide. What the Decree provides is the authority of the HLURB to impose *administrative fines* under Section 38, as implemented by the Rules Implementing the Subdivision and Condominium Buyer's Protective Decree. This Section of the Decree provides: Sec. 38. *Administrative Fines*. – The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court. The Implementing Rules, for their part, clarify that *"The implementation and payment of administrative fines shall not preclude criminal prosecution of the offender under Section 39 of the Decree."* Thus, the implementing rules themselves expressly acknowledge that two separate remedies with differing consequences may be sought under the Decree, specifically, the administrative remedy and criminal prosecution.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DETERMINATION THEREOF LIES WITH THE PERSONS DULY AUTHORIZED BY LAW; ENUMERATION.— Unless the contrary appears under other provisions of law (and in this case no such provision applies), the determination of the criminal liability lies within the realm of criminal procedure as embodied in the Rules of Court. Section 2, Rule 112 of these Rules provide that the prerogative to determine the existence or non-existence of probable cause lies with the persons duly authorized by law;

as provided in this Rule, they are (a) Provincial or City Prosecutors and their assistants; (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (c) National and Regional State Prosecutors; and (d) other officers as may be authorized by law.

7. ID.; ID.; ID.; REPUBLIC ACT NO. 5180 (LAW ON UNIFORM PROCEDURE OF PRELIMINARY INVESTIGATION); WHEN VIOLATED; CASE AT BAR.— In the present case, the petitioners have expressly chosen to pursue the criminal prosecution as their remedy but the prosecutor dismissed their complaint. The prosecutor's dismissal for prematurity was apparently on the view that an administrative finding of violation must first be obtained before recourse can be made to criminal prosecution. This view is not without its model in other laws; one such law is in the prosecution of unfair labor practice under the Labor Code where no criminal prosecution for unfair labor practice can be instituted without a final judgment in a previous administrative proceeding. The need for a final administrative determination in unfair labor practice cases, however, is a matter *expressly* required by law. Where the law is silent on this matter, as in this case, the fundamental principle – that administrative cases are independent from criminal actions – fully applies, subject only to the rules on forum shopping under Section 5, Rule 7 of the Rules of Court. In the present case, forum shopping is not even a matter for consideration since the petitioners have chosen to pursue only one remedy – criminal prosecution. Thus, we see no bar to their immediate recourse to criminal prosecution by filing the appropriate complaint before the prosecutor's office. In light of these legal realities, we hold that the public respondent prosecutors should have made a determination of probable cause in the complaint before them, instead of simply dismissing it for prematurity. Their failure to do so and the dismissal they ordered effectively constituted an evasion of a positive duty and a virtual refusal to perform a duty enjoined by law; they acted on the case in a manner outside the contemplation of law. This is grave abuse of discretion amounting to a lack of or in excess of jurisdiction warranting a reversal of the assailed resolution. In the concrete context of this case, the public prosecutors effectively shied away from their duty to prosecute, a criminal violation of P.D. No. 957 as mandated by Section 5, Rule 110 of the Rules of

Court and Republic Act No. 5180, as amended, otherwise known as the Law on Uniform Procedure of Preliminary Investigation.

8. ID.; ID.; DISMISSAL OF CRIMINAL COMPLAINT; REMEDIES.— As a final word, we stress that the *immediate recourse to this Court* that this Decision allows should not serve as a precedent in other cases where the prosecutor dismisses a criminal complaint, whether under P.D. No. 957 or any other law. Recourse to (a) the filing a motion for reconsideration with the City or Provincial Prosecutor, (b) the filing a petition for review with the Secretary of the DOJ, (c) the filing a motion for reconsideration of any judgment rendered by the DOJ, and (d) intermediate recourse to the CA, are remedies that the dictates of orderly procedure and the hierarchy of authorities cannot dispense with. Only the extremely peculiar circumstances of the present case compelled us to rule as we did; thus our ruling in this regard is a rare one that should be considered *pro hac vice*.

APPEARANCES OF COUNSEL

Rico and Associates for petitioners.
Poblador Bautista and Reyes for Ferdinand T. Santos, *et al.*

D E C I S I O N

BRION, *J.*:

Before us is the petition for *certiorari*[1] filed by the spouses Leonardo and Milagros Chua (*petitioners*) to assail the Resolution dated November 4, 2002 of the City Prosecutor of Pasig in I.S. No. PSG 02-02-09150. The City Prosecutor's Resolution dismissed the complaint filed by the petitioners against Ferdinand T. Santos, Robert John L. Sobrepeña, Noel M. Cariño, Roberto S. Roco, Alice Odchique-Bondoc, Romulo T. Santos and Enrique A. Sobrepeña, Jr. (*private respondents*) for violation of Presidential Decree (*P.D.*) No. 957, otherwise known as "The Subdivision and Condominium Buyers Protective Decree."

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

FACTUAL BACKGROUND

The antecedent facts, drawn from the records, are briefly summarized below.

On February 11, 1999, the petitioners (as buyers) and Fil-Estate Properties, Inc. (*FEPI*, as developers) executed a Contract To Sell[2] a condominium unit. Despite the lapse of three (3) years, FEPI failed to construct and deliver the contracted condominium unit to the petitioners.

As a result, the petitioners filed on September 3, 2002 a Complaint-Affidavit[3] before the Office of the City Prosecutor of Pasig City accusing the private respondents, as officers and directors of FEPI, of violating P.D. No. 957, specifically its Sections 17 and 20, in relation with Section 39.[4] These provisions state:

> Sec. 17. *Registration*. – All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.
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> Sec. 20. *Time of Completion*. – Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.
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[2] *Rollo*, pp. 37-48.

[3] *Id.*, pp. 30-33.

[4] *Id.*, pp. 34-36.

Sec. 39. *Penalties*. – Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, *upon conviction*, be punished by a fine of not more than twenty thousand (₱20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto. [Emphasis supplied]

The petitioners alleged that the private respondents did not construct and failed to deliver the contracted condominium unit to them and did not register the Contract to Sell with the Register of Deeds.

Of the seven (7) private respondents, only private respondent Alice Odchique-Bondoc filed a Counter-Affidavit.[5] She countered that the City Prosecutor has no jurisdiction over the case since it falls under the exclusive jurisdiction of the Housing and Land Use Regulatory Board (*HLURB*).

On November 4, 2002, Assistant City Prosecutor Dennis R. Pastrana and Pasig City Prosecutor Jacinto G. Ang (*public respondents*), respectively **issued and approved the Resolution**[6] **dismissing the complaint for being premature.** The Resolution held that it is the HLURB that has exclusive jurisdiction over cases involving real estate business and practices.

THE PETITION and THE PARTIES' POSITIONS

On December 12, 2002, the petitioners filed the present petition[7] anchored on the following ground:

PUBLIC RESPONDENTS COMMITTED MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, WHEN IT DISMISSED

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[5] *Id.,* pp. 56-64.

[6] *Id.,* pp. 22-27.

[7] *Id.,* pp. 3-21.

PETITIONER'S COMPLAINANT (sic) ON THE GROUND THAT THE HLURB, NOT THEIR OFFICE HAS JURISDICTION TO CONDUCT PRELIMINARY INVESTIGATION AND FILE THE CORRESPONDING INFORMATION IN COURT FOR CRIMINAL VIOLATIONS OF P.D. No. 957.[8]

The petitioners argue that jurisdiction to entertain criminal complaints is lodged with the city prosecutor and that the jurisdiction of the HLURB under P.D. No. 957 is limited to the enforcement of contractual rights, not the investigation of criminal complaints.

In their Comment,[9] the private respondents submit that the petition should be dismissed outright because the petitioners failed to avail of other remedies provided by law, such as (a) the filing of a motion for reconsideration with the City Prosecutor of Pasig City, (b) the filing of a petition for review with the Secretary of the Department of Justice (*DOJ*), (c) the filing of a motion for reconsideration of any judgment rendered by the DOJ, or (d) the filing of an appeal or a petition for *certiorari* with the Court of Appeals (*CA*); that even if *certiorari* is a proper remedy, the petition was filed in violation of the hierarchy of courts; and that even on the merits, the petition must fail since the public respondents correctly dismissed the complaint as a reasonable interpretation of P.D. No. 957 which requires a prior determination by the HLURB that a corporation violated P.D. No. 957 before criminal charges may be filed against its corporate officers.

In their Reply, the petitioners reiterate that the public respondents abdicated their authority to conduct a preliminary investigation and to indict the private respondents for criminal violations of P.D. No. 957 when they dismissed the criminal complaint for being premature.[10]

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

[9] *Id.,* p. 45.

[10] *Id.,* p. 91.

OUR RULING

We find the petition meritorious.

At the outset, we note that the petitioners indeed filed the present petition for *certiorari* without prior recourse to other available remedies provided by law and the observance of the judicial hierarchy of courts. Nonetheless, the rules on prior recourse to these available remedies are not without exceptions, nor is the observance of the judicial hierarchy of courts an inflexible rule; the peculiarity, uniqueness and unusual character of the factual and circumstantial settings of a case may allow the flexible application of these established legal principles to achieve fair and speedy dispensation of justice.

A prior motion for reconsideration is unnecessary: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner;** (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and **there is an extreme urgency for relief;** (f) where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; or (i) **where the issue raised is one purely of law or where public interest is involved.**[11]

On the other hand, prior exhaustion of administrative remedies may be dispensed with and judicial action may be validly resorted

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[11] *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 373; *Tan, Jr. v. Sandiganbayan*, G.R. No. 128764, July 10, 1998, 292 SCRA 452, 457; *Tan v. Court of Appeals*, G.R. No. 108634, July 17, 1997, 275 SCRA 568, 574-575.

to immediately: (a) when there is a violation of due process; (b) **when the issue involved is purely a legal question;** (c) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (d) when there is estoppel on the part of the administrative agency concerned; (e) when there is irreparable injury; (f) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter; (g) **when to require exhaustion of administrative remedies would be unreasonable;** (h) when it would amount to a nullification of a claim; (i) when the subject matter is a private land in land case proceedings; (j) when the rule does not provide a plain, speedy and adequate remedy; or (k) **when there are circumstances indicating the urgency of judicial intervention.**[12]

On the non-observance of the principle of hierarchy of courts, it must be remembered that this rule generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought immediately before us as we are not triers of facts.[13] A *strict application* of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright.[14]

In the present petition for *certiorari*, we find that there are four (4) compelling reasons to allow the petitioners' invocation of our jurisdiction in the first instance, even without prior recourse

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[12] *Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561, 573; *Paat v. Court of Appeals*, G.R. No. 111107, January 10, 1997, 266 SCRA 167.

[13] *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 161; *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. Nos. 155001, 155547 and 155661, January 21, 2004, 420 SCRA 575, 584.

[14] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338, 346; *Real v. Belo*, G.R. No. 146224, January 17, 2007, 513 SCRA 111.

to a motion for reconsideration or to the exhaustion of administrative remedies, and even in disregard of the principle of hierarchy of courts.

First, the petitioners raise a *pure question of law* involving jurisdiction over criminal complaints for violation of P.D. No. 957. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[15] As noted earlier, this Court is the undisputed final arbiter of all questions of law.

Second, the present case requires prompt action because public interest and welfare are involved in subdivision and condominium development, as the terms of P.D. Nos. 957 and 1344 expressly reflect.[16] Questions of conflicting processes, essentially based on jurisdiction, will consistently recur as people's need for housing (and hence, subdivisions and condominiums) escalate. Shelter is a basic human need whose fulfillment cannot afford any kind of delay.[17]

Third, considering that this case has been pending for nearly seven (7) years (since the filing of the Complaint-Affidavit on September 3, 2002) to the prejudice not only of the parties involved, but also of the subdivision and condominium regulatory

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[15] *Mendoza v. Salinas*, G.R. No. 152827, February 6, 2007, 514 SCRA 414, 419; *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, G.R. No. 161882, July 8, 2005, 463 SCRA 222, 233.

[16] Entitled "Empowering The National Housing Authority To Issue Writ Of Execution In The Enforcement Of Its Decision Under Presidential Decree No. 957."

[17] The first whereas clause of Executive Order No. 90 of December 17, 1986, entitled "Identifying the Government Agencies Essential for the National Shelter Program and Defining their Mandates, Creating the Housing and Urban Development Coordinating Council, Rationalizing Funding Sources and Lending Mechanisms for Home Mortgages and For Other Purposes," reads:

"WHEREAS, Government recognizes that **shelter is a basic need** for which low and middle income families, particularly in urbanized areas, require assistance; x x x" (Emphasis supplied).

system and its need for the prompt determination of controversies, the interests of justice now demand the direct resolution of the jurisdictional issue this proceeding poses. As mentioned, at stake in this case is shelter – a basic human need and to remand the case to the DOJ for a determination of the merits of the parties' jurisdictional tug-of-war would not serve any purpose other than to further delay its resolution.[18] Thus, the *practicality of the situation* and *the need for the speedy administration of justice* justify a departure from the strict application of procedural rules. Besides, the issue before us presents no special difficulty, and we feel it should be decided now, without going through the procedural formalities that shall anyway end up with this Court.

Fourth, the petition is meritorious. The public respondents committed grave abuse of discretion in dismissing the criminal complaints for violation of P.D. No. 957 on the ground that jurisdiction lies with the HLURB.

Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating and defining the terms of the agency's mandate. **P.D. No. 1344** clarifies and spells out the quasi-judicial dimensions of the grant of jurisdiction to the HLURB in the following specific terms:[19]

> 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;

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[18] See *Filipinas Manufacturers Bank v. Eastern Rizal Fabricators*, G.R. No. 62741, May 29, 1987, 150 SCRA 443.

[19] Jurisdiction was originally vested in the National Housing Authority (NHA) under P.D. No. 957, later clarified by P.D. No. 1344. Under Executive Order (E.O.) No. 648 of February 7, 1981, this jurisdiction was transferred to the Human Settlements Regulatory Commission (HSRC) which, pursuant to E.O. No. 90 of December 17, 1986, was renamed as the Housing and Land Use Regulatory Board (HLURB).

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 of its quasi-judicial authority, on the other hand, is defined by the terms of **P.D. No. 957** whose Section 3 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 provisions of P.D No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was to provide for an appropriate government agency, the HLURB, to which all parties – buyers and sellers of subdivision and condominium units – may seek remedial recourse. The law recognized, too, that subdivision and condominium development involves public interest and welfare and should be brought to a body, like the HLURB, that has technical expertise.[20] In the exercise of its powers, the HLURB, on the other hand, is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts. This ancillary power, generally judicial, is now no longer with the regular courts to the extent that the pertinent HLURB laws provide.[21]

Viewed from this perspective, the HLURB's jurisdiction over contractual rights and obligations of parties under subdivision and condominium contracts comes out very clearly. But hand in hand with this definition and grant of authority is the provision on criminal penalties for violations of the Decree, provided under the Decree's Section 39, heretofore quoted. Significantly, nothing

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[20] See *Arranza v. B. F. Homes, Inc.*, G.R. No. 131683, June 19, 2000, 333 SCRA 799.

[21] *Antipolo Realty Corporation v. National Housing Authority*, No. 50444, August 31, 1987, 153 SCRA 399, 407.

in P.D. No. 957 vests the HLURB with jurisdiction to impose the Section 39 *criminal* penalties. What the Decree provides is the authority of the HLURB to impose *administrative fines* under Section 38, as implemented by the Rules Implementing the Subdivision and Condominium Buyer's Protective Decree. This Section of the Decree provides:

> Sec. 38. *Administrative Fines*. – The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.

The Implementing Rules, for their part, clarify that "*The implementation and payment of administrative fines shall not preclude criminal prosecution of the offender under Section 39 of the Decree.*" Thus, the implementing rules themselves expressly acknowledge that two separate remedies with differing consequences may be sought under the Decree, specifically, the administrative remedy and criminal prosecution.

Unless the contrary appears under other provisions of law (and in this case no such provision applies), the determination of the criminal liability lies within the realm of criminal procedure as embodied in the Rules of Court. Section 2, Rule 112 of these Rules provide that the prerogative to determine the existence or non-existence of probable cause lies with the persons duly authorized by law; as provided in this Rule, they are (a) Provincial or City Prosecutors and their assistants; (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (c) National and Regional State Prosecutors; and (d) other officers as may be authorized by law.

In the present case, the petitioners have expressly chosen to pursue the criminal prosecution as their remedy but the prosecutor dismissed their complaint. The prosecutor's dismissal for prematurity was apparently on the view that an administrative finding of violation must first be obtained before recourse can be made to criminal prosecution. This view is not without its model in other laws; one such law is in the prosecution of unfair labor practice under the Labor Code where no criminal prosecution

for unfair labor practice can be instituted without a final judgment in a previous administrative proceeding.[22] The need for a final administrative determination in unfair labor practice cases, however, is a matter *expressly* required by law. Where the law is silent on this matter, as in this case, the fundamental principle – that administrative cases are independent from criminal actions[23] – fully applies, subject only to the rules on forum shopping under Section 5, Rule 7 of the Rules of Court.[24] In the present case, forum shopping is not even a matter for consideration since the petitioners have chosen to pursue only one remedy – criminal prosecution. Thus, we see no bar to their immediate recourse to criminal prosecution by filing the appropriate complaint before the prosecutor's office.

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[22] Article 247, Labor Code.

[23] *People v. Toledano*, G.R. No. 110220, May 18, 2000, 332 SCRA 210, 216-217; *Larin v. Executive Secretary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 727; see also *Barillo v. Gervacio*, G.R. No. 155088, August 31, 2006, 500 SCRA 561, 572.

[24] Section 5, Rule 7 of the Rules of Court provides:

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 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 noncompliance 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 constitute 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.

In light of these legal realities, we hold that the public respondent prosecutors should have made a determination of probable cause in the complaint before them, instead of simply dismissing it for prematurity. Their failure to do so and the dismissal they ordered effectively constituted an evasion of a positive duty and a virtual refusal to perform a duty enjoined by law; they acted on the case in a manner outside the contemplation of law. This is grave abuse of discretion amounting to a lack of or in excess of jurisdiction warranting a reversal of the assailed resolution.[25] In the concrete context of this case, the public prosecutors effectively shied away from their duty to prosecute, a criminal violation of P.D. No. 957 as mandated by Section 5, Rule 110 of the Rules of Court and Republic Act No. 5180,[26] as amended,[27] otherwise known as the Law on Uniform Procedure of Preliminary Investigation.

As a final word, we stress that the *immediate recourse to this Court* that this Decision allows should not serve as a precedent in other cases where the prosecutor dismisses a criminal complaint, whether under P.D. No. 957 or any other law. Recourse to (a) the filing a motion for reconsideration with the City or Provincial Prosecutor, (b) the filing a petition for review with the Secretary of the DOJ, (c) the filing a motion for reconsideration of any judgment rendered by the DOJ, and (d) intermediate recourse to the CA, are remedies that the dictates of orderly procedure and the hierarchy of authorities cannot dispense with. Only the extremely peculiar circumstances of the present case compelled us to rule as we did; thus our ruling in this regard is a rare one that should be considered *pro hac vice*.

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[25] *Deutsche Bank Manila v. Chua Yok See*, G.R. No. 165606, February 6, 2006, 481 SCRA 672, 692; *Perez v. Court of Appeals*, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

[26] Entitled "An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and Their Assistants, and by State Prosecutors or their Assistants," approved on September 8, 1967.

[27] By Presidential Decree No. 77, effective December 6, 1972, and Presidential Decree No. 911, effective March 23, 1976.

WHEREFORE, we hereby *GRANT* the petition and accordingly *REVERSE* and *SET ASIDE* the Resolution dated November 4, 2002 of the City Prosecutor of Pasig in I.S. No. PSG 02-02-09150. The complaint is hereby ordered returned to the Office of the City Prosecutor of Pasig City for the determination of probable cause and the filing of the necessary information, if warranted. No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 158630. September 4, 2009]

JOYCE Y. LIM, represented by her attorney-in-fact BERNARDO M. NICOLAS, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

[G.R. No. 162047. September 4, 2009]

JOYCE Y. LIM, represented by her attorney-in-fact BERNARDO M. NICOLAS, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY REGISTRATION DECREE; REGISTRATION OF TITLE; REQUISITES.— The twin applications for registration were decided by the trial court on the basis of the *Public Land Act* "and/or" the *Property Registration Decree*. The *Property Registration Decree* involves original registration through ordinary registration proceedings. Under Section 14 (1) of said law, the requisites

for the filing of an application for registration of title are: that the property in question is alienable and disposable land of the public domain; that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier. x x x An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land.

2. ID.; ID.; DISTINGUISHED FROM THE PUBLIC LAND ACT.— Alternative invocation of the provisions of the *Public Land Act* to have her applications considered as confirmations of imperfect titles, the same fails too. The *Public Land Act* provides: Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit: x x x (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 of ownership, since June 12, 1945, or earlier,** immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These 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. When Section 48 (b) of the *Public Land Act* was amended by *Presidential Decree No. 1073*, which made June 12, 1945 as the cut-off date, the amendment made the law concordant with Section 14 (1) of the *Property Registration Decree*. Section 48(b) of the *Public Land Act* and Section 14(1) of the *Property Registration Decree* vary, however, with respect to their operation since the latter operates when there exists a title which only needs confirmation, while the former works under the presumption that the land applied for still belongs to the State.

3. ID.; ID.; CLASSIFICATION OF LOTS AS ALIENABLE AND DISPOSABLE LANDS OF PUBLIC DOMAIN DO NOT CHANGE ITS STATUS AS PROPERTIES OF PUBLIC DOMINION.— While a property classified as alienable and disposable public land may be converted into private property by reason of open, continuous, exclusive and notorious possession of at least 30 years, public dominion lands become patrimonial property not only with a declaration that these are alienable or disposable but also with an express government manifestation that the property is already patrimonial or no longer retained for public use, public service or the development of national wealth. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run. While the subject lots were declared alienable or disposable on March 15, 1982, there is no competent evidence that they are no longer intended for public use or for public service. The classification of the lots as alienable and disposable lands of the public domain does not change its status as properties of the public dominion. Petitioner cannot thus acquire title to them by prescription as yet.

APPEARANCES OF COUNSEL

Escober Alon and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Joyce Lim (petitioner) filed on September 7, 1998 before the Regional Trial Court (RTC) of Tagaytay City an Application for Registration of Title (LRC Case No. TG-857) over Lot 13687, a 9,638-square-meter parcel of land located in Adlas, Silang, Cavite.[1]

Petitioner also filed on September 7, 1998 another application for registration of title (LRC Case No. TG-858) before the

[1] *Rollo* (G.R. No. 158630), p. 15, records (LRC No. TG-857), p. 1.

same RTC, this time over adjacent Lot 13686 containing 18,997-square-meters.[2]

Petitioner, declaring that she purchased both lots on April 30, 1997 from Spouses Edgardo and Jorgina Pagkalinawan (Spouses Pagkalinawan) as evidenced by a "*Kasulatan ng Bilihang Lubusan ng Lupa*,"[3] sought the application of Presidential Decree No. 1529 or the Property Registration Decree for both applications, claiming that she and her predecessors-in-interest Trinidad Mercado, Fernanda Belardo, Victoria Abueg and the Spouses Pagkalinawan have been in open, continuous, exclusive and notorious possession and occupancy of the lots under a *bona fide* claim of ownership for more than thirty (30) years. Petitioner alternatively invoked the provisions of Commonwealth Act No. 141, as amended, or the *Public Land Act* as basis of her applications.

In LRC Case No. TG-857, petitioner presented the following documentary evidence to support her claim of ownership over Lot 13687: original tracing cloth,[4] technical description of the lot,[5] tax declarations,[6] official receipts showing real estate tax payments[7] and a March 13, 1997 Certification from the Community Environment and Natural Resources Office (CENRO) that no other application/patent has been filed on the lot and that there is no adverse claimant thereto.[8]

She likewise appended a February 3, 1999 CENRO Certification reading

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[2] *Rollo* (G.R. No. 162047), p. 16.

[3] Exhibit "N"; Records (LRC Case No. TG-857), pp. 6-10; The Records in LRC Case No. TG-858 were not elevated to the Court.

[4] Records (LRC No. TG-857), p. 12, Exhibit "K".

[5] *Id.* at 13; Exhibit "P".

[6] *Id.* at 72-98; Exhibits "R" to "R-10".

[7] *Id.* at 99-100; Exhibits "S" to "S-2".

[8] *Id.* at 102; Exhibit "U".

This is to certify that the parcel of land designated as Lot 13687, Cad-452-D, Silang Cadastre as surveyed for Ms. Victoria Abueg situated at Brgy. Adlas, Silang, Cavite containing an area of 9,638 sq. meters more or less as shown and described on the plan on the other side hereof is verified to be **within the Alienable or Disposable Land** per Land Classification Map No. 3013 **established under Project No. 20-A** FAO 4-1656 **on March 15, 1982**.[9] (Emphasis and underscoring supplied)

In LRC Case No. TG-858 involving Lot 13686, petitioner offered the same documentary evidence presented in the other case except the original tracing cloth and technical description of the lot, and another dated February 3, 1999 CENRO Certification reading

This is to certify that the parcel of land designated as **Lot 13686,** Cad-452-D, Silang Cadastre as surveyed for Ms. Victoria Abueg situated at Brgy. Adlas, Silang, Cavite containing an area of 18,997 sq. meters more or less as shown and described on the plan on the other side hereof is verified to be **within the Alienable or Disposable Land** per Land Classification Map No. 3013 established under Project No. 20-A under FAO 4-1656 **on March 15, 1982**[10] (Emphasis and underscoring supplied)

To prove that she and her predecessors-in-interest had been in continuous and uninterrupted possession of the lots as required under the law, petitioner offered the testimony of Domingo Destura (Destura) as a common witness for both applications.[11]

Destura, who was 71 years old at the time he took the witness stand on March 17, 1999, testified that he was 13 years old when he became a helper at his father's farm which adjoins the subject lots; that he is familiar with Trinidad Mercado, the then owner of the lots as far back as the year 1941; that Trinidad Mercado's daughter, Fernanda Belardo, inherited them; and

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[9] *Rollo* (G.R. No. 158630), p. 83; Records (LRC Case No. TG-857), p. 101.

[10] *Rollo* (G.R. No. 162047), p. 124. Respondent's Memorandum quoted the Certification verbatim since the Records in LRC Case No. TG-858 were not elevated to the Court.

[11] Records (LRC Case No. TG-857), p.53.

the latter's daughter, Victoria Abueg, in turn inherited it from them; and that the lots were eventually sold to Edgardo Pagkalinawan sometime in the 1990s.[12]

Herein respondent Republic of the Philippines (the Republic or respondent), represented by an assistant provincial prosecutor, did not present evidence to oppose the applications.[13]

By Decision of October 21, 1999, Branch 18 of the RTC granted petitioner's application in LRC No. TG-857, disposing as follows:

> WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 *and/or* P.D. 1529, otherwise known as Property Registration Law, **the land described in Plan Ap-04-012230 and containing an area of Nine Thousand Six Hundred Thirty Eight (9,638) Square Meters,** as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of JOYCE Y. LIM who is of legal age, single and with postal address at 333 Juan Luna Street, Binondo, Manila.
>
> Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.
>
> SO ORDERED. (Emphasis, italics and underscoring supplied)

By a separate Decision of October 21, 1999, the same court also granted petitioner's application in LRC TG-858, disposing as follows:

> WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, **the land described in Plan Ap-04-012229 and containing an area of Eighteen Thousand Nine Hundred Ninety Seven (18,997) Square Meters,** as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of JOYCE Y. LIM who is of legal age, single and with postal address at 333 Juan Luna Street, Binondo, Manila.

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[12] Transcript of Stenographic Notes (TSN), March 17, 1999, pp. 6-12.

[13] Records (LRC Case No. TG-857), p. 105.

Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

SO ORDERED. (Emphasis and underscoring supplied)

The Solicitor General, on behalf of the Republic, appealed the decisions to the Court of Appeals on the ground that petitioner failed to comply with the provisions of the *Property Registration Decree* and Article 1137 of the Civil Code both laws of which require at least 30 years of adverse possession.[14]

By Decisions of November 20, 2002[15] and April 28, 2003[16] in CA-G.R. CV No. 67231 and CA-G.R. CV No. 67232, respectively, the appellate court reversed and set aside the decisions of the RTC and dismissed petitioner's applications.

In finding for the Republic in CA-G.R. CV No. 67231, the appellate court noted that petitioner's possession was short of the 30-year period of possession.

[I]n the case at bench, it is beyond dispute that [petitioner] acquired the subject land through purchased [sic] from Spouses Edgardo and Jorgina Pagkalinawan on April 30, 1997. In addition, **[petitioner's] predecessors-in-interests have been in possession of the subject land only as early as 1967 as evidenced by the *Tax Declaration No. 1980* (Record, p. 92, Exhibit "R-8-B"); *Tax Declaration No. 1981* (Record, p.80, Exhibit "R-5-C") and *Tax Declaration No. 1982* (Record, p.84, Exhibit "R-7") issued in their names.** However, said possession of [petitioner's] predecessors-in-interest in 1967 could not be used as the basis for the reckoning of the thirty (30) years period [*sic*] in view of the *Certification* dated February 3, 1999 (Record, p. 101) issued by the CENR Office declaring that subject land is ***"within the Alienable or Disposable Land Per Land Classification Map. No. 3013 established under Project No. 20-A under FAO 4-1656***

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[14] CA *rollo*, pp. 17-31.

[15] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices B.A. Adefuin-Dela Cruz and Mariano C. Del Castillo, concurring.

[16] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Conrado M. Vasquez Jr. and Rosmari D. Carandang, concurring.

on March 15, 1982," hence, the reckoning period should be March 15, 1982 and not 1967.

Applying March 15, 1982 as the date when the subject land was classified as alienable, it can be concluded that since [petitioner] filed this *Application* on September 7, 1998 (Record pp. 1-5) and her predecessors-in-interest have been **in possession of the subject land for only sixteen (16) years,** short of the thirty (30) years possession as required by P.D. [No.] 1529, the application for registration of title should have been denied by the court *a quo.* Moreover, the number of years from 1967 to 1982 or fifteen (15) years to be exact cannot be credited or included in the computation of the thirty (30)[-]year period since **during that time (1967-1982) the subject land was still inalienable and belongs [sic] to [the] public domain.** x x x.

x x x[17] (Italics in the original; emphasis and underscoring supplied)

Whereas, in CA-G.R. CV No. 67232, the appellate court also noted that petitioner's possession was short of the 30-year period of possession.

[I]n the case at bench, it is beyond dispute that [petitioner] acquired the subject land through purchased [sic] from Spouses Edgardo and Jorgina Pagkalinawan on April 30, 1997. In addition, **[petitioner's] predecessors-in-interest have been in possession of the subject land[s] only in 1994 as shown in the Tax Declaration No. 18582 (Record p.10, Annex "A") issued in their name (Spouses Pagkalinawan). No other evidence was adduced by [petitioner] that her predecessors[-]in[-]interest have been in possession of the subject land earlier than 1994.** As such, the possession of [petitioner] and her predecessors[-]in[-]interest was only for a period of 3 years (from 1994-1997). This falls short of the required 30 years period [sic] of possession in order to have the land registered and titled.

Assuming *arguendo* that [petitioner's] predecessors-in[-]interest have been in possession of the land for a period of 30 years, the application of said period is misplaced because per Certification dated February 3, 1999 (Record, p. 101) issued by the CENR Office, **the subject land was declared as "*within the Alienable or***

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[17] *Rollo* (G.R. No 158630), pp. 46-47.

***Disposable Land Per Land Classification Map. No. 3013 established under Project No. 20-A under FAO 4-1656 on March 15, 1982,*" hence, the reckoning period should be March 15, 1982. Deducting the year 1997 (date of purchase) from 1982 (the year the land was classified an [sic] alienable and disposable), [petitioner] have [*sic*] been in possession of the subject land only for a period of 15 years,** x x x.

x x x[18] (Italics in the original; emphasis and underscoring supplied)

Her motions for reconsideration having been denied,[19] petitioner lodged the present petitions for review. By Resolution[20] of September 6, 2006, the Court consolidated both petitions which fault the appellate court as follow:

I. . . . IN FINDING THAT PETITIONER HAS NOT PERFORMED ALL THE CONDITIONS ESSENTIAL TO A GOVERNMENT GRANT AS SET FORTH IN SECTION 48 (B) OF COMMONWEALTH ACT NO. 141, AS AMENDED, OTHERWISE KNOWN AS THE PUBLIC LAND ACT, THAT IS, THE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF PUBLIC AGRICULTURAL LAND FOR AT LEAST THIRTY (30) YEARS IMMEDIATELY PRECEDING THE FILING OF HER APPLICATION FOR REGISTRATION OF TITLE, THUS, PETITIONER IS NOT ENTITLED TO A CONFIRMATION OF HER INCOMPLETE AND IMPERFECT TITLE OVER [THE] SUBJECT PROPERTY.

II. . . . IN FINDING THAT THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1529, OTHERWISE KNOWN AS THE PROPERTY REGISTRATION ACT, REQUIRING OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION OF ALIENABLE AND DISPOSABLE LANDS OF [THE] PUBLIC DOMAIN, UNDER A BONAFIDE CLAIM OF OWNERSHIP, PRIOR TO 12 JUNE 1945, MAY DEFEAT PETITIONER'S RIGHT THAT HAS ALREADY BEEN VESTED PRIOR TO PROMULGATION THEREOF.[21]

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[18] *Rollo* (G.R. No. 162047), pp. 49-51.

[19] *Rollo* (G.R. No. 158630), p. 51; *Id.* at 55-56.

[20] *Rollo* (G.R. No. 162047), p. 159.

[21] *Rollo* (G.R. No. 158630), p. 20; *Id.* at 21-22.

Petitioner maintains in her Memorandum[22] that she and her predecessors-in-interest have been in possession of the properties since 1941. She draws attention to the testimony of Destura as well as the documentary evidence pointing to the payment of real property taxes as far back as 1967 in the name of Trinidad Mercado.[23]

Respondent, on the other hand, posits that petitioner herself submitted evidence that proves fatal to her applications, citing the CENRO February 3, 1999 Certifications which reflect the failure to satisfy the requirements of the law regarding classification of the lots as alienable and disposable land since June 12, 1945 or earlier, or for 30 years or more at the time of the filing of the applications in 1998.

Respondent emphasizes that the lots were classified to be alienable and disposable only on March 15, 1982, hence, petitioner's possession or occupancy of the lots could only be reckoned from said date onwards.[24]

Respondent further posits that, in any event, petitioner failed to prove that possession was continuous from 1941 up to the filing of the applications in 1998 as no factual evidence thereof was proffered, the testimony of Destura having only established the transfers of ownership over the lots.[25]

The petitions fail.

The twin applications for registration were decided by the trial court on the basis of the *Public Land Act* "and/or" the *Property Registration Decree*.

The *Property Registration Decree* involves original registration through ordinary registration proceedings. Under Section 14

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[22] *Rollo* (G.R. No. 162047), pp. 164-195.

[23] *Vide*: Records (LRC No. TG-857), p. 97; Exhibit "R-9-D". The dorsal portion thereof reflects that "tax under said declaration begins with the year 1967.

[24] *Rollo* (G.R. No. 162047), pp. 203-205.

[25] *Id.* at 206-209.

(1) of said law, the requisites for the filing of an application for registration of title are: that the property in question is alienable and disposable land of the public domain; that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[26]

As the Solicitor General proffers, the alienable and disposable character of the lots should have already been established on June 12, 1945 or earlier; and given that they were declared alienable only on March 15, 1982, as reflected in the CENRO Certifications, petitioner could not have maintained a *bona fide* claim of ownership since June 12, 1945 or earlier.

In *Republic of the Philippines v. Court of Appeals and Naguit*,[27] the Court declared that Section 14(1) of the *Property Registration Decree*

…**merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed.** If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However**, if the property has already been classified as alienable and disposable,** as it is in this case, **then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.**

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

(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.

x x x x x x x x x.

[27] G.R. No. 144057, January 17, 2005, 489 Phil. 405.

This reading aligns conformably with our holding in *Republic v. Court of Appeals*. Therein, the Court noted that "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 a statute." In that case, the subject land had been certified by the DENR as alienable and disposable in 1980, thus the Court concluded that the alienable status of the land, **compounded** by the established fact that therein respondents had occupied the land even before 1927, sufficed to allow the application for registration of the said property. In the case at bar, even the petitioner admits that the subject property was released and certified as within alienable and disposable zone in 1980 by the DENR.[28] (Citations omitted; emphasis and underscoring supplied)

As gathered from the CENRO Certifications, the lots were verified to be alienable or disposable lands on March 15, 1982. These Certifications enjoy the presumption of regularity in the absence of contradictory evidence.

In another vein, there is no sufficient proof that petitioner's predecessors-in-interest had been in open, continuous and adverse possession of the lots since June 12, 1945 or earlier. Petitioner's reliance on the testimony of Destura does not lie.

Petitioner's witness Destura merely recounted petitioner's version of the chain of ownership of the lots. His testimony consists of general statements with no specifics as to when petitioner's predecessors-in-interest began actual occupancy of the lots. It did not establish the character of the possession of petitioner and her predecessors-in-interest over the lots. Consider his following testimony:

Q. When you were 13 years old, do you know who was the owner of these parcels of land?

A. Trinidad Mercado, ma'm.

x x x x x x x x x

Q. Do you know what is the nature of these parcels of land?

[28] *Id.* at 414-415.

A. Agricultural, sir.

Q. And why do you say that this is agricultural?

A. It is planted to seasonal crops.

Q. After Trinidad Mercado, Mr. Witness, do you remember who became the owner of these parcels of land?

A. After the death of Trinidad in 1970, it was inherited by Fernanda Belardo.

Q. Why? Who is this Fernanda Belardo?

A. She is the only daughter of Trinidad Mercado.

x x x x x x x x x

ATTY. PINEDA:

Do you know of any crops being planted by this Fernanda Belardo?

A. **The previous crops that they are planting there** [*sic*], **ma'm.**

Q. Until when did Fernanda Belardo own these parcels of land?

A. **Up to** [*sic*] **1990s.**

Q. Do you know who became the owner of these parcels of land sometime in the 1990s?

A. What I know, Victoria Abueg, the daughter of Fernanda Belardo.

Q. And do you know how this Victoria Abueg became the owner of this land?

A. Since I am an adjacent owner of the property, I know that the children partitioned the property among themselves.

Q. Are you saying that these properties were inherited by Victoria Abueg from her mother Fernanda?

A. That is what I know.

x x x x x x x x x

Q. When was this property sold, if you know?

A. In the 1990s.

Q. And do you know to whom these parcels of land were sold to? [*sic*]

A. To Edgardo Pagkalinawan.

x x x x x x x x x

Q. **Do these properties continue to be agricultural at the time of Edgardo Pagkalinawan?**

A. **Yes, ma'm.**

ATTY. PINEDA:

Why do you say so, Mr. Witness?

A. **Because the same crops were planted on the properties by Edgardo Pagkalinawan.**

Q. **After this Edgardo Pagkalinawan, who became the owner of these properties?**

A. **I came to know** that it was sold to Joyce Lim.

x x x x x x x x x

Q. **Are there any crops still being planted on this parcel of land?**

WITNESS:

The same seasonal crops like the previous ones like pineapple and coffee.

x x x x x x x x x

Q. **And you said you and your father are working on the property belonging, adjoining to these properties [sic], is that correct?**

A. **Yes, sir.**

Q. **Not on these properties?**

A. **No, sir.**

FISCAL VELAZCO:

The property that adjoins the parcels of land subject of the application is owned by you, or you just work on it?

A. As a **tenant**, sir.

x x x (Emphasis and underscoring supplied)[29]

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[29] TSN, March 17, 1999, pp. 6-14.

Clearly, Destura's avowals are at best hearsay. Even if he were a helper of his father-occupant of an adjoining lot, he does not appear to have personal knowledge of the ownership and possession of the subject lots or any adverse claim thereto.

The same holds true with respect to the testimonies of petitioner's other witnesses –Fernando Cortez, who is the caretaker of the lots since 1997,[30] and Bernardo Nicolas, the liaison officer of the law firm engaged by petitioner to trace back the lots' previous owners and secure the requisite documents and certifications from government agencies and offices. Both witnesses' testimonies are extraneous as they failed to even mention a single act of dominion over the lots on June 12, 1945 or earlier.

As *Republic v. Alconaba*[31] holds:

> The law speaks of possession **and** occupation. Since these words are separated by the conjunction **and**, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. *Actual* possession of a land consists in the *manifestation of acts of dominion* over it of such a nature as a party would naturally exercise over his own property**. (Emphasis, italics and underscoring supplied)[32]

As for petitioner's reliance on the tax declarations and receipts of realty tax payments, the documents – tax declarations for Lot No. 13687 and Lot No. 13686 which were issued only in

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[30] TSN, April 21, 1999, pp. 4-7.

[31] 471 Phil. 607 (2004).

[32] *Id.* at 620 citing *Director of Lands v. IAC*, G.R. No. 68946, 209 SCRA 214 (1992), *Ramos v. Director of Lands*, 39 Phil. 175 (1918) and *Republic v. Court of Appeals*, G.R. Nos. 115747 and 116658, November 20, 2000, 345 SCRA 104.

1991 and 1994,[33] respectively, are *indicia* of the possession in the concept of an owner.[34] There is no showing of tax payments before these years.

Furthermore, an examination of the tax declaration marked as Exhibit "R-10" reveals that the realty taxes on Lots 13686 and 13687 from 1982 to 1991 were **paid only on August 1, 1991**.[35] And while the tax declarations marked as Exhibits "R" to "R-4" specifically pertain to Lot 13687 with an area of 9,638 square meters,[36] Exhibits "R-5" to "R-9-D" neither contain the cadastral lot number nor the total area of the lot covered thereby. Additionally, these Exhibits relate to a lot located in "Biluso," not in "Adlas" in Silang, Cavite, the adjacent lots or boundaries of which are not even detailed.[37]

An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land.[38]

As for petitioner's alternative invocation of the provisions of the *Public Land Act* to have her applications considered as confirmations of imperfect titles, the same fails too. The *Public Land Act* provides:

> Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for

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[33] The CA Decision mentioned Tax Declaration No. 18582 (with reference to p.10 of the Record in LRC Case No. TG-858 the records of which were not elevated to the Court).

[34] *Republic v. Kalaw*, G.R. No. 155138, June 8, 2004, 431 SCRA 401, 413.

[35] Records (LRC No. TG-857), p. 98 (at dorsal portion).

[36] *Id.* at 72-76.

[37] *Id.* at 77-97.

[38] *Director of Lands Management Bureau v. CA*, 381 Phil. 761, 770 (2000).

confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x x

(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 of ownership, since June 12, 1945, or earlier,** immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These 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 and underscoring supplied.)

When Section 48 (b) of the *Public Land Act* was amended by *Presidential Decree No. 1073*,[39] which made June 12, 1945 as the cut-off date, the amendment made the law concordant with Section 14 (1) of the *Property Registration Decree*.

Section 48(b) of the *Public Land Act* and Section 14(1) of the *Property Registration Decree* vary, however, with respect to their operation since the latter operates when there exists a title which only needs confirmation, while the former works under the presumption that the land applied for still belongs to the State.[40]

As earlier discussed, while the subject lots were verified to be alienable or disposable lands since March 15, 1982, there is no sufficient proof that open, continuous and adverse possession over them by petitioner and her predecessors-in-interest commenced on June 12, 1945 or earlier. Petitioner's applications cannot thus be granted.

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[39] Section 4. – The provisions of Section 48 (b) and Section 48 (c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessors-in-interest, under a bona fide claim of acquisition of ownership since June 12, 1945.

[40] *Republic v. Herbieto*, G.R. No. 156117, May 26, 2005, 459 SCRA 183, 203 citing *Aquino v. Director of Lands*, 39 Phil. 850, 858 (1919).

While a property classified as alienable and disposable public land may be converted into private property by reason of open, continuous, exclusive and notorious possession of at least 30 years,[41] public dominion lands become patrimonial property not only with a declaration that these are alienable or disposable but also with an express government manifestation that the property is already patrimonial or no longer retained for public use, public service or the development of national wealth.[42] And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.

While the subject lots were declared alienable or disposable on March 15, 1982, there is no competent evidence that they are no longer intended for public use or for public service. The classification of the lots as alienable and disposable lands of the public domain does not change its status as properties of the public dominion. Petitioner cannot thus acquire title to them by prescription as yet.

WHEREFORE, the petitions are *DENIED*. The Decisions and Resolutions of the Court of Appeals in CA-G.R. CV Nos. 67231 and 67232 are hereby *AFFIRMED*.

No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio,[*] and *Abad, JJ.,* concur.

Brion, J., in the result.

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[41] *Vide*: *Group Commander, Intelligence and Security Group, Philippine Army v. Dr. Malvar*, 438 Phil. 252, 275 (2002).

[42] The CIVIL CODE states that:

Art. 420. The following things are property of public dominion:

x x x x x x x x x.

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Art. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

[*] Additional member vice Justice Mariano C. del Castillo, who took no part due to prior participation in the Court of Appeals.

SECOND DIVISION

[G.R. No. 167569. September 4, 2009]

CARLOS T. GO, SR., *petitioner, vs.* **LUIS T. RAMOS,** *respondent.*

[G.R. No. 167570. September 4, 2009]

JIMMY T. GO, *petitioner, vs.* **LUIS T. RAMOS,** *respondent.*

[G.R. No. 171946. September 4, 2009]

HON. ALIPIO F. FERNANDEZ, JR., in his capacity as the Commissioner of the BUREAU OF IMMIGRATION; ATTY. FAISAL HUSSIN and ANSARI M. MACAAYAN, in their capacity as Intelligence Officers of the BUREAU OF IMMIGRATION, *petitioners, vs.* **JIMMY T. GO *a.k.a.* JAIME T. GAISANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CITIZENSHIP PROCEEDINGS; *RES JUDICATA* DOES NOT OBTAIN AS A MATTER OF COURSE; RATIONALE.— Cases involving issues on citizenship are *sui generis*. Once the citizenship of an individual is put into question, it necessarily has to be threshed out and decided upon. In the case of *Frivaldo v. Commission on Elections*, we said that decisions declaring the acquisition or denial of citizenship cannot govern a person's future status with finality. This is because a person may subsequently reacquire, or for that matter, lose his citizenship under any of the modes recognized by law for the purpose. Indeed, if the issue of one's citizenship, after it has been passed upon by the courts, leaves it still open to future adjudication, then there is more reason why the government should not be precluded from questioning one's claim to Philippine citizenship, especially so when the same has never been threshed out by any tribunal. Citizenship proceedings, as aforestated, are a class of its own, in that, unlike other cases, *res judicata* does not obtain as a

matter of course. In a long line of decisions, this Court said that every time the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res judicata*; hence, it has to be threshed out again and again as the occasion may demand.

2. ID.; ID.; *RES JUDICATA*; WHEN APPLICABLE.— *Res judicata* may be applied in cases of citizenship only if the following concur: 1. a person's citizenship must be raised as a material issue in a controversy where said person is a party; 2. the Solicitor General or his authorized representative took active part in the resolution thereof; and 3. the finding or citizenship is affirmed by this Court.

3. ID.; ID.; INDISPENSABLE PARTY; DEFINED; NOT PRESENT IN CASE AT BAR.— As to the issue of whether Carlos is an indispensable party, we reiterate that an indispensable party is a party in interest without whom no final determination can be had of an action, and who shall be joined either as plaintiff or defendant. To be indispensable, a person must first be a real party in interest, that is, one who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit. Carlos clearly is not an indispensable party as he does not stand to be benefited or injured by the judgment of the suit. What is sought is the deportation of Jimmy on the ground that he is an alien. Hence, the principal issue that will be decided on is the propriety of his deportation. To recall, Jimmy claims that he is a Filipino under Section 1(3), Article IV of the 1935 Constitution because Carlos, his father, is allegedly a citizen. Since his citizenship hinges on that of his father's, it becomes necessary to pass upon the citizenship of the latter. However, whatever will be the findings as to Carlos' citizenship will in no way prejudice him.

4. ID.; ID.; THE COURT MAY ENJOIN THE DEPORTATION PROCEEDINGS; RATIONALE.— There can be no question that the Board has the authority to hear and determine the deportation case against a deportee and in the process determine also the question of citizenship raised by him. However, this Court, following American jurisprudence, laid down the exception to the primary jurisdiction enjoyed by the deportation

board in the case of *Chua Hiong v. Deportation Board* wherein we stressed that judicial determination is permitted in cases when the courts themselves believe that there is substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct. Moreover, when the evidence submitted by a deportee is conclusive of his citizenship, the right to immediate review should also be recognized and the courts shall promptly enjoin the deportation proceedings. While we are mindful that resort to the courts may be had, the same should be allowed only in the sound discretion of a competent court in proper proceedings. After all, the Board's jurisdiction is not divested by the mere claim of citizenship. Moreover, a deportee who claims to be a citizen and not therefore subject to deportation has the right to have his citizenship reviewed by the courts, after the deportation proceedings. The decision of the Board on the question is, of course, not final but subject to review by the courts.

5. POLITICAL LAW; CITIZENSHIP; DOCTRINE OF *JUS SOLI*; APPLICATION THEREOF IS ABANDONED BY THE SUPREME COURT.— The doctrine of *jus soli* was for a time the prevailing rule in the acquisition of one's citizenship. However, the Supreme Court abandoned the principle of *jus soli* in the case of *Tan Chong v. Secretary of Labor*. Since then, said doctrine only benefited those who were individually declared to be citizens of the Philippines by a final court decision on the mistaken application of *jus soli.*

6. ID.; ID.; AS A RULE, A LEGITIMATE CHILD FOLLOWS THE CITIZENSHIP OF THE FATHER WHILE AN ILLEGITIMATE CHILD FOLLOWS THE CITIZENSHIP OF THE MOTHER; WHEN ELECTION OF CITIZENSHIP ALLOWED.— It is a settled rule that only legitimate children follow the citizenship of the father and that illegitimate children are under the parental authority of the mother and follow her nationality. Moreover, we have also ruled that an illegitimate child of a Filipina need not perform any act to confer upon him all the rights and privileges attached to citizens of the Philippines; he automatically becomes a citizen himself. Com. Act No. 625 which was enacted pursuant to Section 1(4), Article IV of the 1935 Constitution, prescribes the procedure

that should be followed in order to make a valid election of Philippine citizenship. Under Section 1 thereof, legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines." However, the 1935 Constitution and Com. Act No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "upon reaching the age of majority." The age of majority then commenced upon reaching 21 years. In the opinions of the then Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a "reasonable time" after attaining the age of majority. The phrase "reasonable time" has been interpreted to mean that the election should be made within three (3) years from reaching the age of majority. It is true that we said that the 3-year period for electing Philippine citizenship may be extended as when the person has always regarded himself as a Filipino. Be that as it may, it is our considered view that not a single circumstance was sufficiently shown meriting the extension of the 3-year period. The fact that Carlos exercised his right of suffrage in 1952 and 1955 does not demonstrate such belief, considering that the acts were done after he elected Philippine citizenship. On the other hand, the mere fact that he was able to vote does not validate his irregular election of Philippine citizenship. At most, his registration as a voter indicates his desire to exercise a right appertaining exclusively to Filipino citizens but does not alter his real citizenship, which, in this jurisdiction, is determined by blood (*jus sanguinis*). The exercise of the rights and privileges granted only to Filipinos is not conclusive proof

of citizenship, because a person may misrepresent himself to be a Filipino and thus enjoy the rights and privileges of citizens of this country. It is incumbent upon one who claims Philippine citizenship to prove to the satisfaction of the court that he is really a Filipino. No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the state.

7. ID.; ID.; DEPORTATION PROCEEDINGS; NATURE THEREOF; EXPLAINED.— Deportation proceedings are administrative in character, summary in nature, and need not be conducted strictly in accordance with the rules of ordinary court proceedings. 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 reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. Although Jimmy was not furnished with a copy of the subject Resolution and Charge Sheet as alleged by him, the trial court found that he was given ample opportunity to explain his side and present controverting evidence, thus: x x x It must be stressed that after receiving the Order dated September 11, 2001 signed by BSI Chief Ronaldo P. Ledesma on October 4, 2001, petitioner Jimmy T. Go admitted that when his representative went to the B.I.D. to inquire about the said Order, the latter chanced upon the Resolution dated February 14, 2001 and March 8, 2001 as well as the Charge Sheet dated July 3, 2001. Hence on October 5, 2001, he filed a "Motion for Extension of Time to File Memorandum" and as such, was allowed by Ronaldo P. Ledesma an extension of ten (10) days to submit his required memorandum. x x x This circumstance satisfies the demands of administrative due process.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; WHEN AVAILABLE; NOT APPLICABLE IN CASE AT BAR.— We have held in a litany of cases that the extraordinary remedies of *certiorari*, prohibition and *mandamus* are available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The writ of *certiorari* does not lie where an appeal may be taken or where another adequate remedy is available for the correction of the error. The petitioners

correctly argue that appeal should have been the remedy availed of as it is more plain, speedy and adequate. The 48-hour appeal period demonstrates the adequacy of such remedy in that no unnecessary time will be wasted before the decision will be re-evaluated.

9. ID.; SPECIAL PROCEEDINGS; ISSUANCE OF THE WRIT OF *HABEAS CORPUS*; NOT ALLOWED WHEN THE PARTY SOUGHT TO BE RELEASED HAS ALREADY BEEN CHARGED BEFORE THE COURTS.— A petition for the issuance of a writ of *habeas corpus* is a special proceeding governed by Rule 102 of the Revised Rules of Court. The objective of the writ is to determine whether the confinement or detention is valid or lawful. If it is, the writ cannot be issued. What is to be inquired into is the legality of a person's detention as of, at the earliest, the filing of the application for the writ of *habeas corpus,* for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4 of Rule 102, be no longer illegal at the time of the filing of the application. Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of *habeas corpus.* His remedy would be to quash the information and/or the warrant of arrest duly issued. The writ of *habeas corpus* should not be allowed after the party sought to be released had been charged before any court. The term "court" in this context includes quasi-judicial bodies of governmental agencies authorized to order the person's confinement, like the Deportation Board of the Bureau of Immigration. Likewise, the cancellation of his bail cannot be assailed via a petition for *habeas corpus.* When an alien is detained by the Bureau of Immigration for deportation pursuant to an order of deportation by the Deportation Board, the Regional Trial Courts have no power to release such alien on bail even in *habeas corpus* proceedings because there is no law authorizing it.

APPEARANCES OF COUNSEL

Madayag Cañeda Ruenata and Associates and *Rovenel O. Obligar* for respondent Jimmy T. Go.

Agabin Verzola Hermoso and Layaoen for Luis T. Ramos.

D E C I S I O N

QUISUMBING, *J.*:

Before us are three petitions. G.R. Nos. 167569 and 167570 are petitions for review on *certiorari* to set aside the October 25, 2004 Decision[1] and February 16, 2005 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 85143 that affirmed the Decision[3] dated January 6, 2004 and Order[4] dated May 3, 2004 of the Regional Trial Court (RTC) of Pasig City, Branch 167 in SCA No. 2218 upholding the preparation and filing of deportation charges against Jimmy T. Go, the corresponding Charge Sheet[5] dated July 3, 2001, and the deportation proceedings thereunder conducted.

On the other hand, G.R. No. 171946, also a petition for review on *certiorari*, seeks to set aside the December 8, 2005 Decision[6] and March 13, 2006 Resolution[7] of the appellate court in CA-G.R. SP No. 88277.

Considering that the three cases arose from the same factual milieu, the Court resolved to consolidate G.R. Nos. 167570 and 167569 with G.R. No. 171946 per Resolution[8] dated February 26, 2007.

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[1] *Rollo* (G.R. No. 167569), pp. 597-609. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[2] *Id.* at 611.

[3] *Id.* at 612-617. Penned by Judge Alfredo C. Flores.

[4] *Id.* at 618-619.

[5] *Rollo* (G.R. No. 167570), p. 157.

[6] *Rollo* (G.R. No. 171946), pp. 35-49. Penned by Associate Justice Eliezer R. De los Santos with Associate Justices Eugenio S. Labitoria and Jose C. Reyes, Jr., concurring.

[7] *Id.* at 50. Penned by Associate Justice Eliezer R. De los Santos with Associate Justices Arturo D. Brion (now a member of this Court) and Jose C. Reyes, Jr., concurring.

[8] *Rollo* (G.R. No. 167570), p. 530.

These petitions stemmed from the complaint-affidavit[9] for deportation initiated by Luis T. Ramos before the Bureau of Immigration and Deportation (now Bureau of Immigration) against Jimmy T. Go alleging that the latter is an illegal and undesirable alien. Luis alleged that while Jimmy represents himself as a Filipino citizen, Jimmy's personal circumstances and other records indicate that he is not so. To prove his contention, Luis presented the birth certificate of Jimmy, issued by the Office of the Civil Registrar of Iloilo City, which indicated Jimmy's citizenship as "FChinese." Luis argued that although it appears from Jimmy's birth certificate that his parents, Carlos and Rosario Tan, are Filipinos, the document seems to be tampered, because only the citizenship of Carlos appears to be handwritten while all the other entries were typewritten. He also averred that in September 1989 or thereabout, Jimmy, through stealth, machination and scheming managed to cover up his true citizenship, and with the use of falsified documents and untruthful declarations, was able to procure a Philippine passport from the Department of Foreign Affairs.

Jimmy refuted the allegations in his counter-affidavit,[10] averring that the complaint for deportation initiated by Luis was merely a harassment case designed to oust him of his rightful share in their business dealings. Jimmy maintained that there is no truth to the allegation that he is an alien, and insisted that he is a natural-born Filipino. Jimmy alleged that his father Carlos, who was the son of a Chinese father and Filipina mother, elected Philippine citizenship in accordance with Article IV, Section 1, paragraph 4[11] of the 1935 Constitution and Commonwealth Act

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[9] *Rollo* (G.R. No. 167569), pp. 631-634.

[10] *Id.* at 636-646.

[11] ARTICLE IV. *Citizenship*

SECTION 1. The following are citizens of the Philippines:

x x x x x x x x x

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

x x x x x x x x x

No. 625[12] (Com. Act No. 625), as evidenced by his having taken the Oath of Allegiance on July 11, 1950 and having executed an Affidavit of Election of Philippine citizenship on July 12, 1950. Although the said oath and affidavit were registered only on September 11, 1956, the reason behind such late registration was sufficiently explained in an affidavit. Jimmy added that he had even voted in the 1952 and 1955 elections.[13] He denied that his father arrived in the Philippines as an undocumented alien, alleging that his father has no record of arrival in this country as alleged in the complaint-affidavit precisely because his father was born and raised in the Philippines, and in fact, speaks fluent Ilonggo and Tagalog.[14]

With regard to the erroneous entry in his birth certificate that he is "FChinese," he maintained that such was not of his own doing, but may be attributed to the employees of the Local Civil Registrar's Office who might have relied on his Chinese-sounding surname when making the said entry. He asserted that the said office has control over his birth certificate; thus, if his father's citizenship appears to be handwritten, it may have been changed when the employees of that office realized that his father has already taken his oath as a Filipino.[15] As regards the entry in his siblings' certificates of birth, particularly Juliet Go and Carlos Go, Jr., that their father is Chinese, Jimmy averred that the entry was erroneous because it was made without prior consultation with his father.[16]

In a Resolution[17] dated February 14, 2001, Associate Commissioner Linda L. Malenab-Hornilla dismissed the complaint

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[12] AN ACT PROVIDING THE MANNER IN WHICH THE OPTION TO ELECT PHILIPPINE CITIZENSHIP SHALL BE DECLARED BY A PERSON WHOSE MOTHER IS A FILIPINO CITIZEN, approved on June 7, 1941.

[13] *Rollo* (G.R. No. 167569), pp. 642-643.

[14] *Id.* at 645-646.

[15] *Id.* at 644.

[16] *Id.*

[17] *Id.* at 685-687.

for deportation against Jimmy. Associate Commissioner Hornilla affirmed the findings of the National Bureau of Investigation tasked to investigate the case that Jimmy's father elected Filipino citizenship in accordance with the provisions of the 1935 Philippine Constitution. By operation of law, therefore, the citizenship of Carlos was transmitted to Jimmy, making him a Filipino as well.

On March 8, 2001,[18] the Board of Commissioners (Board) reversed said dismissal, holding that Carlos' election of Philippine citizenship was made out of time. Finding Jimmy's claim to Philippine citizenship in serious doubt by reason of his father's questionable election thereof, the Board directed the preparation and filing of the appropriate deportation charges against Jimmy.

On July 3, 2001, the corresponding Charge Sheet was filed against Jimmy, charging him of violating Section 37(a)(9)[19] in relation to Section 45(c)[20] of Com. Act No. 613, otherwise

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[18] *Rollo*, (G.R. No. 167570), pp. 155-156.

[19] Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

x x x x x x x x x

(9) Any alien who commits any of the acts described in sections forty-five and forty-six of this Act, independent of criminal action which may be brought against them: *Provided*, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: *Provided*, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head;

x x x x x x x x x

[20] Section 45. Any individual who –

x x x x x x x x x

(c) Obtains, accepts or uses any immigration document, knowing it to be false; or

x x x x x x x x x

known as The Philippine Immigration Act of 1940,[21] as amended, committed as follows:

x x x x x x x x x

1. That Respondent was born on October 25, 1952 in Iloilo City, as evidenced by a copy of his birth certificate wherein his citizenship was recorded as "Chinese";

2. That Respondent through some stealth machinations was able to subsequently cover up his true and actual citizenship as Chinese and illegally acquired a Philippine Passport under the name JAIME T. GAISANO, with the use of falsified documents and untruthful declarations, in violation of the above-cited provisions of the Immigration Act[;]

3. That [R]espondent being an alien, has formally and officially represent[ed] and introduce[d] himself as a citizen of the Philippines, for fraudulent purposes and in order to evade any requirements of the immigration laws, also in violation of said law.

CONTRARY TO LAW.[22]

On November 9, 2001, Carlos and Jimmy filed a petition for *certiorari* and prohibition[23] with application for injunctive reliefs before the RTC of Pasig City, Branch 167, docketed as SCA No. 2218, seeking to annul and set aside the March 8, 2001 Resolution of the Board of Commissioners, the Charge Sheet, and the proceedings had therein. In essence, they challenged the jurisdiction of the Board to continue with the deportation proceedings.

In the interim, the Board issued a Decision[24] dated April 17, 2002, in BSI-D.C. No. ADD-01-117, ordering the apprehension and deportation of Jimmy. The dispositive portion of the decision reads:

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[21] AN ACT TO CONTROL AND REGULATE THE IMMIGRATION OF ALIENS INTO THE PHILIPPINES, approved on August 26, 1940.

[22] *Rollo* (G.R. No. 167570), p. 157.

[23] *Rollo* (G.R. No. 167569), pp. 692-742.

[24] *Rollo* (G.R. No. 171946), pp. 106-124.

WHEREFORE, in view of the foregoing, the Board of Commissioners hereby Orders the apprehension of respondent JIMMY T. GO @ JAIME T. GAISANO and that he be then deported to CHINA of which he is a citizen, without prejudice, however, to the continuation of any and all criminal and other proceedings that are pending in court or before the prosecution arm of the Philippine Government, if any. And that upon expulsion, he is thereby ordered barred from entry into the Philippines.

SO ORDERED.[25]

In view of the said Decision, Carlos and Jimmy filed on June 13, 2002 a supplemental petition for *certiorari* and prohibition[26] before the trial court and reiterated their application for injunctive reliefs. The trial court issued a writ of preliminary prohibitory injunction pending litigation on the main issue, enjoining the Bureau from enforcing the April 17, 2002 Decision.[27] Later, however, the trial court dissolved the writ in a Decision[28] dated January 6, 2004 as a consequence of the dismissal of the petition.

Carlos and Jimmy moved for reconsideration. But their motion was likewise denied.[29]

Following the dismissal of the petition in SCA No. 2218, the Board issued a warrant of deportation[30] which led to the apprehension of Jimmy. Jimmy commenced a petition for *habeas corpus*, but the same was eventually dismissed by reason of his provisional release on bail.[31]

Carlos and Jimmy then questioned the Decision in SCA No. 2218 as well as the Resolution denying their motion for reconsideration by way of a petition for *certiorari* before the

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[25] *Id.* at 124.

[26] *Rollo* (G.R. No. 167569), pp. 743-761.

[27] *Rollo* (G.R. No. 171946), pp. 125-126.

[28] *Rollo* (G.R. No. 167569), pp. 612-617.

[29] *Rollo* (G.R. No. 171946), pp. 135-136.

[30] *Id.* at 137.

[31] Records, p. 71, SP. Proc. No. 11447.

Court of Appeals, docketed as CA-G.R. SP No. 85143. They imputed grave abuse of discretion by the trial court for passing upon their citizenship, claiming that what they asked for in their petition was merely the nullification of the March 8, 2001 Resolution and the charge sheet.

The appellate tribunal dismissed the petition.[32] It did not find merit in their argument that the issue of citizenship should proceed only before the proper court in an independent action, and that neither the Bureau nor the Board has jurisdiction over individuals who were born in the Philippines and have exercised the rights of Filipino citizens. The appellate tribunal also rejected their claim that they enjoy the presumption of being Filipino citizens.

The Court of Appeals held that the Board has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and in the process, determine their citizenship.

The appellate court agreed with the trial court that the principle of *jus soli* was never extended to the Philippines; hence, could not be made a ground to one's claim of Philippine citizenship. Like the trial court, the appellate tribunal found that Carlos failed to elect Philippine citizenship within the reasonable period of three years upon reaching the age of majority. Furthermore, it held that the belated submission to the local civil registry of the affidavit of election and oath of allegiance in September 1956 was defective because the affidavit of election was executed after the oath of allegiance, and the delay of several years before their filing with the proper office was not satisfactorily explained.

The course of action taken by the trial court was also approved by the appellate tribunal. The Court of Appeals stated that the trial court necessarily had to rule on the substantial and legal bases warranting the deportation proceeding in order to determine whether the Board acted without or in excess of jurisdiction, or with grave abuse of discretion. Moreover, the appellate court found that due process was properly observed in the proceedings before the Board, contrary to the claim of Jimmy.

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[32] *Rollo* (G.R. No. 167569), p. 609.

Unfazed with the said ruling, they moved for reconsideration. Their motion having been denied,[33] Carlos and Jimmy each filed a petition for review on *certiorari* before this Court, respectively docketed as G.R. Nos. 167569 and 167570.

Meanwhile, in view of the dismissal of CA-G.R. SP. No. 85143, Bureau of Immigration Commissioner Alipio F. Fernandez, Jr. issued Warrant of Deportation No. AFF-04-003[34] dated November 16, 2004 to carry out the April 17, 2002 Decision in BSI-D.C. No. ADD-01-117. This resulted in the apprehension and detention of Jimmy at the Bureau of Immigration Bicutan Detention Center, pending his deportation to China.[35]

On account of his detention, Jimmy once again filed a petition for *habeas corpus*[36] before the RTC of Pasig City, Branch 167, docketed as SP. Proc. No. 11507 assailing his apprehension and detention despite the pendency of his appeal and his release on recognizance.

In an Order[37] dated December 6, 2004, the trial court dismissed the said petition ruling that the remedy of *habeas corpus* cannot be availed of to obtain an order of release once a deportation order has already been issued by the Bureau. Jimmy moved for reconsideration of the Order, but this was also denied by the trial court in an Order[38] dated December 28, 2004.

Jimmy assailed the Orders of the trial court in a petition for *certiorari* and prohibition before the appellate court, docketed as CA-G.R. No. 88277. The Court of Appeals granted the petition and enjoined the deportation of Jimmy until the issue of his citizenship is settled with finality by the court. The Court of Appeals held as follows:

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[33] *Rollo* (G.R. No. 171946), p. 308.

[34] *Id.* at 309.

[35] *Id.* at 310.

[36] *Id.* at 311-316.

[37] *Id.* at 327-330.

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

x x x x x x x x x

…the issuance of a warrant to arrest and deport the petitioner without any proof whatsoever of his violation of the bail conditions [that he was previously granted] is arbitrary, inequitable and unjust, for the policies governing the grant of his bail should likewise apply in the cancellation of the said bail. Although a deportation proceeding does not partake of the nature of a criminal action, yet considering that it is such a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person who all his life has always lived in the Philippines, where he has established his family and business interests, one who appears to be not completely devoid of any claim to Filipino citizenship, being the son of a Filipina, whose father is alleged to also have elected to be a Filipino, the constitutional right of such person to due process cannot be peremptorily dismissed or ignored altogether, and indeed should not be denied. If it later turns out that the petitioner is a Filipino after all, then the overly eager Immigration authorities would have expelled and relegated to statelessness one who might in fact be a Filipino by blood.

x x x x x x x x x

WHEREFORE, in view of the foregoing, the petition with reference to the Warrant of Deportation issued by the BID is hereby **GRANTED**. The Bureau of Immigration and Deportation, through Commissioner Alipio F. Fernandez, Jr., Atty. Faizal Hussin and Ansari Maca Ayan, and any of their deputized agents, are **ENJOINED** from deporting petitioner Jimmy T. Go, *a.k.a.* Jaime T. Gaisano, until the issue of petitioner's citizenship is finally settled by the courts of justice.

SO ORDERED.[39]

Their motion for reconsideration[40] having been denied on March 13, 2006, Hon. Alipio Fernandez, in his capacity as the Commissioner of the Bureau of Immigration, and Atty. Faisal Hussin and Ansari M. Macaayan, in their capacity as Intelligence Officers of the Bureau of Immigration, are before this Court as petitioners in G.R. No. 171946.

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[39] *Id.* at 46-48.

[40] *Id.* at 50.

The parties have raised the following grounds for their respective petitions:

G.R. No. 167569

I.

THE PROCEEDINGS HAD BEFORE THE BUREAU OF IMMIGRATION AND DEPORTATION (B.I.D.) ARE NULL AND VOID FOR ITS FAILURE TO IMPLEAD AN INDISPENSABLE PARTY IN THE PERSON OF PETITIONER CARLOS GO, SR.

II.

… GIVEN THE SUBSTANTIAL EVIDENCE TO PROVE HEREIN PETITIONER CARLOS GO SR.'S FILIPINO CITIZENSHIP, A FULL BLOWN TRIAL UNDER THE MORE RIGID RULES OF EVIDENCE PRESCRIBED IN COURT PROCEEDINGS SHOULD HAVE BEEN CONDUCTED TO DETERMINE HIS FILIPINO CITIZENSHIP AND NOT THROUGH MERE "SUMMARY PROCEEDINGS" SUCH AS THE ONE HAD BEFORE THE B.I.D. AS WELL AS IN THE COURT *A QUO*.

III.

A FILIPINO CITIZEN IS NOT REQUIRED TO ELECT PHILIPPINE CITIZENSHIP.

IV.

ASSUMING CARLOS GO, SR. STILL NEEDS TO ELECT PHILIPPINE CITIZENSHIP, HE HAD COMPLIED WITH ALL THE REQUIREMENTS OF COM. ACT NO. 625.

V.

PETITIONER CARLOS GO, SR. ENJOYS THE "PRESUMPTION OF CITIZENSHIP."

VI.

RESPONDENT'S "CAUSE OF ACTION" HAD LONG PRESCRIBED.[41]

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[41] *Rollo* (G.R. No. 167569), pp. 566-588.

G.R. No. 167570

I.

THE PROCEEDINGS HAD BEFORE THE BUREAU OF IMMIGRATION AND DEPORTATION (B.I.D.) ARE NULL AND VOID FOR ITS FAILURE TO IMPLEAD AN INDISPENSABLE PARTY IN THE PERSON OF PETITIONER'S FATHER, CARLOS GO, SR.

II.

THE DEPORTATION PROCEEDINGS BEFORE THE B.I.D. ARE NULL AND VOID FOR ITS FAILURE TO OBSERVE DUE PROCESS.

III.

THE B.I.D.'S CAUSE OF ACTION AGAINST HEREIN PETITIONER JIMMY T. GO HAD ALREADY PRESCRIBED.

IV.

… GIVEN THE SUBSTANTIAL EVIDENCE TO PROVE HEREIN PETITIONER'S FILIPINO CITIZENSHIP, A FULL BLOWN TRIAL UNDER THE MORE RIGID RULES OF EVIDENCE PRESCRIBED IN COURT PROCEEDINGS SHOULD HAVE BEEN CONDUCTED TO DETERMINE HIS FILIPINO CITIZENSHIP AND NOT THROUGH MERE "SUMMARY PROCEEDINGS" SUCH AS THE ONE HAD BEFORE THE B.I.D.[42]

G.R. No. 171946

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN ENJOINING RESPONDENT'S DEPORTATION.[43]

Succinctly stated, the issues for our resolution are: (a) whether the cause of action of the Bureau against Carlos and Jimmy had prescribed; (b) whether the deportation proceedings are null and void for failure to implead Carlos as an indispensable party therein; (c) whether the evidence adduced by Carlos and Jimmy to prove their claim to Philippine citizenship is substantial and sufficient to oust the Board of its jurisdiction from continuing

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[42] *Rollo* (G.R. No. 167570), pp. 32-46.

[43] *Rollo* (G.R. No. 171946), p. 18.

with the deportation proceedings in order to give way to a formal judicial action to pass upon the issue of alienage; (d) whether due process was properly observed in the proceedings before the Board; and (e) whether the petition for *habeas corpus* should be dismissed.

The arguments raised by Carlos and Jimmy in their respective petitions are merely a rehash of the arguments they adduced before the appellate tribunal and the trial court. Once again, they raised the same argument of prescription. As to Carlos, it is his position that being recognized by the government to have acquired Philippine citizenship, evidenced by the Certificate of Election issued to him on September 11, 1956, his citizenship could no longer be questioned at this late date. As for Jimmy, he contends that the Board's cause of action to deport him has prescribed for the simple reason that his arrest was not made within five (5) years from the time the cause of action arose, which according to him commenced in 1989 when he was alleged to have illegally acquired a Philippine passport.

In any event, they argue that the deportation proceeding should be nullified altogether for failure to implead Carlos as an indispensable party therein. Jimmy posits that the deportation case against him was made to depend upon the citizenship of his father, Carlos, in that the Board found justification to order his deportation by declaring that his father is a Chinese citizen even though the latter was never made a party in the deportation proceedings. They argue that the Board could not simply strip Carlos of his citizenship just so they could question the citizenship of Jimmy. To do so without affording Carlos the opportunity to adduce evidence to prove his claim to Philippine citizenship would be the height of injustice. For failing to accord him the requisite due process, the whole proceeding should perforce be stuck down.

While they concede that the Board has jurisdiction to hear cases against an alleged alien, they insist that judicial intervention may be resorted to when the claim to citizenship is so substantial that there are reasonable grounds to believe that the claim is correct, like in this case. Their claim to Philippine citizenship,

they said, is clearly shown by the fact that they were born, had been raised and had lived in this country all their lives; they speak fluent Tagalog and Ilonggo; they engage in businesses reserved solely for Filipinos; they exercise their right to suffrage; they enjoy the rights and privileges accorded only to citizens; and they have no record of any Alien Certificate of Registration. More importantly, they contend that they were validly issued Philippine passports. They further posit that the judicial intervention required is not merely a judicial review of the proceedings below, but a full-blown, adversarial, trial-type proceedings where the rules of evidence are strictly observed.

Considering that his citizenship affects that of his son, Carlos opted to present controverting arguments to sustain his claim to Philippine citizenship, notwithstanding the fact that according to him, he was never impleaded in the deportation proceedings.

Carlos takes exception to the ruling of the appellate court that the doctrine of *jus soli* failed to accord him Philippine citizenship for the reason that the same was never extended to the Philippines. He insists that if his Philippine citizenship is not recognized by said doctrine, it is nonetheless recognized by the laws enforced prior to the 1935 Constitution, particularly the Philippine Bill of 1902[44] and the Philippine Autonomy Act of August 29, 1916 (Jones Law of 1916).[45]

According to Carlos, the Philippine Bill of 1902 and the Jones Law of 1916 deemed all inhabitants of the Philippine Islands as well as their children born after the passage of said laws to be citizens of the Philippines. Because his father, Go Yin An, was a resident of the Philippines at the time of the passage of the Jones Law of 1916, he (Carlos) undoubtedly acquired his father's

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[44] AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES, approved on July 1, 1902.

[45] AN ACT TO DECLARE THE PURPOSE OF THE PEOPLE OF THE UNITED STATES AS TO THE FUTURE POLITICAL STATUS OF THE PEOPLE OF THE PHILIPPINE ISLANDS, AND TO PROVIDE A MORE AUTONOMOUS GOVERNMENT FOR THOSE ISLANDS, approved on August 29, 1916.

citizenship. Article IV, first paragraph, of the 1935 Constitution therefore applies to him. Said constitutional provision reads:

> ARTICLE IV. *Citizenship*
>
> SECTION 1. The following are citizens of the Philippines:
>
> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
>
> x x x x x x x x x

Even assuming that his father remained as a Chinese, Carlos also claims that he followed the citizenship of his Filipina mother, being an illegitimate son, and that he even validly elected Philippine citizenship when he complied with all the requirements of Com. Act No. 625. He submits that what is being disputed is not whether he complied with Com. Act No. 625, but rather, the timeliness of his compliance. He stresses that the 3-year compliance period following the interpretation given by *Cuenco v. Secretary of Justice*[46] to Article IV, Section 1(4) of the 1935 Constitution and Com. Act No. 625 when election must be made, is not an inflexible rule. He reasoned that the same decision held that such period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino, like in his case.[47]

We deny the appeal of Carlos and Jimmy for lack of merit.

Carlos and Jimmy's claim that the cause of action of the Bureau has prescribed is untenable. Cases involving issues on citizenship are *sui generis*. Once the citizenship of an individual is put into question, it necessarily has to be threshed out and decided upon. In the case of *Frivaldo v. Commission on Elections*,[48] we said that decisions declaring the acquisition or denial of citizenship cannot govern a person's future status with finality. This is because a person may subsequently reacquire,

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[46] No. L-18069, May 26, 1962, 5 SCRA 108.

[47] *Id.* at 110.

[48] G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727.

or for that matter, lose his citizenship under any of the modes recognized by law for the purpose.[49] Indeed, if the issue of one's citizenship, after it has been passed upon by the courts, leaves it still open to future adjudication, then there is more reason why the government should not be precluded from questioning one's claim to Philippine citizenship, especially so when the same has never been threshed out by any tribunal.

Jimmy's invocation of prescription also does not persuade us. Section 37 (b) of Com. Act No. 613 states:

> Section 37. …
>
> x x x x x x x x x
>
> (b) Deportation may be effected under clauses 2, 7, 8, 11 and 12 of this section at any time after entry, but shall not be effected under any other clause unless the arrest in the deportation proceedings is made within five years after the cause of deportation arises….
>
> x x x x x x x x x

As shown in the Charge Sheet, Jimmy was charged for violation of Section 37(a)(9),[50] in relation to Section 45(e)[51] of Com. Act No. 613. From the foregoing provision, his deportation may be effected only if his arrest is made within 5 years from the time the cause for deportation arose. The court *a quo* is correct when it ruled that the 5-year period should be counted only from July 18, 2000, the time when Luis filed his complaint for deportation. It is the legal possibility of bringing the action which determines the starting point for the computation of the

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[49] *Id.* at 761.

[50] *Supra* at 19.

[51] Section 45. Any individual who –

> x x x x x x x x x
>
> (e) Being an alien, shall for any fraudulent purpose represent himself to be a Philippine citizen in order to evade any requirement of the immigration laws; or
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> x x x x x x x x x

period of prescription.[52] Additionally, Section 2 of Act No. 3326,[53] as amended, entitled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run," provides:

> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> x x x x x x x x x

The counting could not logically start in 1989 when his passport was issued because the government was unaware that he was not a Filipino citizen. Had the government been aware at such time that he was not a Filipino citizen or there were certain anomalies attending his application for such passport, it would have denied his application.

As to the issue of whether Carlos is an indispensable party, we reiterate that an indispensable party is a party in interest without whom no final determination can be had of an action, and who shall be joined either as plaintiff or defendant.[54] To be indispensable, a person must first be a real party in interest, that is, one who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit.[55] Carlos clearly is not an indispensable party as he does not stand to be benefited or injured by the judgment of the suit. What is sought is the deportation of Jimmy on the ground that he is an alien.

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[52] *Tolentino v. Court of Appeals*, No. L-41427, June 10, 1988, 162 SCRA 66, 72.

[53] Approved on December 4, 1926.

[54] RULES OF COURT, Rule 3,

SEC. 7. *Compulsory joinder of indispensable parties*. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[55] RULES OF COURT, Rule 3,

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.

Hence, the principal issue that will be decided on is the propriety of his deportation. To recall, Jimmy claims that he is a Filipino under Section 1(3),[56] Article IV of the 1935 Constitution because Carlos, his father, is allegedly a citizen.[57] Since his citizenship hinges on that of his father's, it becomes necessary to pass upon the citizenship of the latter. However, whatever will be the findings as to Carlos' citizenship will in no way prejudice him.

Citizenship proceedings, as aforestated, are a class of its own, in that, unlike other cases, *res judicata* does not obtain as a matter of course. In a long line of decisions, this Court said that every time the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res judicata*; hence, it has to be threshed out again and again as the occasion may demand.[58] *Res judicata* may be applied in cases of citizenship only if the following concur:

1. a person's citizenship must be raised as a material issue in a controversy where said person is a party;

2. the Solicitor General or his authorized representative took active part in the resolution thereof; and

3. the finding or citizenship is affirmed by this Court.[59]

See also *Victorias Milling Co., Inc. v. NLRC*, G.R. No. 116236, October 2, 1996, 262 SCRA 623, 630.

[56] ARTICLE IV. *Citizenship*

SECTION 1. …

x x x x x x x x x

(3) Those whose fathers are citizens of the Philippines.

x x x x x x x x x

[57] *Rollo* (G.R. No. 167569), p. 642.

[58] *Moy Ya Lim Yao v. Commissioner of Immigration*, No. L-21289, October 4, 1971, 41 SCRA 292, 367; *Lee v. Commissioner of Immigration*, No. L-23446, December 20, 1971, 42 SCRA 561, 565; *Board of Commissioners (CID) v. Dela Rosa*, G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 854, 877-878.

[59] *Board of Commissioners (CID) v. Dela Rosa*, *supra* at 878. See also *Burca v. Republic*, No. L-24252, June 15, 1973, 51 SCRA 248, 259-260.

In the event that the citizenship of Carlos will be questioned, or his deportation sought, the same has to be ascertained once again as the decision which will be rendered hereinafter shall have no preclusive effect upon his citizenship. As neither injury nor benefit will redound upon Carlos, he cannot be said to be an indispensable party in this case.

There can be no question that the Board has the authority to hear and determine the deportation case against a deportee and in the process determine also the question of citizenship raised by him.[60] However, this Court, following American jurisprudence, laid down the exception to the primary jurisdiction enjoyed by the deportation board in the case of *Chua Hiong v. Deportation Board*[61] wherein we stressed that judicial determination is permitted in cases when the courts themselves believe that there is substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct.[62] Moreover, when the evidence submitted by a deportee is conclusive of his citizenship, the right to immediate review should also be recognized and the courts shall promptly enjoin the deportation proceedings.[63]

While we are mindful that resort to the courts may be had, the same should be allowed only in the sound discretion of a competent court in proper proceedings.[64] After all, the Board's jurisdiction is not divested by the mere claim of citizenship.[65]

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[60] *Lao Gi v. Court of Appeals*, G.R. No. 81798, December 29, 1989, 180 SCRA 756, 761.

[61] 96 Phil. 665 (1955).

[62] *Chua Hiong v. Deportation Board*, *supra* at 672. See also *Co v. The Deportation Board,* No. L-22748, July 29, 1977, 78 SCRA 104, 107.

[63] *Chua Hiong v. Deportation Board*, *id.* at 671. See also *Co v. The Deportation Board*, *id.* at 107; *Calacday v. Vivo*, No. L-26681, May 29, 1970, 33 SCRA 413, 416.

[64] *Chua Hiong v. Deportation Board*, *supra* at 672. See also *Co v. The Deportation Board*, *supra* at 107-108.

[65] *Chua Hiong v. Deportation Board*, *supra* at 670, citing *Miranda, et al. v. Deportation Board,* 94 Phil. 531, 533 (1954).

Moreover, a deportee who claims to be a citizen and not therefore subject to deportation has the right to have his citizenship reviewed by the courts, after the deportation proceedings.[66] The decision of the Board on the question is, of course, not final but subject to review by the courts.[67]

After a careful evaluation of the evidence, the appellate court was not convinced that the same was sufficient to oust the Board of its jurisdiction to continue with the deportation proceedings considering that what were presented particularly the birth certificates of Jimmy, as well as those of his siblings, Juliet Go and Carlos Go, Jr. indicate that they are Chinese citizens. Furthermore, like the Board, it found the election of Carlos of Philippine citizenship, which was offered as additional proof of his claim, irregular as it was not made on time.

We find no cogent reason to overturn the above findings of the appellate tribunal. The question of whether substantial evidence had been presented to allow immediate recourse to the regular courts is a question of fact which is beyond this Court's power of review for it is not a trier of facts.[68] None of the exceptions[69] in which this Court may resolve factual issues has been shown to exist in this case. Even if we evaluate their arguments and the evidence they presented once again, the same conclusion will still be reached.

One of the arguments raised to sustain Carlos' claim to Philippine citizenship is the doctrine of *jus soli*, or the doctrine or principle of citizenship by place of birth. To recall, both the

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[66] *Chua Hiong v. Deportation Board*, *supra* at 671.

[67] *Vivo v. Montesa*, No. L-24576, July 29, 1968, 24 SCRA 155, 159.

[68] *Civil Service Commission v. Bumogas*, G.R. No. 174693, August 31, 2007, 531 SCRA 780, 785.

[69] *Ong v. Bogñalbal*, G.R. No. 149140, September 12, 2006, 501 SCRA 490, 501; *Heirs of Dicman v. Cariño*, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 261-262; *Almendrala v. Ngo*, G.R. No. 142408, September 30, 2005, 471 SCRA 311, 322.

trial court and the Court of Appeals ruled that the doctrine of *jus soli* was never extended to the Philippines. We agree. The doctrine of *jus soli* was for a time the prevailing rule in the acquisition of one's citizenship.[70] However, the Supreme Court abandoned the principle of *jus soli* in the case of *Tan Chong v. Secretary of Labor*.[71] Since then, said doctrine only benefited those who were individually declared to be citizens of the Philippines by a final court decision on the mistaken application of *jus soli.*[72]

Neither will the Philippine Bill of 1902[73] nor the Jones Law of 1916[74] make Carlos a citizen of the Philippines. His bare claim that his father, Go Yin An, was a resident of the Philippines

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[70] See *United States v. Ang*, 36 Phil. 858 (1917); *United States v. Lim Bin*, 36 Phil. 924 (1917); *Santos Co v. Government of the Philippine Islands*, 52 Phil. 543 (1928); *Haw v. Collector of Customs*, 59 Phil. 612 (1934); *Lam Swee Sang v. Commonwealth of the Philippines*, 73 Phil. 309 (1941); *Gallofin v. Ordoñez*, 70 Phil. 287 (1940).

[71] 79 Phil. 249, 257-258 (1947). See also *Tio Tiam v. Republic of the Philippines*, 101 Phil. 195, 198-199 (1957).

[72] R. JOSON AND R. LEDESMA, *MANUAL ON THE ALIEN REGISTRATION ACT OF 1950 10* (1999).

[73] SECTION 4. That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris, December tenth, eighteen hundred and ninety-eight.

[74] SECTION 2. That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris, December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: PROVIDED, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of the Philippine

at the time of the passage of the said laws, without any supporting evidence whatsoever will not suffice.

It is a settled rule that only legitimate children follow the citizenship of the father and that illegitimate children are under the parental authority of the mother and follow her nationality.[75] Moreover, we have also ruled that an illegitimate child of a Filipina need not perform any act to confer upon him all the rights and privileges attached to citizens of the Philippines; he automatically becomes a citizen himself.[76] However, it is our considered view that absent any evidence proving that Carlos is indeed an illegitimate son of a Filipina, the aforestated established rule could not be applied to him.

As to the question of whether the election of Philippine citizenship conferred on Carlos Filipino citizenship, we find that the appellate court correctly found that it did not.

Com. Act No. 625 which was enacted pursuant to Section 1(4), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship. Under Section 1 thereof, legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry.

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citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.

[75] J. BERNAS, *CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS: NOTES AND CASES PART II 929* (2004 ed.), citing *Ching Leng v. Galang*, 104 Phil. 1058 (1958), unreported; *Serra v. Republic*, 91 Phil. 914 (1952), unreported; *Zamboanga Transportation Co., Inc. v. Lim*, 105 Phil. 1321 (1959), unreported; *Board of Immigration Commissioners v. Go Callano*, No. L-24530, October 31, 1968, 25 SCRA 890.

[76] *In re: Florencio Mallare*, Adm. Case No. 533, September 12, 1974, 59 SCRA 45, 52; *Re: Application for Admission to the Philippine Bar of Vicente D. Ching*, B.M. No. 914, October 1, 1999, 316 SCRA 1, 10-11.

The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines."[77]

However, the 1935 Constitution and Com. Act No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "upon reaching the age of majority." The age of majority then commenced upon reaching 21 years. In the opinions of the then Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a "reasonable time" after attaining the age of majority. The phrase "reasonable time" has been interpreted to mean that the election should be made within three (3) years from reaching the age of majority.[78]

It is true that we said that the 3-year period for electing Philippine citizenship may be extended as when the person has always regarded himself as a Filipino. Be that as it may, it is our considered view that not a single circumstance was sufficiently shown meriting the extension of the 3-year period. The fact that Carlos exercised his right of suffrage in 1952 and 1955 does not demonstrate such belief, considering that the acts were done after he elected Philippine citizenship. On the other hand, the mere fact that he was able to vote does not validate his irregular election of Philippine citizenship. At most, his registration as a voter indicates his desire to exercise a right appertaining exclusively to Filipino citizens but does not alter his real citizenship, which, in this jurisdiction, is determined by blood (*jus sanguinis*). The exercise of the rights and privileges granted only to Filipinos

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[77] *Re: Application for Admission to the Philippine Bar of Vicente D. Ching, supra* at 8.

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

is not conclusive proof of citizenship, because a person may misrepresent himself to be a Filipino and thus enjoy the rights and privileges of citizens of this country.[79]

It is incumbent upon one who claims Philippine citizenship to prove to the satisfaction of the court that he is really a Filipino. No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the state.[80]

As Carlos and Jimmy neither showed conclusive proof of their citizenship nor presented substantial proof of the same, we have no choice but to sustain the Board's jurisdiction over the deportation proceedings. This is not to say that we are ruling that they are not Filipinos, for that is not what we are called upon to do. This Court necessarily has to pass upon the issue of citizenship only to determine whether the proceedings may be enjoined in order to give way to a judicial determination of the same. And we are of the opinion that said proceedings should not be enjoined.

In our considered view, the allegation of Jimmy that due process was not observed in the deportation proceedings must likewise fail.

Deportation proceedings are administrative in character, summary in nature, and need not be conducted strictly in accordance with the rules of ordinary court proceedings.[81] 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 reconsideration of the action or ruling complained of.[82] As long as the parties are given the

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[79] I R. LEDESMA, *AN OUTLINE OF PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS 405* (2006 ed.).

[80] *Paa v. Chan*, No. L-25945, October 31, 1967, 21 SCRA 753, 762.

[81] *Lao Tang Bun v. Fabre*, 81 Phil. 682, 691 (1948).

[82] *CMP Federal Security Agency, Inc. v. NLRC*, G.R. No. 125298, February 11, 1999, 303 SCRA 99, 111; *Philippine Long Distance Telephone Company v. NLRC*, G.R. No. 111933, July 23, 1997, 276 SCRA 1, 7.

opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[83] Although Jimmy was not furnished with a copy of the subject Resolution and Charge Sheet as alleged by him, the trial court found that he was given ample opportunity to explain his side and present controverting evidence, thus:

> x x x It must be stressed that after receiving the Order dated September 11, 2001 signed by BSI Chief Ronaldo P. Ledesma on October 4, 2001, petitioner Jimmy T. Go admitted that when his representative went to the B.I.D. to inquire about the said Order, the latter chanced upon the Resolution dated February 14, 2001 and March 8, 2001 as well as the Charge Sheet dated July 3, 2001. Hence on October 5, 2001, he filed a "Motion for Extension of Time to File Memorandum" and as such, was allowed by Ronaldo P. Ledesma an extension of ten (10) days to submit his required memorandum. x x x[84]

This circumstance satisfies the demands of administrative due process.

As regards the petition in G.R. No. 171946, petitioners contend that the appellate tribunal erred in enjoining Jimmy's deportation.[85]

Petitioners question the remedy availed of by Jimmy. They argue that the existence of the remedy of an ordinary appeal proscribes the filing of the petition for *certiorari* as was done in this case. They point out that the appeal period in *habeas corpus* cases is only 48 hours, compared to a special civil action under Rule 65 of the Rules of Court which is 60 days. This clearly shows that an ordinary appeal is the more plain, speedy and adequate remedy; hence, it must be the one availed of.[86] Since the decision of the trial court was not properly appealed,

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[83] *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264, 269.

[84] *Rollo* (G.R. No. 171946), p. 131.

[85] *Id.* at 18.

[86] *Id.* at 21-23.

the same may be said to have attained finality, and may no longer be disturbed.[87]

They maintain that the dismissal of the petition for *habeas corpus* by the trial court was proper. A petition for *habeas corpus* has for its purpose only the determination of whether or not there is a lawful ground for Jimmy's apprehension and continued detention. They urge that the decision of the Board dated April 17, 2002 that ordered Jimmy's deportation has already attained finality by reason of the belated appeal taken by Jimmy from the said decision on April 2, 2004 before the Office of the President, or after almost two years from the time the decision was rendered. Said decision of the Board, they insist, is the lawful ground that sanctions Jimmy's apprehension and detention.[88]

Petitioners in G.R. No. 171946 also argue that Jimmy cannot rely on the bail on recognizance he was previously granted to question his subsequent apprehension and detention. Under the Philippine Immigration Act of 1940, the power to grant bail can only be exercised while the alien is still under investigation, and not when the order of deportation had already been issued by the Board.[89] Hence, the bail granted was irregular as it has no legal basis. Furthermore, they said the petition for *habeas corpus* necessarily has to be dismissed because the same is no longer proper once the applicant thereof has been charged before the Board, which is the case with Jimmy.[90] Nonetheless, they claim that the *habeas corpus* case is rendered moot and academic as Jimmy is no longer being detained.[91]

On the other hand, Jimmy counters that the instant petition for *certiorari* and prohibition is the most appropriate, speedy and adequate remedy in spite of the availability of ordinary

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[87] *Id.* at 24.

[88] *Id.* at 25-28.

[89] *Id.* at 28.

[90] *Id.* at 28-29.

[91] *Id.* at 29.

appeal considering that what is involved in this case is his cherished liberty. Grave abuse of discretion on the part of the petitioners in ordering his arrest and detention, he argues, all the more justifies the avails of the extraordinary writ.[92] Contrary to the petitioners' stand, Jimmy argues that the April 17, 2002 Decision of the Board has not attained finality owing to the availability of various remedies, one of which is an appeal, and in fact is actually void because it was rendered without due process.[93] He also insists that the bail issued to him is valid and effective until the final determination of his citizenship before the proper courts.[94] Moreover, he maintains that the petition for *habeas corpus* was proper since its object is to inquire into the legality of one's detention, and if found illegal, to order the release of the detainee.[95] As in his petition in G.R. No. 167570, Jimmy also contends that the proceedings before the Board is void for failure to implead therein his father, and that he should have been given a full blown trial before a regular court where he can prove his citizenship.[96]

Considering the arguments and contentions of the parties, we find the petition in G.R. No. 171946 meritorious.

We have held in a litany of cases that the extraordinary remedies of *certiorari*, prohibition and *mandamus* are available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The writ of *certiorari* does not lie where an appeal may be taken or where another adequate remedy is available for the correction of the error.[97]

The petitioners correctly argue that appeal should have been the remedy availed of as it is more plain, speedy and adequate.

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[92] *Id.* at 432-433.

[93] *Id.* at 435-436.

[94] *Id.* at 441.

[95] *Id.* at 442.

[96] *Id.* at 443-449.

[97] *Dwikarna v. Domingo*, G.R. No. 153454, July 7, 2004, 433 SCRA 748, 754.

The 48-hour appeal period demonstrates the adequacy of such remedy in that no unnecessary time will be wasted before the decision will be re-evaluated.

A petition for the issuance of a writ of *habeas corpus* is a special proceeding governed by Rule 102 of the Revised Rules of Court. The objective of the writ is to determine whether the confinement or detention is valid or lawful. If it is, the writ cannot be issued. What is to be inquired into is the legality of a person's detention as of, at the earliest, the filing of the application for the writ of *habeas corpus*, for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4[98] of Rule 102, be no longer illegal at the time of the filing of the application.[99]

Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of *habeas corpus*. His remedy would be to quash the information and/or the warrant of arrest duly issued. The writ of *habeas corpus* should not be allowed after the party sought to be released had been charged before any court. The term "court" in this context includes quasi-judicial bodies of governmental agencies authorized to order the person's confinement, like the Deportation Board of the Bureau of Immigration.[100] Likewise, the cancellation of his bail cannot

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[98] SEC. 4. *When writ not allowed or discharged authorized*.– If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

[99] *Office of the Solicitor General v. De Castro,* A.M. No. RTJ-06-2018, August 3, 2007, 529 SCRA 157, 168-169.

[100] *Id.* at 169-170; *Kiani v. Bureau of Immigration and Deportation (BID)*, G.R. No. 160922, February 27, 2006, 483 SCRA 341, 357.

be assailed via a petition for *habeas corpus*. When an alien is detained by the Bureau of Immigration for deportation pursuant to an order of deportation by the Deportation Board, the Regional Trial Courts have no power to release such alien on bail even in *habeas corpus* proceedings because there is no law authorizing it.[101]

Given that Jimmy has been duly charged before the Board, and in fact ordered arrested pending his deportation, coupled by this Court's pronouncement that the Board was not ousted of its jurisdiction to continue with the deportation proceedings, the petition for *habeas corpus* is rendered moot and academic. This being so, we find it unnecessary to touch on the other arguments advanced by respondents regarding the same subject.

WHEREFORE, the petitions in G.R. Nos. 167569 and 167570 are *DENIED*. The Decision dated October 25, 2004 and Resolution dated February 16, 2005 of the Court of Appeals in CA-G.R. SP No. 85143 are *AFFIRMED*. The petition in G.R. No. 171946 is hereby *GRANTED*. The Decision dated December 8, 2005 and Resolution dated March 13, 2006 of the Court of Appeals in CA-G.R. SP No. 88277 are *REVERSED* and *SET ASIDE*. The December 6, 2004 and December 28, 2004 Orders of the Regional Trial Court of Pasig City, Branch 167 are hereby *REINSTATED*.

No pronouncement as to costs.

SO ORDERED.

Carpio,[*] *Carpio Morales, Del Castillo,* and *Abad, JJ.,* concur.

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[101] *Bengzon v. Ocampo,* 84 Phil. 611, 613 (1949); *Ong See Hang v. Commissioner of Immigration,* No. L-9700, February 28, 1962, 4 SCRA 442, 447.

[*] Additional member per Raffle of June 29, 2009 in place of Associate Justice Arturo D. Brion who concurred in the assailed Resolution.

SECOND DIVISION

[G.R. No. 168151. September 4, 2009]

REGIONAL CONTAINER LINES (RCL) OF SINGAPORE and EDSA SHIPPING AGENCY, *petitioners, vs.* **THE NETHERLANDS INSURANCE CO. (PHILIPPINES), INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; LIABILITY OF COMMON CARRIERS FOR LOST OR DAMAGED CARGO.— In *Central Shipping Company, Inc. v. Insurance Company of North America,* we reiterated the rules for the liability of a common carrier for lost or damaged cargo as follows: (1) Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case; (2) In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and (3) In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they observed extraordinary diligence.

2. ID.; ID.; ID.; ID.; PRESUMPTION OF NEGLIGENCE; WHEN OVERCOME.— A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. **To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.** x x x To exculpate itself from liability for the loss/damage to the cargo under any of the causes,

the common carrier is burdened to prove any of the causes in Article 1734 of the Civil Code claimed by it by a preponderance of evidence. If the carrier succeeds, the burden of evidence is shifted to the shipper to prove that the carrier is negligent.

APPEARANCES OF COUNSEL

Melgar Tria and Associates for petitioners.
Leaño Leaño and Leaño III Law Office for respondent.

D E C I S I O N

BRION, *J.*:

For our resolution is the petition for review on *certiorari* filed by petitioners Regional Container Lines of Singapore (*RCL*) and EDSA Shipping Agency (*EDSA Shipping*) to annul and set aside the decision[1] and resolution[2] of the Court of Appeals (*CA*) dated May 26, 2004 and May 10, 2005, respectively, in CA-G.R. CV No. 76690.

RCL is a foreign corporation based in Singapore. It does business in the Philippines through its agent, EDSA Shipping, a domestic corporation organized and existing under Philippine laws. Respondent Netherlands Insurance Company (Philippines), Inc. (*Netherlands Insurance*) is likewise a domestic corporation engaged in the marine underwriting business.

FACTUAL ANTECEDENTS

The pertinent facts, based on the records are summarized below.

On October 20, 1995, 405 cartons of Epoxy Molding Compound were consigned to be shipped from Singapore to Manila for Temic Telefunken Microelectronics Philippines

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justice Martin S. Villarama, Jr., and Associate Justice Danilo B. Pine (retired); *rollo*, pp. 40, 45-53.

[2] *Id.*, pp. 44-54.

(*Temic*). U-Freight Singapore PTE Ltd.[3] (*U-Freight Singapore*), a forwarding agent based in Singapore, contracted the services of Pacific Eagle Lines PTE. Ltd. (*Pacific Eagle*) to transport the subject cargo. The cargo was packed, stored, and sealed by Pacific Eagle in its Refrigerated Container No. 6105660 with Seal No. 13223. As the cargo was highly perishable, the inside of the container had to be kept at a temperature of 0º Celsius. Pacific Eagle then loaded the refrigerated container on board the *M/V Piya Bhum*, a vessel owned by RCL, with which Pacific Eagle had a slot charter agreement. RCL duly issued its own Bill of Lading in favor of Pacific Eagle.

To insure the cargo against loss and damage, Netherlands Insurance issued a Marine Open Policy in favor of Temic, as shown by MPO-21-05081-94 and Marine Risk Note MRN-21 14022, to cover all losses/damages to the shipment.

On October 25, 1995, the *M/V Piya Bhum* docked in Manila. After unloading the refrigerated container, it was plugged to the power terminal of the pier to keep its temperature constant. Fidel Rocha (*Rocha*), Vice-President for Operations of Marines Adjustment Corporation, accompanied by two surveyors, conducted a protective survey of the cargo. They found that based on the temperature chart, the temperature reading was constant from October 18, 1995 to October 25, 1995 at 0º Celsius. However, at midnight of October 25, 1995 – when the cargo had already been unloaded from the ship – the temperature fluctuated with a reading of 33º Celsius. Rocha believed the fluctuation was caused by the burnt condenser fan motor of the refrigerated container.

On November 9, 1995, Temic received the shipment. It found the cargo completely damaged. Temic filed a claim for cargo loss against Netherlands Insurance, with supporting claims documents. The Netherlands Insurance paid Temic the sum of ₱1,036,497.00 under the terms of the Marine Open Policy. Temic then executed a loss and subrogation receipt in favor of Netherlands Insurance.

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[3] U-Freight issued its own Bill of Lading No. SINMNL 048/10/95 covering the cargo.

Seven months from delivery of the cargo or on June 4, 1996, Netherlands Insurance filed a complaint for subrogation of insurance settlement with the Regional Trial Court, Branch 5, Manila, against "the unknown owner of *M/V Piya Bhum*" and TMS Ship Agencies (*TMS*), the latter thought to be the local agent of *M/V Piya Bhum*'s unknown owner.[4] The complaint was docketed as Civil Case No. 96-78612.

Netherlands Insurance amended the complaint on January 17, 1997 to implead EDSA Shipping, RCL, Eagle Liner Shipping Agencies, U-Freight Singapore, and U-Ocean (Phils.), Inc. (*U-Ocean*), as additional defendants. A third amended complaint was later made, impleading Pacific Eagle in substitution of Eagle Liner Shipping Agencies.

TMS filed its answer to the original complaint. RCL and EDSA Shipping filed their answers with cross-claim and compulsory counterclaim to the second amended complaint. U-Ocean likewise filed an answer with compulsory counterclaim and cross-claim. During the pendency of the case, U-Ocean, jointly with U-Freight Singapore, filed another answer with compulsory counterclaim. Only Pacific Eagle and TMS filed their answers to the third amended complaint.

The defendants all disclaimed liability for the damage caused to the cargo, citing several reasons why Netherland Insurance's claims must be rejected. Specifically, RCL and EDSA Shipping denied negligence in the transport of the cargo; they attributed any negligence that may have caused the loss of the shipment to their co-defendants. They likewise asserted that no valid subrogation exists, as the payment made by Netherlands Insurance to the consignee was invalid. By way of affirmative defenses, RCL and EDSA Shipping averred that the Netherlands Insurance has no cause of action, and is not the real party-in-interest, and that the claim is barred by laches/prescription.

After Netherlands Insurance had made its formal offer of evidence, the defendants including RCL and EDSA Shipping

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[4] TMS was actually the local agent of Pacific Eagle.

sought leave of court to file their respective motions to dismiss based on demurrer to evidence.

RCL and EDSA Shipping, in their motion, insisted that Netherlands Insurance had (1) failed to prove any valid subrogation, and (2) failed to establish that any negligence on their part or that the loss was sustained while the cargo was in their custody.

On May 22, 2002, the trial court handed down an Order dismissing Civil Case No. 96-78612 on demurrer to evidence. The trial court ruled that while there was valid subrogation, the defendants could not be held liable for the loss or damage, as their respective liabilities ended at the time of the discharge of the cargo from the ship at the Port of Manila.

Netherlands Insurance seasonably appealed the order of dismissal to the CA.

On May 26, 2004, the CA disposed of the appeal as follows:

> WHEREFORE, in view of the foregoing, **the dismissal of the complaint against defendants Regional Container Lines and Its local agent, EDSA Shipping Agency, is REVERSED and SET ASIDE.** The dismissal of the complaint against the other defendants is AFFIRMED. Pursuant to Section 1, Rule 33 of the 1997 Rules of Civil Procedure, defendants Regional Container Lines and EDSA Shipping Agency are deemed to have waived the right to present evidence.
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> As such, defendants **Regional Container Lines and EDSA Shipping Agency are ordered to reimburse plaintiff in the sum of ₱1,036,497.00 with interest** from date hereof until fully paid.
>
> No costs.
>
> SO ORDERED. [Emphasis supplied.]

The CA dismissed Netherland Insurance's complaint against the other defendants after finding that the claim had already been barred by prescription.[5]

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[5] The bill of lading issued by U-Freight provided that its liability shall be discharged "unless a suit is brought in the proper forum and written notice thereof received by the carrier within nine (9) months after the delivery of

Having been found liable for the damage to the cargo, RCL and EDSA Shipping filed a motion for reconsideration, but the CA maintained its original conclusions.

The sole issue for our resolution is ***whether the CA correctly held RCL and EDSA Shipping liable as common carriers under the theory of presumption of negligence.***

THE COURT'S RULING

The present case is governed by the following provisions of the Civil Code:

ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, **are bound to observe extraordinary diligence in the vigilance over the goods** and for the safety of the passengers transported by them according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in Articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles1755 and 1756.

ART. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

2) Act of the public enemy in war, whether international or civil;

3) Act of omission of the shipper or owner of the goods;

4) The character of the goods or defects in the packing or in the containers;

5) Order or act of competent public authority.

ART. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4 and 5 of the preceding article, **if the goods are lost, destroyed,**

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the goods." By the time U-Freight, U-Ocean, and Pacific Eagle were impleaded in the amended complaints, the period to file claims had already lapsed.

or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required by article 1733.

ART. 1736. **The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them,** without prejudice to the provisions of Article 1738.

ART. 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.

ART. 1742. Even if the loss, destruction, or deterioration of the goods should be caused by the character of the goods, or **the faulty nature of the packing or of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.**

In *Central Shipping Company, Inc. v. Insurance Company of North America*,[6] we reiterated the rules for the liability of a common carrier for lost or damaged cargo as follows:

1) Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case;

2) In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and

3) In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have

[6] G.R. 150751, September 20, 2004, 438 SCRA 511.

been at fault or to have acted negligently, unless they observed extraordinary diligence.[7]

In the present case, RCL and EDSA Shipping disclaim any responsibility for the loss or damage to the goods in question. They contend that the cause of the damage to the cargo was the "fluctuation of the temperature in the reefer van," which fluctuation occurred *after* the cargo had already been discharged from the vessel; no fluctuation, they point out, arose when the cargo was still on board *M/V Piya Bhum*. As the cause of the damage to the cargo occurred after the same was already discharged from the vessel and was under the custody of the arrastre operator (International Container Terminal Services, Inc. or *ICTSI*), RCL and EDSA Shipping posit that the presumption of negligence provided in Article 1735 of the Civil Code should not apply. What applies in this case is Article 1734, particularly paragraphs 3 and 4 thereof, which exempts the carrier from liability for loss or damage to the cargo when it is caused either by an act or omission of the shipper or by the character of the goods or defects in the packing or in the containers. Thus, RCL and EDSA Shipping seek to lay the blame at the feet of other parties.

We do not find the arguments of RCL and EDSA Shipping meritorious.

A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported.[8] When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable.[9]

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[7] *Ibid.*, citing *Asia Lighterage and Shipping, Inc. v. Court of Appeal*, 409 SCRA 340 (2003), and *Delsan Transport Lines, Inc. v. Court of Appeals*, 369 SCRA 24 (2001).

[8] *Edgar Cokaliong Shipping Lines, Inc. v. UCPB General Insurance Company, Inc.*, G.R. No. 146018, June 25, 2003, 404 SCRA 706.

[9] *DSR-Senator Lines v. Federal Phoenix Assurance Co., Inc.*, G.R. No. 135377, October 7, 2003, 413 SCRA 14, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, 234 SCRA 78 (1994) and cases cited therein.

To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.[10]

In the present case, RCL and EDSA Shipping failed to prove that they did exercise that degree of diligence required by law over the goods they transported. Indeed, there is sufficient evidence showing that the fluctuation of the temperature in the refrigerated container van, as recorded in the temperature chart, occurred *after* the cargo had been discharged from the vessel and was already under the custody of the arrastre operator, ICTSI. This evidence, however, does not disprove that the condenser fan – which caused the fluctuation of the temperature in the refrigerated container – was not damaged while the cargo was being unloaded from the ship. It is settled in maritime law jurisprudence that ***cargoes while being unloaded generally remain under the custody of the carrier;***[11] RCL and EDSA Shipping failed to dispute this.

RCL and EDSA Shipping could have offered evidence before the trial court to show that the damage to the condenser fan did not occur: (1) while the cargo was in transit; (2) while they were in the act of discharging it from the vessel; or (3) while they were delivering it actually or constructively to the consignee. They could have presented proof to show that they exercised extraordinary care and diligence in the handling of the goods, but they opted to file a demurrer to evidence. **As the order granting their demurrer was reversed on appeal, the CA correctly ruled that they are deemed to have waived their right to present evidence,**[12] **and the presumption of negligence must stand.**

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[10] *Aboitiz Shipping Corporation v. Insurance Company of North America*, G.R. No. 168402, August 6, 2008; *Calvo v. UCPB General Insurance Co., Inc.*, G.R. No. 148896, March 19, 2002, 379 SCRA 510.

[11] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, March 26, 2009.

[12] RULES OF COURT, RULE 33. SEC. 1. *Demurrer to evidence*.– After

It is for this reason as well that we find RCL and EDSA Shipping's claim that the loss or damage to the cargo was caused by a defect in the packing or in the containers. To exculpate itself from liability for the loss/damage to the cargo under any of the causes, the common carrier is burdened to prove any of the causes in Article 1734 of the Civil Code claimed by it by a preponderance of evidence. If the carrier succeeds, the burden of evidence is shifted to the shipper to prove that the carrier is negligent.[13] RCL and EDSA Shipping, however, failed to satisfy this standard of evidence and in fact offered no evidence at all on this point; a reversal of a dismissal based on a demurrer to evidence bars the defendant from presenting evidence supporting its allegations.

WHEREFORE, we *DENY* the petition for review on *certiorari* filed by the Regional Container Lines of Singapore and EDSA Shipping Agency. The decision of the Court of Appeals dated May 26, 2004 in CA-G.R. CV No. 76690 is *AFFIRMED IN TOTO*. Costs against the petitioners.

SO ORDERED.

Quisumbing (Chairperson) , *Carpio Morales, Del Castillo,* and *Abad, JJ.,* concur.

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the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal right to relief. If his motion is denied, he shall have the right to present evidence. **If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.**

[13] *Philippine Charter Insurance Corporation v. M/V National Honor*, G.R. No. 161833, July 8, 2003, 463 SCRA 202.

SECOND DIVISION

[G.R. No. 170482. September 4, 2009]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **AGUIDA *VDA. DE* SANTIAGO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS; GENERALLY CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE BY THIS COURT; EXCEPTIONS.— At the onset, well-settled is the rule that the Supreme Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) **When the findings are contrary to those of the trial court;** (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW ARE ENTERTAINED.— As a rule, only questions of law are entertained by this Court in petitions for review on *certiorari* under Rule 45. It is not our function to analyze or weigh all over again the evidence presented. It is a settled doctrine that in a civil case, final and conclusive are the factual

findings of the trial court, but only if supported by clear and convincing evidence on record.

3. MERCANTILE LAW; REPUBLIC ACT NO. 7832 (ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/ MATERIALS PILFERAGE ACT OF 1994); IMMEDIATE DISCONNECTION BY THE ELECTRIC UTILITY, WHEN PROPER.— Section 4 of Rep. Act No. 7832 states: SEC. 4. *Prima Facie Evidence*. – (a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative: (i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter; (ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity; (iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter; (iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph or log; (v) **The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;** (vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories; (vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter or its metering accessories; and (viii) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: *Provided, however,* That the

discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB). (b) The possession, control or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be *prima facie* evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore such line/material may be confiscated from the person in possession, control or custody thereof. Under the above provision, the *prima facie* presumption that will authorize immediate disconnection will arise only upon the satisfaction of certain requisites. One of these requisites is the personal witnessing and attestation by an officer of the law or by an authorized ERB representative when the discovery was made.

APPEARANCES OF COUNSEL

Horatio Enrique M. Bona Jose Reny T. Albarico & Elias M. Santos for petitioner.

R.A. Din, Jr. & Associates Law Offices for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated April 22, 2005 and the Resolution[2] dated November 21, 2005, of the Court of Appeals in CA-G.R. CV No. 78800. The appellate court had reversed the Decision[3] dated November 18, 2002 of the Regional Trial

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[1] *Rollo*, pp. 40-55. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Edgardo P. Cruz and Arturo D. Brion (now a member of this Court) concurring.

[2] *Id.* at 75-76.

[3] CA *rollo*, pp. 57-64. Penned by Presiding Judge Victoria C. Fernandez-Bernardo.

Court (RTC) of Malolos, Bulacan, Branch 18, in Civil Case No. 249-M-2000. Earlier the RTC dismissed the complaint for damages filed by Aguida *vda. de* Santiago (Aguida) against the Manila Electric Company (Meralco) and ordered Aguida to pay Meralco a differential billing amount of ₱65,819.75[4] in her electric billing. The Court of Appeals, however, reversed the RTC's decision and found that Aguida had been deprived of electricity without due process of law. It ordered Meralco to pay Aguida moral and exemplary damages, and attorney's fees and dismissed Meralco's claim for differential billing.

The facts of the case, as summarized by the Court of Appeals, are as follows:

Respondent Aguida *vda. de* Santiago is the widow of the late Jose Santiago, a registered customer of petitioner Meralco. Since the death of her husband in October 1990, Aguida, along with her daughter Elsa, her five grandchildren and a housemaid, have been living in their residential house located at No. 26, Purok I Meyto, Calumpit, Bulacan, under the same contract of service entered into by Jose Santiago.

On March 10, 2000, Antonio Cruz, an inspector of Meralco, together with two other Meralco inspectors, conducted a routine inspection of Aguida's meter installation posted outside the gate of their ancestral house at a distance of more or less twenty meters.

After inspection, Cruz found that a self-grounding wire connected to the electric meter was being used to deflect the actual consumption of electricity. Cruz immediately disconnected the electric service and prepared a Meter/Socket Inspection Report[5] and Notice of Disconnection[6] which Aguida was made to sign. Thereafter, Cruz demanded payment of a differential billing amounting to ₱65,819.75. On the same day, Aguida filed a protest with the Malolos branch of Meralco and its main office in Ortigas, Pasig City. Aguida claimed that the electric meter

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[4] *Id*. at 64.

[5] Records, Vol. I, p. 393.

[6] *Id*. at 394.

was inspected without her knowledge or prior permission, nor were her neighbors called to witness the inspection. She also denied having seen a policeman in uniform during the inspection.

Meralco, on the other hand, relied on Cruz' report and sent a differential billing to Aguida totaling ₱385,467.10. It likewise invoked the provisions of the contract of service and Republic Act No. 7832,[7] otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," to justify its right to effect immediate disconnection of the electric service.[8]

On April 4, 2000, Aguida filed a complaint for damages against Meralco before the RTC of Malolos, Branch 18.[9]

In a Decision dated November 18, 2002, the RTC dismissed the complaint for damages and ordered Aguida to pay Meralco ₱65,819.75 differential billing. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, Judgment is hereby rendered in favor of defendants [Meralco and Antonio Cruz] and against plaintiff [Aguida *vda. de* Santiago]:
>
> 1. dismissing plaintiff's Complaint for damages against defendants Manila Electric Company (Meralco) and Antonio Cruz;
>
> 2. ordering plaintiff or her representative to pay or deposit with defendant Manila Electric Company (Meralco) the "differential billing" in the amount of Sixty-Five Thousand Eight Hundred Nineteen Pesos and Seventy-Five Centavos (₱65,819.75), Philippine currency, within ten (10) days from receipt of this Decision; and
>
> 3. ordering defendant Manila Electric Company (Meralco) to immediately restore or reconnect its electric service to plaintiff at [the] latter's residence at No. 26, Purok 1, Meyto, Calumpit, Bulacan,

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[7] AN ACT PENALIZING THE PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC POWER TRANSMISSION LINES/MATERIALS, RATIONALIZING SYSTEM LOSSES BY PHASING OUT PILFERAGE LOSSES AS A COMPONENT THEREOF, AND FOR OTHER PURPOSES, approved on December 8, 1994.

[8] Records, Vol. I, p. 122.

[9] *Id*. at 3-14.

under the name of registered customer Jose Santiago, Aguida *Vda. de* Santiago, as user, upon payment by plaintiff of the foregoing "differential billing" of Sixty-Five Thousand Eight Hundred Nineteen Pesos and Seventy-Five Centavos (₱65,819.75) with defendant Meralco. In the interest of public service and public interest, this particular disposition, with respect to immediate restoration of electric service only, is immediately executory without prejudice to any appeal that may be taken therefrom by any of the parties.

No pronouncement as to costs.

SO ORDERED.[10]

Both parties appealed to the Court of Appeals. Meralco protested the order to pay ₱65,819.75, arguing it should be ₱385,467.10, while Aguida argued that the RTC erred in finding that there was a regular inspection of her residence.

On April 22, 2005, the Court of Appeals reversed the RTC's ruling after finding that there was no due process in the disconnection of Aguida's electric service. Thus:

WHEREFORE, premises considered, the Decision of the RTC Branch 18, Malolos, Bulacan is hereby **SET ASIDE** and **REVERSED**. Defendant-appellant MERALCO is hereby ordered to pay plaintiff-appellant the sum of ₱100,000.00 as moral damages and ₱50,000.00 exemplary damages plus ₱20,000.00 as attorney's fees. Furthermore, MERALCO's claim for ₱385,467.10 differential billing is hereby **DISMISSED** for lack of merit. Finally, the MERALCO is hereby ordered to immediately restore the electric supply of plaintiff-appellant.

SO ORDERED.[11]

Meralco's motion for reconsideration was denied. Hence, the instant appeal by Meralco where it raises the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO SUFFICIENT PROOF THAT RESPONDENT WAS FOUND USING SELF-GROUND WIRE.

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[10] CA *rollo*, pp. 63-64.

[11] *Rollo*, p. 53.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER MERALCO DID NOT OBSERVE DUE PROCESS OF LAW WHEN IT DISCONTINUED THE ELECTRIC SUPPLY OF RESPONDENT.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE RIGHT OF PETITIONER TO DISCONNECT RESPONDENT'S ELECTRIC SERVICE PURSUANT TO THE PROVISIONS OF RA 7832.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE RULING OF [THE] COURT *A QUO* BY AWARDING DAMAGES IN FAVOR OF RESPONDENT.[12]

Simply, the issue is: Did the Court of Appeals err in reversing the RTC's decision dismissing respondent's complaint for damages against petitioner for allegedly disconnecting respondent's electric service without due process of law?

At the onset, well-settled is the rule that the Supreme Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

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[12] *Id*. at 340.

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[13] (Emphasis supplied.)

As a rule, only questions of law are entertained by this Court in petitions for review on *certiorari* under Rule 45. It is not our function to analyze or weigh all over again the evidence presented. It is a settled doctrine that in a civil case, final and conclusive are the factual findings of the trial court, but only if supported by clear and convincing evidence on record.[14]

In this case, the findings of the Court of Appeals are contrary to the findings of the RTC. Hence, a review thereof is in order.

Section 4 of Rep. Act No. 7832 states:

SEC. 4. *Prima Facie Evidence*. – (a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative:

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[13] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

[14] *Vibram Manufacturing Corporation v. Manila Electric Company*, G.R. No. 149052, August 9, 2005, 466 SCRA 178, 183.

(i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter;

(ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;

(iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph or log;

(v) **The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device**;

(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;

(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter or its metering accessories; and

(viii) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: *Provided, however*, That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

(b) The possession, control or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be *prima facie* evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore

such line/material may be confiscated from the person in possession, control or custody thereof. (Emphasis supplied.)

Under the above provision, the *prima facie* presumption that will authorize immediate disconnection will arise only upon the satisfaction of certain requisites. One of these requisites is the personal witnessing and attestation by an officer of the law or by an authorized ERB representative when the discovery was made.[15]

After a careful review of the evidence on record, we affirm the appellate court's holding that "there is no solid, strong and satisfactory evidence to prove the alleged meter-tampering."

The Court of Appeals correctly held:

> After our careful scrutiny of the records, we find merit to plaintiff-appellant's appeal. We believe that there is no solid, strong and satisfactory evidence to prove the alleged meter-tampering. The law states that, in order to constitute *prima facie* evidence of electric pilferage, the discovery thereof must be personally witnessed and attested to by at least a police officer or a representative of [the] Energy Regulatory Board (ERB).
>
> Here, PO2 Chavez had allegedly witnessed and attested to the conduct of routine inspection. It is intriguing to note, however, that the inspection was conducted in Calumpit, Bulacan whereas PO2 Chavez is a police officer assigned in Caloocan City. PO2 Chavez likewise failed to present a written order from [the] Caloocan Police Station that allowed/sent him to escort MERALCO inspectors in Calumpit, Bulacan. Moreover, PO2 Chavez likewise admitted that the inspection team did not coordinate with [the] Calumpit Police Station for assistance in the conduct of said inspection. This fact alone makes us wary of imputing any legitimacy or regularity in the conduct of operation by [the] MERALCO inspection team.
>
> We are inclined to lend credence to the testimony of plaintiff-appellant and her daughter Elsa that there was no policeman in uniform during the inspection.
>
> Moreover, if the meter-tampering was really committed, it could have been discovered at the earliest opportunity during the previous

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[15] *Quisumbing v. Meralco*, G.R. No. 142943, April 3, 2002, 380 SCRA 195, 204.

inspection on the subject meter installation conducted by [the] MERALCO, Malolos Branch in July 1999. Besides, plaintiff-appellant's billing records from May 1999 to February 2000 marked as EXHS. "A" to "A-9", will attest to the fact that her average monthly electric consumption ranges from 578 to 721 kwh. or with equivalent billing of ₱2,000 to ₱3000. There was no showing of drastic changes in the billing except only for the billing period of April 16, 1999 to May 18, 1999 when it had gone up to ₱7,793.60 which prompted the plaintiff-appellant to lodge a protest for investigation, re-computation and refund for over billing. Upon investigation, [the] MERALCO, Malolos Branch found the meter to be DEFECTIVE but not tampered. Thus, it replaced the defective meter but despite thereof, MERALCO did not make a corresponding refund in favor of the plaintiff-appellant. Furthermore, the meter was last seen in January 2000 and yet MERALCO found no traces of meter-tampering. Surprisingly, after barely two months from the last inspection, plaintiff-appellant is charged of meter-tampering by defendant CRUZ.

The RTC had evidently failed to consider some relevant facts and circumstances, which if considered, would have altered its conclusion and judgment.[16]

Like the Court of Appeals, we are also wary of imputing legitimacy or regularity to the acts of PO2 Chavez, who allegedly witnessed and attested to the conduct of the inspection at respondent's house, since he is a police officer of Caloocan City and not Bulacan. Police officers must act only within their assigned territory.

In view of the foregoing, we affirm the ruling of the Court of Appeals.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated April 22, 2005 and the Resolution dated November 21, 2005 of the Court of Appeals in CA-G.R. CV No. 78800 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Corona,[*] *Carpio Morales, Del Castillo,* and *Abad, JJ.,* concur.

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[16] *Rollo*, pp. 242-244.

[*] Additional member per Raffle of July 29, 2008 in place of Associate Justice Arturo D. Brion who concurred in the assailed Decision and Resolution.

SECOND DIVISION

[G.R. No. 171176. September 4, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK (now PHILIPPINE COMMERCIAL INTERNATIONAL BANK),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF; GARNISHMENT OF DEBTS AND CREDITS; NATURE OF GARNISHMENT, EXPLAINED.— The legal basis of garnishment is found in Section 9 (c), Rule 39 of the Rules of Court, which states: Sec. 9. *Execution of judgments for money, how enforced.* x x x (c) Garnishment of debts and credits. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the posssession or control of third parties. **Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled.** The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees. xxx Garnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. Under this rule, the garnishee [the third person] is obliged to deliver the credits, *etc*. to the proper officer issuing the writ and "the law exempts from liability the person having in his possession or under his control any credits or other personal property belonging to the defendant x x x if such property be delivered or transferred x x x to the clerk, sheriff, or other officer of the court in which the action is pending." A self-evident feature of this rule is that the court is not required to serve summons on the garnishee, nor is it necessary to implead the garnishee in the case in order to hold him liable. As we have consistently ruled, **all that is necessary for the trial court to lawfully bind the person of the garnishee or any person who has in**

his possession credits belonging to the judgment debtor is service upon him of the writ of garnishment. Through service of this writ, the garnishee becomes a "virtual party" to or a "forced intervenor" in the case, and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court, with a view to the complete satisfaction of the judgment of the court.

2. ID.; RULES OF PROCEDURE SHOULD NOT BE USED TO DEFEAT THE ENDS OF JUSTICE OR UNDULY DELAY A CASE; SUSTAINED.— It has not escaped our attention that the NPC has employed a variety of seemingly legitimate tactics to delay the execution of the CFI Branch II decision. In fact, due to its various legal maneuverings, the NPC succeeded in avoiding its obligation to pay PCIB since 1976, or for more than 30 years, to PCIB's great prejudice. In so doing, the NPC has made a mockery of justice. We therefore take this opportunity to admonish the NPC and to remind NPC's counsels that while we agree that lawyers owe their entire devotion to the interest of their clients, they should not forget that they are also officers of the court, bound to exert every effort to assist in the **speedy and efficient administration of justice.** They should not, therefore, misuse the rules of procedure to defeat the ends of justice or unduly delay a case, impede the execution of a judgment or misuse court processes. As we declared in *Banogan, et al. v. Zerna, et al.*: This Court has repeatedly reminded litigants and lawyers alike: Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, be deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them. xxx One reason why there is a degree of public mistrust for lawyers is the way some of them misinterpret the law to the point of distortion in a cunning effort to achieve their purpose. By doing so, they frustrate the ends of justice and at the same time lessen popular faith in the legal profession as the sworn upholders of the law. While this is not to say that every wrong interpretation of the law is to be condemned, as

> indeed most of them are only honest errors, **this Court must express its disapproval of the adroit and intentional misreading designed precisely to circumvent or violate it.** As officers of the court, lawyers have a responsibility to assist in the proper administration of justice. They do not discharge this duty by filing pointless petitions that only add to the workload of the judiciary, especially this Court, which is burdened enough as it is. A judicious study of the facts and the law should advise them when a case such as this, should not be permitted to be filed to merely clutter the already congested judicial dockets. *They do not advance the cause of law or their clients by commencing litigations that for sheer lack of merit do not deserve the attention of the courts.*

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Rilloraza Africa De Ocampo and Africa and *Sumalpong Matibag Magturo Banzon Buenaventura & Yusi* for respondent.

D E C I S I O N

BRION, *J.*:

This Decision resolves the **petition for review on *certiorari***[1] filed by the National Power Corporation (*NPC*) to assail the decision[2] dated January 19, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 32745, entitled *"National Power Corporation v. Hon. Vetino E. Reyes, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 4, and the Philippine Commercial And Industrial Bank (now Philippine Commercial International Bank)."*

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[1] Under Rule 45, Rules of Court; *rollo*, pp. 11-30.

[2] Penned by Associate Justice Monina Arevalo-Zenarosa, with the concurrence of Associate Justice Andres Reyes, Jr. and Associate Justice Rosmari D. Carandang; *id*, pp. 82-95.

FACTUAL BACKGROUND

This petition has its roots in the complaint for a sum of money filed by the Philippine Commercial International Bank (*PCIB*) against B.R. Sebastian and Associates, Inc. (*Sebastian*), docketed as Civil Case No. 79092 in the then Court of First Instance of Manila, Branch II (*CFI Branch II*). In its decision dated November 26, 1970, CFI Branch II found defendant Sebastian liable to plaintiff PCIB as follows:

> WHEREFORE, the Court hereby renders judgment in favor of the plaintiff and against the defendants, as follows:
>
> 1. On the First Cause of Action, ordering defendant B.R. Sebastian & Associates, Inc. to pay the plaintiff the sum of ₱151,306.40, plus daily interest of ₱42.569 from February 18, 1970 and other bank charges, until complete payment is made;
>
> 2. On the Second, Third and Fourth and/or Alternative Cause of Action, ordering the defendants, jointly and severally, to pay the plaintiff the total sum of ₱181,786.23 **inclusive** of marginal deposits, interest, commission and other bank charges as of September 26, 1969 and thereafter, **plus interests and other bank charges until complete payment is made;**
>
> 3. On all Causes of Action, ordering the defendants, jointly and severally to pay ₱20,000.00 as attorney's fees and costs of suit.
>
> SO ORDERED. [Emphasis supplied]

The CA affirmed the CFI Branch II decision. The CA decision itself lapsed to finality on March 2, 1972.

Before the CFI Branch II decision in favor of PCIB could be executed, Sebastian filed a complaint against the NPC for the collection of a sum of money. The complaint, filed with the Court of First Instance of Manila, Branch XX (*CFI Branch XX*) and docketed as Civil Case No. 77140, resulted in a decision requiring the NPC to pay Sebastian the sum of Two Million, Seven Thousand, One Hundred Fifty-Seven Pesos (₱2,007,157.00). This CFI Branch XX decision became final on June 20, 1976.

On July 20, 1976, CFI Branch II issued an *alias* writ of execution in Civil Case No. 79092 that became the basis for the issuance on July 21, 1976 of a Notice of Garnishment by the Sheriff of Manila, attaching and levying on all the "good(s), effects, moneys in the possession and control of NPC, particularly the judgment in Civil Case No. 77140 in the amount of Two Million Seven Thousand One Hundred Fifty-Seven Pesos (₱2,007,157.00), to satisfy the amount of Five Hundred Eighty Thousand Two Hundred Twenty-Eight (₱580,228.19)." The amount to be satisfied is Sebastian's liability in Civil Case No. 79092.

In due course, CFI Branch II issued an Order dated March 11, 1978 directing NPC to deliver to the Sheriff of Manila or PCIB the amount it held for Sebastian equivalent to the money judgment. The NPC complied by delivering PNB Check No. 739673 dated June 29, 1978 in the amount of Two Hundred Forty-Nine Thousand, Two Hundred Fifty-Six Pesos and Seventy-Four Centavos (₱249,256.74) as partial compliance with the Notice of Garnishment.

On November 8, 1988, PCIB filed a motion with the then CFI Branch II (now referred to as the Regional Trial Court of Manila, Branch 4, or *RTC*) to require the NPC to satisfy the judgment in Civil Case No. 79092 and to remit the unsatisfied amount of Three Hundred Forty Thousand, Nine Hundred Seventy-One Pesos and Forty-Five Centavos (₱340,971.45), plus interests and other bank charges from July 21, 1976 until full payment is made. The NPC opposed the motion on the ground that the RTC had not acquired jurisdiction over it, as it had not been duly summoned.

On April 21, 1989, the RTC issued an order directing NPC to satisfy its November 26, 1970 judgment against Sebastian in Civil Case No. 79092. This order, in part, states:

> This treats of the Motion to Require the National Power Corporation to satisfy the judgment of November 26, 1970 filed by plaintiff thru counsel on December 17, 1988.

Plaintiff's motion stems from the decision of this court dated November 26, 1970 which found favor for the plaintiff. On July 21, 1976, the said decision was sought to be enforced by way of garnishment against the monies and credits of defendants which are in the possession of the National Power Corporation. Said entity, however, failed to remit the entire amount of the judgment leaving it partially satisfied. Plaintiff proceeded to institute an independent court action to recover from the NPC the difference of the judgment amounting to ₱340,971.45 as of July 21, 1976, plus interest before the Regional Trial Court of Pasig, Br. CLVI, docketed as Civil Case No. 39255. Said court rendered judgment in favor of plaintiff.

On appeal to the Court of Appeals, the latter court affirmed the decision of the lower court and further ruled that this court retains jurisdiction to hold the NPC liable to the plaintiff to satisfy the judgment.

x x x x x x x x x

Despite the said order and the assurance of Marcelino C. Ilao, Chief Legal Counsel of the National Power Corporation that he will deliver the money belonging to defendants in its possession, the latter has failed to comply. The NPC cannot now deny the jurisdiction of this court over it. It should likewise be noted at the outset that garnishment is a specie of attachment or execution which consists in the citation of some stranger to the litigation, who is debtor to one of the parties to the action. By these means such debtor stranger becomes a forced intervenor; and the court having acquired jurisdiction over his person by means of the citation, requires him to pay his debt not to his former creditor but to the new creditor who is creditor in the main litigation. (See *Tayabas Land Co. vs. Sharuff,* 41 Phil. 382).

Considering that the judgment in favor of the plaintiff has been unsatisfied, it is within the powers of the court to order the National Power Corporation, as the entity having legal custody of the same properties of the defendants, to turn over the same to the plaintiff.

WHEREFORE, **the National Power Corporation is ordered anew to satisfy the judgment of this court dated November 26, 1970.**

SO ORDERED. [Emphasis supplied]

The CA dismissed the petition for *certiorari* the NPC filed to question the above Order. The NPC then went to this Court on a petition for review, docketed as G.R. No. 93238. We dismissed the petition for lack of merit and, in so doing, held:

However, in the case at bar, it was the petitioner who caused the delay in the payment of the remaining balance of the aforesaid Notice of Garnishment. Therefore, the delay of more than 10 years from the time the judgment of November 26, 1970 became final and executory should not be counted in computing the 5-year period in executing a judgment by motion, since the delay was not respondent's doing but petitioner's. It is well- settled that:

> In computing the time limited for suing out an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*.

Thus, the filing of respondent PCIB of a motion requiring petitioner to remit the unsatisfied amount of the Notice of Garnishment on November 8, 1988 is still seasonable and well within the 5-year period since the statute of limitations has been devised to operate primarily against those who slept on their rights and not against those desirous to act but cannot do so for causes beyond their control.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

The NPC's motion for reconsideration suffered a similar fate in the Resolution we issued on October 7, 1992.

With the NPC's legal objections cleared, the RTC, in Civil Case No. 79092, directed the issuance of a writ of execution on June 30, 1993 "pursuant to the order of this court dated April 21, 1989, the same to be implemented by Deputy Sheriff Cezar C. Javier." The writ, issued on July 8, 1993, reads:

NOW WHEREFORE, **we command you that of the goods and chattels of National Power Corporation, you cause to be made the sum of ₱340,971.45, plus interest and other bank charges from July 21, 1976 until fully paid**, together with your lawful fees for service of this writ of execution, all in the Philippine currency which the plaintiff recovered in our Regional Trial Court of Manila, Branch IV on April 21, 1989, and that you render the same to the said plaintiff aside from your own fees on this execution and to likewise return this writ unto this Court within sixty (60) days from the date of receipt hereof with your proceedings indorsed hereon.

But if sufficient personal properties cannot be found whereof to satisfy this execution and lawful fees therein, then you are commanded that on the lands and buildings of said National Power Corporation, you cause to be made the said sums of money in the manner required by law and the Rules of Court and make return of your proceedings with this writ within sixty (60) days from the date of receipt hereof. [Emphasis supplied]

On August 9, 1993, the RTC issued an *Alias* Writ of Execution that provides:

Please be notified that an *alias* writ of execution was issued in the above-entitled case by the Honorable Vetino E. Reyes, Presiding Judge of the Regional Trial Court of Manila, Branch IV, copy herewith attached and being served upon you.

By virtue of said Writ of Execution, you are hereby ordered to pay the above-stated plaintiff through the undersigned Branch Sheriff the total amount of One Million Eight Hundred Sixty-Four Thousand Eight Hundred Ten & 74/100 as of June 30, 1993 (as per plaintiff bank computation-copy of said computation is hereto attached), within five (5) days from receipt of this Notice.

Should you fail to comply with the above-stated demand within the grace period aforementioned, the undersigned Branch Sheriff formally notifies you that he would be constrained to use the full force of the law to implement the said Writ of Execution to fully satisfy the judgment in the above-entitled case.

Please be guided accordingly.

The amount sought to be collected was computed as follows:

Balance (Unsatisfied Court Judgment dated 11/26/70)	₱340,971.45
Add: Interest at 14% p.a. from 7/21/76 to 6/30/93 (6,188 days)	820,528.25
Penalty at 12% p.a. from 7/21/76 to 6/30/93 (6,188 days)	703,310.44
Total Amount Due as of 6/30/93	₱1,864,810.74

The NPC sought to quash the *alias* writ on the ground that it is liable to pay the garnished amount only in the sum of Three Hundred Forty Thousand, Nine Hundred Seventy-One Pesos and Forty-Five Centavos (₱340,971.45), but not the interest and bank charges added thereon. The RTC denied the NPC motion, whereupon the NPC went to the CA on a petition for *certiorari*, contending in the main that the RTC had no jurisdiction to require it to pay interest and bank charges on the garnished amount where these additional charges went beyond the amount specified in the Notice of Garnishment issued by the Sheriff on July 21, 1976. The CA's ruling requiring the NPC to pay the outstanding balance plus interests and back wages is the subject of this petition for review.

THE PETITION

The issue, as framed in the petition, is whether the CA erred in affirming the orders of the RTC, that required the NPC to pay interest and bank charges on the garnished amount, where said interest and bank charges are over and beyond the amount specified in the notice of garnishment.

The NPC submits that since it was never a party to Civil Case No. 79092, being a mere garnishee, it cannot be bound by the CFI Branch II decision, which imposed upon Sebastian the obligation to pay interest and bank charges, on top of the monetary amount specified therein. According to the NPC, it is only bound to pay the amount specified in the Notice of Garnishment dated July 21, 1976, which states:

Attachment/levy is… made upon all the goods, effects, interests, credits, money/monies, stocks, shares, any interest in stocks and shares, and any other personal property in [petitioner's] possession or under [petitioner's] control, belonging to the defendant/s … B.R. SEBASTIAN & ASSOCIATES, INC. and all debts owing by [petitioner] to said defendant/s as of date of service hereof, sufficient to cover the sum of ₱580,228.19, and specifically the recovered judgment of the defendant B.R. SEBASTIAN & ASSOCIATES, INC. against [petitioner] NATIONAL POWER CORPORATION in the amount of ₱2,007,157 as per decision of the arbitration board formed by the Court, dated May 22, 1976.

Since neither the Notice of Garnishment nor the dispositive portions of the decisions of the CA[3] and the Supreme Court[4] mentioned that it is liable for interest and bank charges, and the NPC had already paid ₱249,256.74 out of the ₱580,228.19 indicated in the Notice of Garnishment, it is liable to pay the balance of ₱340,971.45 only, without any interests and bank charges.

OUR RULING

We deny the petition for lack of merit.

Nature of Garnishment

The legal basis of garnishment is found in Section 9 (c), Rule 39 of the Rules of Court, which states:

Sec. 9. *Execution of judgments for money, how enforced.*

x x x x x x x x x

(c) Garnishment of debts and credits. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the posssession or control of third parties. **Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled**.

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[3] In CA-G.R. SP No. 18475.

[4] In G.R. No. 93238.

The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees. x x x [Emphasis supplied.]

Garnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. Under this rule, the garnishee [the third person] is obliged to deliver the credits, *etc*. to the proper officer issuing the writ and "the law exempts from liability the person having in his possession or under his control any credits or other personal property belonging to the defendant x x x if such property be delivered or transferred x x x to the clerk, sheriff, or other officer of the court in which the action is pending."[5]

A self-evident feature of this rule is that the court is not required to serve summons on the garnishee, nor is it necessary to implead the garnishee in the case in order to hold him liable. As we have consistently ruled, **all that is necessary for the trial court to lawfully bind the person of the garnishee or any person who has in his possession credits belonging to the judgment debtor is service upon him of the writ of garnishment**.[6] Through service of this writ, the garnishee becomes a "virtual party" to or a "forced intervenor" in the case, and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court, with a view to the complete satisfaction of the judgment of the court.

NPC's contention that it cannot be bound by the CFI Branch II judgment on the ground that it was not a party to Civil Case No. 79092 is therefore unavailing.

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[5] *RCBC v. de Castro*, G.R. No. L-34548, November 29, 1988, 168 SCRA 49, citing *Engineering Construction Inc. v. NPC*, 163 SCRA 9 (1988).

[6] See: *Tayabas Land Co. v. Sharruf*, 41 Phil. 382 (1921), *Bautista v. Barredo*, G.R. No. L-20653, April 30, 1965, 13 SCRA 744; *Perla Compania de Seguros, Inc. v. Ramolete*, G.R. No. 60887, November 13, 1991, 203 SCRA 487; *PNB Management v. R&R Metal Casting*, G.R. No. 132245, January 2, 2002, 373 SCRA 1.

Notice of Garnishment to be considered in conjunction with the decision sought to be executed

As correctly pointed out by the PCIB in its Comment,[7] the Notice of Garnishment was issued pursuant to, and in the execution of, the decision of the CFI Branch II which undoubtedly required Sebastian to pay not only the unsatisfied amount of ₱340,971.45, but also the interests and bank charges. The NPC, in satisfying its obligation towards the PCIB, its new creditor, is thus required to refer to the dispositive portion of the CFI Branch II's decision dated November 26, 1970, since it is the very decision that the Notice of Garnishment sought to satisfy.

Stated more directly for the benefit of the NPC so as to remove any possible source of ambiguity and doubt, the **NPC is obliged to pay, aside from the remaining ₱340,971.45, all interests and bank charges that have accumulated on this amount from July 21, 1976 until it has made complete payment.**

The NPC next tries to argue that it cannot be made to pay interests and bank charges since there is nothing in the dispositive portions of the CA decision in CA-G.R. SP No. 18475, or in our decision in G.R. No. 93238 that requires NPC to do so; the NPC bases its argument on the principle that only the dispositive portion of the decision becomes the subject of execution.

We find this argument completely misplaced. The very purpose of CA-G.R. SP No. 18475 was to resolve the petition for *certiorari* filed by the NPC to question the RTC order dated April 21, 1989 that states:

> WHEREFORE, the National Power Corporation is ordered anew to satisfy the judgment of this court dated November 26, 1970.

In its petition, the NPC mainly argued that the RTC gravely abused its discretion in issuing the April 21, 1989 order because NPC was never made a party to Civil Case No. 79092 and, thus, could not be bound by the CFI Branch II decision issued

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[7] Dated June 6, 2006; *rollo*, pp. 59-81.

in the same case. When the CA issued its decision in CA-G.R. SP No. 18475 denying NPC's petition for *certiorari*, this effectively affirmed the questioned RTC order directing the NPC to satisfy the CFI Branch II's November 26, 1970 decision.

In like manner, when we denied NPC's petition for review on *certiorari* in G.R. No. 93238, we also affirmed the validity and operational force of the same April 21, 1989 order. This is but the natural effect of denying the petition questioning the order, and it would be preposterous to conclude otherwise.

Final Note

It has not escaped our attention that the NPC has employed a variety of seemingly legitimate tactics to delay the execution of the CFI Branch II decision. In fact, due to its various legal maneuverings, the NPC succeeded in avoiding its obligation to pay PCIB since 1976, or for more than 30 years, to PCIB's great prejudice. In so doing, the NPC has made a mockery of justice. We therefore take this opportunity to admonish the NPC and to remind NPC's counsels that while we agree that lawyers owe their entire devotion to the interest of their clients, they should not forget that they are also officers of the court, bound to exert every effort to assist in the **speedy and efficient administration of justice**. They should not, therefore, misuse the rules of procedure to defeat the ends of justice or unduly delay a case, impede the execution of a judgment or misuse court processes.[8]

As we declared in *Banogan, et al. v. Zerna, et al.*:[9]

This Court has repeatedly reminded litigants and lawyers alike:

Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party

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[8] See: *Eternal Gardens v. CA*, G.R. No. 123698, August 5, 1998, 293 SCRA 622.

[9] G.R. No. L-35469, October 9, 1987, 154 SCRA 593, cited in *Chua Huat, et al. v. CA*, G.R. No. 53851, July 9, 1991, 199 SCRA 15.

be not, through a mere subterfuge, be deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

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One reason why there is a degree of public mistrust for lawyers is the way some of them misinterpret the law to the point of distortion in a cunning effort to achieve their purpose. By doing so, they frustrate the ends of justice and at the same time lessen popular faith in the legal profession as the sworn upholders of the law. While this is not to say that every wrong interpretation of the law is to be condemned, as indeed most of them are only honest errors, **this Court must express its disapproval of the adroit and intentional misreading designed precisely to circumvent or violate it.**

As officers of the court, lawyers have a responsibility to assist in the proper administration of justice. They do not discharge this duty by filing pointless petitions that only add to the workload of the judiciary, especially this Court, which is burdened enough as it is. A judicious study of the facts and the law should advise them when a case such as this, should not be permitted to be filed to merely clutter the already congested judicial dockets. **They do not advance the cause of law or their clients by commencing litigations that for sheer lack of merit do not deserve the attention of the courts.** [Emphasis supplied.]

WHEREFORE, premises considered, we hereby *DENY* the petition and *AFFIRM* the Court of Appeals' Decision dated January 19, 2006 in CA-G.R. SP No. 32745. We further *AFFIRM* the Orders dated July 8, 1993, August 9, 1993, and August 24, 1993 of the Regional Trial Court of Manila, Branch 4, presided by Judge Vetino E. Reyes. Double costs against petitioner National Power Corporation pursuant to Section 3, Rule 142 of the Rules of Court.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171491. September 4, 2009]

DR. CASTOR C. DE JESUS, *petitioner, vs.* **RAFAEL D. GUERRERO III, CESARIO R. PAGDILAO, and FORTUNATA B. AQUINO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE; QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT; NOT PRESENT IN CASE AT BAR.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the administrative complaint must be dismissed for lack of merit. A perusal of petitioner's allegations clearly shows that they are mere general statements or conclusions of law, wanting in evidentiary support and substantiation. It is not enough for petitioner to simply aver that respondents had been derelict in their duties; he must show the specific acts or omissions committed by them which amount to incompetence and gross negligence. This, he failed to do. Hence, the complaint was correctly dismissed for lack of merit.

2. ID.; ID.; ID.; FINDING OF GUILT IN A CRIMINAL CASE WILL NOT NECESSARILY RESULT IN A FINDING OF LIABILITY IN ADMINISTRATIVE CASE; SUSTAINED.— It is worthy to note that petitioner is merely proceeding from his own belief that there exists sufficient basis to charge respondents criminally. This is not within his province to decide. He could not arrogate unto himself the power that pertains to the proper authorities enjoined by law to determine

the absence or existence of probable cause to indict one of a criminal offense. More importantly, an administrative proceeding is different from a criminal case and may proceed independently thereof. Even if respondents would subsequently be found guilty of a crime based on the same set of facts obtaining in the present administrative complaint, the same will not automatically mean that they are also administratively liable. As we have said in *Gatchalian Promotions Talents Pool, Inc. v. Naldoza* and which we have reiterated in a host of cases, a finding of guilt in the criminal case will not necessarily result in a finding of liability in the administrative case. Conversely, respondents' acquittal will not necessarily exculpate them administratively. The basic premise is that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa. It must be stressed that the basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of criminal prosecution is the punishment of crime. To state it simply, petitioner erroneously equated criminal liability to administrative liability.

3. ID.; ID.; ID.; PRINCIPLE OF COMMAND RESPONSIBILITY, WHEN NOT APPLICABLE.— In the absence of substantial evidence of gross negligence of the respondents, administrative liability could not be based on the principle of command responsibility. Without proof that the head of office was negligent, no administrative liability may attach. Indeed, the negligence of subordinates cannot always be ascribed to their superior in the absence of evidence of the latter's own negligence. While it may be true that certain PCAMRD employees were sanctioned for negligence and some other administrative infractions, it does not follow that those holding responsible positions, like the respondents in this case, are likewise negligent, especially so when the contentions of petitioner remain unsubstantiated.

APPEARANCES OF COUNSEL

Gonzales Relova (+) Muyco & Guzman for petitioner.
Caesar M. Angeles for respondents.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review seeking to reverse and set aside the Decision[1] dated September 30, 2005 of the Court of Appeals, in CA-G.R. SP No. 83779, and its Resolution[2] dated February 9, 2006 denying petitioner's motion for reconsideration.

Culled from the records are the following facts:

Nilo A. Bareza, Records Officer III of the Philippine Council for Aquatic and Marine Research and Development (PCAMRD), made out a check payable to himself and drawn against the Asean-Canada Project Fund, a foreign-assisted project being implemented by PCAMRD. To avoid being caught, Bareza stole Land Bank Check No. 070343 from the trust fund of the PCAMRD from the desk of Arminda S. Atienza, PCAMRD Cashier III. He filled out the check for the amount of ₱385,000.00, forged the signatures of the authorized signatories, made it appear that the check was endorsed to Atienza, and with him as the endorsee, encashed the check that was drawn against the PCAMRD Trust Fund. Then, he deposited part of the money to the Asean-Canada Project Fund and pocketed the difference.[3]

Atienza discovered that the check in question was missing on the third week of February 1999 while preparing the Report of Checks Issued and Cancelled for the Trust Fund for the month of January. Not finding the check anywhere in her office, Atienza called the bank to look for the same. She was shocked to learn from a bank employee that the check had been issued payable in her name. When Atienza went to the bank to examine the check, she noticed that her signature and the signature of

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[1] *Rollo*, pp. 25-32. Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Mario L. Guariña III and Jose Catral Mendoza, concurring.

[2] *Id.* at 34.

[3] *Id.* at 57.

Dir. Rafael D. Guerrero III (Guerrero), PCAMRD Executive Director, were forged. She also found out that Bareza appeared to be the person who encashed the check.[4]

Bareza admitted his wrongdoings when he was confronted by Atienza about the incident, but begged that he be not reported to the management. Bareza also promised to return the money in a few days. Against her good judgment, Atienza acquiesced to Bareza's request, seeing Bareza's remorse over his transgressions. But Atienza also felt uneasy over her decision to keep silent about the whole thing, so Atienza persuaded Bareza to inform Fortunata B. Aquino (Aquino), PCAMRD Director of Finance and Administrative Division, about what he did. Bareza, however, decided to confess to Carolina T. Bosque, PCAMRD Accountant III, instead.[5]

When Bareza revealed to Bosque what he had done, he was also advised to report the matter to Aquino, but, Bareza became hysterical and threatened to commit suicide if his misdeeds were ever exposed. Due to his fervent pleading and his promise to repay the amount he took, Bosque, like Atienza, assented to his plea for her to remain silent.[6]

True to his word, Bareza deposited back ₱385,000.00 to the PCAMRD account on February 25, 1999.[7]

On July 27, 2001, following rumors that an investigation will be conducted concerning irregularities in the said project, Bareza set fire to the PCAMRD Records Section in order to clear his tracks.[8]

A fact-finding committee was thus created by virtue of PCAMRD Memorandum Circular No. 30[9] to investigate the

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[4] *Id.* at 85.

[5] *Id.*

[6] *Id.* at 87.

[7] *Id.* at 90.

[8] *Id.* at 78.

[9] *Id.* at 70-71.

burning incident and forgery of checks by Bareza. After investigation, the fact-finding committee found sufficient evidence to charge Bareza with dishonesty, grave misconduct and falsification of official document.[10] The fact-finding committee likewise found sufficient evidence to charge Atienza with inefficiency and incompetence in the performance of official duties[11] and Bosque with simple neglect of duty.[12]

Concomitant to the above findings, Guerrero formed an investigation committee to conduct formal investigations on the charges filed against Bareza, Atienza and Bosque.[13] The investigation committee found Bareza guilty of dishonesty and grave misconduct and recommended his dismissal from the service. It also found sufficient basis to uphold the charge filed against Atienza and Bosque, and recommended a minimum penalty of six (6) months and one (1) day suspension for Atienza, and a maximum penalty of six (6) months suspension for Bosque.[14]

On September 10, 2001 the PCAMRD adopted the findings of the investigation committee but imposed only the penalty of six (6) months suspension on Atienza and only three (3) months suspension on Bosque.[15]

Not convinced with the results of the investigation and the penalties imposed on Bareza, Atienza and Bosque, petitioner exerted efforts to obtain a copy of the complete records of the proceedings had. Upon reading the same, petitioner was of the opinion that the investigation conducted by the fact-finding committee and investigation committee was perfunctorily and superficially done, and made only to whitewash and cover-up the real issues because the report exonerated other persons involved

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[10] *Id.* at 67.

[11] *Id.* at 68.

[12] *Id.* at 69.

[13] *Id.* at 91.

[14] *Id.* at 65.

[15] *Id.* at 42-43.

in the crimes and omitted other erroneous acts. According to him, these circumstances led to partiality in deciding the charges. Hence, petitioner filed with the Office of the Deputy Ombudsman for Luzon (Ombudsman) a complaint against Guerrero, Cesario R. Pagdilao (Pagdilao), PCAMRD Deputy Executive Director, and Aquino, among others, for incompetence and gross negligence.[16] The case was docketed as OMB Case No. L-A-02-0209-D.

In their Joint Counter-Affidavit and Complaint for Malicious Prosecution[17] dated July 9, 2002, the respondents argued that the complaint is wanting in material, relevant and substantive allegations and is clearly intended only to harass them. Furthermore, they contended that petitioner failed to identify the persons he claims were exonerated, and worse, petitioner failed to state with particularity their participation in the crimes.[18]

In his Consolidated Reply and Counter-Affidavit[19] dated July 25, 2002, petitioner belied the allegation of the respondents that his complaint was lacking in substance. He stressed that the report of the investigation committee that was submitted by the respondents reinforced his claim that the investigation relative to the forgery and arson case was indeed perfunctory and superficial, designed only to whitewash and cover-up the real issues. To bolster his contention, he pointed out that the sworn affidavit of Bareza revealed that the latter was able to use certain funds of the Asean-Canada Project by encashing blank checks that were previously signed by Pagdilao. Thus, he averred that the failure to implicate Pagdilao as a conspirator to the crime of forgery shows that the investigation was just a farce. Petitioner also claimed that Atienza and Bosque were not charged with the proper administrative offense to avoid their dismissal from the service. Petitioner pointed to the command responsibility

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[16] *Id.* at 37.

[17] *Id.* at 49-52.

[18] *Id.* at 50.

[19] *Id.* at 150-158.

of respondents over Bareza, Atienza and Bosque. He maintained that had they been prudent enough in handling PCAMRD's finances, the forgery of checks and the arson incident could have been avoided. Furthermore, petitioner alleged that being the head of PCAMRD, Guerrero should have pursued investigations on the criminal aspect of the cases of forgery and arson because a huge amount of government money was involved therein. His act, therefore, of declaring the cases closed after the conduct of the investigations in the administrative aspect only is contrary to the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) because its object is to conceal "*more big anomalies and issues.*"[20]

In a Decision[21] dated August 5, 2002, the Ombudsman recommended the dismissal of the administrative case filed against the respondents for lack of merit. It agreed with the respondents that the complaint was couched in general terms that contains no material, relevant and substantial allegation to support the theory of cover-up or whitewash. The Ombudsman also held that there is nothing to sustain petitioner's allegation that Pagdilao should be implicated in the forgery because petitioner failed to sufficiently prove that the check that was signed in blank by Pagdilao was Land Bank Check No. 070343, or the subject check encashed by Bareza. Even assuming that the forged check was the one signed in blank by Pagdilao, the Ombudsman opined that the latter still cannot be said to have participated in the forgery because the check was in the custody and safekeeping of Atienza, the cashier, when it was stolen. In the same vein, the Ombudsman found no adequate basis in the petitioner's allegation that Guerrero charged Atienza and Bosque with erroneous administrative infractions to lessen their liability, noting that Guerrero merely adopted the recommendation of the fact-finding and investigation committees as to what they should be charged with. The Ombudsman added that Guerrero cannot be indicted for violation of Section 3(e) of Rep. Act No. 3019 or be held administratively liable for his failure to initiate criminal

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

[21] *Id.* at 159-165.

cases against Bareza, Atienza and Bosque because he had no personal knowledge of the commission of the crimes allegedly committed by them.[22]

Petitioner moved for reconsideration, but the Ombudsman denied it in an Order[23] dated November 25, 2003. According to the Ombudsman, nowhere in petitioner's complaint did he allege that respondents should be blamed for arson and forgery because of command responsibility. It held that petitioner's averment of the same only in his reply-affidavit and in his motion for reconsideration should be disregarded altogether since it materially and belatedly alters his original cause of action against the respondents, which cannot be allowed.[24]

Not accepting defeat, petitioner elevated the matter by way of a petition for review[25] under Rule 43 before the appellate court. Petitioner claimed that the Ombudsman gravely erred when it recommended the dismissal of the charges against the respondents and denied his motion for reconsideration despite the existence of a *prima facie* case against them for incompetence and gross negligence.

On September 30, 2005, the Court of Appeals rendered a Decision affirming the August 5, 2002 Decision and November 25, 2003 Order of the Ombudsman in OMB Case No. L-A-02-0209-D. The appellate court found that the Ombudsman correctly dismissed the complaint against the respondents. The appellate court held that petitioner questioned the handling of the PCAMRD finances without specifying the particular acts or omissions constituting the gross negligence of the respondents. The charges, being broad, sweeping, general and purely speculative, cannot, by their nature, constitute a *prima facie* case against the respondents.[26]

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[22] *Id.* at 161-162, 164.

[23] *Id.* at 171-176.

[24] *Id.* at 174-175.

[25] CA *rollo*, pp. 7-21.

[26] *Rollo*, p. 31.

Petitioner moved for the reconsideration of the said Decision but it was denied by the appellate court in the Resolution dated February 9, 2006.

Hence, the present petition raising the following issues for our resolution:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT DENIED IN ITS DECISION PETITIONER'S PETITION AND AFFIRMED THE OMBUDSMAN'S DECISION OF AUGUST 5, 2002 IN OMB-L[-A]-02-020[9]-D, RECOMMENDING DISMISSAL OF THE CASE BY RELYING SOLELY AND EXCLUSIVELY ON THE GENERAL RULE/PRINCIPLE THAT THE COURTS WILL NOT INTERFERE IN THE INVESTIGATORY AND PROSECUTORY POWERS OF THE OMBUDSMAN, IGNORING THE EXCEPTIONS TO THE RULE – PRESENCE OF COMPELLING REASONS AND GRAVE ABUSE OF DISCRETION IN THE EXERCISE THEREOF.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR AND A GRAVE MISAPPREHENSION OF FACTS AND MISAPPRECIATION OF THE EVIDENCE WHEN IT RULED THAT THERE IS NO *PRIMA FACIE* OR PROBABLE CAUSE AGAINST RESPONDENTS, [THAT] IF CONSIDERED, WILL ALTER THE OUTCOME OF THE CASE.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENTS ARE NOT ADMINISTRATIVELY LIABLE.[27]

Simply put, we are asked to resolve whether the appellate court erred in affirming the dismissal of the complaint. We hold that it did not.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as

[27] *Id.* at 208.

adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the administrative complaint must be dismissed for lack of merit.[28]

Mainly, petitioner ascribes incompetence and gross negligence to respondents because according to him, the fraudulent use of PCAMRD funds and arson would not have happened had they not been remiss in the performance of their duties. Specifically, he averred that Guerrero, being the head of PCAMRD, should have seen to it that all the resources of the government are managed and expended in accordance with laws and regulations, and safeguarded against loss and waste; Pagdilao should have ensured that the signed blank checks were used for what they were intended; and that anomalies would have been avoided had Aquino supervised Bareza, Atienza and Bosque, her subordinates, properly and efficiently. In sum, petitioner argues that they are accountable because of command responsibility.[29]

We agree with the appellate court and the Ombudsman that the complaint against the respondents should be dismissed. A perusal of petitioner's allegations clearly shows that they are mere general statements or conclusions of law, wanting in evidentiary support and substantiation. It is not enough for petitioner to simply aver that respondents had been derelict in their duties; he must show the specific acts or omissions committed by them which amount to incompetence and gross negligence. This, he failed to do. Hence, the complaint was correctly dismissed for lack of merit.

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[28] *Manalabe v. Cabie*, A.M. No. P-05-1984, July 6, 2007, 526 SCRA 582, 589; See also *Adajar v. Develos*, A.M. No. P-05-2056, November 18, 2005, 475 SCRA 361, 376-377; *Ong v. Rosete*, A.M. No. MTJ-04-1538, October 22, 2004, 441 SCRA 150, 160; *Datuin, Jr. v. Soriano*, A.M. No. RTJ-01-1640, October 15, 2002, 391 SCRA 1, 5.

[29] *Rollo*, pp. 218-219.

Petitioner's allegation that he has specified the acts and omissions of respondents which show that they are guilty of dishonesty and falsification lacks merit. Aside from the fact that nowhere in the records does it appear that he has indeed shown the particular acts or omissions of respondents constituting dishonesty or which amounted to falsification of whatever nature, it must be emphasized that the case he filed before the Ombudsman was an administrative complaint for incompetence and gross negligence. Hence, these are the two charges he needed to prove by substantial evidence, not any other crime or administrative infraction. At the very least, petitioner should have shown how his accusations of dishonesty and falsification constituted incompetence and gross negligence on the part of the respondents.

To further persuade us that his complaint was wrongly dismissed, petitioner argues that he had in his petition established the existence of probable cause to hold respondents liable for violation of Section 3(e) of Rep. Act No. 3019, or the Anti-Graft and Corrupt Practices Act.[30] He then concludes that "*if there is sufficient basis to indict the respondents of a criminal offense then with more reason that they should be made accountable administratively considering the fact that the quantum of evidence required in administrative proceedings is merely substantial evidence.*"[31]

This argument likewise has no merit. It is worthy to note that petitioner is merely proceeding from his own belief that there exists sufficient basis to charge respondents criminally. This is not within his province to decide. He could not arrogate unto himself the power that pertains to the proper authorities enjoined by law to determine the absence or existence of probable cause to indict one of a criminal offense.

More importantly, an administrative proceeding is different from a criminal case and may proceed independently thereof.[32]

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[30] *Id.* at 211-217.

[31] *Id.* at 217.

[32] *Miralles v. Go*, G.R. No. 139943, January 18, 2001, 349 SCRA 596,

Even if respondents would subsequently be found guilty of a crime based on the same set of facts obtaining in the present administrative complaint, the same will not automatically mean that they are also administratively liable.

As we have said in *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*[33] and which we have reiterated in a host of cases,[34] a finding of guilt in the criminal case will not necessarily result in a finding of liability in the administrative case. Conversely, respondents' acquittal will not necessarily exculpate them administratively. The basic premise is that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa.[35]

It must be stressed that the basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of criminal prosecution is the punishment of crime.[36] To state it simply, petitioner erroneously equated criminal liability to administrative liability.

Neither will the allegation of the principle of command responsibility make the respondents liable. In the absence of substantial evidence of gross negligence of the respondents,

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609; See also *Barillo v. Gervacio*, G.R. No. 155088, August 31, 2006, 500 SCRA 561, 572; *J. King & Sons Company, Inc. v. Hontanosas, Jr.*, A.M. No. RTJ-03-1802, September 21, 2004, 438 SCRA 525, 552, citing *Bejarasco, Jr. v. Buenconsejo*, A.M. No. MTJ-02-1417, May 27, 2004, 429 SCRA 212, 221; *Paredes v. Court of Appeals*, G.R. No. 169534, July 30, 2007, 528 SCRA 577, 587.

[33] A.C. No. 4017, September 29, 1999, 315 SCRA 406.

[34] *Miralles v. Go, supra* at 609; *Office of the Court Administrator v. Sardido*, A.M. No. MTJ-01-1370, April 25, 2003, 401 SCRA 583, 591; *Saludo, Jr. v. Court of Appeals*, G.R. No. 121404, May 3, 2006, 489 SCRA 14, 19.

[35] *Gatchalian Promotions Talents Pool, Inc. v. Naldoza, supra* at 413.

[36] *Valencia v. Sandiganbayan*, G.R. No. 141336, June 29, 2004, 433 SCRA 88, 99.

administrative liability could not be based on the principle of command responsibility.[37] Without proof that the head of office was negligent, no administrative liability may attach. Indeed, the negligence of subordinates cannot always be ascribed to their superior in the absence of evidence of the latter's own negligence.[38] While it may be true that certain PCAMRD employees were sanctioned for negligence and some other administrative infractions, it does not follow that those holding responsible positions, like the respondents in this case, are likewise negligent, especially so when the contentions of petitioner remain unsubstantiated.

WHEREFORE, there being no sufficient showing of grave and reversible error in the assailed decision and resolution, the petition is *DENIED*. Said Decision dated September 30, 2005 and Resolution dated February 9, 2006 of the Court of Appeals in CA-G.R. SP No. 83779 are hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and *Abad, JJ.*, concur.

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[37] *Principe v. Fact-Finding & Intelligence Bureau*, G.R. No. 145973, January 23, 2002, 374 SCRA 460, 468.

[38] *Nicolas v. Desierto*, G.R. No. 154668, December 16, 2004, 447 SCRA 154, 167; *Soriano v. Marcelo*, G.R. No. 167743, November 22, 2006, 507 SCRA 571, 591-592.

THIRD DIVISION

[G.R. No. 176040. September 4, 2009]

CASA CEBUANA INCORPORADA and ANGELA FIGUEROA PAULIN, *petitioners, vs.* **IRENEO P. LEUTERIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; AS A RULE, LABOR CASES MUST BE DECIDED ACCORDING TO JUSTICE AND EQUITY AND THE SUBSTANTIAL MERITS OF THE CONTROVERSY; RATIONALE.— It is well-settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. Rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided.

2. ID.; ID.; TERMINATION OF EMPLOYMENT; RESIGNATION; DEFINED AND CONSTRUED.— [T]he filing of a complaint for illegal dismissal is difficult to reconcile with voluntary resignation. Had respondent intended to voluntarily relinquish his employment, he would not have immediately sought redress from the NLRC. Respondent clearly manifested that he had no intention of resigning when he urgently and vigorously pursued this case against petitioners. In *Fungo v. Lourdes School of Mandaluyong*, we defined resignation as "the voluntary act of employees who are compelled by personal reasons to disassociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment." In this case, the evidence on record suggests that respondent did not voluntarily resign. The more logical conclusion, based on the evidence, is that respondent was then being *forced or pressured* to resign, which is tantamount to illegal dismissal. We cannot lend credence to petitioners' claim that respondent was merely given a "graceful

exit." Their reliance on our ruling in *Willi Hahn Enterprises and/or Willi Hahn v. Lilia R. Maghuyop* is misplaced, considering that, in said case, respondent had clearly resigned by tendering a resignation letter even before the petitioners could initiate termination proceedings. In contrast, respondent in this case did not execute any resignation letter and, in fact, resisted pressures for him to resign.

3. ID.; ID.; ID.; VALID DISMISSAL OF EMPLOYEES; REQUISITES; NOT PRESENT IN CASE AT BAR.— For the dismissal of an employee to be valid, the employer must serve the employee two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal, and (2) the second to inform the employee of his employer's decision to terminate him. The first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. This is to afford the employee an opportunity to avail of all defenses and exhaust all remedies to refute the allegations hurled against him. Absent such statement, the first notice falls short of the requirement of due process. x x x In view of the lack of proper investigation into the charges against respondent, petitioners failed to show that they have a just cause for terminating his employment. Respondents' alleged infractions amount to nothing more than bare accusations and unilateral conclusions that do not provide legal justification for his termination from employment. Although petitioners have wider latitude of discretion in terminating respondent, who was a managerial employee, it is nonetheless settled that confidential and managerial employees cannot be arbitrarily dismissed at any time, and without cause *as reasonably established in an appropriate investigation.* Such employees, too, are entitled to security of tenure, fair standards of employment and the protection of labor laws. Managerial employees, no less than rank-and-file laborers are entitled to due process. A valid dismissal must comply with two requisites, namely: (a) the dismissal must be for any of the causes stated in Article 282 of the Labor Code; and (b) the employee must have been accorded due process, basic of which is the opportunity to be heard and to defend himself. In the instant case, petitioners failed to prove that they complied with the

foregoing requirements of the law. Thus, they should be held accountable for respondents' illegal dismissal.

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina and Lopez Law Offices for petitioners.

Environmental Legal Assistance Center for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals dated May 5, 2006 in CA-G.R. CEB-SP No. 01361, which found petitioners Casa Cebuana Incorporada and Angela Figueroa Paulin guilty of illegal dismissal.

Petitioner corporation is a company engaged in the business of manufacturing fine furniture, fixtures and ornamentation for export. On September 15, 1999, it hired respondent as manager of its Human Resources Development Department for a monthly salary of ₱30,000.00. Respondent was also given convertible 30 days paid leave, gasoline allowance as well as health care benefits.

On November 24, 2000, petitioner corporation extended a loan to respondent in the amount of ₱1,035,000.00 for the purchase of a lot, evidenced by a promissory note,[2] wherein respondent authorized petitioner corporation to deduct ₱5,000.00 from his monthly salary as installment payment for the debt.

Subsequently, on February 24, 2003, the company's account manager, Mrs. Nemesia Gomez, told respondent that in consideration of the loan, the company president, petitioner Paulin, wanted him to execute a real estate mortgage over the lot. Respondent refused, contending that there was no agreement to that effect between him and petitioner Paulin when the loan was contracted.

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[1] *Rollo*, pp. 85-92.

[2] *Id.* at 124.

On March 29, 2003, Mrs. Carmen Bugash, a company consultant, called respondent to a meeting and allegedly told him that petitioner Paulin could no longer work with him. Immediately thereafter, they both went to the office of petitioner Paulin where he was allegedly asked to resign.

The parties differ on their accounts of what transpired at petitioner Paulin's office. According to petitioners, respondent was shown a notice/memorandum of the same date detailing his infractions[3] which respondent allegedly refused to receive and instead pleaded that he be allowed to resign as he did not want the stain of dismissal on his employment record.[4]

Respondent denied that he offered to resign. He claimed that he did not submit any resignation letter and even reported for work on April 3, 2003. However, he was barred from entering the company premises and was allowed entry only after signing the visitor's logbook. He again spoke to Bugash who allegedly told him that the memorandum of March 29, 2003 would be issued, unless he tendered his resignation and executed a real estate mortgage in favor of the company.

On the same day, respondent received a Memorandum[5] dated March 31, 2003 from petitioner Paulin, confirming the details of their previous meeting. It stated that respondent was allowed to voluntarily resign, as the company lost its trust and confidence on his ability to handle the position of HR Manager. Petitioners cited the following reasons for such loss of trust and confidence:

1. The result of a survey among our employees would indicate that you have lost your credibility with them since you are always making promises without fulfilling them. This puts the company in bad light since it is expected that you as Personnel Manager link with management on decisions pertaining to industrial relations.

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[3] *Id.* at 163.

[4] *Id.* at 25.

[5] *Id.* at 207.

2. The expected series of value formation that you were supposed to conduct regularly was not done religiously which resulted in the deterioration of the work values of the employees, excessive overtime, quality problems, materials wastage, *etc*.

3. Disciplinary measures that needed to be taken in regard to AWOLS and tardiness were just left to the discretion of the supervisors, and as a result, the corresponding penalties were not imposed leading to abuse by the employees.

4. You were instructed to put teeth to the 5S program, which you started in line with your plan to be ISO accredited, but we have not seen any concrete results. A walk through the factory will clearly show that nothing was done along this line. It was all talk with no clear visible action program.

5. The recent adverse findings of DOLE on the safety standards should have been addressed by you as Personnel Manager, but it was only when a DOLE inspector came when attention was given to it. We need not emphasize here that DOLE matters are your responsibility and we accept no reason for failure to comply with requirements.

6. Mishandling of the recent security guard case, which became full blown when it could have been addressed earlier had attention been given to it.

7. Too much attention given to HUNAT movement against Corona Del Mar which has nothing to do with the company and yet its name gets dragged down as a hindrance to your efforts in fighting against Corona Del Mar. It is apparent that your extra-curricular activities have eaten up your time, which resulted in relegating your functions as a second or third priority.

Respondent filed a complaint with the NLRC Regional Arbitration Branch No. VII in Cebu City for illegal dismissal, illegal deduction and non-payment of wages, 13th month pay, service incentive leave pay and allowances. In his position paper, respondent claimed that he maintained a good relationship with his superiors and, in fact, received several favors and praises for his exemplary performance, such as the loan extended to him for the purchase of a lot. He headed a people's organization which opposed a subdivision project called Corona del Mar located in Pooc, Talisay City, of which the mayor is a cousin-

in-law of petitioner Paulin. He claimed that after he initiated a peaceful assembly against the project and the city, he was treated differently by his superiors. Respondent denied that he voluntarily resigned and insisted that he was illegally dismissed.[6]

On the other hand, petitioners asserted that it was respondent who borrowed money from the company and promised to execute a real estate mortgage after title to the lot was transferred to his name. However, after respondent obtained the loan, he began showing signs of aberrant behavior and lackadaisical work attitude. The employees also complained about his moody and high strung behavior.

Petitioners also alleged that respondent failed to report for work on time and refused to observe delineated working hours. He neglected to perform his job, particularly in coordinating skills and manpower, and planning and conducting proper training, job evaluation analysis, psychological evaluation and trade tests. His grossly deteriorating performance was coupled with abuse of privileges such as when he claimed gasoline allowance for two vehicles instead of only one. He also prioritized and spent company time on extra-curricular activities.

Petitioners stressed that it was respondent who pleaded to forego the investigation of his infractions and to allow him to resign. Thereafter, he no longer reported for work and took out all his personal belongings and effects from the company premises.[7]

In due course, the Labor Arbiter rendered a Decision[8] dated September 24, 2003, ordering petitioners to reinstate respondent to his former or equivalent position without loss of seniority rights and benefits but without payment of backwages. While ruling that there was no illegal dismissal for lack of proof that respondent was in fact terminated from employment, the Labor Arbiter also held that there was no showing that respondent

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[6] *Id.* at 210.

[7] *Id.* at 211-212.

[8] *Id.* at 209-214.

had voluntarily resigned. Thus, according to the Labor Arbiter, each party must bear his own loss.[9]

On appeal, the NLRC declared that respondent was illegally dismissed based on the memorandum issued by petitioners terminating his services and the fact that he was subsequently barred from reporting for work. Petitioners also did not refute respondent's narration of the events which led to his dismissal. Neither was there evidence that respondent was properly notified of his infractions prior to the March 29, 2003 meeting, nor given ample opportunity to controvert the charges against him. Consequently, petitioners failed to observe procedural due process and to prove any just cause for respondent's dismissal.[10]

Petitioners moved for reconsideration which was granted in a Resolution dated June 27, 2005. This time, the NLRC found respondent to have voluntarily resigned when he allegedly made known to a company security guard that he was quitting. The incident transpired while respondent was in the process of taking out his belongings from the company premises, and was reported in a handwritten memorandum prepared by the security guard and presented by petitioners as part of their evidence. The NLRC also held that the Memorandum dated March 29, 2003 informing complainant that he was being terminated should be considered as never implemented, as it was superseded by the March 31, 2003 Memorandum allowing respondent to voluntarily resign.[11]

Respondent filed a motion for reconsideration but it was denied. Thus, respondent elevated the matter to the Court of Appeals which rendered the herein assailed Decision, the dispositive part of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case, ANNULLING and SETTING ASIDE the assailed Resolutions

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[9] *Id.* at 213-214.

[10] *Id.* at 240-241.

[11] *Id.* at 282-283.

promulgated on June 27, 2005 and October 20, 2005, both by the public respondent, in NLRC Case No. V-000176-2004, ORDERING the private respondents to REINSTATE the petitioner to his position as HRD Manager without loss of seniority rights and DIRECTING the private respondents to pay him full backwages from April 3, 2003 up to the finality of this judgment.

The public respondent is hereby ordered to make proper determination of the backwages due to the petitioner as well as his separation pay should reinstatement be no longer feasible.

SO ORDERED.[12]

The appellate court held that the NLRC gravely abused its discretion when it found respondent to have voluntarily resigned from his employment despite lack of substantial evidence to support such finding. Respondent never submitted a resignation letter and the only evidence of such fact is the handwritten memorandum of the security guard. According to the appellate court, the security guard's memorandum does not conclusively establish the fact of respondent's resignation, but merely narrates the usual procedure of the guards in checking and logging vehicles coming in and out of company premises. Petitioners also failed to observe due process in dismissing respondent from employment.[13]

Petitioners filed a motion for reconsideration of the appellate court's decision which was denied in a Resolution dated December 6, 2006. Hence, petitioners filed the instant petition under Rule 45.

Petitioners fault the Court of Appeals for taking cognizance of respondent's petition for *certiorari* because the same was allegedly filed late. They also assert that the Court of Appeals erred in declaring that respondent was illegally dismissed because there was substantial evidence to support the conclusion that he voluntarily resigned.

The petition lacks merit.

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[12] *Id.* at 91-92; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[13] *Id.* at 88 & 91.

The appellate court correctly resolved respondent's petition on the merits, instead of dismissing the same outright on technical grounds. Although respondent's motion for extension of time to file petition before the Court of Appeals was admittedly filed one day late, thus resulting in the belated filing of the petition, the same may be deemed as an excusable oversight that should not take precedence over the merits of the case. It is well-settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. Rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided.[14]

The Court of Appeals correctly found that there was no substantial evidence to prove that respondent voluntarily resigned. The only evidence presented by petitioners on this matter is the handwritten memorandum of the security guard regarding what transpired when respondent took out his belongings on March 31, 2003. The security guard reported:

x x x x x x x x x

This vehicle stopped 20 meters from the gate. I approached him (respondent) and saluted him. He returned my salute, opened the right side window of his car and said "Guard! I am bringing with me my personal effects. Look at these because I am up to today only, I will not come back here. This is so that I will be clear and you will not get into trouble with your work." I answered him "Is that so, sir? Let's look at them and I will enter them in my logbook."

x x x x x x x x x[15]

According to petitioners, it may be reasonably inferred from the foregoing that respondent had already quit his job. The

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[14] *Remington Industrial Sales Corporation v. Erlinda Castaneda,* G.R. Nos. 169295-96, November 20, 2006, 507 SCRA 391, 404-405.

[15] As translated from the Visayan dialect.

lack of a resignation letter does not necessarily disprove respondent's voluntary resignation, as the events described above show a clear intent on the part of respondent to relinquish employment. As correctly observed by the Court of Appeals, however, the security guard's report does not conclusively establish the fact of respondent's resignation, but merely narrates the standard procedure employed by security guards in checking vehicles that pass through company gates. Likewise, the statement of respondent that he was "up to today only" and that he will "not come back here" does not necessarily indicate that he resigned from employment, but could also mean that he was leaving the company due to other causes.

In light of the prevailing circumstances in this case, we are convinced that respondent did not voluntarily resign and was in fact illegally dismissed from employment. Petitioners admit that during the meeting in petitioner Paulin's office on March 29, 2003, respondent was shown a notice/memorandum detailing his alleged infractions, which the latter refused to receive.[16] Instead, respondent allegedly asked that he be allowed to resign because he did not want the stain of dismissal on his employment record.

The notice/memorandum that was shown to respondent referred to the Memorandum dated March 29, 2003 which is actually a notice of termination and not merely a memorandum detailing respondent's alleged infractions. The said memorandum explicitly states:

x x x x x x x x x

We regret to inform you that we will have to terminate your services at the earliest possible time in view of the loss of trust and confidence in your ability to handle your present position. This is brought about by the series of events which has made your stay with the company untenable.

x x x x x x x x x[17]

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[16] *Rollo*, pp. 25 & 238-239.

[17] *Id.* at 163.

Thus, it can be seen that when respondent went to petitioner Paulin's office together with Bugash, petitioners were decided on terminating his services.

The lack of any resignation letter on the part of respondent is significant, considering petitioner's assertion that he "pleaded" to be allowed to resign during the meeting held on March 29, 2003. If respondent had indeed opted to avail of this alternative, then there would have been nothing to prevent petitioners from asking respondent to tender a resignation letter at that very moment. However, respondent did no such thing and even went back several times to speak to Bugash until he was finally barred from entering company premises on April 3, 2003.

Moreover, respondent filed his complaint with the NLRC soon after the last meeting with Bugash. Needless to say, the filing of a complaint for illegal dismissal is difficult to reconcile with voluntary resignation.[18] Had respondent intended to voluntarily relinquish his employment, he would not have immediately sought redress from the NLRC. Respondent clearly manifested that he had no intention of resigning when he urgently and vigorously pursued this case against petitioners.

In *Fungo v. Lourdes School of Mandaluyong*,[19] we defined resignation as "the voluntary act of employees who are compelled by personal reasons to disassociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment."[20] In this case, the evidence on record suggests that respondent did not voluntarily resign. The more logical conclusion, based on the evidence, is that respondent was then being *forced or pressured* to resign, which is tantamount to illegal dismissal.

We cannot lend credence to petitioners' claim that respondent was merely given a "graceful exit." Their reliance on our ruling

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[18] *Fortuny Garments/Johnny Co v. Elena J. Castro*, G.R. No. 150668, December 15, 2005, 478 SCRA 125, 131.

[19] G.R. No. 152531, July 27, 2007, 528 SCRA 248.

[20] *Id.* at 256.

in *Willi Hahn Enterprises and/or Willi Hahn v. Lilia R. Maghuyop*[21] is misplaced, considering that, in said case, respondent had clearly resigned by tendering a resignation letter even before the petitioners could initiate termination proceedings. In contrast, respondent in this case did not execute any resignation letter and, in fact, resisted pressures for him to resign.

Consequently, we find no merit in petitioners' contention that respondent waived any intended investigation on his alleged infractions by offering to resign instead. The meeting held on March 29, 2003 was not meant to inform respondent of any planned investigation, but was called to formally apprise respondent of his termination from employment. Prior to said meeting, respondent had not been given any form of notice regarding the charges against him or the opportunity to refute these charges. Bugash even told respondent that petitioner Paulin "could no longer work with him," thereby signifying that respondent's services was being terminated.

For the dismissal of an employee to be valid, the employer must serve the employee two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal, and (2) the second to inform the employee of his employer's decision to terminate him. The first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. This is to afford the employee an opportunity to avail of all defenses and exhaust all remedies to refute the allegations hurled against him. Absent such statement, the first notice falls short of the requirement of due process.[22]

In the case at bar, petitioners did not notify respondent of any investigation that was to be conducted on his alleged infractions. The Memorandum dated March 29, 2003 was actually

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[21] G.R. No. 160348, December 17, 2004, 447 SCRA 349.

[22] See *Mercury Drug Corporation v. Serrano*, G.R. No. 160509, March 10, 2006, 484 SCRA 434, 448.

a notice of termination that was ostensibly shown to respondent on the same day that he supposedly pleaded to be allowed to resign. Neither could the March 31, 2003 Memorandum be deemed to comply with the requirements of the first notice, as maintained by petitioners. This second memorandum did not state that an investigation will be conducted, but merely "confirms" what allegedly transpired during the meeting held on March 29, 2003. Respondent was thus not given an opportunity to controvert the charges leveled against him by petitioners.

In view of the lack of proper investigation into the charges against respondent, petitioners failed to show that they have a just cause for terminating his employment. Respondents' alleged infractions amount to nothing more than bare accusations and unilateral conclusions that do not provide legal justification for his termination from employment. Although petitioners have wider latitude of discretion in terminating respondent, who was a managerial employee, it is nonetheless settled that confidential and managerial employees cannot be arbitrarily dismissed at any time, and without cause *as reasonably established in an appropriate investigation*. Such employees, too, are entitled to security of tenure, fair standards of employment and the protection of labor laws. Managerial employees, no less than rank-and-file laborers are entitled to due process.[23]

A valid dismissal must comply with two requisites, namely: (a) the dismissal must be for any of the causes stated in Article 282 of the Labor Code; and (b) the employee must have been accorded due process, basic of which is the opportunity to be heard and to defend himself.[24] In the instant case, petitioners failed to prove that they complied with the foregoing requirements of the law. Thus, they should be held accountable for respondents' illegal dismissal.

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[23] *Philippine Transmarine Carriers, Inc. v. Felicisimo Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 597-598.

[24] *Nenuca A. Velez v. Shangri-La's Edsa Plaza Hotel, Terry Ko, Coen Masselink and Vanessa Suatengco*, G.R. No. 148261, October 9, 2006, 504 SCRA 13, 24.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The May 5, 2006 Decision of the Court of Appeals in CA-G.R. CEB-SP No. 01361 which found petitioners guilty of illegal dismissal and ordered them to reinstate respondent to his former or equivalent position without loss of seniority rights, or separation pay in case reinstatement is no longer feasible, with full backwages, is *AFFIRMED in toto*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.*, concur.

SECOND DIVISION

[G.R. No. 176700. September 4, 2009]

ROMERO MONTEDERAMOS, *petitioner, vs.* **TRI-UNION INTERNATIONAL CORPORATION,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; CONSTRUCTIVE DISMISSAL; DEFINED; NOT PRESENT IN CASE AT BAR.— While the employer bears the burden in illegal dismissal cases to prove that the termination was for valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service. This petitioner failed to discharge. He, in fact, failed to refute respondent's claim that it sent him a Violation Memorandum, which was duly received by him on April 15, 2003, and a subsequent Memorandum via registered mail, requiring him to explain his habitual tardiness on the therein indicated dates but that he failed to comply therewith. That respondent advised petitioner on July 31, 2003 that he was "supposed to report . . . [the following day], August 1, 2003" but that he was given

a chance to report on August 11, 2003 does not, in itself, amount to constructive dismissal. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence. Constructive dismissal contemplates, among other things, quitting because continued employment is rendered impossible, unreasonable or unlikely, or a demotion in rank or a diminution of pay. It clearly exists when an act of clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee, leaving him with no option but to forego his continued employment. Not any of these circumstances exists to call for a ruling that petitioner was constructively dismissed.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Abella & Dacumos Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent Tri-Union International Corp. (respondent), which markets and distributes Company B products, hired on July 18, 1997 Romero Montederamos (petitioner) as a stockman at its outlet at the Metro Ayala Department Store, Cebu Business Park, Cebu City.

By Memorandum of June 27, 2003, respondent suspended petitioner for one month effective July 1, 2003, drawing him to file on July 2, 2003 a Complaint[1] for illegal dismissal and non-payment of overtime pay, service incentive leave, allowances and separation pay before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VII.

By petitioner's claim, in August 2002, respondent asked him to sign a contract of employment covering five months[2] but he refused, knowing that he was already a regular employee; that

[1] NLRC records, p. 1.

[2] *Id.* at 32.

on June 24, 2003, he informed respondent of his need for a letter of introduction to Metro Ayala since his Metro Ayala Identification Card (I.D.) was due to expire on June 30, 2003; that he was told to return the following day but was unable to do so because he had to accomplish clearance requirements with Metro Ayala; that on June 26, 2003, he repaired to respondent's office but was told that his supervisor was absent and that the latter's assistant could not give the letter of introduction by herself; that he later learned that the assistant could and actually did sign letters of introduction for and in behalf of the supervisor;[3] and that as his wait for a letter of introduction did not come by June 30, 2003, he realized that respondent had no intention of giving him one and was terminating his employment, hence, his filing on July 2, 2003 of the Complaint against respondent.

Upon the other hand, respondent claimed as follows:[4]

On April 15, 2003, it sent petitioner a Violation Memorandum[5] warning him for habitual tardiness, citing his tardiness on February 18, 2003, March 4, 2003, March 18, 2003, and April 1, 2003; and that on June 17, 2003, it sent petitioner a second Violation Memorandum[6] for habitual tardiness, citing his tardiness on April 22, 2003, May 6, 2003, May 20, 2003, and June 3, 2003, which Memorandum required him to submit a written explanation therefor, but that petitioner refused to receive it and in fact answered back and walked out on his immediate supervisor, prompting the latter to send him a Memorandum on June 18, 2003 reading:

> You were given second memorandum last June 17, 2003 with a request of explanation in your part of your habitual tardiness. However, you refuse[d] to sign the memorandum for the said violation. Instead, you answered and walked out from the office before your superior told you to do so.

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[3] *Id.* at 35.

[4] *Id.* at 8-15.

[5] *Id.* at 17.

[6] *Id.* at 18.

This memo serves as your **warning**. Another situation that may arise after this memorandum will be a **ground for your suspension.**[7] (Underscoring supplied)

Again petitioner refused to receive the third Memorandum. And he failed to submit an explanation behind his habitual tardiness, drawing respondent to send him a June 27, 2003 Memorandum via registered mail suspending him for one month effective July 1, 2003, *viz*:

You are hereby warned to follow all rules and regulations of our company where you are employed, one of these is to attend [the] company meeting scheduled every Tuesday of the week. However, there has been no improvement of your habitual tardiness since our first memorandum last April 15, 2003. Thereby, you were given a second memo with a request of explanation on your part last June 17, 2003 but you refuse[d] to sign. Instead, you showed insubordination [on] your part by answering back your immediate superior. The same incident took place last June 26, 2003 [*sic*]. You disrespect our office personnel. This is the third time you did this, first was last April 15, 2003. With these offenses, you are **suspended for one month effective July 1, 2003**. You will resume work on August 1, 2003.

This memo serves as your last warning. Another situation that may arise after this memo will be a ground for your termination.[8] (Emphasis and underscoring supplied)

Hence, petitioner's filing on July 2, 2003 of his Complaint.

On July 31, 2003, the last day of the 30-day suspension of petitioner, respondent advised petitioner as follows:

This is to remind you that your suspension ends this July 31, 2003. You are supposed to report at the office this August 1, 2003 but we are **giving you a chance to report on August 11, 2003 at 9 o'clock in the morning**. I am hoping [for] your presence on the date mentioned above.[9] (Emphasis and underscoring supplied)

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[7] *Id.* at 19.

[8] *Id.* at 20.

[9] *Id.* at 21.

Petitioner never ever reported for work, however.

Finally, respondent claimed that it had paid petitioner overtime pay, allowance, and service incentive leave.[10]

By Decision[11] of November 10, 2003, Labor Arbiter Ernesto F. Carreon, finding that there was neither illegal dismissal nor abandonment, ordered respondent to reinstate petitioner without backwages, and pay him service incentive leave pay in the amount of ₱3,000.00. Petitioner's claim for overtime pay was denied as it was unsubstantiated.

On appeal, the NLRC,[12] by Decision dated February 21, 2005, reversed and set aside the Labor Arbiter's decision and entered a new one declaring petitioner to have been illegally dismissed. Brushing aside petitioner's alleged tardiness in 2003 in light of respondent's failure to present the daily time records of petitioner who had been working for respondent since 1997, the NLRC held that respondent failed to refute petitioner's allegation that he was made to sign a 5-month contract but that he refused as he had attained regular status. Such refusal of petitioner, the NLRC concluded, precipitated, and ended in his illegal dismissal when respondent denied his request for the issuance of a letter of introduction for the renewal of his Metro Ayala I.D.

Noting that "it is to the best interest of complainant that he should no longer be reinstated to his former position," the NLRC granted him backwages and separation pay covering the period July 1, 2003 to 2004, subject to recomputation upon finality of the Decision.

Respondent's Motion for Reconsideration[13] having been denied by Resolution[14] of July 22, 2005, it appealed via *Certiorari* to the Court of Appeals.

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[10] *Id.* at. 13.

[11] *Id.* at 45-50.

[12] *Id.* at 92. Penned by Commissioner Aurelio D. Menzon and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Oscar S. Uy.

[13] *Id.* at 93-99.

[14] *Id.* at 116-118.

By Decision[15] of July 27, 2006, the Court of Appeals reversed and set aside the NLRC decision and reinstated the Labor Arbiter's decision. The appellate court held that respondent's June 27, 2003 Memorandum to petitioner suspending him for one month ending July 31, 2003 but later advising him to resume work 10 days later or on August 11, 2003 belied the charge of illegal dismissal. It went on to hold that petitioner's infractions resulting in his suspension — tardiness and refusal to attend company meetings because he was not allegedly paid remuneration — were of his own wrongdoings.

Respecting petitioner's claim that his refusal to sign the 5-month contract precipitated his suspension, the appellate court noted that the refusal occurred in August 2002 yet, but the Violation Memoranda were issued to petitioner much later starting April 2003. It thus held that if indeed respondent wanted to terminate the services of petitioner on the basis of such refusal, it could have done so much earlier.

Finally, the appellate court held that respondent's offer of reinstatement to petitioner runs counter to the charge of illegal dismissal.

His Motion for Reconsideration[16] having been denied by Resolution[17] of January 23, 2007, petitioner filed the present Petition for Review on *Certiorari*,[18] insisting that he was illegally/constructively dismissed and not merely suspended by respondent, hence, entitled to separation pay, backwages and other money claims. He particularly highlights the fact that his one month suspension ended on July 31, 2003 but he was given "a chance to report on August 9(*sic*), 2003" as amounting to constructive dismissal.

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[15] CA *rollo*, pp. 106-113. Penned by Court of Appeals Associate Justice Pampio A. Abarintos with the concurrence of Associate Justices Marlene Gonzales-Sison and Priscilla Baltazar-Padilla.

[16] CA *rollo*, pp. 114-120.

[17] *Id.* at 124-125.

[18] *Rollo*, pp. 17-38.

The petition is bereft of merit.

While the employer bears the burden in illegal dismissal cases to prove that the termination was for valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service.[19] This petitioner failed to discharge. He, in fact, failed to refute respondent's claim that it sent him a Violation Memorandum, which was duly received by him on April 15, 2003, and a subsequent Memorandum via registered mail,[20] requiring him to explain his habitual tardiness on the therein indicated dates but that he failed to comply therewith.

That respondent advised petitioner on July 31, 2003 that he was "supposed to report . . . [the following day], August 1, 2003" but that he was given a chance to report on August 11, 2003 does not, in itself, amount to constructive dismissal. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[21]

Constructive dismissal contemplates, among other things, quitting because continued employment is rendered impossible, unreasonable or unlikely, or a demotion in rank or a diminution of pay. It clearly exists when an act of clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee, leaving him with no option but to forego his continued employment.[22] Not any of these circumstances exists to call for a ruling that petitioner was constructively dismissed.

Respondent's inability to provide the letter-introduction for the renewal of petitioner's Metro Ayala I.D. cannot be considered an act of discrimination or insensibility to warrant a finding of constructive dismissal. It bears noting that petitioner's Metro Ayala I.D. was yet to expire on June 30, 2003. He was, however, by June 27, 2003 Memorandum, suspended effective July 1, 2003.

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[19] *Vide Ledesma, Jr. v. National Labor Relations Commission*, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.

[20] *Vide* NLRC records, pp. 18-21.

[21] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 366.

[22] *Norkis Trading vs. Gnilo*, 544 SCRA 279.

In another vein, petitioner's failure to report for work after the expiration of the period of his suspension notwithstanding, respondent just the same, by its claim, offered to reinstate him during the mandatory conference and even after receiving the promulgation of the decision of Labor Arbiter, which claim he did not refute.[23]

Respecting petitioner's claim for service incentive leave, the Court finds well-taken the Labor Arbiter's grant thereto. For respondent's claim of having settled it bears no documentation.

As for petitioner's claim for overtime pay, the same fails, there being no concrete proof that he had indeed rendered overtime service.

WHEREFORE, the petition is, in light of the foregoing discussions, *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 177456. September 4, 2009]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **DOMINGO R. DANDO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; THE COURT MAY RELAX THE RIGID APPLICATION OF THE RULES TO AFFORD THE PARTIES THE OPPORTUNITY TO FULLY VENTILATE THEIR CASES ON THE MERIT; WHEN JUSTIFIED.— It is a basic legal construction that

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[23] *Vide* NLRC records, pp. 67, 95-96.

where words of command such as "shall," "must," or "ought" are employed, they are generally and ordinarily regarded as mandatory. Thus, where, as in Rule 18, Sections 5 and 6 of the Rules of Court, the word "shall" is used, a mandatory duty is imposed, which the courts ought to enforce. The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application. In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis 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. In *Sanchez v. Court of Appeals*, the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.

2. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR.— The substantive right of BPI to recover a due and demandable obligation cannot be denied or diminished by a rule of procedure, more so, since Dando admits that he did avail himself of the credit line extended by FEBTC, the predecessor-in-interest of BPI, and

disputes only the amount of his outstanding liability to BPI. To dismiss Civil Case No. 03-281 with prejudice and, thus, bar BPI from recovering the amount it had lent to Dando would be to unjustly enrich Dando at the expense of BPI. x x x the failure of BPI to file its Pre-Trial Brief with the RTC and provide Dando with a copy thereof within the prescribed period under Section 1, Rule 18 of the Rules of Court, was the first and, so far, only procedural lapse committed by the bank in Civil Case No. 03-281. BPI did not manifest an evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules. In fact, BPI, for the most part, exhibited diligence and reasonable dispatch in prosecuting its claim against Dando by immediately moving to set Civil Case No. 03-281 for Pre-Trial Conference after its receipt of Dando's Answer to the Complaint; and in instantaneously filing a Motion for Reconsideration of the 10 October 2003 Order of the RTC dismissing Civil Case No. 03-281. Accordingly, the ends of justice and fairness would be best served if the parties to Civil Case No. 03-281 are given the full opportunity to thresh out the real issues and litigate their claims in a full-blown trial.

APPEARANCES OF COUNSEL

Benedicto Versoza Felipe and Burkley Law Offices for petitioner.

Pablo S. Castillo for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court, filed by petitioner Bank of the Philippine Islands (BPI), assailing (1) the Decision[1] dated 20 November 2006 of the Court of Appeals in CA-G.R. SP No. 82881, which

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid, concurring; *rollo*, pp. 6-13.

granted the Petition for *Certiorari* under Rule 65 of the Rules of Court filed by herein respondent Domingo R. Dando (Dando); and (2) the Resolution dated 4 April 2007 of the appellate court in the same case denying the Motion for Reconsideration of BPI. The Court of Appeals, in its assailed Decision, annulled the Orders dated 13 January 2004 and 3 March 2004 of the Regional Trial Court (RTC) of Makati City, Branch 149, setting Civil Case No. 03-281 for pre-trial conference; and reinstated the earlier Order dated 10 October 2003 of the RTC dismissing Civil Case No. 03-281 for failure of BPI to file its pre-trial brief.

The instant Petition stemmed from a Complaint for Sum of Money and Damages[2] filed on 13 March 2003 by BPI against Dando before the RTC, docketed as Civil Case No. 03-281. The Complaint alleged that on or about 12 August 1994, Dando availed of a loan in the amount of ₱750,000.00 from Far East Bank and Trust Company (FEBTC), under a *Privilege Cheque Credit Line Agreement*.[3] The parties agreed that Dando would pay FEBTC the principal amount of the loan, in lump sum, at the end of 90 days; and interest thereon every 30 days, the periods reckoned from the time of availment of the loan. Dando defaulted in the payment of the principal amount of the loan, as well as the interest and penalties thereon. Despite repeated demands, Dando refused and/or failed to pay his just and valid obligation.[4] In 2000, BPI and FEBTC merged, with the former as the surviving entity,[5] thus, absorbing the rights and obligations of the latter.[6]

After Dando filed with the RTC his Answer with Counterclaim,[7] BPI filed its Motion to Set Case for Pre-Trial. Acting on the

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[2] *Rollo*, p. 45.

[3] *Id.* at 59.

[4] *Id.* at 63-64.

[5] http://www.mybpimag.com/index.php?option=com_content&view=article&id=279&Itemid=320

[6] *Rollo*, p. 52.

[7] *Id.* at 66.

said Motion, the RTC, through Acting Presiding Judge Oscar B. Pimentel (Judge Pimentel), issued an Order[8] on 11 June 2003 setting Civil Case No. 03-281 for pre-trial conference on 18 August 2003. Judge Pimentel subsequently issued, on 16 June 2003, a Notice of Pre-Trial Conference,[9] which directed the parties to submit their respective pre-trial briefs at least three days before the scheduled date of pre-trial. Dando submitted his Pre-trial Brief[10] to the RTC on 11 August 2003. BPI, on the other hand, filed its Pre-trial Brief[11] with the RTC, and furnished Dando with a copy thereof, only on 18 August 2003, the very day of the scheduled Pre-Trial Conference.

When the parties appeared before the RTC on 18 August 2003 for the scheduled Pre-Trial Conference, Dando orally moved for the dismissal of Civil Case No. 03-281, citing Sections 5 and 6, Rule 18 of the Rules of Court. The RTC, through an Order issued on the same day, required Dando to file a written motion within five days from the receipt of the said Order and BPI to file its comment and/or opposition thereto. The RTC order reads:

> On calling this case for the pre-trial conference, counsel for both parties appeared and even [respondent] Domingo R. Dando appeared. The attention of the Court was called by the counsel for the [respondent Dando] that the counsel for the [petitioner BPI] only filed her Pre-Trial Brief today at 9:00 o'clock in the morning instead of at least three days before the pre-trial conference, as required by the Rules. This prompted the counsel for the [respondent Dando] to ask for the dismissal of the case for violation of Rule 18 of the Rules of Civil Procedure.
>
> Counsel for the [respondent Dando] even claims that he has not received a copy of the pre-trial brief, but then according to the counsel for the [petitioner BPI], a copy thereof was sent by registered mail to counsel for the [respondent Dando] since (sic) August 18, 2003,

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[8] Records, p. 36.

[9] Annex I, *Rollo*, p. 180.

[10] Annex H, *id.* at 82.

[11] *Id.* at 71.

and considering the nature of the motion of the counsel for the [respondent Dando], it is best that the [respondent Dando's] counsel reduce the same in writing within five days from today, furnishing personally a copy thereof the counsel for the [petitioner BPI] who is hereby given five days from receipt thereof within which to file her comment and/or opposition thereto, thereafter, the incident shall be considered submitted for Resolution.

Meanwhile, no pre-trial conference shall be held until the motion is resolved.[12]

On 25 August 2003, Dando filed with the RTC his written Motion to Dismiss Civil Case No. 03-281, for violation of the mandatory rule on filing of pre-trial briefs.[13] BPI filed an Opposition[14] to Dando's Motion, arguing that its filing with the RTC of the Pre-Trial Brief on 18 August 2003 should be considered as compliance with the rules of procedure given that the Pre-Trial Conference did not proceed as scheduled on said date.

In an Order dated 10 October 2003, the RTC granted Dando's Motion to Dismiss Civil Case No. 03-281, for the following reasons:

In resolving this motion, this Court should be guided by the mandatory character of Section 6, Rule 18 of the Revised Rules of Court which: strictly mandates the parties to the case to file with the Court and serve on the adverse party and SHALL ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs but likewise imposed upon the parties the mandatory duty to seasonably file and serve on the adverse party their respective pre-trial briefs. The aforesaid rule does not merely sanction the non-filing thereof of the parties' respective pre-trial briefs but likewise imposed upon the parties the mandatory duty to seasonably file and serve on the adverse party their respective pre-trial briefs. Pre-trial briefs are meant to serve as a device to clarify and narrow down the basic issues between the parties so that

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[12] Records, p. 50.

[13] *Id.* at 51-54.

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

at pre-trial, the proper parties may be able to obtain the fullest possible knowledge of the issues and the facts before civil trials and this prevent said trials from being carried in the dark.[15]

Consequently, the RTC decreed:

WHEREFORE, premises considered, finding the [herein respondent Dando's] motion to dismiss to be impressed with merit the same is hereby GRANTED. Accordingly, the instant case is hereby dismissed with prejudice.[16]

BPI filed a Motion for Reconsideration[17] of the 10 October 2003 Order of the RTC, praying for the liberal interpretation of the rules. Expectedly, Dando filed his Comment/Opposition thereto.[18]

On 13 January 2004, the RTC, now presided by Judge Cesar O. Untalan (Judge Untalan), issued an Order resolving the Motion for Reconsideration of BPI as follows:

The Court finds merit in plaintiff's motion.

Considering that although reglementary periods under the Rules of Court are to be strictly observed to prevent needless delays, jurisprudence nevertheless allows the relaxation of procedural rules. Since technicalities are not ends in themselves but exist to protect and promote substantive rights of litigants [*Sy vs. CA, et al.*, G.R. No. 127263, April 12, 2000; *Adamo vs. IAC*, 191 SCRA 195 (1990); *Far East Marble (Phils.), Inc. vs. CA*, 225 SCRA 249, 258 (1993)], in the interest of substantial justice, and without giving premium to technicalities, the motion for reconsideration is hereby granted.[19]

At the end of its 13 January 2004 Order, the RTC disposed:

Wherefore, the Order dated October 10, 2003 is hereby reconsidered and set aside.

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[15] *Id.* at 62.

[16] *Id.*

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

[18] *Id.*

[19] *Id.* at 93.

Let this case be set for pre-trial anew on February 13, 2004 at 8:30 in the morning. Notify both parties and their respective counsel of this setting.[20]

It was then Dando's turn to file a Motion for Reconsideration,[21] which the RTC addressed in its Order dated 3 March 2004, thus:

Finding no new issue raised in defendant's motion, as to warrant a reconsideration of the assailed Order dated January 13, 2004, the instant motion is hereby denied.

The Pre-trial set on March 19, 2004 at 8:30 in the morning shall proceed accordingly.[22]

Dando sought recourse from the Court of Appeals by filing a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 82881.[23] Dando averred that RTC Judge Untalan committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing its Order dated 13 January 2004. The Court of Appeals rendered a Decision on 20 November 2006 where it held that:

In this case, the BPI stated in its motion for reconsideration of the order dismissing its action that the delay in the filing of the pre-trial brief was solely due to the heavy load of paper work of its counsel, not to mention the daily hearings the latter had to attend. We find this excuse too flimsy to justify the reversal of an earlier order dismissing the action. The BPI did not come forward with the most convincing reason for the relaxation of the rules, or has not shown any persuasive reason why it should be exempt from abiding by the rules. We therefore find the public respondent to have gravely abused his discretion in considering and granting the

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[20] *Id.*

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

[22] *Id.* at 105.

[23] In view of the petition filed by Dando before the Court of Appeals, Regional Trial Court, Branch 149 issued an Order dated 19 March 2004 (records, p. 162), indefinitely suspending the proceedings in Civil Case No. 03-281 pending resolution before the Court of Appeals of CA-G.R. SP No. 82881.

BPI's motion for reconsideration. The BPI failed to even try to come up with a good reason for its failure to file its pre-trial brief on time in order to relax the application of the procedural rules. Heavy work load and court hearings cannot even be considered an excuse. The trial court cannot just set aside the rules of procedure and simply rely on the liberal interpretation of the rules. Clearly, public respondent ignored the mandatory wordings of Sections 5 and 6 of Rule 18. Under Section 6, the plaintiff's failure to file the pre-trial brief at least three days before the pre-trial shall have the same effect as failure to appear at the pre-trial. Under Section 5 of the same Rule, failure by plaintiff to appear at the pre-trial shall be cause for dismissal of the action. There is grave abuse of discretion when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[24]

The *fallo* of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the petition is GRANTED. The Orders dated January 13, 2004 and March 3, 2004, of the Regional Trial Court of Makati City, Branch 149, in Civil Case No. 03-281 are hereby ANNULLED and SET ASIDE. The October 10, 2003 Order is hereby REINSTATED.[25]

The Court of Appeals, in a Resolution dated 4 April 2007,[26] denied the Motion for Reconsideration of BPI for lack of merit.

Hence, this Petition where BPI raises the following issues:

A. IS THE HONORABLE COURT OF APPEALS, IN ISSUING THE DECISION AND RESOLUTION, CORRECT WHEN IT STRICTLY APPLIED THE RULES OF PROCEDURE.

B. IS THE HONORABLE COURT OF APPEALS CORRECT WHEN IT DECLARED THAT THE HONORABLE TRIAL COURT COMMITTED A GRAVE ABUSE OF DISCRETION WHEN THE LATTER RECONSIDERED AND SET ASIDE THE ORDER (ANNEX "H" TO THE PETITION) DISMISSING THE CASE, DESPITE THE HONORABLE TRIAL COURT'S

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[24] *Rollo*, pp. 11-12.

[25] *Id.* at 13.

[26] *Id.* at 14.

DISCRETION OR POWER TO RELAX COMPLIANCE WITH THE RULES OF PROCEDURE.[27]

Relevant herein are the following provisions of the Rules of Court on pre-trial:

Rule 18
PRE-TRIAL

SEC. 6. *Pre-trial brief.* – The parties **shall file with the court and serve on the adverse party,** in such manner as shall ensure their receipt thereof **at least three (3) days before** the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x x x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

SEC. 5. *Effect of failure to appear*. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be **cause for dismissal of the action.** The dismissal shall be **with prejudice**, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (Emphases ours.)

It is a basic legal construction that where words of command such as "shall," "must," or "ought" are employed, they are generally and ordinarily regarded as mandatory. Thus, where, as in Rule 18, Sections 5 and 6 of the Rules of Court, the word "shall" is used, a mandatory duty is imposed, which the courts ought to enforce.[28]

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory

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[27] *Id.* at 235.

[28] *Mirasol v. Court of Appeals,* 403 Phil. 760, 772 (2001).

character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[29]

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application.[30] In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis 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.[31]

In *Sanchez v. Court of Appeals*,[32] the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.[33]

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[29] *Barranco v. Commission on the Settlement of Land Problems,* G.R. No. 168990, 16 June 2006, 491 SCRA 222, 232, citing *Reyes v. Torres*, 429 Phil. 95, 101 (2002).

[30] *Polanco v. Cruz,* G.R. No. 182426, 13 February 2009.

[31] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista,* 491 Phil. 476, 484 (2005).

[32] 452 Phil. 665, 674 (2003); *Macasasa v. Sicad,* G.R. No. 146547, 20 June 2006, 491 SCRA 368, 383, citing *Barnes v. Padilla,* 482 Phil. 903, 915 (2004).

[33] *Barranco v. Commission on the Settlement of Land Problems, supra* note 29.

Herein, BPI instituted Civil Case No. 03-281 before the RTC to recover the amount it had lent to Dando, plus interest and penalties thereon, clearly, a matter of property. The substantive right of BPI to recover a due and demandable obligation cannot be denied or diminished by a rule of procedure,[34] more so, since Dando admits that he did avail himself of the credit line extended by FEBTC, the predecessor-in-interest of BPI, and disputes only the amount of his outstanding liability to BPI.[35] To dismiss Civil Case No. 03-281 with prejudice and, thus, bar BPI from recovering the amount it had lent to Dando would be to unjustly enrich Dando at the expense of BPI.

The counsel of BPI invokes "heavy pressures of work" to explain his failure to file the Pre-Trial Brief with the RTC and to serve a copy thereof to Dando at least three days prior to the scheduled Pre-Trial Conference.[36] True, in *Olave v. Mistas*,[37] we did not find "heavy pressures of work" as sufficient justification for the failure of therein respondents' counsel to timely move for pre-trial. However, unlike the respondents in *Olave*,[38] the failure of BPI to file its Pre-Trial Brief with the RTC and provide Dando with a copy thereof within the prescribed period under Section 1, Rule 18 of the Rules of

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[34] *Gosiaco v. Ching*, G.R. No. 173807, 16 April 2009.

[35] Dando claims in his Answer that he was not able to avail himself of the indicated full credit line amount of ₱750,000.00, and agrees with the allegation in the complaint, specifically paragaraph no. 6 thereof, that he has drawn no more than ₱375,000.00, but again denies that he has agreed to pay 19% interest per annum and late payment charges thereon at the rate of 3% x x x. (*Rollo*, p. 67.)

[36] *Rollo*, p. 84.

[37] G.R. No. 155193, November 26, 2004, 444 SCRA 479, 495.

[38] The respondents in *Olave* repeatedly failed to comply with the Rules, to wit: (a) the respondents' failure to implead all the indispensable parties in the original complaint, which impelled the petitioners to move that they (the respondents) be ordered to amend their complaint; and b) while the respondents amended their complaint, they still failed to submit the required special power of attorney evidencing the authority of the respondent Antonina Mistas to execute the required certificate against forum shopping in behalf of her sister, respondent Pacita Mistas.

Court, was the first and, so far, only procedural lapse committed by the bank in Civil Case No. 03-281. BPI did not manifest an evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules. In fact, BPI, for the most part, exhibited diligence and reasonable dispatch in prosecuting its claim against Dando by immediately moving to set Civil Case No. 03-281 for Pre-Trial Conference after its receipt of Dando's Answer to the Complaint; and in instantaneously filing a Motion for Reconsideration of the 10 October 2003 Order of the RTC dismissing Civil Case No. 03-281.

Accordingly, the ends of justice and fairness would be best served if the parties to Civil Case No. 03-281 are given the full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Besides, Dando would not be prejudiced should the RTC proceed with the hearing of Civil Case No. 03-281, as he is not stripped of any affirmative defenses nor deprived of due process of law.[39]

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated 20 November 2006 and Resolution dated 4 April 2007 of the Court of Appeals in CA-G.R. SP No. 82881 are *REVERSED* and *SET ASIDE*. The Orders dated 13 January 2004 and 3 March 2004 in Civil Case No. 03-281, insofar as they set aside the prior Order dated 10 October 2003 of the same trial court dismissing the Complaint of petitioner Bank of the Philippine Islands for failure of the latter to timely file its Pre-Trial Brief, is *REINSTATED*. The Regional Trial Court of Makati City, Branch 149, is *DIRECTED* to continue with the hearing of Civil Case No. 03-281 with utmost dispatch, until its termination. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[39] *Zenaida Polanco v. Carmen Cruz*, G.R. No. 182426, 13 February 2009.

THIRD DIVISION

[G.R. No. 177836. September 4, 2009]

EDWINO A. TORRES (deceased), represented and substituted by ALFONSO P. TORRES III and FATIMA P. TORRES, son and daughter, respectively, of deceased petitioner, *petitioners, vs.* **BALLIGI V. RODELLAS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; APPEALS TO THE OFFICE OF THE PRESIDENT, RULES AND REGULATIONS; WHEN SUPPLETORY APPLICATION OF THE RULES OF COURT, ALLOWED.— Note that the rules and regulations governing appeals to the Office of the President of the Philippines are embodied in Administrative Order No. 18, Series of 1987, entitled "Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines." Though nothing therein provides for substitution of a party in case of death, the same states in its Section 9 that: SECTION 9. The Rules of Court shall apply in a suppletory character whenever practicable. Sec. 16, Rule 3 of the Revised Rules of Court, thus, finds application herein, in that it covers the situation in case of the death of a party.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DEATH OF PARTY; WHEN MAY A DECEASED PARTY BE SUBSTITUTED BY HIS HEIRS; PRESENT IN CASE AT BAR.— The rule provides: Section 16. *Death of party; duty of counsel.* – **Whenever a party to a pending action dies, and the claim is not thereby extinguished,** it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action. The **heirs of the deceased may be allowed to be substituted** for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs. **The court**

shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice. If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. Clear from the aforequoted provision that a deceased party may be substituted by his heirs, but it must be emphasized that substitution may only be allowed in actions that survive the death of a party thereto. In *Gonzales v. Philippine Amusement and Gaming Corporation*, citing *Bonilla v. Barcena*, we declared that the determination of whether an action survives the death of a party depends on the nature of the action and the damage sued for. We explicated: In the causes of action which survive the wrong complained of affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental x x x. In the case at bar, both parties accuse the other of unlawfully depriving them of their respective rights to acquire the subject property, together with the house built thereon, by means of an MSA grant from the State. Evidently, what are primarily and principally affected herein are the property and property rights of the parties, and any injuries to their persons (*i.e.*, damages) are only incidental. Such property and property rights survived Edwino's death and may pass on by succession to his heirs. Therefore, the heirs must be allowed to continue any litigation to protect said property or property rights and to substitute themselves for the deceased party in accordance with appropriate rules.

3. ID.; ID.; ID.; ID.; DUTY OF THE COUNSEL TO REPORT, EXPLAINED.— According to Section 16, Rule 3 of the Revised Rules of Court, a counsel, within 30 days from his client's death, is duty-bound to inform the court of such fact, and to submit the name/s and address/es of the deceased client's legal representative/s. Thereafter, the court **shall**

order, forthwith, the appearance of and substitution by the deceased party's legal representative/s within another period of 30 days from notice. Nowhere is it mentioned in the instant case when exactly Edwino died. Atty. Restor just informed the Office of the President of the fact of Edwino's death in the Motion for Reconsideration of the 5 August 2003 Decision, which he filed on 15 September 2003 on behalf of his deceased client. With no exact date of Edwino's death, we have no basis for determining whether Atty. Restor was able to inform the Office of the President of such fact within the requisite period of 30 days. Nevertheless, even assuming that Atty. Restor belatedly notified the Office of the President of Edwino's death, Section 16, Rule 3 of the Revised Rules of Court only provided that, in case of failure of the counsel to comply with his duty as stated in the first paragraph thereof, it would be a ground for disciplinary action against said counsel, not that he/she would already be without personality to appear as counsel in the proceedings for the benefit of his/her client or the latter's heirs. x x x We emphasize that the purpose behind Section 16, Rule 3 of the Revised Rules of Procedure is the protection of the **right to due process** of every party to a litigation who may be affected by the intervening death. The deceased litigant is himself or herself protected, as he/she continues to be properly represented in the suit through the duly appointed legal representative of his estate. The spirit behind the general rule requiring a formal substitution of heirs is "not really because substitution of heirs is a jurisdictional requirement, but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein." x x x Justice and equity demand that Edwino's heirs be given the opportunity to contest the adverse judgment that affects the property and property rights to which they succeeded. A rule intended to protect due process cannot be invoked to defeat the same. x x x A party may have two or more lawyers working in collaboration in a given litigation, but the fact that a second attorney enters his appearance for the same party does not necessarily raise the presumption that the authority of the first attorney has been withdrawn. The second counsel should

only be treated as a collaborating counsel despite his appearance as "the new counsel of record." A lawyer is presumed to be properly authorized to represent any cause in which he appears; the second counsel, in this case Atty. Restor, is presumed to have acted within his authority as collaborating counsel when he filed the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President.

4. ID.; APPEALS; FINDINGS OF FACT ARE GENERALLY ACCORDED GREAT RESPECT BY THE SUPREME COURT.— Time and again, we have stated that this Court is not a trier of fact or otherwise structurally capacitated to receive and evaluate evidence *de novo*, unlike the Court of Appeals. The Court of Appeals generally has the authority to review findings of fact, and even hold hearings for further reception of evidence. Its conclusions as to findings of fact are generally accorded great respect by this Court. It is a body that is fully capacitated and has a surfeit of experience in appreciating factual matters, including documentary evidence.

APPEARANCES OF COUNSEL

J. Barte Sy Fabregas Law Offices for petitioners.
Fabros Ulanday & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari*,[1] under Rule 45 of the Revised Rules of Court, seeks the review of the *29 November 2006*[2] and *2 May 2007*[3] *Resolutions* of the Court of Appeals in CA-G.R. SP No. 81305, entitled "Edwino A. Torres (deceased) represented and substituted by Alfonso P. Torres III, Fatima

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[1] *Rollo,* pp. 8-33.

[2] Penned by Associate Justice Mariflor P. Punzalan-Castillo with Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid concurring; *rollo,* pp. 34-36.

[3] *Rollo,* pp. 37-41.

P. Torres, son and daughter of deceased petitioner," which, respectively, dismissed the petition assailing the decision of the Office of the President, and denied the subsequent motion for reconsideration thereof.

The root of the present controversy is a 111-square meter parcel of alienable and disposable residential land, described as Lot No. 4, Sgs-04-000316-D, located at Poblacion, San Jose, Occidental Mindoro (subject property).

Respondent Balligi V. Rodellas (Balligi) and her family began occupying the subject property sometime in 1967. They built thereon a residential house (the Rodellas' house), initially made of light materials, but eventually renovated and replaced using stronger materials.

In October 1986, Balligi filed a Miscellaneous Sales Application (MSA) for the subject property with the Department of Environment and Natural Resources (DENR). Said application was docketed as MSA No. (IV-18) 3524.

In 1989, Balligi and her family left Occidental Mindoro for Manila in order to find work. On 1 October 1989, Balligi left the country to join her husband in Saudi Arabia as an Overseas Filipino Worker (OFW). In the meantime, the house built by Balligi and her family on the subject property was left in the care and possession of her relatives, namely, her half-brother, Aster Vallejos; her sister, Bituin Vallejos; her cousin-in-law, Sonia Jaravata; her sister and brother-in-law, spouses Inanama Vallejos (Inanama) and Oscar Gallardo; Milagros Olarte; and Ildefonso Ruiz and family.

Sometime thereafter, still in 1989, petitioner Edwino A. Torres (Edwino) and his spouse moved into the house on the subject property, occupying the portion vacated by Aster Vallejos. Edwino claimed that Balligi already sold him the subject property and the house built thereon for ₱60,000.00, as evidenced by an *Affidavit of Relinquishment/Sale of Right* supposedly signed by the parties thereto and notarized on 9 October 1989. From that time on, Edwino collected monthly rental of ₱300.00 from the other occupants of the house.

On the basis of the *Affidavit of Relinquishment/Sale of Right*, Edwino filed with the DENR an MSA in his own name for the subject property, docketed as MSA No. (IV-18) 3780.

After conducting an investigation and ocular inspection, Wilfredo M. Paguia, Land Investigator, DENR, issued a *Report* on 10 June 1991, recommending that Edwino's MSA be given due course. On 15 July 1991, the Provincial Environment and Natural Resources Officer (PENRO) issued an *Order* 1) rejecting Balligi's MSA No. (IV-18) 3524; and 2) giving due course to Edwino's MSA No. (IV-18) 3780.

In 1992, respondent Balligi's son, Eugenio V. Rodellas, Jr. (Eugenio), returned to Occidental Mindoro. While there, he came to learn that Edwino claimed ownership of the subject property and the house thereon by virtue of the *Affidavit of Relinquishment/Sale of Right*.

On 8 December 1992, Eugenio, alleging to act on behalf of his mother, Balligi, but without presenting any written authority from the latter, filed before the Community Environment and Natural Resources Office (CENRO), San Jose, Occidental Mindoro, a *Protest* against Edwino's MSA No. (IV-18) 3780. Eugenio prayed, *inter alia*, for the cancellation of said MSA on the ground that the *Affidavit of Relinquishment/Sale of Right*, the very basis of the application, was a forged document. Eugenio insisted that Balligi never entered into any sale of the subject property and house, much less signed the purported *Affidavit of Relinquishment/Sale of Right* on 9 October 1989, considering that Balligi and her husband were in Saudi Arabia at that time. Eugenio's Opposition to Edwino's MSA was docketed as DENR Case No. 5438.

On 8 March 1993, Eugenio and his aunt, Inanama, filed an *Amended Protest* against Edwino's MSA No. (IV-18) 3780. Attached to the Amended Protest was a *Special Power of Attorney*, which Balligi executed in favor of Eugenio and Inanama, and acknowledged before Vice Consul Alimatar M. Garangan, Philippine Embassy, Riyadh, Kingdom of Saudi Arabia in January 1993.

In an *Order*[4] dated 4 June 1993, Antonio G. Principe, Regional Executive Director, Regional Office (RO) No. IV, DENR, dismissed the protests against Edwino's MSA No. (IV-18) 3780 for lack of merit, to wit:

> WHEREFORE, in view of the foregoing, the Protest as well as the Amended Protest is (sic) hereby as it is ordered DISMISSED for lack of merit and whatever amount paid on account thereof is forfeited in favor of the government. The MSA No. (IV-18) 3780 of Edwino A. Torres is hereby given further due course.

According to DENR-RO No. IV, neither Eugenio nor Inanama had the personality to represent Balligi. It credited no value to the *Special Power of Attorney* in favor of Eugenio and Inanama, as the "document itself was highly questionable. Close scrutiny of the same shows that the authentication was done on the 25th day of January 1993 [even] before the execution of the said document by Balligi Letty V. Rodellas on January 26, 1993."[5] DENR-RO No. IV also mentioned in its Order that it was not in a position to determine and resolve the genuineness and due execution of the Affidavit of Relinquishment/Sale of Right presented by Edwino, the same being within the jurisdiction of the courts.

On 21 June 1993, Balligi, still through her son, Eugenio, filed a *Request for Extension of Time* to file a motion for reconsideration of the 4 January 1993 Order of DENR-RO No. IV. However, DENR- RO No. IV, in an Order dated 10 September 1993, denied Balligi's request for extension, because it was supposedly filed beyond the 15-day reglementary period within which to appeal the assailed order. The dispositive portion of the 10 September 1993 Order reads:

> WHEREFORE, in view of the foregoing premises, the Motion for Reconsideration dated June 21, 1993 filed by herein [petitioner Balligi], represented by Eugenio V. Rodellas, Jr. and Inanama V. Gallardo, is hereby as it is ordered DENIED for lack of merit.

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[4] *Id.* at 43-45.

[5] DENR Order dated 4 June 1993, p. 3; *rollo*, p. 45.

Consequently thereto, the Order dated June 4, 1993 issued in the above-entitled case is deemed final and executory.[6]

Determined, respondent Balligi, who had arrived back in the Philippines, herself filed, on 15 April 1994, another *Opposition/Protest* against petitioner Edwino's MSA No. (IV-18) 3780.

On 6 June 1994, another Order was issued by the DENR-RO No. IV directing the conduct of an investigation of the matters alleged in Balligi's *Opposition/Protest*; and holding the processing of Edwino's MSA No. (IV-18) 3780 in abeyance.

After an evaluation of the record of the case, DENR-RO No. IV dismissed respondent Balligi's *Opposition/Protest* in an Order dated 13 December 1995, the *fallo* of which states:

WHEREFORE, premises considered, the instant "OPPOSITION AND/OR PROTEST" filed by Balligi V. Rodellas is hereby, as it is ordered, DISMISSED for lack of merit. Let the MSA No. (IV-18) 3780 of Edwino A. Torres be now given further due course leading to the issuance of patent therefor.[7]

Citing its 10 September 1993 Order, DENR-RO No. IV reasoned that Balligi's *Opposition/Protest* was barred by *res judicata.*

Balligi moved for the reconsideration of the Order dated 13 December 1995 of DENR-RO No. IV before the Office of the DENR Secretary. Her Motion for Reconsideration, docketed as DENR Case No. 7771, was denied by the DENR Secretary in an *Order*[8] dated 29 June 1998. The DENR Secretary held that "there is no showing that she, [herein respondent Balligi] Rodellas, ever filed a complaint with the proper forum, *i.e.*, the Court, against the herein [petitioner Edwino] involving the alleged falsified and spurious document. Mere allegation that such document is spurious and forged do not make such document spurious and a forgery."[9]

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[6] *Rollo,* p. 47.

[7] *Id.* at 50.

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

[9] *Id.* at 50.

Undaunted, Balligi filed an appeal with the Office of the President, docketed as O.P. Case No. 98-8537.

In a *Decision*[10] promulgated on 5 August 2003, the Office of the President reversed and set aside the assailed orders of the DENR Secretary and the DENR-RO No. IV. The Office of the President adjudged that the principle of *res judicata* was not applicable to the facts of O.P. Case No. 98-8537, given that:

> A careful review of the order of June 4, 1993, which the DENR claims constitutes a bar to subsequent litigation, would reveal that the same does not comply with the third requisite enumerated above, that the judgment must be on the merits. It will be recalled that the Regional Executive Director (RED) refused to rule on the main issue raised in the protest, which is the alleged forged and spurious Affidavit of Relinquishment/Sale of Right, claiming that his Office is not in the position to determine and resolve the genuineness and due execution of the aforesaid document; and claiming further that "the said protest should not have been entertained in the first place considering that upon its filing, Eugenio V. Rodellas Jr. has no personality to represent Balligi V. Rodellas."

The Office of the President opined that "the DENR should have applied *res ipsa loquitur*" instead, since:

> It should have been very clear that the alleged Affidavit of Relinquishment/Sale of Right is nothing but a forgery. [Respondent Balligi] was in the Kingdom of Saudi Arabia at the time she was supposed to have executed the document, as duly evidenced by the entries in her passport. She left the Philippines on October 1, 1989, while the Affidavit is dated October 9, 1989 x x x. In fact, at the inception of the case, she was still there in Saudi Arabia, which was why the RED did not want to recognize the legal personality of her son to represent her. If the DENR knew that appellant was out of the country all along, how can it even entertain the thought that she was the one who signed the document in Occidental Mindoro? It is important to note that [Edwino] never questioned the veracity of the entries in [Balligi]'s passport.[11]

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[10] *Id.* at 55-59.

[11] *Id.* at 58.

The Office of the President disposed:

> WHEREFORE, the decision of the Acting Secretary of Environment and Natural Resources dated September 19, 1997, and the order dated June 29, 1998, reiterating it, are hereby REVERSED and SET ASIDE. The Department of Environment and Natural Resources is hereby ordered to reject the Miscellaneous Sales Application No. (IV-18) 3780 of Edwino A. Torres and reinstate Miscellaneous Sales Application No. (IV-18) 3524 of Balligi V. Rodellas, and give due course thereto. All persons occupying the subject property by virtue of the Miscellaneous Sales Application of Edwino A. Torres, his heirs and assigns, are hereby ordered to vacate the same.[12]

Atty. Alexander Restor (Atty. Restor), Edwino's counsel, received a copy of the 5 August 2003 Decision of the Office of the President on 29 August 2003. On 15 September 2003, Atty. Restor filed a Motion for Reconsideration of said Decision, and at the same time, manifested that his client, Edwino, had since passed away, but without actually intimating the exact date of the latter's death.

In an Order dated 27 October 2003, the Office of the President ruled that the Motion for Reconsideration filed by Atty. Restor was –

> DISMISSED for being filed out of time and for lack of personality of the movant.[13]

According to the Office of the President, Edwino's death extinguished his agency relationship with Atty. Restor. Hence, Atty. Restor had no more authority to continue to act on Edwino's behalf. In addition, the Motion for Reconsideration was filed by Atty. Restor beyond the 15-day reglementary period.

On 16 November 2003, Edwino's representatives and legal heirs executed a *Letter of Appointment*[14] "[appointing] and [engaging] the legal services of Atty. Alexander Restor in O.P.

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[12] *Id.* at 58-59.

[13] *Id.* at 62.

[14] CA *rollo*, p. 52.

Case No. 988537 before the Office of the President and to further represent [them] in the event that the afore-mentioned case is appealed to the Court of Appeals/Supreme Court."

Subsequently, on 9 December 2003, Atty. Restor filed, on behalf of Edwino, represented and substituted by the latter's son and daughter, Alfonso P. Torres III (Alfonso) and Fatima P. Torres (Fatima), respectively, a Petition for Review with the Court of Appeals, challenging the 5 August 2003 Decision and 27 October 2003 Order of the Office of the President. Their Petition was docketed as CA-G.R. SP No. 81305.

In a Resolution promulgated on 29 November 2006, the appellate court dismissed the Petition in CA-G.R. SP No. 81305, thus:

> IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED.[15]

The Court of Appeals affirmed the finding of the Office of the President that the 5 August 2003 Decision of the latter had long since attained finality in view of the late filing of Edwino's Motion for Reconsideration of the same. Moreover, the appellate court agreed that Atty. Restor had no personality to move for the reconsideration of the decision in question, and as a result, "no motion for reconsideration of the August 5, 2003 Decision of the Office of the President could have been considered filed."[16]

As expected, Alfonso and Fatima filed a Motion for Reconsideration of the 29 November 2006 Resolution of the Court of Appeals, arguing therein that Atty. Restor had timely filed the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President. Atty. Restor received a copy of the challenged Decision of the Office of the President on 29 August 2003, and the 15th day or last day for filing a motion for reconsideration of the same, 13 September 2003, was a Saturday; hence, Atty. Restor was able to file such a motion only on 15 September 2003, Monday, the next working day.

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[15] *Rollo*, p. 36.

[16] *Id.* at 35.

In its Resolution dated 2 May 2007, the Court of Appeals reconsidered its initial position on the point of the late filing of the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President, conceding that:

> It is true, as [herein petitioners Alfonso and Fatima] argue, that the Office of the President failed to take into consideration that the 15th day fell on a Saturday and therefore, the Motion for Reconsideration, which was filed on the 17th day, cannot be said to have been filed out of time.[17]

But the appellate court remained steadfast in its resolve that Atty. Restor lacked the legal personality to file the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President despite the *Letter of Appointment*, dated 16 November 2003, executed by Edwino's representatives and legal heirs in Atty. Restor's favor. The Court of Appeals pronounced that:

> [T]he Letter of Appointment (citation omitted) appended by the petitioners to the Petition for Review cannot cure Atty. Restor's lack of authority in filing the Motion for Reconsideration before the Office of the President. Not only was said letter not presented before the latter. It was likewise executed only after the Office of the President issued the assailed Order. That being the case, Atty. Restor's lack of authority cannot be said to have been cured.[18]

In the end, the Court of Appeals concluded that:

> Thus, while the petition for review appears to have been filed on time, the fact is that the decision sought to be reviewed has already become final and executory. In view of said finality, this Court is without authority to review said Decision anymore.[19]

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

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[17] *Id.* at 40.

[18] *Id.*

[19] *Id.* at 36.

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE RULING OF THE OFFICE OF THE PRESIDENT THAT ATTY. RESTOR, PETITIONER'S FORMER COUNSEL, HAD NO LEGAL PERSONALITY TO FILE THE MOTION FOR RECONSIDERATION BEFORE THE OFFICE OF THE PRESIDENT, IN VIEW OF EDWINO'S DEATH, PURSUANT TO SECTION 16, RULE 3 OF THE RULES OF COURT AND ARTICLE 1919(3) OF THE CIVIL CODE;

II.

THE COURT OF APPEALS ERRED IN REFUSING TO RULE ON THE PROPRIETY OF THE DISMISSAL OF PETITIONER'S MOTION FOR RECONSIDERATION BY THE OFFICE OF THE PRESIDENT; and

III.

THE DECISION OF THE DENR REGIONAL EXECUTIVE DIRECTOR DATED JUNE 4, 1993 IN DENR CASE NO. IV-5438 IN FAVOR OF PETITIONERS HAS LONG BECOME FINAL AND EXECUTORY. AS SUCH, RESPONDENT'S SUBSEQUENT OPPOSITION AND/OR PROTEST DATED APRIL 15, 1994 DOCKETED AS DENR CASE NO. IV-B-5520 VIOLATES THE PRINCIPLE OF *RES JUDICATA.*

At the crux of this Petition is the issue of whether the Court of Appeals erred in dismissing the Petition for Review of Edwino's legal heirs in CA-G.R. SP No. 81305 on the ground that the 5 August 2003 Decision of the Office of the President in O.P. Case No. 98-8537, being assailed in the latter Petition, had already attained finality.

Alfonso and Fatima maintain that the Court of Appeals erred in affirming the 27 October 2003 Order of the Office of the President which dismissed the Motion for Reconsideration filed by Atty. Restor based on a misapplication of Section 16, Rule 3 of the Revised Rules of Court. They aver that the failure to comply with said procedural rule should not invalidate the proceedings and the judgment rendered therein if the action survives the death of the party to the case. The action in this case "survives the death of Edwino A. Torres as the subject of said action was ownership of real property and not some personal liability." Thus, Edwino's death "did not extinguish his civil personality." Alfonso and Fatima argue further that their "right

to due process would be violated if their motion for reconsideration would be brushed aside just because counsel failed to move for a substitution of a party. x x x. In any case, Atty. Restor submitted a Letter of Appointment appointing him as counsel which ratified his representation of petitioners."[20]

In defense of the assailed resolutions of the Court of Appeals, Balligi contends that the arguments of Edwino's heirs are untenable as "[p]etitioners' stand is premised on the assumption that the proceedings and the judgment had before the Office of the President were invalid."[21] Quite the reverse, Balligi asserts that "said proceedings stand for even petitioners ADMITTED the non-personality of Atty. Restor under (sic) their Motion for Reconsideration before the Honorable Court of Appeals x x x."[22] That said, however, Balligi, through a new counsel, Atty. Amando S. Fabros, digressed from previous arguments. Balligi now claims that "[t]he ruling of the Office of the President was not so much based on the failure of either Atty. Alfredo A. Castillo (Atty. Castillo) or Atty. Restor to give advice or information as to the death of Edwino A. Torres but on the apparent non-withdrawal of Atty. Castillo who was handling the appeal, and the unceremonious taking over of said appeal by Atty. Restor without such withdrawal and written authority of petitioners."[23] She insists that "what was invalidated or not given force and effect was the Motion for Reconsideration filed by Atty. Restor without legal authority or personality."[24] Balligi submits that "if a party appears in an action by attorney, he must be heard only through such attorney, who, so long as he remains the attorney of record, has the exclusive management and control of the action and of all steps and proceedings taken therein to enforce the rights and remedies of his client."[25]

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[20] *Id.* at 19.

[21] *Id.* at 123.

[22] *Id.*

[23] *Id.* at 125.

[24] *Id.* at 124.

[25] *Id.*

We agree with petitioners that the Office of the President misapplied the rule on substitution upon the death of a party litigant.

Note that the rules and regulations governing appeals to the Office of the President of the Philippines are embodied in Administrative Order No. 18, Series of 1987, entitled "Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines." Though nothing therein provides for substitution of a party in case of death, the same states in its Section 9 that:

SECTION 9. The Rules of Court shall apply in a suppletory character whenever practicable.

Sec. 16, Rule 3 of the Revised Rules of Court, thus, finds application herein, in that it covers the situation in case of the death of a party. The rule provides:

Section 16. *Death of party; duty of counsel.* – **Whenever a party to a pending action dies, and the claim is not thereby extinguished**, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The **heirs of the deceased may be allowed to be substituted** for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphases ours.)

Clear from the aforequoted provision that a deceased party may be substituted by his heirs, but it must be emphasized that substitution may only be allowed in actions that survive the death of a party thereto. In *Gonzales v. Philippine Amusement and Gaming Corporation*,[26] citing *Bonilla v. Barcena*,[27] we declared that the determination of whether an action survives the death of a party depends on the nature of the action and the damage sued for. We explicated:

> In the causes of action which survive the wrong complained of affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental x x x.

In the case at bar, both parties accuse the other of unlawfully depriving them of their respective rights to acquire the subject property, together with the house built thereon, by means of an MSA grant from the State. Evidently, what are primarily and principally affected herein are the property and property rights of the parties, and any injuries to their persons (*i.e.*, damages) are only incidental. Such property and property rights survived Edwino's death and may pass on by succession to his heirs. Therefore, the heirs must be allowed to continue any litigation to protect said property or property rights and to substitute themselves for the deceased party in accordance with appropriate rules.

According to Section 16, Rule 3 of the Revised Rules of Court, a counsel, within 30 days from his client's death, is duty-bound to inform the court of such fact, and to submit the name/s and address/es of the deceased client's legal representative/s. Thereafter, the court **shall** order, forthwith, the appearance of and substitution by the deceased party's legal representative/s within another period of 30 days from notice.

Nowhere is it mentioned in the instant case when exactly Edwino died. Atty. Restor just informed the Office of the

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[26] 473 Phil. 582, 591 (2004).

[27] 163 Phil. 521 (1976).

President of the fact of Edwino's death in the Motion for Reconsideration of the 5 August 2003 Decision, which he filed on 15 September 2003 on behalf of his deceased client. With no exact date of Edwino's death, we have no basis for determining whether Atty. Restor was able to inform the Office of the President of such fact within the requisite period of 30 days. Nevertheless, even assuming that Atty. Restor belatedly notified the Office of the President of Edwino's death, Section 16, Rule 3 of the Revised Rules of Court only provided that, in case of failure of the counsel to comply with his duty as stated in the first paragraph thereof, it would be a ground for disciplinary action against said counsel, not that he/she would already be without personality to appear as counsel in the proceedings for the benefit of his/her client or the latter's heirs.

Instructive herein is our ruling in *Heirs of F. Nuguid Vda. de Haberer v. Court of Appeals*.[28] Florentina Nuguid *Vda. de* Haberer (Florentina) was the appellant in the case still pending before the Court of Appeals when she died. Florentina's counsel, Attorneys Bausa, Ampil and Suarez, gave the Court of Appeals notice of their client's death and requested the suspension of the running of the period within which to file the appellant's brief, pending the appointment by the probate court of an executor of the latter's estate. The Court of Appeals denied the motion for extension/suspension of time to file appellant's brief and dismissed the appeal. Florentina's counsels filed their urgent motion for reconsideration, explaining that their predicament over the requests for extension/suspension of period to file a brief was due to the uncertainty of whether their services would still be retained by the heirs or legal representatives of their deceased client. Florentina's counsels still felt obligated, however, to preserve the right of Florentina's heirs/successors to continue the appeal, pursuant to what is now Section 16, Rule 3 of the Revised Rules of Court, pending the settlement of the question of who among such heirs/successors should be the executor of the deceased's estate. Hence, Florentina's counsel presented, for admission, the printed "brief for the appellant," the printing of

[28] 192 Phil. 61 (1981).

which they had deferred "for professional ethical considerations," pending action by the appellate court on their request for suspension of the period. Despite the foregoing explanation by Florentina's counsel, the Court of Appeals still refused to reconsider its earlier dismissal of the appeal and to admit the submitted appellant's brief. In addition to invoking the general principle that "litigants have no right to assume that such extensions will be granted as a matter of course"; the appellate court also cited the equally established principle that the relation of attorney and client is terminated by the death of the client. In the absence of a retainer from the heirs or authorized representatives of his deceased client, the attorney would thereafter have no further power or authority to appear or take any further action in the case, save to inform the court of the client's death and take the necessary steps to safeguard the deceased's rights in the case. Upon appeal to us, we found that the Court of Appeals gravely erred in not following the Rule and requiring the appearance of the legal representative of the deceased and instead dismissing the appeal of the latter who had yet to be substituted in the pending appeal. We held that:

> Respondent court therefore erred in ruling that since upon the demise of the party-appellant, the attorney-client relationship between her and her counsels "was automatically severed and terminated," whatever pleadings filed by said counsel with it after the death of said appellant "are mere scraps of paper." If at all, due to said death on May 25, 1975 and severance of the attorney-client relationship, further proceedings and specifically the running of the original 45-day period for filing the appellant's brief should be legally deemed as having been **automatically suspended, until the proper substitution** of the deceased appellant by her executor or administrator or her heirs shall have been effected within the time set by respondent court pursuant to the cited Rule.
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> x x x x x x x x x
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> Prescinding from the foregoing, justice and equity dictate under the circumstances of the case at bar that the rules, while necessary for the speedy and orderly administration of justice, should not be applied with the rigidity and inflexibility of respondent court's resolutions. What should guide judicial action is the principle that a party litigant is to be given the fullest opportunity to establish

the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. x x x.[29] (Emphases supplied.)

In this case, Atty. Restor is in much the same situation as Florentina's counsels. Though incomplete, the mention by Atty. Restor of Edwino's death in the Motion for Reconsideration **effectively informed** the Office of the President of the same. Having been apprised of the fact of Edwino's death, it was incumbent upon the Office of the President, even without Atty. Restor's motion to such effect, to order the legal representative/s of the deceased party to appear and be substituted; or, at the very least, to direct the counsel to furnish the court with the names and addresses of such representative/s.

Since Atty. Restor filed the Motion for Reconsideration within the reglementary period and no longer requested for suspension/ extension of time to do so, the Office of the President need not suspend the running of said reglementary period as in *Heirs of F. Nuguid Vda. de Haberer*, but it could have deferred any action on said Motion until a substitution had been effected and it had ascertained that the substituted heirs chose to retain Atty. Restor's services as legal counsel. Conspicuously, the Office of the President completely failed to act on the information that Edwino had died so as to effect proper substitution by the latter's heirs, as set forth in Section 16, Rule 3 of the Revised Rules of Court. The only action the Office of the President took as regards said information was to deny the Motion for Reconsideration filed by Atty. Restor for his lack of personality, given his client's death. This we find totally contrary to equity and fair play since Edwino's heirs were, in effect, deprived of their right to seek reconsideration or appeal of the adverse decision of the Office of the President which was itself partly responsible for their non-substitution.

We emphasize that the purpose behind Section 16, Rule 3 of the Revised Rules of Procedure is the protection of the **right to due process** of every party to a litigation who may be affected

[29] *Id.* at 70-71.

by the intervening death. The deceased litigant is himself or herself protected, as he/she continues to be properly represented in the suit through the duly appointed legal representative of his estate.[30] The spirit behind the general rule requiring a formal substitution of heirs is "not really because substitution of heirs is a jurisdictional requirement, but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein."[31]

It must also be remembered that, unless properly relieved, the counsel is responsible for the conduct of the case;[32] he is obligated by his client and the court to do what the interest of his client requires until the end of litigation or his representation is terminated formally and there is a termination of record.[33] And the only way the Office of the President could have ascertained whether Atty. Restor still had the authority to file the Motion for Reconsideration on behalf of Edwino's heirs, or otherwise had been relieved or his representation terminated, was by having Edwino's heirs come forth as the rules required. In fact, in the *Letter of Appointment* dated 16 November 2003, which was presented before the Court of Appeals, Alfonso and Fatima, as Edwino's legal representatives and heirs, explicitly retained the services of Atty. Restor by "[appointing] and [engaging] [his] legal services x x x in O.P. Case No. 98-8537 before the Office of the President and to further represent [them] in the event that the afore-mentioned case is appealed to the Court of Appeals/Supreme Court."[34] Even though belatedly

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[30] *Sumaljag v. Literato*, G.R. No. 149787, 18 June 2008, 555 SCRA 53, 59-60; citing *Napere v. Barbarona*, G.R. No. 160426, 31 January 2008, 543 SCRA 376, 382.

[31] *Heirs of F. Nuguid Vda. de Haberer v. Court of Appeals*, *supra* note 28.

[32] *Tumbagahan v. Court of Appeals*, G.R. No. L-32684, 20 September 1988, 165 SCRA 485, 489.

[33] *Orcino v. Gaspar*, 344 Phil. 792, 798 (1997).

[34] CA *rollo*, p. 52.

executed, such Letter of Appointment demonstrates that if they were just given the opportunity by the Office of the President, Alfonso and Fatima could have easily confirmed the authority of Atty. Restor to continue acting as their counsel in the proceedings and to submit the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President.

Interestingly, if, as argued by the Office of the President and the Court of Appeals, Atty. Restor no longer had the personality to represent Edwino upon the latter's death, assuming he died prior to the rendition of the decision of the Office of the President, should it not also follow that the sending of a copy of the 5 August 2003 Decision of the Office of the President to Atty. Restor, as counsel of record, could no longer be deemed a notice to the party, and his receipt of the same could not have caused the commencement of the period within which to file a motion for reconsideration? As a consequence, the reglementary period within which to move for reconsideration of the assailed decision in O.P. Case No. 98-8537 had really not yet begun to toll.

Given the foregoing, the 5 August 2003 Decision of the Office of the President could not have attained finality. It being partly responsible for the non-substitution of the heirs for the deceased Edwino, the Office of the President could not dismiss the Motion for Reconsideration filed by Atty. Restor, to the prejudice of said heirs. Justice and equity demand that Edwino's heirs be given the opportunity to contest the adverse judgment that affects the property and property rights to which they succeeded. A rule intended to protect due process cannot be invoked to defeat the same.

This having been said, we address the recent theory[35] of Atty. Fabros, Balligi's new counsel, that Atty. Restor's lack of personality to file the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President was due to the failure of Atty. Castillo, Edwino's previous counsel, to formally withdraw as such, and of Atty. Restor to formally substitute

[35] *Rollo*, p. 125.

for Atty. Castillo. A thorough review of the Order dated 27 October 2003 of the Office of the President (dismissing the Motion for Reconsideration of the Decision dated 5 August 2003 filed by Atty. Restor, due to the latter's lack of personality), and the Resolutions dated 29 November 2006 and 2 May 2007 of the Court of Appeals (affirming the dismissal by the Office of the President of said Motion for Reconsideration) reveal no such pronouncement. The plain reason for the dismissal of the Motion for Reconsideration was that Atty. Restor had no more personality to file the same, given that Edwino's death extinguished the attorney-client relationship between them.

But even assuming, for the sake of argument, that the Office of the President and the Court of Appeals did find that Atty. Restor had no personality to file the Motion for Reconsideration in question because Atty. Castillo had not withdrawn as Edwino's counsel and Atty. Restor had not substituted for Atty. Castillo; such finding would have likewise been erroneous. A party may have two or more lawyers working in collaboration in a given litigation,[36] but the fact that a second attorney enters his appearance for the same party does not necessarily raise the presumption that the authority of the first attorney has been withdrawn.[37] The second counsel should only be treated as a collaborating counsel despite his appearance as "the new counsel of record." A lawyer is presumed to be properly authorized to represent any cause in which he appears;[38] the second counsel, in this case Atty. Restor, is presumed to have acted within his authority as collaborating counsel when he filed the Motion for Reconsideration of the 5 August 2003 Decision of the Office of the President.

Finally, we stop short of resolving the issue of whose MSA should be given due course, because in order to do so, we must first make findings of fact concerning the authenticity and validity

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[36] *Tan v. Court of Appeals*, 341 Phil. 570, 580 (1997).

[37] *Elbiña v. Ceniza*, G.R. No. 154019, 10 August 2006, 498 SCRA 438, 442.

[38] *Fernandez v. Aniñon*, G.R. No. 138967, 24 April 2007, 522 SCRA 1, 9-10.

of the *Affidavit of Relinquishment/Sale of Right* dated 9 October 1989, allegedly executed by Balligi in favor of Edwino. It must be noted that the DENR and the Office of the President made divergent findings thereon. We cannot, as of yet, make such findings given the derth of evidence on record. To arrive at an ultimate determination, the remand of the case to the Court of Appeals is in order, so that it can give due course to the Petition for Review in CA-G.R. SP No. 81305. Time and again, we have stated that this Court is not a trier of fact or otherwise structurally capacitated to receive and evaluate evidence *de novo*, unlike the Court of Appeals. The Court of Appeals generally has the authority to review findings of fact, and even hold hearings for further reception of evidence. Its conclusions as to findings of fact are generally accorded great respect by this Court. It is a body that is fully capacitated and has a surfeit of experience in appreciating factual matters, including documentary evidence.

WHEREFORE, premises considered, the instant Petition is *PARTLY GRANTED*. The assailed twin *Resolutions* dated 29 November 2006 and 2 May 2007 of the Court of Appeals in CA-G.R. SP No. 81305 are *REVERSED* and *SET ASIDE*, insofar as they affirmed the declarations of the Office of the President in the latter's Order dated 27 October 2003 in O.P. Case No. 98-8537 that, given the death of his client, Edwino A. Torres, Atty. Alexander Restor lacked the personality to file the Motion for Reconsideration of the Decision dated 5 August 2003; and that, since no motion for reconsideration or appeal had been timely filed, the said Decision dated 5 August 2003 of the Office of the President had become final and executory.

The case is hereby *REMANDED* to the Court of Appeals, which is *ORDERED* to give due course to the Petition for Review filed in CA-G.R. SP No. 81305 and to hold further proceedings in accordance with this Decision.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178485. September 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIANO SAPIGAO, JR.,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE TRIAL COURT; ACCORDED HIGH RESPECT BY THE APPELLATE COURT; EXCEPTION.— Findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of their credibility and the probative weight of their testimonies, as well as its conclusions anchored on the said findings, are accorded by the appellate court high respect if not conclusive effect, unless the trial court ignored, misunderstood, or misconstrued facts and circumstances of substance which, if considered, would warrant a reversal of the outcome of the case.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; MATTER BEST TAKEN BY THE TRIAL COURTS; RATIONALE.— It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity

of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."

3. CRIMINAL LAW; MURDER; PENALTY AND CIVIL LIABILITY.— As for the penalty and civil liability, the Court of Appeals correctly held: Under Article 248 of the Revised Penal Code, the essential elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide. All the elements of murder, as alleged in the Information, have been sufficiently established by the prosecution in the present case. The offense in the present case was committed on September 22, 1987, prior to the enactment of Republic Act No. 7659 (The Death Penalty Law) on December 13, 1993. The applicable penalty for murder prior to the enactment of R.A. 7659 is *reclusion temporal* maximum to death. There being no aggravating or mitigating circumstances, the penalty imposable on accused-appellant in accordance with Art. 64(1) of the Revised Penal Code should be the medium period, which is, *reclusion perpetua*. The penalty of *reclusion perpetua* being indivisible, the Indeterminate Sentence Law does not apply. **Civil Liability.** The trial court awarded the heirs of the victim Alexander Turalba the sum of ₱38,600.00 as actual damages, ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages. We delete the award of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Since the prosecution did not present receipts to prove the actual losses suffered, such actual damages cannot be awarded. While no actual damages may be awarded because no competent evidence in the form of receipts was presented, temperate damages may be recovered under Article 2224 of the Civil Code as the Court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.

Consistent with current jurisprudence, the amount of ₱25,000.00 is awarded to the victim's heirs as temperate damages considering that it is not disputed that the family incurred expenses for the wake and burial of the victim. Consistent with prevailing jurisprudence, We award ₱50,000.00 by way of indemnity *ex delicto* to the heirs of Alexander Turalba. When death occurs as a result of the crime, the heirs of the deceased are entitled to such amount as civil indemnity for death without need of any evidence or proof of damages. The award of ₱50,000.00 as moral damages is sustained, being consistent with recent cases. Moral damages are awarded without further proof other than the death of the victim. The victim's heirs are likewise entitled to exemplary damages in the amount of ₱25,000.00, given the presence of treachery which qualified the killing to murder. Under Article 2230 of the Civil Code which allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances, the term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Romeo C. De La Cruz & Associates for accused-appellant.

D E C I S I O N

QUISUMBING, *J.*:

For automatic review is the Decision[1] dated July 19, 2006 of the Court of Appeals, in CA-G.R. CR No. 01018, affirming with modification the Decision[2] dated July 28, 1999 of the Regional Trial Court (RTC) of Urdaneta City, Branch 46, in Criminal Case No. U-5035, finding appellant Mariano Sapigao, Jr. guilty beyond reasonable doubt of the crime of murder.

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[1] *Rollo*, pp. 3-18. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Jose L. Sabio, Jr. and Sesinando E. Villon, concurring.

[2] Records, pp. 171-179. Penned by Judge Modesto C. Juanson.

The facts of the case, culled from the records, are as follows:

In an Information[3] dated January 4, 1989, appellant Mariano Sapigao, Jr. and Melvin Sublingo, who remains at large, were accused of the crime of murder with the use of unlicensed firearms, as follows:

> That on or about the 22nd day of September 1987, in the afternoon, at Barangay Carosucan Sur, municipality of Asingan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with Cal. .45 and Cal. .38 Handguns, conspiring, confederating and mutually helping each other, with deliberate intent to kill, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously, attack, assault and shoot one Alexander Turalba, inflicting upon him, the following injuries: Gunshot wound – ¾ cm. pt. of entrance passing between the 8th and 9th thorasaic vertebrae, lacerating the right ventricle of the heart [bullet lodged between the 6th left and right ribs, at the sternum]; Gunshot wound – ¾ pt. of entrance, left parietal bone, traversing the brain with 1 inch ill-defined edges pt. of exit, fracturing the right maxillary bone, which caused the death of said Alexander Turalba, as a consequence, to the damage and prejudice of his heirs.
>
> CONTRARY to Art. 248, Revised Penal Code.

A Warrant of Arrest[4] was issued against appellant and Sublingo on October 12, 1987, but the two allegedly eluded arrest. An *Alias* Warrant of Arrest[5] was issued on December 1, 1987. Another Warrant of Arrest[6] was issued on January 18, 1989 by the RTC of Urdaneta, Pangasinan, Branch 46.

Appellant was arrested on February 8, 1993.[7] His lawyer filed a petition for bail[8] which was opposed by the government

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[3] *Id.* at 1.

[4] *Id.* at 24.

[5] *Id.* at 27.

[6] *Id.* at 40.

[7] *Id.* at 41.

[8] *Id.* at 45.

prosecutor.[9] The RTC, acting on the opposition of the government prosecutor, increased the bail bond from ₱30,000.00 to ₱50,000.00.[10] Thereafter, the government prosecutor, Atty. Monte P. Ignacio, filed a motion for consolidation[11] of the case which had been docketed as Criminal Case No. U-5035 with another criminal case docketed as Criminal Case No. U-4963 for illegal possession of firearms against the appellant and Sublingo arising out of the same incident. The motion was unacted upon and when called for arraignment, appellant was absent and out on bail.[12] Warrants of arrest were again issued against him and he was finally arrested on January 27, 1999. During his arraignment on February 9, 1999, appellant pleaded not guilty.[13] Previously, the RTC, on March 18, 1993, consolidated Criminal Case No. U-5035 with Criminal Case No. U-4963 for illegal possession of firearms against the same accused.[14]

The prosecution presented the testimonies of Dr. Leonardo Guerrero, Cecilio Fabro, SPO4 Rodrigo Escaño, and Apolonia Turalba, the victim's grandmother. For its part, the defense presented the testimonies of eyewitness Jesus Ballesteros, the appellant himself, Ballistician and Chief of the Firearms and Explosives Unit of the National Bureau of Investigation (NBI) Rogelio Munar, and NBI Medico-Legal Officer Dr. Arturo Llavore.

The autopsy of the victim was conducted by Dr. Irenio G. Agapito, Rural Health Physician of Asingan, Pangasinan. The autopsy report states the following findings on the victim:

EXTERNAL:

Fairly developed, fairly nourished, adult male, weighing around 130 lbs., height – 5[’] 4”; Lon[g] black hair, brown complexion

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[9] *Id.* at 47.

[10] *Id.* at 48.

[11] *Id.* at 49.

[12] *Id.* at 57.

[13] *Id.* at 78.

[14] *Id.* at 50.

and wearing *maong* long pants, green t-shirt, white brief[s] soaked with blood.

INTERNAL:

GUNSHOT WOUNDS

1. ¾ cm. Pt. of entrance passing between the 8th and 9th thorasaic vertebrae lacerating the right ventricle of the heart and the bullet was lodged between the 6th left and right ribs, at the sternum.

BLOOD AT THORACIC CAVITY 500 c.c.

2. ¾ pt. of entrance – left parietal bone traversing the brain with 1 inch ill-defined edges of pt[.] of exit fracturing the right maxillary bone.

CAUSE OF DEATH: Fatal gunshot wounds.[15]

Prosecution witness Cecilio Fabro claimed that on September 22, 1987, at about 3 p.m., he was with the victim Alexander Turalba at the basketball court located at Carosucan Sur in front of the health center of the school, forming a team to play basketball. While they were in the process of forming the team, Melvin Sublingo arrived and immediately shot Alexander Turalba once at the back with a .38 caliber firearm. Turalba fell, face down. Melvin Sublingo fired once more, hitting Henry Osias. Then appellant Mariano Sapigao, Jr., shot Alexander Turalba with a .45 caliber firearm while the latter was lying down. After the shooting, Sublingo ran towards the eastern direction while appellant ran towards the western direction. After Sublingo and appellant left, Fabro lifted Turalba, placed the latter in a jeep and brought him to the Urdaneta Sacred Heart Hospital where he was declared dead on arrival.[16]

For the defense, Jesus Ballesteros, a resident of Carosucan Sur, Asingan, Pangasinan, testified that on September 22, 1987, at about 3 p.m., he was with the appellant, who was his cousin, and several other cousins near a basketball court at Carosucan

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[15] *Id.* at 11.

[16] TSN, February 22, 1999, pp. 4-8.

Sur. Suddenly, Melvin Sublingo appeared. Sublingo at first tried to shoot Cecilio Fabro but a cousin of Fabro, Orlan Fabro, shouted "You run, *Manong*, because Melvin is there already." Cecilio ran towards the south. Alexander Turalba, who was at the midcourt, was then shot by Melvin Sublingo with a .38 caliber firearm. Appellant was beside Ballesteros at the time Sublingo shot Turalba twice hitting the back and head of Turalba. Sublingo shot the head of Turalba first. When Turalba fell down, he was shot again at the back by Sublingo. Sublingo then ran towards the east where he met Osias. He also shot Osias. Ballesteros denied that appellant shot Turalba. He attributed the shooting by Sublingo to revenge because Turalba mauled Sublingo in the morning of September 22, 1987 and while Sublingo was being mauled by Alexander Turalba, Cecilio Fabro had poked a knife at the head of Sublingo.[17]

Appellant denied shooting Alexander Turalba. He claimed that it was Melvin Sublingo who shot Turalba twice, the first shot hitting Turalba in the head and the second hitting Turalba at the back.[18]

NBI Ballistician Rogelio Munar testified that based on the gunshot wounds of Turalba described in the autopsy report, the wound was produced by a .32 or .38 caliber pistol.[19]

Dr. Arturo Llavore testified that after examining the autopsy report, he concluded that the gunshot wounds were inflicted by a .38 caliber firearm.[20]

On July 28, 1999, the RTC rendered a decision finding appellant guilty beyond reasonable doubt of murder. It, however, dismissed the charges against him for illegal possession of firearms, appreciating treachery as an aggravating circumstance in the crime of murder. The dispositive portion of the RTC decision reads:

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[17] TSN, March 16, 1999, pp. 2-15.

[18] TSN, April 5, 1999, p. 6.

[19] TSN, June 16, 1999, p. 7.

[20] TSN, July 6, 1999, pp. 5-6.

WHEREFORE, JUDGMENT of CONVICTION beyond reasonable doubt is rendered against MARIANO SAPIGAO, JR. of the crime of aggravated Murder (appreciating treachery as qualifying circumstance) with the use of firearms and the Court sentences Mariano Sapigao, Jr. to suffer the penalty of *Reclusion Perpetua;* to indemnify the heirs of the victim the sum of ₱38,600.00 as actual damages; plus ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages.

Mariano Sapigao, Jr. is ACQUITTED in Crim. Case No. U-4963 (Illegal Possession of Firearm).

The Branch Clerk of Court is hereby ordered to prepare the mittimus.

The Jail Warden, Bureau of Jail Management and Penology is hereby ordered to deliver the person of Mariano Sapigao, Jr. to the National Bilibid Prisons, Muntinlupa City, [within] 15 days from receipt of this Decision.

SO ORDERED.[21]

Appellant appealed before this Court. Pursuant to the decision in *People v. Mateo*,[22] the case was transferred to the Court of Appeals for intermediate review.

On July 19, 2006, the Court of Appeals affirmed with modification the trial court's decision, as follows:

WHEREFORE, in view of the foregoing, the [D]ecision dated July 28, 1999 of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Case No. U-5035 is *AFFIRMED* with modification. Accused-appellant MARIANO SAPIGAO, JR. is found *GUILTY* beyond reasonable doubt of the crime of murder, qualified by treachery, and is hereby sentenced to suffer the penalty of *reclusion perpetua*, and *ORDERED* to pay the heirs of the victim Alexander Turalba the following amounts: ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages.

SO ORDERED.[23]

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[21] Records, p. 179.

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

[23] *Rollo*, p. 17.

Hence, this appeal where appellant raises the following issues in his Supplemental Brief:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT APPELLANT SHOT THE VICTIM AND CAUSED HIS DEATH.

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT APPELLANT ACTED IN CONSPIRACY WITH THE OTHER ACCUSED MELVIN SUBLINGO.

III.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE GUILT OF APPELLANT HAS NOT BEEN SHOWN BEYOND REASONABLE DOUBT.[24]

The primordial issue is: Has appellant's guilt for the crime of murder been proven beyond reasonable doubt?

Appellant, in his Supplemental Brief,[25] argues the prosecution failed to prove that he shot the victim because: (1) Prosecution witness Cecilio Fabro testified that the handgun used by him in shooting the victim was a .45 caliber handgun, but the diameters at the point of entry of the two wounds sustained by the victim were that of wounds caused by a .38 caliber firearm;[26] (2) Fabro testified that he shot the victim at the back while the Autopsy Report stated that the wounds of the victim were in the thoracic area and the left parietal area;[27] (3) The expert witnesses, Ballistician Munar and Dr. Llavore, are impartial witnesses while Fabro had a motive to falsely testify against him;[28] (4) The reliance by the Court of Appeals on the rule that

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

[25] *Id.* at 52-92.

[26] *Id.* at 57.

[27] *Id.* at 66.

[28] *Id.* at 67.

the trial court is in the best position to assess the credibility of witnesses is not applicable in this case;[29] (5) Ballistician Munar and Dr. Llavore are expert and impartial witnesses and their testimonies are based on physical evidence and scientific fact;[30] (6) The other accused, Melvin Sublingo, caused both wounds of the victim;[31] (7) The path of the bullet wound that caused the wound on the head of the victim belies the testimony of Fabro that he shot the victim while the latter was lying face down on the ground;[32] (8) He had no motive to shoot the victim;[33] (9) For more than ten years, the authorities did not arrest him;[34] (10) The burden of proof that he shot the victim with a .45 caliber handgun rests with the prosecution and he does not have the burden to prove that he did not shoot the victim.[35]

The prosecution, through the Office of the Solicitor General, opted not to file a supplemental brief, explaining that its arguments on the issues invoked had already been discussed in the brief it had previously filed.[36]

After review, we uphold the ruling of the Court of Appeals affirming the guilty verdict of the trial court.

Findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of their credibility and the probative weight of their testimonies, as well as its conclusions anchored on the said findings, are accorded by the appellate court high respect if not conclusive effect, unless the trial court ignored, misunderstood, or misconstrued facts and circumstances

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[29] *Id.* at 68.

[30] *Id.* at 69.

[31] *Id.* at 72.

[32] *Id.* at 74.

[33] *Id.* at 75.

[34] *Id.* at 76.

[35] *Id.* at 78.

[36] *Id.* at 196-197.

of substance which, if considered, would warrant a reversal of the outcome of the case.[37]

In this case, the Court of Appeals and the RTC gave credence to the testimony of prosecution witness Cecilio Fabro whose testimony directly contradicts that of defense witness Jesus Ballesteros. We see no reason to deviate from this finding.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.[38] For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."[39]

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[37] *People v. Dela Cruz*, G.R. Nos. 138931-32, July 17, 2003, 406 SCRA 439, 446-447.

[38] *Maandal v. People*, G.R. No. 144113, June 28, 2001, 360 SCRA 209, 222.

[39] *Id.* at 223.

Cecilio Fabro testified:

Q Mr. Witness, at about 3:00 o'clock in the afternoon of September 22, 1987, do you remember where you were?

A Yes, sir.

Q Where were you?

A We were at the basketball court, sir.

Q Where is that basketball court?

A In front of the Health Center of the school, sir.

Q Where is that school?

A Caros[u]can Sur sir.

Q Why were you there at that precise time and date in that basketball court at Brgy. Caros[u]can Sur, Asingan, Pangasinan?

A Because we are going to play basketball sir.

Q Aside from you who are your companions or who are present in that basketball court?

A Our [t]eammate and our barangaymate but Melvin Sublingo arrived and [began shooting], sir.

Q Who are [those] present at the basketball court?

A Melvin Sublingo, Mariano Sapigao, Jr. and our teammate, sir.

Q How about Alexander T[u]ralba?

A He was there sir.

Q While you [were] forming that basketball team in the afternoon of September 22, 1987, what happened Mr. Witness?

A Melvin Sublingo drew a gun and shot Alexander T[u]ralba sir.

Q How far were you then at that time when Melvin Sublingo [shot] Alexander T[u]ralba?

A Three (3) meters sir.

Q [What] part of Alexander T[u]ralba's body was hit?

A [The] heart sir.

Q Do you know what firearm was used by Melvin Sublingo?

A .38 Calibre sir.

Q What happened to Alexander T[u]ralba when he was hit with a .38 Calibre?

A He died sir.

Q **[After] Alexander T[u]ralba was hit, what happened to Alexander T[u]ralba?**

A **He fell down on the ground, sir, facing down.**

Q You mean when Alexander T[u]ralba fell down, his face [was] facing down?

A Yes sir.

Q How about Melvin Sublingo, what did he do when Alexander T[u]ralba was shot?

A He again fired his gun, sir.

Q Who fired that gun?

A Melvin Sublingo sir.

Q Was Alexander T[u]ralba hit?

A No more because the place where he fired the gun is the place where he ran and Osias was hit, sir.

Q You said the first time that Melvin Sublingo shot Alexander T[u]ralba, [the latter] fell down and was hit, what did Melvin Sublingo do after that?

A Melvin Sublingo ran sir.

Q To what direction did Melvin Sublingo run?

A [Towards] the eastern direction sir.

Q **When Melvin Sublingo ran and you saw Alexander T[u]ralba [fall] down, what happened after that?**

A **I saw Mariano Sapigao, Jr. [shoot] Alexander T[u]ralba while [the latter was] lying down facing the ground sir.**

Q You mean Mariano Sapigao, Jr. shot Alexander T[u]ralba while the latter was lying down?

A Yes sir.

Q **[What part of Alexander Turalba's body] was hit when Mariano Sapigao, Jr. shot him?**

A **Head sir.**

Q How many times?
A Once only sir.

Q How far were you [from] the accused Mariano Sapigao, Jr. when the latter fired towards Alexander T[u]ralba?
A Five (5) meters sir.

Q **What kind of gun was used by Mariano Sapigao, Jr.?**
A **.45 Caliber sir.**

Q How do you know that it was .45 caliber?
A Because I can identify guns sir.[40] (Emphasis supplied.)

The RTC correctly ascertained that moved by common design and unity of purpose, Melvin Sublingo first shot Alexander Turalba at the back, and as a result thereof, Turalba fell to the ground, face down. While Turalba was lying face down, wounded, and in order to ensure that Turalba was dead, the appellant fired at him once using a .45 caliber firearm and hit Turalba's head. The autopsy report conformed with the testimony of Fabro. The RTC noted that Fabro is credible since he narrated in details and without hesitation. It was not inclined to take seriously the defense's assertion that Melvin Sublingo alone, without the participation of the appellant, shot Turalba, after finding that the testimony of Fabro is more credible than the testimonies of Ballesteros and the appellant who are first cousins. We affirm this finding. Ballesteros' testimony that Sublingo first shot the victim on the head and then afterwards on the back appears illogical since the first shot on the head already ensured the death of the victim. Fabro's testimony that the victim was first shot on the back and then afterwards on the head to ensure his demise, appears more accurate.

The Court of Appeals, after carefully and assiduously examining the records of the case, supported the conclusion reached by the RTC. It ruled that although the accused sought to denigrate the testimony of Fabro by alleging that they were previous rivals

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[40] TSN, February 22, 1999, pp. 4-7.

over the love of the same woman, the defense failed to present compelling evidence to support the imputation of ill motive. It further ruled that although the defense capitalized on the testimony of Dr. Leonardo Guerrero, who testified on the possibility that only one kind of firearm was used since the wounds are of similar diameter, and the testimonies of NBI Ballistics Expert Rogelio G. Munar and NBI Medico-Legal Officer Dr. Arturo G. Llavore to prove that the diameter of the gunshot wounds sustained by the victim, which is ¾ or .75 centimeter, could not have been produced by a .45 caliber pistol, the appellate court held that the gun allegedly seen as held and used by the appellant was never presented as evidence and no expert witness was able to physically examine the same. Hence, there was no way of knowing the size of the wound it would have produced. The appellate court also found that even the testimonies of the expert witnesses of the defense were inconclusive. The NBI ballistics expert, Munar, although admitting that he is not well versed on sizes of wounds, testified that the difference in size of gunshot wounds produced by .38 and .45 caliber guns is negligible. Dr. Llavore, the NBI medico-legal expert, testified that the entrance of the wound caused by a caliber .45 handgun is similar to that of a wound caused by a .38 caliber handgun, except in the cross-diameter thereof where the wound is smaller in case of a .38 caliber gun and larger in case of a .45 caliber.

To put to rest the question of whether the .45 caliber handgun allegedly used by the appellant in shooting the victim on the head could produce an entrance wound with a ¾ or .75 centimeter diameter, we have held that the diameter of the entrance of gunshot wounds could be smaller or larger, depending on certain factors. The factors which could make the wound of entrance bigger than the caliber include: (1) shooting in contact or near fire; (2) deformity of the bullet which entered; (3) a bullet which might have entered the skin sidewise; and (4) an acute angular approach of the bullet. Where the wound of entrance is smaller than the firearm's caliber, the same may be attributed to the fragmentation of the bullet before entering the skin or to a

contraction of the elastic tissues of the skin.[41] Thus, it is not impossible for a .45 caliber handgun to produce an entrance wound smaller than expected. The appellant's defense of denial therefore crumbles. In the face of the positive testimony of prosecution witness Fabro, as corroborated by the autopsy report, there is no doubt that appellant is guilty of the crime charged. Truly, what stands out from the evidence on record is the fact that to ensure the death of the victim, the appellant shot him on the head while the victim was already lying down.

In view of the foregoing, the Court is convinced that the prosecution has established by proof beyond reasonable doubt the criminal culpability of the appellant.

As for the penalty and civil liability, the Court of Appeals correctly held:

> Under Article 248 of the Revised Penal Code, the essential elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide. All the elements of murder, as alleged in the Information, have been sufficiently established by the prosecution in the present case.
>
> The offense in the present case was committed on September 22, 1987, prior to the enactment of Republic Act No. 7659 (The Death Penalty Law) on December 13, 1993. The applicable penalty for murder prior to the enactment of R.A. 7659 is *reclusion temporal* maximum to death. There being no aggravating or mitigating circumstances, the penalty imposable on accused-appellant in accordance with Art. 64(1) of the Revised Penal Code should be the medium period, which is, *reclusion perpetua*. The penalty of *reclusion perpetua* being indivisible, the Indeterminate Sentence Law does not apply.

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[41] *People v. Abriol*, G.R. No. 123137, October 17, 2001, 367 SCRA 327, 343-344.

Civil Liability

The trial court awarded the heirs of the victim Alexander Turalba the sum of ₱38,600.00 as actual damages, ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages.

We delete the award of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Since the prosecution did not present receipts to prove the actual losses suffered, such actual damages cannot be awarded.

However, while no actual damages may be awarded because no competent evidence in the form of receipts was presented, temperate damages may be recovered under Article 2224 of the Civil Code as the Court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty. Consistent with current jurisprudence, the amount of ₱25,000.00 is awarded to the victim's heirs as temperate damages considering that it is not disputed that the family incurred expenses for the wake and burial of the victim.

Consistent with prevailing jurisprudence, We award ₱50,000.00 by way of indemnity *ex delicto* to the heirs of Alexander Turalba. When death occurs as a result of the crime, the heirs of the deceased are entitled to such amount as civil indemnity for death without need of any evidence or proof of damages.

The award of ₱50,000.00 as moral damages is sustained, being consistent with recent cases. Moral damages are awarded without further proof other than the death of the victim.

The victim's heirs are likewise entitled to exemplary damages in the amount of ₱25,000.00, given the presence of treachery which qualified the killing to murder. Under Article 2230 of the Civil Code which allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances, the term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.[42]

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[42] *Rollo,* pp. 15-17.

WHEREFORE, the assailed Decision dated July 19, 2006 of the Court of Appeals in CA-G.R. CR No. 01018 affirming with modification the judgment of conviction of the Regional Trial Court of Urdaneta City, Branch 46 is *AFFIRMED.* Appellant Mariano Sapigao, Jr. is hereby found *GUILTY* of the crime of murder, qualified by treachery, and sentenced to suffer the penalty of *reclusion perpetua* with the accessory penalties provided for by law. He is further *ORDERED* to pay the heirs of the victim Alexander Turalba ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱25,000 as temperate damages, and ₱25,000 as exemplary damages.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 178529. September 4, 2009]

EQUITABLE PCI BANK, INC. (now known as BANCO DE ORO-EPCI, INC.), *petitioner, vs.* **HEIRS OF ANTONIO C. TIU, namely: ARLENE T. FU, MICHAEL U. TIU, ANDREW U. TIU, EDGAR U. TIU and ERWIN U. TIU,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PARTIES IN INTEREST AND REPRESENTATIVES AS PARTIES; DISTINGUISHED.— The pertinent provisions of Rule 3 of the Rules of Court (Parties to Civil Actions) read: 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.** SEC. 3. *Representatives as parties.* – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, **the beneficiary** shall be **included in the title of the case** and shall be deemed to be **the real party in interest.** A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. The AREM (Amendment to Real Estate Mortgage) was executed by Antonio, with the marital consent of Matilde. Since the mortgaged property is presumed conjugal, she is obliged principally under the AREM. It is thus she, following Art. 1397 of the Civil Code *vis a vis* Sec. 2 of Rule 3 of the Rules of Court, who is the real party in interest, hence, the action must be prosecuted in her name as she stands to be benefited or injured in the action. Assuming that Matilde is indeed incapacitated, it is her legal guardian who should file the action on her behalf. Not only is there no allegation in the complaint, however, that respondents have been legally designated as guardians to file the action on her behalf. The name of Matilde, who is deemed the real party in interest, has not been included in the title of the case, in violation of Sec. 3 of Rule 3 of the Rules of Court.

APPEARANCES OF COUNSEL

Divina and Uy Law Offices for petitioner.
Libanan Tansingco Uy Adolfo Borja and Associates for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

To secure loans in the aggregate amount of ₱7 Million obtained by one Gabriel Ching from herein petitioner Equitable PCI Bank, Inc. (now known as Banco de Oro-EPCI, Inc.),[1] Antonio C.

[1] *Rollo*, p. 46.

Tiu (Antonio), of which herein respondents allege to be heirs, executed on July 6, 1994 a Real Estate Mortgage (REM)[2] in favor of petitioner covering a lot located in Tacloban City. Before the words "With my Marital Consent" appearing in the REM is a signature attributed to Antonio's wife Matilde.

On October 5, 1998, Antonio executed an Amendment to the Real Esate Mortgage[3] (AREM) increasing the amount secured by the mortgage to ₱26 Million, also bearing a signature attributed to his wife Matilde above the words "With my Marital Consent."

The property mortgaged was covered by TCT No. T-1381 of the Tacloban Register of Deeds which, the AREM states, was "registered in the name of the Mortgagor."

Antonio died on December 26, 1999.[4]

The loan obligation having remained unsettled, petitioner filed in November 2003 before the Regional Trial Court (RTC) of Tacloban City a "Petition for Sale"[5] dated November 4, 2003, for the extrajudicial foreclosure of the AREM and the sale at public auction of the lot covered thereby. Acting on the petition, the RTC Clerk of Court and *Ex-Officio* Sheriff scheduled the public auction on December 17, 2003.[6]

A day before the scheduled auction sale or on December 16, 2003, the herein respondents, Heirs of Antonio C. Tiu, namely Arlene T. Fu, Michael U. Tiu, Andrew U. Tiu, Edgar U. Tiu, and Erwin U. Tiu, filed a Complaint/Petition[7] before the RTC of Tacloban against petitioner and the Clerk of Court-*Ex Officio* Sheriff, docketed as Civil Case No. 2003-12-205 for annulment of the AREM, injunction with prayer for issuance of writ of

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[2] Records, pp. 15-18.

[3] *Id.* at 22-23.

[4] *Id.* at 24.

[5] *Rollo*, pp. 54-56.

[6] *Id.* at 57.

[7] Records, pp. 1-12.

preliminary injunction and/or temporary restraining order and damages, alleging, among other things, that

> x x x the said AREM is without force and effect, the same having been executed **without the valid consent of** the **wife** of mortgagor Antonio C. Tiu who at the time of the execution of the said instrument was already suffering from advance[d] Alzheimer's Disease and, henceforth, incapable of giving consent, more so writing and signing her name[.][8] (Emphasis and underscoring supplied.)

The RTC issued a temporary restraining order,[9] and subsequently, a writ of preliminary injunction.[10]

To the Complaint petitioner filed a Motion to Dismiss,[11] raising the following grounds:

I

THE PLAINTIFFS/PETITIONERS NOT BEING THE REAL PARTIES-IN-INTEREST, THEIR COMPLAINT STATES NO CAUSE OF ACTION;

II

EVEN IF THERE IS A CAUSE OF ACTION, THE SAME IS ALREADY BARRED BY THE STATUTE OF LIMITATIONS; and

III

THE PRESENT ACTION BEING A PERSONAL ONE, THE VENUE IS IMPROPERLY LAID.[12] (Underscoring supplied)

By Resolution[13] of April 14, 2004, Branch 8 of the Tacloban RTC denied the Motion to Dismiss in this wise:

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[8] *Id.* at 3.

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

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

[11] *Id.* at 33-47.

[12] *Id.* at 33-34.

[13] *Id.* at 157-159.

From the facts of the case, herein plaintiffs/petitioners are so situated that they will either be benefited or injured in subject action. They are therefore real parties in interest, as they will be damnified and injured or their inheritance rights and interest on the subject property protected and preserved in this action. As they are real parties in interest, they therefore have a cause of action against herein defendant.[14]

It thus ordered petitioner to file Answer within the reglementary period. Petitioner's motion for reconsideration of the said Resolution having been denied,[15] it filed a Petition[16] for *Certiorari,* Prohibition, and *Mandamus* with prayer for preliminary injunction before the Court of Appeals which it denied by Decision[17] of August 30, 2006, quoting with approval the trial court's ratio in denying petitioner's Motion to Dismiss.

Hence, the present Petition,[18] petitioner faulting the Court of Appeals in affirming the trial court's denial of its Motion to Dismiss.

Petitioner argues, in the main, that as respondents are not the real parties in interest, their complaint states no cause of action. Citing *Travel Wide Associated, Inc. v. Court of Appeals,*[19] petitioner adds that since the party in interest is respondents' mother but the complaint is not brought in her name, respondents' complaint states no cause of action.

The issue in the main thus is whether the complaint filed by respondents-children of Antonio, without impleading Matilde who must also be Antonio's heir and who, along with Antonio,

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[14] *Rollo,* pp. 112-113.

[15] Records, p. 181.

[16] CA *rollo,* pp. 12-39.

[17] Penned by Court of Appeals Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Arsenio J. Magpale and Agustin S. Dizon. *Id.* at 265-281.

[18] *Rollo,* pp. 3-45.

[19] G.R. No. 77356, July 15, 1991, 199 SCRA 205 (1991).

was principally obliged under the AREM sought to be annulled, is dismissible for lack of cause of action.

The pertinent provision of the Civil Code on annulment of contracts reads:

> Art. 1397. The action for the annulment of contracts may be instituted by **all** who are thereby **obliged principally** or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract. (Emphasis and underscoring supplied)

Upon the other hand, the pertinent provisions of Rule 3 of the Rules of Court (Parties to Civil Actions) read:

> 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**. (Emphasis and underscoring supplied)
>
> SEC. 3. *Representatives as parties.* – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, **the beneficiary** shall be **included in the title of the case** and shall be deemed to be **the real party in interest**. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (Emphasis and underscoring supplied)

The AREM was executed by Antonio, with the marital consent of Matilde. Since the mortgaged property is presumed conjugal, she is obliged principally under the AREM. It is thus she, following Art. 1397 of the Civil Code *vis a vis* Sec. 2 of Rule 3 of the Rules of Court, who is the real party in interest, hence, the action must be prosecuted in her name as she stands to be benefited or injured in the action.

Assuming that Matilde is indeed incapacitated, it is her legal guardian who should file the action on her behalf. Not only is there no allegation in the complaint, however, that respondents have been legally designated as guardians to file the action on her behalf. The name of Matilde, who is deemed the real party in interest, has not been included in the title of the case, in violation of Sec. 3 of Rule 3 of the Rules of Court.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated August 30, 2006 is *REVERSED* and *SET ASIDE*. Civil Case No. 2003-12-205 lodged before Branch 8 of the Regional Trial Court of Tacloban City is *DISMISSED* for lack of cause of action.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178543. September 4, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARISTO VILLANUEVA,** *appellant.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY THE DELAY IN REPORTING THE CRIME; RATIONALE.— Delay in reporting a crime or identifying the malefactor does not affect the credibility of the witnesses *for as long as the same is sufficiently explained*. x x x Marina and Mercedita gave differing explanations why it took some time for them to name appellant. Thus, Marina banked on her having just given birth. But she was two months shy of delivery at the time of the incident. *Whereas* Mercedita blamed

the ensuing confusion (their "minds were still not in order"). The indifference attributed by Marina to the San Manuel Police in solving the crime thus appears to be a mere subterfuge, given that the records reflect the assiduous investigation of the police in tracking the killers with the search reaching a dead-end due to lack of leads. While alibi is considered weak and unavailing, it acquires significance where no proper identification of the assailant has been made. IN FINE, the prosecution failed to discharge its burden of proving beyond reasonable doubt the guilt of appellant. The burden of evidence did not thus shift to appellant, rendering it unnecessary to pass on his alibi.

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.*:

From the March 30, 2007 Decision of the Court of Appeals affirming the February 4, 2004 Decision of the Regional Trial Court of Urdaneta City (Branch 46) finding him guilty of murder, Aristo Villanueva (appellant) lodged the present appeal.

Via Information of March 20, 2002, appellant, together with one Rodrigo Malong (Malong) who is still at large, was charged as follows:

That on or about 7:00 o' clock [*sic*] in the morning of October 17, 2001 at Brgy. San Juan, San Manuel, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, armed and with the use of unlicensed firearms, with intent to kill, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously shoot JANAIRO MAGCALAS inflicting upon him multiple gunshot wounds which caused his death, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code as amended by R.A. No. 7659 in relation to R.A. [No.] 8294.[1]

From the testimonies of prosecution witnesses Marina Magcalas (Marina), Mercedita Capua (Mercedita), Dr. Asuncion Tuvera, SPO3 Danilo Pascua (SPO3 Pascua) of the San Manuel, Pangasinan Police Station and PO3 Julius Ceasar Manocdoc, the following version is gathered:

At 7:00 a.m. of October 17, 2001, while Janairo Magcalas (the victim) and his wife Marina were in front of their house in Barangay San Juan, San Manuel waiting for a tricycle that would bring them to Urdaneta City,[2] and the victim's mother Mercedita was sweeping in the vicinity about three (3) meters away from the couple,[3] appellant, who was on board a motorcycle in tandem with Malong, arrived and at once drew his caliber .45 gun and shot the victim. Malong, who was also armed with a gun, also shot the victim. The assailants then pointed their guns at Marina and again fired at the already sprawled victim.[4]

The autopsy of the victim who was pronounced dead on arrival[5] at the hospital showed that he sustained five gunshot wounds, three of which were located at entry points at his back and two at exit points at the abdomen area.[6]

On arrival at the crime scene, when SPO3 Pascua asked Mercedita if she recognized the assailant, she replied "no, sir . . . [he] had [a] companion [on board] a Honda TMX." When he propounded the same question to Marina, she too said she did not.[7]

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[1] Records, p. 1.

[2] Transcript of Stenographic Notes (TSN), April 21, 2003, pp. 3-4.

[3] TSN, April 23, 2003, pp. 4-5.

[4] TSN, April 21, 2003, pp. 4-7.

[5] *Id.* at 8.

[6] TSN, January 8, 2003, pp. 11-14.

[7] *Id.* at 22-23, 27.

More than three months *after* the shooting or on January 31, 2002, Marina and Mercedita executed their respective sworn statements before the Criminal Investigation and Detection Group's Urdaneta City Sub-Office[8] naming appellant and Malong as the malefactors. To Marina, appellant and Malong were regular patrons at her *balut* stand.[9] To Mercedes, appellant was the one who usually fetched the victim from their house whenever the latter would go somewhere.[10]

Upon the other hand, appellant, who denied being acquainted with Marina and Mercedita as well as with the victim, invoked alibi, claiming that he was on the day of the incident, October 17, 2001, in Cahil, Diffun, Quirino helping his uncle at the farm; that he left Quirino for San Manuel on December 18, 2001 and was arrested and detained by the San Manuel police the next day[11] in connection with the killing of a certain Saribay; that while on detention or in the second week of January 2002 Marina visited him;[12] and that he was released from detention in April 2002 following the dismissal of the case against him in connection with the killing of Saribay.

Brushing aside appellant's alibi, the trial court, by Decision[13] of February 4, 2004, convicted him, disposing as follows:

> WHEREFORE, premises considered, the accused ARISTO "ARIS" VILLANUEVA is found GUILTY beyond reasonable doubt of murder of JANARIO MAGCALAS. He is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and ordered to pay the heirs of Janario Magcalas (a)₱12,990.00 in actual damages; (b) ₱50,000.00 death indemnity; and (c) ₱50,000.00 in moral damages.
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> x x x x x x x x x
>
> SO ORDERED.

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[8] Records, pp. 8-10; Exhibits "H" and "I".

[9] TSN, April 21, 2003, pp. 6-7.

[10] TSN, April 23, 2003, p. 8.

[11] TSN, June 3, 2003, pp. 3-5.

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

[13] *Rollo*, pp. 21-41; Penned by Judge Tita Rodriguez-Villarin.

In convicting appellant, the trial court noted that

> [t]he prosecution witnesses were consistent in relating the principal occurrence and positive identification of the victim's assailants. The **alleged inconsistencies, notwithstanding,** the fact remains that they both categorically identified Villanueva as Janario's assailant. In view of their presence at the time of the incident and their unobstructed view of what transpired, undoubtedly, their eyewitness account must be given credit. (Emphasis and underscoring supplied)

The trial court ruled out the presence of the aggravating circumstance of use of unlicensed firearm, however, the same not having been established by the prosecution.

On appellant's appeal before this Court, the case was, pursuant to *People v. Mateo*,[14] referred to the Court of Appeals for disposition.[15]

The Court of Appeals, by Decision[16] of March 30, 2007, affirmed with modification appellant's conviction by awarding exemplary damages in the amount of ₱25,000 due to the presence of the aggravating circumstance of treachery.

In the present appeal, appellant maintains that the prosecution failed to discharge its primary burden by overwhelming evidence. Citing *People v. Contega*,[17] he contends that "the rule that alibi must be satisfactorily proved was never intended to change the burden of proof in criminal cases; otherwise, we w[ould] see the absurdity of an accused being out in a more difficult position where the prosecution's evidence is vague and weak than where it is strong."

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[14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. Said case modified Sections 3 and 10 of Rule 122, Section 3 of Rule 125, Section 13 of Rule 134 of the Revised Rules of Criminal Procedure and any other rule insofar as they provide direct appeals from the RTC to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed an intermediate review by the Court of Appeals before such cases are elevated to this Court.

[15] Per Resolution dated September 8, 2004.

[16] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez Jr. and Vicente S.E. Veloso, concurring.

[17] G.R. No. 133579, May 31, 2000, 332 SCRA 730.

For its part, the Office of the Solicitor General maintains that the testimonies of the relatives of the victim bear the badges of truth as they "have [the] natural knack for remembering the faces of the attackers and they, more than anybody else, would be concerned with vindicating the crime by having the felons brought before the bar of justice." Furthermore, the Solicitor General posits, there is nothing in the record to indicate that Marina and Mercedita were impelled by improper motive to testify against appellant.[18]

The appeal is impressed with merit.

Delay in reporting a crime or identifying the malefactor does not affect the credibility of the witnesses *for as long as the same is sufficiently explained*.[19]

In the present case, the Court entertains doubts on the identification, more than three (3) months after the incident, by prosecution witnesses Marina and Mercedita, of appellant as one of two men who fatally shot the victim. Nothing on record sufficiently explains why Marina and Mercedita, who claimed to be familiar with appellant, failed to immediately name him as one of the assailants when SPO3 Pascua inquired from them if they recognized the "assailant."

Marina, in fact even went to the Balungao District Jail, in the company of a certain Nel Ramos, a week after her husband's death in October 2001 purportedly to identify appellant, then on detention there, as one of the assailants. But despite that, she did not inform the police of appellant's involvement in her husband's killing, until after more than three months.

Consider Marina's following account, quoted *verbatim,* surrounding the delay.

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[18] *Rollo*, pp. 123-146; Appellee's Brief.

[19] *People v. Arlalejo*, G.R. No. 127841, June 16, 2000, 333 SCRA 604, 612, citing *People v. Agsunod, Jr.*, 306 SCRA 612 (1999); *People v. Reduca*, 301 SCRA 516 (1999); and *People v. Banela*, 301 SCRA 84 (1999).

Q After you claimed that you have seen Aris Villanueva shot your husband three (3) times. Where is the next time you have seen him?

A I did not see him sir.

Q In other words the next time you saw Aris Villanueva when he was **already in Court,** right?

A Yes sir.

Q Is it not true that you went to the District Jail of Balungao to see Aris Villanueva?

A **No sir.**

Q And in fact you are even in the company of Ombudsman Narciso Ramos?

ATTY. IGNACIO:

We would like to put on the record that she (witness) hardly answer the question for a yes or no. She hard times to answer the question, your Honor.

WITNESS:

A **Yes sir.**

Q **And you have seen Aris Villanueva the jail in Balungao?**

A **Yes sir.**

Q **And somebody pointed to you, right?**

A **Yes sir.**

Q If you love your husband why did it take you four (4) months from October 17 to report/identify the assailant. Why did it take you for some time?

A **Because I newly gave birth that time and we are poor, sir**.

Q **When did you give birth?**

A **December sir.**

Q You mean to say from October to December, two (2) months, and yet you did not tell to the Police that you recognized Aris Villanueva, right?

A Somebody helped us which is why I was given the nerve to report the matter, sir.

Q Why you have no nerve?

A Because we are threatened sir.

Q Who threatened you?

A There were times gunshot and motorcycle used to stop in front of our house, sir.

x x x x x x x x x

Q **Even after you gave birth to your child on December, it still take you for two (2) months to report to the CIDG, San Fernando, La Union?**

A **Yes sir.**

Q **Why San Fernando, La Union and not San Manuel Police?**

A **Because we reported to the San Manuel Police and nothing happened, sir.**

Q When was that when you reported in San Manuel Police?

A At the time when my husband died, sir.

Q Did you tell the Police of San Manuel that Aris Villanueva and Rodrigo Malong who shot your husband?

A **Yes sir.**

Q **Who was that policeman whom you reported?**

A **Policeman Pascua sir.**

Q Was it the other way Pascua whom you reported?

A I don't want to talk this time because I'm afraid, sir.

Q In other words it was not Aris Villanueva and Rodrigo Malong?

A Yes sir.

Q **And you did not tell the Police that it was Aris Villanueva and Rodrigo Malong who shot your husband?**

A **Yes sir.**

Q In fact you are present when Pascua testified in Court?

A Yes sir.

Q **And it was very emphatic that you did not recognize who shot your husband?**

A **Yes sir.**[20] (Emphasis and underscoring supplied)

It bears stress that the foregoing testimony of Marina is noticeably discordant on whether she immediately reported to the police the identity of appellant as one of the malefactors. At one point, she volunteered that she gave the name of appellant to SPO3 Pascua only to contradict the same later. Again, consider her testimony as follows, quoted *verbatim*:

Q When you saw Aris Villanueva inside the district jail of Balungao, what did you do?

A None sir, but I just pointed to him.

Q **You did not go and accused him for killing your husband?**

A **No sir.**

x x x x x x x x x

Q You said that your husband was shot on October 17, 2001 in the morning. From that time your husband was shot, how many days when you and Ombudsman Ramos went to the District Jail of Balungao?

A More than a week, sir.

Q Why, do you know the reason why you and Ombudsman Ramos went to the Balungao District Jail?

A To identify whether he was really the one who shot my husband, sir.

Q Who told you to identify?

A Pareng Nel sir.[21] (Emphasis and underscoring supplied)

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[20] TSN, April 21, 2003, pp. 13-16.

[21] *Id.* at 20-21.

Why Marina had to visit appellant, to whom she claimed to be familiar, in jail, in order to be able to point to him as one of the culprits underscores the fact that either she was not at all familiar with appellant or she did not really see who shot her husband. For, if she really saw and recognized or was familiar with appellant, there would have been no need for her to see him while in detention in order to identify him. In fact, that even after seeing appellant at the jail a week or more after the shooting she still failed to complain against him but waited for about three (3) months reinforces the doubt on her claim that it was he who was one of two who shot her husband.

Mercedita's attempt to explain the delay in identifying appellant as one of the malefactors does not impress either. Consider further her testimony as follows, quoted *verbatim*:

Q Why did you not go straight to San Manuel?

A Because if we go to the police of San Manuel they do not mind us there, sir.

Q How many times did you go there?

A Two (2) times, sir.

x x x x x x x x x

Q Did Pascua [of the San Manuel police force] ever see you and interview you?

A He did not investigate me.

Q **But he saw you at the place in San Juan?**

A **Yes, sir.**

Q **You did not volunteer to tell Pascua what you saw at that time?**

A **Pascua just said, "Who is that who really did that?"**

Q **What was your answer to that question of Pascua?**

A **"This is what happened," I said.**

Q **What is that that happened that you told Pascua?**

A **When the cadaver arrived coming from the hospital, I told Pascua, "This is what happened," and Pascua did not say anything.**

Q **DID YOU TELL PASCUA THAT IT WAS ARIS VILLANUEVA AND RODRIGO MALONG THAT SHOT YOUR SON?**

A **NOT YET, SIR.**

Q **WHAT DID YOU MEAN BY NOT YET, DID YOU FINALLY TELL HIM?**

A **NO, SIR, BECAUSE OUR MINDS WERE NOT STILL IN ORDER.**

Q **AFTER RECOVERING FROM THAT STATE OF MIND OF YOURS, DID YOU GO BACK TO PASCUA AND TELL HIM WHAT HAPPENED?**

A **NO, SIR.**

Q Why, when you claim that you saw and recognized the assailant of your son?

A No, sir, when they examined the cadaver of Janario, Pascua did not get near.

Q According to you, you talked with him two times, did you not tell him what you saw, this Investigator Pascua, you did not tell, him?

A Yes, sir, first was when Janario died and second was when I went there and they did not mind us.

Q **BECAUSE HE ASKED YOU WHO DID THAT TO YOUR SON AND YOU DID NOT TELL HIM THAT IS WHY HE DID NOT MIND YOU ANYMORE, RIGHT?**

A YES, SIR.[22] (Emphasis, capitalization, and underscoring supplied)

The foregoing testimony shows Mercedita's evasiveness on her answers on whether she told SPO3 Pascua the identity of appellant as one of her son's assailants, proffering vague retorts

[22] TSN, April 23, 2003, pp. 22-24.

to an otherwise plain and simple query. At any rate, it is clear that she did not tell SPO3 Pascua who shot her son, as indeed SPO3 Pascua had claimed at the witness stand that both Marina and Mercedita had told him during the investigation that they did not recognize who shot the victim. Thus SPO3 Pascua testified:

Q What did you do when you found out that he died?

A **I also interviewed Marina Magcalas if she knows the identity of the gunman. She was crying and crying and told me she does not know the two (2) who gunned h[er] husband.**[23]

x x x x x x x x x

ATTY. IGNACIO: (Cross-examination)

Q You claim that when you arrived at the crime scene the mother of the victim, Mercedita Magcalas was around and you claim that you investigated her together with Tanod Manuel, how did you investigate them?

A In Ilocano, sir.

Q We expect that you asked them if they recognized the assailant in Ilocano, "*AMAMMO YO KADI DAYDIAY PIMMALTOG?* (Do you know the gunman?), what was their answer in Ilocano?

A *"HAAN, SIR, ADDA CADUA NA, NAKAMOTOR TI HONDA TMX AGPABAGATAN DA"* (No, sir, . . . he has companion [on board] a Honda TMX proceeding southward).[24] (Emphasis and underscoring supplied)

As indicated in the earlier-quoted testimony of Marina, she claimed that she did not have the "nerve" to tell the police that she recognized appellant as one of her husband's killer as "we [were] threatened," explaining that "[t]here were times gunshot and motorcycle used to stop infront of our house." While threats have been held to be valid grounds to explain the delay in identifying the assailants, there is no showing in the present

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[23] TSN, January 8, 2003, p. 24.

[24] *Id.* at 26-27.

case if those claimed bases of the threats were real, and if they were, who lodged them and for what.

At all events, Marina and Mercedita gave differing explanations why it took some time for them to name appellant. Thus, Marina banked on her having just given birth. But she was two months shy of delivery at the time of the incident. *Whereas* Mercedita blamed the ensuing confusion (their "minds were still not in order").

The indifference attributed by Marina to the San Manuel Police in solving the crime thus appears to be a mere subterfuge, given that the records reflect the assiduous investigation of the police in tracking the killers with the search reaching a dead-end due to lack of leads.

While alibi is considered weak and unavailing, it acquires significance where no proper identification of the assailant has been made.[25]

IN FINE, the prosecution failed to discharge its burden of proving beyond reasonable doubt the guilt of appellant. The burden of evidence did not thus shift to appellant, rendering it unnecessary to pass on his alibi.

WHEREFORE, the decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. For failure of the prosecution to prove his guilt beyond reasonable doubt, appellant, Aristo Villanueva, is *ACQUITTED* of murder.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is directed to forthwith cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform the Court of action taken within 10 days.

Costs *de oficio*.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[25] *People v. Giganto Sr*., G.R. No.123077, July 20, 2000, 336 SCRA 294, 305.

SECOND DIVISION

[G.R. No. 179944. September 4, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO ORTIZ, CHARITO CHAVEZ, EDWIN DASILIO and JERRY DOE,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH RAPE; ELEMENTS.— Simply, robbery with rape is committed when the following elements concur: (1) the taking of personal property is committed with violence against or intimidation of persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; (4) the robbery is accompanied by rape.

2. ID.; ID.; PENALTY AND CIVIL LIABILITY.— The appellate court did not err in affirming appellants' conviction for the crime of Robbery with Rape as defined under Article 294, paragraph 1 of the Revised Penal Code. In view of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006, the death penalty was likewise correctly reduced to *reclusion perpetua*, without eligibility for parole under the Indeterminate Sentence Law. We, however, modify the award of civil indemnity. In line with prevailing jurisprudence, the civil indemnity to be awarded should be ₱75,000.00, not ₱50,000.00, since the crime committed by the appellants is qualified by circumstances, including the use of firearms and of superior number, which warrant the imposition of the death penalty.

3. ID.; ROBBERY; WHEN COMMITTED; PRESENT IN CASE AT BAR.— The first three elements were proven by the following established facts: the victims categorically identified appellants as the ones who threatened them and took their personal belongings; all appellants held weapons; appellants entered the house of Candido, herded Candido and his son, Dennis, in a corner of their house and tied their hands; BBB heard the cries of Dennis and when he checked where the cries

were coming from, appellants intercepted him and tied his hands as well; appellants entered the house of BBB and AAA, and thereafter ransacked the said house taking valuable items. From the foregoing, it is clear that the crime of robbery was committed. The trial court likewise did not err in admitting and giving weight to the testimony of Asuncion Casiano and SPO2 Nestor Huerno that Dasilio bartered the calculator which was identified as part of appellants' loot from the victims. Section 36, Rule 132 of the Revised Rules on Evidence provides that where the proponent offers evidence deemed by counsel of the adverse party as inadmissible for any reason, the latter has the right to object. The failure to object, when there is an opportunity to speak, operates as a waiver of the objection. Here, appellants failed to timely object to the testimonial evidence presented by the prosecution; hence, the same was validly admitted and considered by the trial court in arriving at its judgment. Absent any showing that the trial court overlooked or misappreciated certain facts or circumstances of weight and influence which, if considered, would affect the result, we find no reason to overturn the trial court's finding of robbery which is fully supported by the evidence on record.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF VICTIM, WORTHY OF FULL FAITH AND CREDENCE.— As to the attendant rape, we find the testimony of AAA worthy of full faith and credence. As observed by the appellate court: x x x The victim's declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by the appellants against her. The Court finds no reason to depart from the rule that the trial court's evaluation of the credibility of the testimonies of the witnesses is accorded great weight because it has the unique opportunity of hearing the witnesses testify and observing their deportment and manner of testifying.

5. ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF APPELLANTS AS PERPETRATORS OF THE CRIME CHARGED.— For alibi to prosper, it is not enough for the appellants to prove that they were somewhere else when the crime was committed. They must further demonstrate that it was physically impossible for them to have been at the scene of the crime at the time of its commission.

Here, appellants interposed the alibi that they were at a place other than Brgy. xxx, xxx, xxx xxx at the time the crime was committed; however, no one corroborated their testimonies. Hence, we agree that their alibi deserves no merit.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] dated July 18, 2007 of the Court of Appeals, in CA-G.R. CR H.C. No. 01305, which affirmed with modification the Decision[2] dated August 23, 2004 of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-3064, convicting appellants Antonio Ortiz, Charito Chavez and Edwin Dasilio for the crime of robbery with rape.

In an Information[3] dated August 14, 2000, Ortiz, Chavez, Dasilio and Jerry Doe (at large) were charged with the crime of Robbery with Multiple Rape allegedly committed as follows:

That on or about the 22nd of April 2000 at around 7:00 o'clock in the evening at Zone xxx, Brgy. xxx, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and with intent to gain and while all armed with guns, by means of force and violence against the persons of BBB and AAA[4] at their residence, did then and there willfully, unlawfully and feloniously, take, steal and carry away the following items, to wit: 1 pair gold

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[1] *Rollo*, pp. 3-20. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring.

[2] CA *rollo*, pp. 30-32. Penned by Judge Nilo A. Malanyaon.

[3] Records, p. 2.

[4] In line with the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693,

rings, 1 pc. Cellphone (Nokia), 1 pc. walkman, 1 pc. Radio cassette (sony), 2 pcs. wrist watch, 2 pcs. flashlights, 1 pc. emergency light, assorted ID's amounting to Thirty Thousand (₱30,000.00) Pesos and cash of Three Thousand (₱3,000.00), all valued at a total amount of Thirty[-]Three Thousand (₱33,000.00) Pesos Philippine Currency, but before leaving with the loots the above-named accused, with violence, force and intimidation of person, at gun point succeeded in having carnal knowledge of the same AAA, one after the other, in taking their turns in satisfying their carnal desires, against her will, to the damage and prejudice of the spouses, BBB and AAA.

ACTS CONTRARY TO LAW.

Upon arraignment, appellants Ortiz, Chavez and Dasilio pleaded not guilty to the charge. Whereupon, trial ensued.

The factual antecedents follow.

On April 22, 2000 at around seven o'clock in the evening, Candido Oliva and his son, Dennis, were inside their *camalig* when they heard BBB's dog barking. This prompted Candido to go outside and verify what was happening. As it was dark outside, he decided to get a flashlight, but before he could enter the *camalig*, somebody with a revolver pushed him inside. The man who pushed him introduced himself as "Sergeant" and was later identified only as Jerry Doe.

Thereafter, Jerry Doe called Dasilio inside the *camalig*. Dasilio, who was then armed with a sword, ordered Candido to sit beside Dennis, who was interminably crying out of fear. Father and son were then made to lie face down while appellants tied their hands with a tie wire.

At about the same time, spouses AAA and BBB were watching television inside their house, which was situated just 12 to 15 meters from the *camalig*, when they heard Dennis crying. BBB

September 19, 2006, 502 SCRA 419, 425-426, the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members will likewise be withheld; See also Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

proceeded to Candido's house to investigate but he was also herded inside Candido's house where he was tied by Dasilio. Thereafter, Candido, Dennis and BBB were ordered to proceed to BBB's house. On their way there, BBB saw Ortiz and Chavez.

Jerry Doe and Chavez went to BBB's house ahead of the group, and tied AAA's hands with plastic tape. After Ortiz and Dasilio arrived, appellants ransacked the spouses' house while Jerry Doe held AAA at gunpoint. Subsequently, the four victims were shoved inside the spouses' bedroom. Jerry Doe and Dasilio continued to loot the house while Chavez and Ortiz acted as lookout.

After the looting was over, AAA was asked to get food from the *camalig*. After feeding Candido, she was again ordered to get water from the *camalig*. This time, Jerry Doe and the appellants accompanied AAA.

While in the *camalig*, Jerry Doe ordered AAA to remove her shorts and panty. AAA pleaded with Jerry Doe and appellants not to rape her, but despite her pleas, the four took turns in raping her in the presence of each other.

After succeeding in raping AAA, the four all went back to the house of AAA and BBB. Before leaving, the four warned the victims not to venture out as they had allegedly placed a grenade at the door. Heeding the warning, the victims kept mum until morning. As soon as they verified that there was no grenade by the door, they went out and reported the incident to the police authorities.

During the investigation, SPO2 Nestor Huerno recovered a calculator, which was one of the items taken from AAA and BBB's house on the night of the robbery, from Asuncion Casiano. Upon the police's inquiry, Casiano declared that his neighbor, Dasilio, bartered the said calculator in exchange for some grocery items from her store. Additionally, Florentino Bueno, a friend of the appellants, emerged during the investigation. He said that Ortiz and Chavez invited him a week before April 22, 2000 to join them in robbing private complainants. Bueno also revealed that in a drinking spree, Ortiz and Chavez boasted in his presence about the robbery they committed and the rapes perpetrated on AAA.

Satisfied that the prosecution has discharged its duty to prove the guilt of the appellants, the trial court rendered a decision on August 23, 2004 convicting appellants for the crime charged. It decreed that it cannot give credence to appellants' alibi since they failed to prove that it was impossible for them to be at the situs of the crime at the time it took place. The trial court also held that the testimonies given by the private complainants were likewise clear and convincing; hence, there was no reason to disbelieve them.

The decretal portion of the trial court's decision reads:

IN VIEW OF THE FOREGOING, judgment is rendered in favor of the People of the Philippines, and against all the accused:

1. Finding the accused Antonio Ortiz, Charito Chavez, and Edwin Dasilio (also spelled as Dacillo), guilty beyond reasonable doubt of Robbery with Multiple Rape, defined and penalized under Article 294, Subsection 1 of the Revised Penal Code, as amended by R.A. 7659, and considering the aggravating circumstance that it was committed by an armed band, and with ignominy, sentences all of them, to death;

2. Ordering all of the accused to pay the spouses BBB and AAA the sum of ₱30,000.00 as actual damages, ₱50,000.00 as indemnity and ₱50,000.00 each as moral damages, for every rape committed by them as well as that committed by Jerry Doe, an indicted co-conspirator, to AAA, or ₱200,000.00 in all, solidarily, and to pay the costs.

SO ORDERED.[5]

On appeal, the Court of Appeals in a Decision dated July 18, 2007 affirmed the ruling of the trial court, with the modification that: (1) the penalty was reduced to *reclusion perpetua* without eligibility for parole pursuant to Republic Act No. 9346;[6] (2) actual damages was reduced to ₱28,082.00 as established from the testimony of AAA and BBB; and (3) exemplary damages was awarded in favor of AAA in the amount of ₱25,000.00.

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

[6] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, approved on June 24, 2006.

The *fallo* of the appellate court's decision reads:

WHEREFORE, in view of the foregoing, the August 23, 2004 decision of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-3064 is **AFFIRMED** with **MODIFICATION**. As modified, the judgment is as follows: **Appellants Antonio Ortiz, Charito Chavez and Edwin [Dasilio] (also [spelled] as Dacillo) are found guilty beyond reasonable doubt of robbery with rape and are hereby sentenced to *reclusion perpetua* without eligibility for parole; to make reparation for the value of the items they unlawfully took in the amount of ₱28,082.00; to solidarily pay the offended parties ₱50,000.00 as civil indemnity, solidarily,** (sic); **to solidarily pay AAA ₱50,000.00 each or a total of ₱200,000.00 as moral damages, and ₱25,000.00 as exemplary damages.**

Costs *de oficio*.

SO ORDERED.[7]

Hence, the present appeal.

On June 4, 2008, this Court directed the parties to simultaneously file their supplemental briefs.[8] Both the appellants and the Solicitor General manifested that they are dispensing with the filing of a supplemental brief as their positions have already been assiduously discussed before the appellate court.

Appellants anchor their appeal on the sole assignment of error that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF ROBBERY WITH MULTIPLE RAPE.[9]

Appellants argue that the calculator, which was bartered by Dasilio, was not one of the items allegedly stolen from the spouses as the same was not specifically enumerated in the complaint filed by them. They assert that the inclusion of the calculator

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[7] *Rollo*, p. 19.

[8] *Id.* at 28.

[9] CA *rollo*, p. 58.

as a lost item was a mere afterthought to bolster the prosecution's theory that appellants perpetrated the crime as its possession can be easily traced to one of them.[10]

Further, appellants assert that AAA's testimony regarding the alleged rapes should be taken with caution because she gave similar testimonies regarding the different incidents of rape. They maintain that a witness whose testimony is perfect in all aspects lays herself open to suspicion of having been coached or having memorized statements earlier rehearsed.[11]

Finally, appellants maintain that their defense of alibi should not have been viewed immediately with disfavor since there are situations where an innocent person accused of committing a crime may really have no other defense but denial and alibi. Besides, the *onus probandi* in establishing the guilt of an accused lies with the prosecution, and conviction should not rest on the weakness of the defense.[12]

For its part, the Office of the Solicitor General (OSG) counters that appellants' conviction was not anchored solely on the recovery of the calculator, and cites several valid reasons why their alibi was disregarded, including the fact that appellants were positively identified by the private complainants as the malefactors. The OSG further argues that appellants are now estopped from objecting to the admission of the calculator in evidence as they failed to do so when the prosecution presented SPO2 Huerno, Casiano and AAA to testify on the recovery of the calculator and its identification as one of the things stolen from the spouses.[13]

The OSG adds that the testimony of AAA on the commission of the rapes is worthy of credence. It cites the ruling of this Court that when an alleged victim of rape says that she was raped, she says in effect all that is necessary to show that rape was indeed

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[10] *Id.* at 61.

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

[12] *Id.* at 62-63.

[13] *Id.* at 95-97.

committed, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[14]

Simply, the issue for our resolution is: Did the prosecution prove beyond reasonable doubt appellants' guilt for the crime of Robbery with Rape?

We rule in the affirmative.

Article 294, paragraph 1 of the Revised Penal Code provides:

ART. 294. *Robbery with violence against or intimidation of persons —Penalties.*—Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x x x x x x

Simply, robbery with rape is committed when the following elements concur: (1) the taking of personal property is committed with violence against or intimidation of persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; (4) the robbery is accompanied by rape.[15]

In this case, we find the evidence sufficient to prove beyond reasonable doubt that appellants committed the crime of robbery with rape.

The first three elements were proven by the following established facts: the victims categorically identified appellants as the ones who threatened them and took their personal belongings; all appellants held weapons; appellants entered the house of Candido, herded Candido and his son, Dennis, in a corner of their house and tied their hands; BBB heard the cries of Dennis and when he checked where the cries were coming from, appellants

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[14] *Id.* at 117.

[15] *People v. Suyu*, G.R. No. 170191, August 16, 2006, 499 SCRA 177, 202-203.

intercepted him and tied his hands as well; appellants entered the house of BBB and AAA, and thereafter ransacked the said house taking valuable items.[16] From the foregoing, it is clear that the crime of robbery was committed.

The trial court likewise did not err in admitting and giving weight to the testimony of Asuncion Casiano and SPO2 Nestor Huerno that Dasilio bartered the calculator which was identified as part of appellants' loot from the victims. Section 36,[17] Rule 132 of the Revised Rules on Evidence provides that where the proponent offers evidence deemed by counsel of the adverse party as inadmissible for any reason, the latter has the right to object. The failure to object, when there is an opportunity to speak, operates as a waiver of the objection. Here, appellants failed to timely object to the testimonial evidence presented by the prosecution; hence, the same was validly admitted and considered by the trial court in arriving at its judgment.[18]

Absent any showing that the trial court overlooked or misappreciated certain facts or circumstances of weight and influence which, if considered, would affect the result, we find no reason to overturn the trial court's finding of robbery which is fully supported by the evidence on record.

As to the attendant rape, we find the testimony of AAA worthy of full faith and credence. As observed by the appellate court:

> While appellants would like to persuade us that AAA's testimony deserves no merit, it is beyond cavil that appellants raped AAA as an afterthought after robbing valuable items in the house.

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[16] *Rollo*, p. 8.

[17] **SEC. 36.** *Objection*.—Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

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[18] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 169454, December 27, 2007, 541 SCRA 479, 494.

First, records show that AAA cried during her direct examination. Such spontaneous emotional outburst strengthens her credibility. The Supreme Court has held that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.

Second, although the examination of Dr. Fajardo of AAA's genital area revealed no laceration in her hymen, it is a settled rule that laceration is not an element of the crime of rape. Simply put, the absence of lacerations does not negate rape. Moreover, hymenal lacerations after sexual congress normally occur on women who have had no prior sexual experience. In this case, AAA is a married woman, who has had prior sexual experience. In the case of *People v. Llanita*, the Supreme Court noted that the strength and dilatability of the hymen are invariable; it may be so elastic as to stretch without laceration during intercourse.

Third, the Supreme Court has held, time and time again, that no woman in her right mind would declare to the whole world that she was raped, unless she is telling the truth….

x x x x x x x x x

Finally, in the absence of evidence of improper motive on the part of private complainant AAA to falsely testify against appellants, her testimony deserves great weight and credence.[19]

x x x x x x x x x

The victim's declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by the appellants against her. The Court finds no reason to depart from the rule that the trial court's evaluation of the credibility of the testimonies of the witnesses is accorded great weight because it has the unique opportunity of hearing the witnesses testify and observing their deportment and manner of testifying.[20]

Regarding appellants' defense of alibi, the same cannot prevail over the positive identification of appellants as perpetrators of the crime charged. For alibi to prosper, it is not enough for the appellants to prove that they were somewhere else when the crime was

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[19] *Rollo*, pp. 16-17.

[20] *People v. Verceles*, G.R. No. 130650, September 10, 2002, 388 SCRA 515, 523.

committed. They must further demonstrate that it was physically impossible for them to have been at the scene of the crime at the time of its commission.[21] Here, appellants interposed the alibi that they were at a place other than Brgy. xxx, xxx, xxx xxx at the time the crime was committed; however, no one corroborated their testimonies. Hence, we agree that their alibi deserves no merit.

Considering the above, the appellate court did not err in affirming appellants' conviction for the crime of Robbery with Rape as defined under Article 294, paragraph 1 of the Revised Penal Code. In view of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006, the death penalty was likewise correctly reduced to *reclusion perpetua*, without eligibility for parole under the Indeterminate Sentence Law.[22]

We, however, modify the award of civil indemnity. In line with prevailing jurisprudence, the civil indemnity to be awarded should be ₱75,000.00, not ₱50,000.00, since the crime committed by the appellants is qualified by circumstances, including the use of firearms and of superior number, which warrant the imposition of the death penalty.[23]

WHEREFORE, the Decision dated July 18, 2007 of the Court of Appeals in CA-G.R. CR H.C. No. 01305 finding appellants guilty for the crime of Robbery with Rape is *AFFIRMED*, with the *MODIFICATION* that the award for civil indemnity is increased to ₱75,000.00. Costs *de oficio*.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and *Abad, JJ.*, concur.

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[21] *People v. Bracero*, G.R. No. 139529, July 31, 2001, 362 SCRA 184, 200-201.

[22] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES (Act No. 4103, as amended), approved and effective on December 5, 1933.

[23] *People v. Jabiniao, Jr.*, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 788.

SECOND DIVISION

[G.R. No. 180274. September 4, 2009]

VIRGILIO C. CRYSTAL and GLYNNA F. CRYSTAL, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JUDGMENT; INTEREST RATES ON MONETARY AWARDS, CLARIFIED.— While it is settled that the imposition of legal interest on monetary awards is subject to the sound discretion of the court which, if properly exercised, will not be disturbed on appeal, the appellate court inexplicably deleted the award in the *dispositive* portion of its assailed Decision, without indicating in any portion of the Decision the reason therefor. The Court finds well-taken the imposition by the trial court of legal interest on the excess amount, not, however, at 12% *per annum*, but at 6%, and to be computed as *LCK Industries Inc. v. Planters Development Bank* teaches, *viz*: Under the principle of unjust enrichment – *nemo cum alterius detrimento locupletari potest* – no person shall be allowed to enrich himself unjustly at the expense of others. This principle of equity has been enshrined in our Civil Code, Article 22 of which provides: Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. We have held that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience. x x x [T]his Court finds the respondent bank **liable** not only for retaining the **excess of the bid price** or the surplus money in the sum of ₱1,893,916.67, but also for paying the **interest thereon at the rate of 6%** ***per annum*** from the time of the filing of the complaint until finality of judgment. Once the judgment becomes final and executory, the **interest** of 12% *per annum*, should be imposed, to be computed from the time the

judgment becomes final and executory until fully satisfied. The imposition of 6% interest *per annum* is thus to be computed from the time the trial court rendered judgment on September 27, 2004, and not from July 21, 1997 (the date of the auction sale) as held by the trial court, nor from the filing of the complaint on March 19, 2001 since it was respondent which filed the complaint (for collection of deficiency of mortgage obligation). And after the finality of this Decision, the judgment award inclusive of interest shall bear interest of 12% *per annum* until full satisfaction thereof.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Calderon Davide Trinidad Tolentino & Castillo for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On September 5, 1995, Virgilio C. Crystal and Glynna F. Crystal (petitioners) obtained a ₱3,000,000 loan from Citytrust Banking Corporation (Citytrust) to secure which they mortgaged a parcel of land located in the Banilad Estate, Cebu City.

In 1996, the Bank of the Philippine Islands (respondent) merged with and absorbed Citytrust.

Petitioners failed to settle their loan, drawing respondent to extra-judicially foreclose the mortgage. The mortgaged property was sold at public auction on July 21, 1997 to respondent which was the highest bidder for ₱5,604,000. The amount was applied to the mortgage obligation.

Respondent subsequently filed on March 19, 2001 before the Regional Trial Court (RTC) of Cebu City a complaint against petitioners, for collection of deficiency of mortgage obligation and damages, alleging that

x x x [O]n the date of the auction the mortgage obligation amounted to ₱6,490,623.18 so there was a resulting deficiency of ₱886,623.18

due the plaintiff from the defendants, the same to earn stipulated interest of 27% per annum from July 21, 1997 to January 1, 2001 and at 20% per annum from January 1, 2001 to March 15, 2001.

After the auction sale on July 21, 1997, plaintiff incurred expenses for Sheriff's commissions, capital gains tax, documentary stamp tax, real estate taxes and other expenses incidental to the transfer of the certificate of title to the plaintiff all in all amounting to ₱1,665,946.69 which defendants are liable to plaintiff x x x. Plaintiff's total claim, therefore, for deficiency as alleged in the preceding paragraph and for other contractual liability as alleged in this paragraph, is ₱3,425,386.27 x x x.[1] (Underscoring supplied)

In their Answer,[2] petitioners contended that respondent violated the Truth in Lending Act by not disclosing that it was charging them 27% *per annum* in interest; and that the extrajudicial foreclosure was illegal because the mortgaged property was not foreclosed for the correct amount. They thus prayed that the extrajudicial foreclosure be declared null and void or, in the alternative, that the excess of their ₱3,000,000 principal obligation plus interest at 12% *per annum* be ordered returned to them and that respondent pay them attorney's fees and expenses of litigation.

Branch 20 of the Cebu City RTC, by Decision of September 27, 2004, reduced petitioners' total outstanding obligation to ₱5,284,888.65[3] after finding that the interests, penalty charges and liquidated damages were exorbitant and the attorney's fees unreasonable. After deducting the said reduced amount of ₱5,284,888.65 from the ₱5,604,000.00 proceeds of the foreclosure sale to thus yield a remainder of ₱319,111.35, the trial court disposed:

WHEREFORE, premises considered, it is hereby ordered that plaintiff Bank of the Philippine Islands *pay Spouses Virgilio and Glynna Crystal the amount of ₱319,111.35 representing the excess amount of the proceeds of the foreclosure sale* over the recomputed obligation of the defendants, plus interest of 12% per annum, from the [*sic*] July 21, 1997 until the same is fully paid.

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[1] Records, pp. 2-3.

[2] *Id.* at 15-18.

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

SO ORDERED.[4] (Emphasis in the original; italics and underscoring supplied)

On appeal, the Court of Appeals affirmed the trial court's decision but deleted the award of interest on the ₱319,111.35 to be returned by respondent to petitioners.[5] The parties filed their respective motions for reconsideration[6] which were denied.[7] They thereupon filed their respective petitions for review on *certiorari* before this Court.

By Resolution of January 23, 2008,[8] the Court denied respondent's petition, docketed as G.R. No. 180129, for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision and resolution.

With respect to herein petitioners' petition[9] subject of the present Decision, petitioners question only the deletion by the appellate court of the imposition by the trial court of interest on the amount to be refunded to them by respondent.[10]

Respondent, in its Comment, posits that it is not obliged to pay petitioners any "surplus,"[11] citing *Dio v. Japor*[12] which held:

We note that the "surplus" was the result of the computation by the Court of Appeals of respondents' outstanding liability based on a reduced interest rate of 12% *per annum* and the reduced penalty

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[4] *Id.* at 100.

[5] Decision of February 28, 2007, penned by Court of Appeals Associate Justice Agustin S. Dizon, with the concurrence of Associate Justices Isaias P. Dicdican and Francisco P. Acosta. CA *rollo*, pp. 59-66.

[6] CA *rollo*, pp. 67-76.

[7] *Id.* at 83-84.

[8] *Id.* at 186.

[9] *Rollo*, pp. 4-14.

[10] *Id.* at 9.

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

[12] G.R. No. 154129, July 8, 2005, 463 SCRA 170.

rate of 1% per month. The court *a quo* then proceeded to apply our ruling in *Sulit v. Court of Appeals*, to the effect that in case of surplus in the purchase price, the mortgagee is liable for such surplus as actually comes into his hands, but where he sells on credit instead of cash, he must still account for the proceeds as if the price were paid in cash, for such surplus stands in the place of the land itself with respect to liens thereon or vested rights therein particularly those of the mortgagor or his assigns.

In the instant case, however, there is no "surplus" to speak of. In adjusting the interest and penalty rates to equitable and conscionable levels, what this Court did was merely to **reflect the true price of the land** in the foreclosure sale. **The amount of the petitioner's bid merely represented the true amount of the mortgagee's debt.** No surplus in the purchase price was thus created to which the respondents as the mortgagors have a vested right.[13] (Emphasis and underscoring supplied)

The petition is impressed with merit.

Section 4 of Rule 68 of the Rules of Civil Procedure mandates that:

[t]he amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of priority, to be ascertained by the court, or if there be no encumbrances or **there be a balance or residue after payment to them, then to the *mortgagor* or his duly authorized agent, or to the person entitled to it.** (Emphasis, italics and underscoring supplied)

In the present case, the appellate court affirmed the trial court's finding, after a recomputation-reduction of the amount of petitioners' outstanding obligation, that there was an excess amount of the proceeds of the foreclosure sale that must be returned to petitioners.

Respondent's reliance on *Dio* thus fails. It must thus return to petitioners the residue or excess amount of ₱319,111.35.

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[13] *Id.* at 178-179.

The only issue in the present case is in fact whether the excess amount of ₱319,111.35 should earn legal interest, the judgment directing respondent to refund such excess having been laid to rest when, as reflected above, the Court denied respondent's petition in G.R. No. 180129.

The Court resolves the issue in the affirmative.

While it is settled that the imposition of legal interest on monetary awards is subject to the sound discretion of the court which, if properly exercised, will not be disturbed on appeal,[14] the appellate court inexplicably deleted the award in the *dispositive* portion of its assailed Decision, without indicating in any portion of the Decision the reason therefor.

The Court finds well-taken the imposition by the trial court of legal interest on the excess amount, not, however, at 12% *per annum*, but at 6%, and to be computed as *LCK Industries Inc. v. Planters Development Bank*[15] teaches, *viz*:

> Under the principle of unjust enrichment – *nemo cum alterius detrimento locupletari potest* – no person shall be allowed to enrich himself unjustly at the expense of others. This principle of equity has been enshrined in our Civil Code, Article 22 of which provides:
>
> > Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.
>
> We have held that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience.
>
> x x x x x x x x x
>
> [T]his Court finds the respondent bank **liable** not only for retaining the **excess of the bid price** or the surplus money in the sum of ₱1,893,916.67, but also for paying the **interest thereon at the rate**

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[14] *PAL v. NLRC*, 328 Phil. 814, 830 (1996).

[15] G.R. No. 170606, November 23, 2007.

of 6% *per annum* from the time of the filing of the complaint until finality of judgment. Once the judgment becomes final and executory, the **interest** of 12% *per annum*, should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied. (Italics in the original; emphasis and underscoring supplied)

The imposition of 6% interest *per annum* is thus to be computed from the time the trial court rendered judgment on September 27, 2004, and not from July 21, 1997 (the date of the auction sale) as held by the trial court, nor from the filing of the complaint on March 19, 2001 since it was respondent which filed the complaint (for collection of deficiency of mortgage obligation).[16] And after the finality of this Decision, the judgment award inclusive of interest shall bear interest of 12% *per annum* until full satisfaction thereof.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CEB CV No. 00546 dated February 28, 2007 is *MODIFIED* in that respondent, Bank of the Philippine Islands, is ordered to return to petitioners the amount of ₱319,111.35 representing the excess amount or residue of the proceeds of the foreclosure sale, to bear interest at 6% *per annum* computed from the time the trial court rendered its judgment on September 27, 2004 until the finality of this Decision. Legal interest of 12% *per annum* shall be imposed on the judgment award inclusive of interest from the finality of this Decision until full satisfaction thereof.

No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[16] *Vide*: *Construction Development Corp. of the Phils. v. Estrella,* G.R. No. 147791, 501 SCRA 228 (2006). In this case, the Court ruled that the legal interest of 6% shall begin to run when the trial court rendered judgment and not when the complaint was filed. This because at the time of the filing of the complaint, the amount of the damages to which plaintiffs may be entitled remains unliquidated and unknown.

SECOND DIVISION

[G.R. No. 180508. September 4, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO RAMOS *Y* VIRAY,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF THE TRIAL COURT; MAY BE DISTURBED WHEN FACTS OF WEIGHT AND SUBSTANCE HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED.— While the trial court's findings of fact are entitled to great weight and are not generally disturbed on appeal, especially where the appellate court is in complete accord therewith as in the present case, where facts of weight and substance have been overlooked, misapprehended or misapplied, such findings may be disturbed.

2. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATION; ADHERENCE TO SPECIFIC PROCEDURES ON THE SEIZURE AND CUSTODY OF DRUGS, MANDATORY; WHEN VIOLATED.— A buy-bust operation is a form of entrapment employed by peace officers to apprehend prohibited drug law violators in the act of committing a drug-related offense. Because of the built-in dangers of abuse that the operation entails, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded. *People v. Tan* mirrors these dangers and thus exhorts courts to be extra vigilant in trying drug cases: [B]y the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe

penalties for drug offenses. The records indicate that the buy-bust team did not follow the outlined procedure on the inventory and photographing of the seized drugs, despite its mandatory character as indicated by the use of the word "shall."

3. ID.; ID.; ID.; ID.; EFFECT THEREOF.— The Court is of course mindful of its pronouncement in *People v. Pringas* that: 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 in the determination of the guilt or innocence of the accused. As earlier discussed, however, the prosecution had not substantiated PO2 Aseboque's claim that team leader PO3 Ruiz had made an inventory of the seized items, as he in fact, confessed not knowing whether said team leader had made an investigation report. IN FINE, the failure of the police officers to comply with the procedure in the custody of seized drugs puts to doubt their origins, and negates any presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties. Appellant's acquittal is thus in order.

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.*:

Assailed by way of appeal is the August 7, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR.H.C. No. 02241 which

[1] Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Mariano C. Del Castillo (now an Associate Justice of this Court) and Arcangelita M. Romilla-Lontok; CA *rollo*, pp. 66-76.

affirmed the March 24, 2006 Decision of Branch 135 of the Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 05-1712 to 05-1713 convicting Antonio Ramos *y* Viray *alias Dinol* (appellant) for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 (the *Comprehensive Dangerous Drugs Act of 2002*) – selling 0.01 gram and possessing 0.05 gram of *shabu*, respectively.

The inculpatory portions of the two separate Informations both dated September 14, 2005 indicting appellant read:

Crim. Case No. 051712

That on or about the 13th day of September 2005, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point zero one (0.01) gram of Methylamphetamine Hydrochloride which is a dangerous drug in consideration of the amount of two hundred (Php 200.00) pesos.[2] (Underscoring supplied)

Crim. Case No. 051713

That on or about the 13th day of September 2005, in the City of Makati Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession ZERO POINT ZERO FIVE (0.05) grams of Methylamphetamine Hydrochloride which is a dangerous drug.[3] (Underscoring supplied)

At the pre-trial conference, the defense admitted, among other things, the execution and authenticity of the Physical Science Reports, thus dispensing with the testimony of the Forensic Chemist.[4]

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[2] Records, p. 2.

[3] *Id.* at 4.

[4] *Vide* Pre-Trial Order, *id.* at 36.

Based on the documentary evidence and collective testimonies of its two witnesses, Noel Pulido (Pulido),[5] an operative of the Makati Anti Drug Abuse Council (MADAC), and PO2 Ronnie Aseboque (PO2 Aseboque),[6] a member of the Makati City Police Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF), the prosecution established the following version:

On September 10, 2005, Pulido, together with other operatives of the MADAC, conducted a surveillance operation on the activities of appellant whose name appeared in the Drug Watch List of Barangay Pitogo, Makati City where he was observed to be selling *shabu* to tricycle drivers at the tricycle terminal along Pitogo St., Guadalupe Nuevo, Makati City.

The positive result of surveillance operation led the Makati City Police SAID-SOTF to form a buy-bust team which PO3 Esterio Ruiz (PO3 Ruiz) headed, with Pulido and PO2 Aseboque as members. PO2 Aseboque, who was designated as the poseur-buyer, was given a one hundred peso bill bearing Serial No. EF951982, and two fifty peso bills bearing Serial Nos. GT851008 and FQ688087. The bills were pre-marked with PO2 Aseboque's initials "REA" on the lower left hand corner thereof. It was agreed that PO2 Aseboque's removal of a towel which was to be draped over his shoulder would signal that the buy-bust transaction was consummated.

The buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA) which gave it operation Control Number NOC 1309-05-13.[7]

At around 6:35 p.m. of September 13, 2005, the buy-bust team, together with its "asset," repaired to a billiard hall along Camino de la Fe St., Barangay Guadalupe Nuevo where Pulido positioned himself across the street as the other members of the team positioned themselves nearby.

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[5] TSN, November 7, 2005, pp. 3-16.

[6] TSN, February 1, 2006, pp. 2-21.

[7] *Vide* Certificate of Coordination, Exhibit "E", records, p. 76.

As the "asset" spotted appellant who was standing in front of the billiard hall, he, together with PO2 Aseboque, approached him and introduced PO2 Aseboque as a buyer. Appellant thereupon asked how much to which he (PO2 Aseboque) replied *"Dalawang daan lang pare."*

Appellant at once brought out a small yellow-colored tin case from which he took out one small heat-sealed transparent plastic sachet containing a white crystalline substance which he handed to PO2 Aseboque who in turn handed him the marked one hundred and two fifty peso bills. At that instant, PO2 Aseboque executed the pre-arranged signal, drawing the other team members to rush to the scene.

PO2 Aseboque then handcuffed appellant as he introduced himself as a police officer, and recovered from his right front pocket[8] the yellow tin case which yielded two other plastic sachets also containing white crystalline substances. In the presence of appellant, he marked his initials "REA" on the plastic sachet subject of the sale, "REA 1" and "REA 2" on the two sachets retrieved from the tin case, and "REA 3" on the small yellow tin case.

With the seized items, appellant was brought for investigation to the Makati City Police SAID-SOTF where P/Supt. Marietto Valerio prepared a memorandum dated September 13, 2005[9] addressed to the Chief of the Chemistry Section of the Philippine National Police (PNP) Crime Laboratory in Makati City requesting for a laboratory examination of the substances contained in the three plastic sachets to determine the presence of *shabu*. Pulido and PO2 Aseboque later executed a Joint Affidavit of Arrest[10] dated September 14, 2005 recounting the details of the buy-bust operation leading to appellant's arrest.

Upon receipt of the three sachets and tin case on September 13, 2005 at 7:35 p.m., Police Senior Inspector Sharon Lontoc Fabros,

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[8] The records do not specify whether the pocket was a shirt or pant pocket.

[9] Exhibit "B", records, p. 71.

[10] Exhibits "A" to "A-1", *id.* at 69-70.

Forensic Chemical Officer of the Southern Police District Crime Laboratory Office conducted a laboratory examination thereof which disclosed the following findings, as recorded in Physical Science Report No. D-219-05S.[11]

SPECIMEN SUBMITTED:

A – One (1) small tin case with markings "REA 3" having three (3) heat-sealed transparent plastic sachets, containing white crystalline substance with the following markings and recorded net weights:

A-1 ("REA") = 0.01 gram
A-2 ("REA-1") = 0.03 gram
A-3 ("REA-2") = 0.02 gram

x x x x x x x x x

F I N D I N G S:

Qualitative examination conducted on the above-stated specimens A-1 through A-3 gave POSITIVE result to tests for the presence of Methylamphetamine hydrochloride, a dangerous drug. x x x

C O N C L U S I O N:

Specimens A-1 through A-3 contain Methylamphetamine hydrochloride, a dangerous drug. (Underlining supplied)

Denying the accusation, appellant[12] gave the following version:

At around 6:45 p.m. of September 13, 2005, while he was walking along Camino Dela Fe Street, Guadalupe Nuevo heading towards his mother's house, he was suddenly grabbed from behind by five unidentified persons who poked a gun at him. Upon inquiring what his violation was, he was told that they were looking for someone named "Danny." He denied knowing any such individual, however. He was then handcuffed, forced into a *Revo* vehicle parked nearby, and brought to the police station.

At the police station, someone took out a small plastic sachet and a yellow tin can from a drawer, as another said "*Sige tuluyan niyo na siya, ito na ebidensiya natin*."

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[11] Exhibit "C", *id.* at 73.

[12] TSN, February 3, 2006, pp. 6-19.

In fine, appellant denied the accusation and claimed that the evidence against him was "planted."

Cherry Clasara,[13] a friend of appellant's sister, corroborated appellant's account of the circumstances under which he was accosted.

By Decision[14] of March 24, 2006, the trial court found appellant guilty of both illegal sale and illegal possession of Methylamphetamine Hydrochloride or *shabu*, disposing as follows:

> WHEREFORE, it appearing that the guilt of the accused ANTONIO RAMOS *Y* VIRAY was proven beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. 9165, as principal, with no mitigating or aggravating circumstances, accused is hereby sentenced:
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> 1. In Criminal Case No. 05-1712, to suffer life imprisonment, and to pay a fine of Five Hundred Thousand Pesos [₱500,000.00];
>
> 2. In Criminal Case No. 05-1713, to suffer imprisonment for an indeterminate term of twelve [12] years and one [1] day, as minimum, to fourteen [14] years and eight [8] months, as maximum, and to pay a fine of Three Hundred Thousand Pesos [₱300,000.00]; and
>
> 3. To pay the costs.
>
> Let the zero point zero one [0.01] gram, and the total of zero point zero five [0.05] gram of Methylamphetamine Hydrochloride be turned over to the PDEA for proper disposition.
>
> SO ORDERED.[15] (Underscoring supplied)

On appeal, the Court of Appeals, by Decision of August 7, 2007, affirmed the trial court's decision, it holding that, contrary to appellant's claim, the policemen had duly complied with the procedure laid down in Section 21 (1), Article II of R.A. No. 9165 as evidenced by the testimony of PO2 Aseboque that an inventory of the seized items had been conducted; and that the failure of the law enforcers to strictly comply with the said

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[13] TSN, March 1, 2006, pp. 2-11.

[14] Rendered by Judge Francisco B. Ibay; records, pp. 89-93.

[15] *Id.* at 93.

provision, not being fatal, did not render appellant's arrest illegal nor the evidence against him inadmissible.[16]

In brushing aside his defense of frame-up, the appellate court noted that appellant failed to adduce evidence on the possible motive of the police officers to falsely charge him.

Hence, the present appeal.

The appeal is impressed with merit.

While the trial court's findings of fact are entitled to great weight and are not generally disturbed on appeal, especially where the appellate court is in complete accord therewith as in the present case, where facts of weight and substance have been overlooked, misapprehended or misapplied, such findings may be disturbed.[17]

On the issue of whether the law enforcement officers had observed the procedure laid down in Section 21 (1), Article II of R.A. No. 9165 – a requirement essential to preserving the integrity of the *corpus delicti* in these cases, the Court rules in the negative. On that score alone, appellant's acquittal is in order.

A buy-bust operation is a form of entrapment employed by peace officers to apprehend prohibited drug law violators in the act of committing a drug-related offense. Because of the built-in dangers of abuse that the operation entails, it is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded.[18] *People v. Tan*[19] mirrors these dangers and thus exhorts courts to be extra vigilant in trying drug cases:

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[16] *Id.* at 72-73.

[17] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631.

[18] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 208.

[19] 401 Phil. 259, 273 (2000), citing *People v. Gireng*, 311 Phil. 12 (1995) and *People v. Pagaura*, 334 Phil. 683 (1997).

[B]y the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. (Underscoring supplied)

The records indicate that the buy-bust team did not follow the outlined procedure on the inventory and photographing of the seized drugs, despite its mandatory character as indicated by the use of the word "shall." This is patent from PO2 Aseboque's testimony on cross-examination by the defense, *viz*:

ATTY. RONALD TAN:

Q: What did you do when you recovered those items, what did you do to those items?

PO2 RONNIE ASEBOQUE:

A: I put markings on those items on top of the hood of the Revo, sir.

Q: Did you make an inventory of those items that were recovered?

A: **Our team leader made the inventory of the items that were recovered sir.**

Q: **Did your team leader make an inventory report for those items recovered?**

A: **I do not know if he was able to make an inventory report.**

Q: You are aware of the provision of RA 9165, am I correct?

A: Yes, sir.

Q: **Are you aware that there is a particular provision that after a buy-bust operation and you were able to recover illegal drugs from that person subject of your buy-bust, you are mandated to take photographs of those items that you took in the presence of the *barangay* official and presence of the accused?**

A: **Yes, sir.**

Q: **Did you do that, did you comply with that requirement in these cases?**

A: **We have the camera but I do not know if they were able to comply with that, sir.**

Q: **You have no knowledge?**

A: **I have no knowledge, sir**.[20] (Emphasis and underscoring supplied)

Parenthetically, the prosecution did not present team leader PO3 Ruiz to enlighten whether he accomplished an inventory report of the seized items. And it bears noting that PO2 Aseboque did not even know if a photograph of the items allegedly seized was taken.

Appellant's contention that the apprehending policemen were remiss in complying with the statutory requirements is thus well-taken.

The Court is of course mindful of its pronouncement in *People v. Pringas*[21] that:

> 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 in the determination of the guilt or innocence of the accused. (Citation omitted, underscoring and emphasis supplied)

As earlier discussed, however, the prosecution had not substantiated PO2 Aseboque's claim that team leader PO3 Ruiz had made an inventory of the seized items, as he in fact, confessed not knowing whether said team leader had made an investigation report.

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[20] TSN, February 1, 2006, pp. 21-22.

[21] G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843 citing *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621.

IN FINE, the failure of the police officers to comply with the procedure in the custody of seized drugs puts to doubt their origins,[22] and negates any presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.[23] Appellant's acquittal is thus in order.

WHEREFORE, the assailed decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. For failure of the prosecution to prove his guilt beyond reasonable doubt, appellant, Antonio Ramos *y* Viray, is *ACQUITTED* of the crimes charged.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is *ORDERED* to cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken thereon within ten (10) days from notice.

SO ORDERED.

Quisumbing (Chairperson), Brion, Bersamin,[*] and *Abad, JJ.,* concur.

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[22] *Vide People v. Orteza,* G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758.

[23] *Vide People v. Santos, Jr.,* G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.

[*] Additional member vice Justice Mariano C. Del Castillo, who took no part due to prior participation in the Court of Appeals.

SECOND DIVISION

[G.R. No. 180693. September 4, 2009]

BONIFACIO DOLERA *Y* TEJADA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; IT IS TOO LATE FOR PETITIONER TO QUESTION THE LEGALITY OF HIS ARREST IN VIEW OF HIS HAVING ALREADY ENTERED HIS PLEA UPON ARRAIGNMENT AND PARTICIPATED AT THE TRIAL.— The Court finds in order the appellate court's observation that it is too late for petitioner to question the legality of his arrest in view of his having already entered his plea upon arraignment and participated at the trial. Having failed to move to quash the information on that ground before the trial court, and having submitted himself to the jurisdiction of the trial court, any supposed defect in his arrest was deemed waived. For the legality of an arrest affects only the jurisdiction of the court over his *person*.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY REQUIREMENT ENSURES THE UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF THE EVIDENCE WHICH MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— It is with respect to the failure of the prosecution to prove the chain of custody of the allegedly seized evidence that the Court departs from the findings of the appellate and lower courts to warrant a reversal of petitioner's conviction. For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug. Thus *Mallillin v. People* emphasized: Prosecutions for illegal possession of prohibited drugs necessitates [*sic*] that

the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. **More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.**

3. ID.; ID.; STANDARD OPERATING PROCEDURE ON THE SEIZURE AND CUSTODY OF DANGEROUS DRUGS AND ITS IMPLEMENTING RULES AND REGULATIONS.— The standard operating procedure on the seizure and custody of dangerous drugs is found in Section 21, Article II of R.A. No. 9165 which provides: 1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized,** or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. Section 21(a) of Article II of the *Implementing Rules and Regulations* of R.A. No. 9165 more specifically mandates that: (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that**

the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

4. ID.; ID.; THE MARKING OF DANGEROUS DRUG BY THE APPREHENDING OFFICER OR TEAM IN CASE OF WARRANTLESS SEIZURES MUST BE DONE AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM, WHICHEVER IS PRACTICABLE.— With respect to the marking of dangerous drug by the apprehending officer or team in case of warrantless seizures such as in this case, it must be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. This is in line with the "chain of custody" rule. *People v. Sanchez* elucidates: . . . [I]n case of **warrantless seizures such as a buy-bust operation**, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value. What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. **Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.** This step

initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft. For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. **If the physical inventory and photograph are made at the nearest police station or office as allowed by the rules, the inventory and photography of the seized items must be made *in accordance with Sec. 2 of Board Resolution No. 1, Series of 2002, but in every case, the apprehended violator or counsel must be present.*** Again, this is in keeping with the desired level of integrity that the handling process requires. Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.

5. ID.; ID.; RECORD DOES NOT SHOW THAT THE ITEMS SEIZED IN CASE AT BAR WERE INVENTORIED, PHOTOGRAPHED AND MARKED IN THE PRESENCE OF PETITIONER IN ACCORDANCE WITH STATUTORY REQUIREMENTS; WORSE, THE TWO MARKED PLASTIC SACHETS WERE NOT IDENTIFIED IN OPEN COURT BY THE POLICE OFFICERS-WITNESSES AND THERE IS NO EXPLANATION IN THE RECORD OF WHAT HAPPENED TO THEM AFTER THEIR LABORATORY EXAMINATION.— From the testimony of prosecution witness PO2 Penalosa which was essentially echoed by prosecution witness PO2 Labon, there is no showing how the flow of the custody of the drugs went from the time of the arrest of petitioner and alleged confiscation of the sachets up to the turnover thereof at the police station to the investigator according to PO2 Penalosa, to the desk officer according to PO2 Labon. Neither is there a showing that the items were inventoried or photographed and marked in the presence of petitioner in accordance with statutory requirements. In fact, where in the police station and at what stage of the investigation was the supposed marking of evidence done were not even indicated. And there is no indication whether the investigator

and the desk officer were one and the same person, and what steps were undertaken to insure the integrity of the evidence. Notably, the record shows that it was PO1 Peñalosa who delivered the items to the crime laboratory. How they were turned over to him by the investigator or desk officer, the prosecution failed to give even a simple indication thereof. There is thus a reasonable likelihood of substitution along the chain in that the two plastic sachets that tested positive for *shabu* were different from the items allegedly seized from petitioner. The Court has long considered such possibility of substitution as fatal for the prosecution. **Worse, the two marked plastic sachets were not even presented, hence, not identified in open court by the police officers-witnesses and there is no explanation extant in the record of what happened to them after their laboratory examination.**

6. ID.; ID.; NO ADMISSION WAS MADE IN THE STIPULATION OF FACTS; THE EXHIBITS PRESENTED BY THE PROSECUTION PROVED THE EXISTENCE AND AUTHENTICITY OF THE REQUEST FOR LABORATORY EXAMINATION BUT NOT THE REQUIRED CHAIN OF CUSTODY FROM THE TIME OF SEIZURE UNTIL ITS PRESENTATION IN COURT.— The stipulation of facts is self-explanatory. What was stipulated was that, among other things, "the items allegedly confiscated" were submitted for laboratory examination. The Chemistry Report only confirmed the contents of two plastic sachets. Whether they were the same packets allegedly confiscated from petitioner, the prosecution failed to establish as there was yet again an unexplained break in the chain. That the prosecution offered in evidence the request for laboratory examination, the chemistry report and the certification from the forensic analyst has no bearing on the question of whether the specimens submitted for chemical analysis were the same allegedly seized from petitioner. All that these exhibits proved were the existence and authenticity of the request for laboratory examination and the results of said examination, but not the required chain of custody from the time of seizure of the evidence until its presentation in court. While there is no need to present all persons who came into contact with the seized drugs to testify in court, the prosecution still has to convincingly establish that the chain of custody remained unbroken throughout, and

the seized items specifically identified. This the prosecution failed to discharge.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; APPELLATE COURT'S RELIANCE ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS WOULD NOT SUFFICE TO UPHOLD PETITIONER'S CONVICTION.— The appellate court's reliance on the presumption of regularity in the performance of official functions would not suffice to uphold petitioner's conviction. Once challenged by evidence, such as in this case, the presumption of regularity cannot be regarded as binding truth and cannot prevail over the presumption of innocence of petitioner-accused.

8. ID.; ID.; TRIAL COURT'S SEEMINGLY HAPHAZARD CONSIDERATION OF THE CIRCUMSTANCES OF THE CASE IS MIRRORED IN ITS DECISION; THE THREE-PARAGRAPH *RATIO DECIDENDI* ONLY DISCUSSED DEFENSE EVIDENCE WITHOUT EVEN ALLUDING TO THE PROSECUTION EVIDENCE AND THE JUDGMENT WAS RENDERED ON THE BASIS OF CONJECTURES AND SUPPOSITIONS.— Although petitioner's defense is denial which, standing alone, is inherently weak, the Court has repeatedly stressed that the conviction of an accused must rest on the strength of the prosecution's evidence and not on the weakness of his defense. The prosecution having failed to overturn the constitutional presumption of innocence in favor of petitioner, his acquittal is in order. A final word. The Court notes the trial court's seemingly haphazard consideration of the circumstances of the case as mirrored in its decision. Its three-paragraph *ratio decidendi* only discussed the defense evidence and even rendered judgment on the basis of conjectures and suppositions. Noticeably, the decision never alluded to the prosecution evidence, nor even tackled in passing the basis of the penalties it imposed. Exhorted to be extra vigilant in trying drug-related cases, courts should give more than lip service to the mandate of administering justice by undertaking a serious and comprehensive consideration of the pros and cons of the evidence offered by both the prosecution and defense in determining the merits of a case.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Bonifacio T. Dolera (petitioner) was charged before the Regional Trial Court of Quezon City with violation of Section 11, Article II of Republic Act No. 9165 (R.A. 9165) or the Comprehensive Dangerous Drugs Act of 2002 under an Information reading

x x x x x x x x x

That on or about the 14th day of August, 2003 in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, wilfully, unlawfully and knowingly have in [his] possession and control, Zero point twenty (0.20) grams of white crystalline substance containing Methylamphetamine [*sic*] hydrochloride a dangerous drug.[1]

CONTRARY TO LAW.

From the evidence for the prosecution, the following version is gathered.

On August 14, 2003, at 3:30 in the afternoon, PO2 Reynaldo Labon (PO2 Labon), PO1 Arnold Peñalosa (PO1 Peñalosa) and PO2 Victor Aquino, having received a report of drug trafficking in the vicinity of Bicol Street in Barangay Payatas, Quezon City, conducted a surveillance along the area.[2]

While at the target area, PO2 Labon saw petitioner, at a distance of seven meters, standing near an alley adjoining Bicol Street, scrutinizing a transparent plastic sachet containing white crystalline substance. PO2 Labon, who was in civilian clothes,

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[1] Records, p. 1.

[2] Transcript of Stenographic Notes, March 17, 2004, pp. 4-5.

thus alighted from the vehicle, followed by PO1 Penalosa, and approached petitioner.[3] After introducing himself as a policeman, PO2 Labon asked petitioner what he was holding, but the latter, who appeared "*natulala,*"[4] did not reply.

Suspecting that the white crystalline substance inside the plastic sachet was *shabu*, PO2 Labon confiscated the same[5] and handcuffed petitioner. PO1 Peñalosa then frisked petitioner and recovered a heat-sealed plastic sachet also containing white crystalline substance from the right front pocket of petitioner's pants. After informing him of his constitutional rights, petitioner was brought to the police station for further investigation.[6]

At the police station, PO2 Labon and PO1 Peñalosa marked the plastic sachets with their respective initials "RL" and "AP"[7] before turning them over to the case investigator. Later in the day, the two plastic sachets including their contents were brought to the PNP Crime Laboratory for examination. The Chemistry Report[8] which recorded the result of the laboratory examination showed that each of the sachets contained 0.10 grams of *shabu*, a dangerous drug.

The parties[9] having stipulated that forensic analyst Leonard M. Jabonillo examined the substances and came up with his findings in his Report, his testimony was dispensed with.

Upon the other hand, petitioner, denying the charge, gave the following version:

He was standing infront of his house waiting for a ride to the public market when three men in civilian clothes alighted from

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[3] *Id.* at 6, 14.

[4] *Id.* at 16.

[5] *Id.* at 7.

[6] TSN, October 27, 2003, pp. 5-6.

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

[8] Records, p. 8; Exhibit "C".

[9] *Id.* at 44.

a white "FX" and forced him to board the vehicle. The three brought him to the police station where he was asked to identify a drug pusher in their place. When he replied that he did not know of any, they told him that "*tutuluyan nila ako*." He was then detained and was subjected to inquest proceedings after four days.[10]

The trial court, by Decision[11] of July 20, 2005, convicted petitioner and sentenced him "to suffer a jail term of TWELVE YEARS AND ONE DAY as minimum and THIRTEEN YEARS as maximum and to pay a fine of ₱300,000." The trial court observed:

> The court finds it quite improbable that police officers in broad daylight would just stop and take away with them a person who is doing nothing but standing on the street in front of his house.
>
> x x x x x x x x x
>
> The accused was brought to the police station for investigation and when asked if it is true that he has *shabu*, the answer of the accused: "*Wala naman po*" does not inspire the confidence that an innocent person, who is 35 years old and married with a baby, would have said.
>
> Moreover, the defense of the accused becomes more unconvincing in view of the fact that not even his wife with a baby and his auntie who lives in the same house with him came to court despite the lapse of a long time, to vouch for the accused. His neighbors whom the accused said saw him being arrested likewise did not come forward to corroborate his claimed innocence. (Underscoring supplied)

The Court of Appeals, before which appellant appealed and questioned, among other things, his warrantless arrest, by Decision[12] of October 30, 2006, affirmed petitioner's conviction. In brushing aside appellant's questioning of his warrantless arrest, the appellate

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[10] TSN, November 25, 2004, pp. 3-7.

[11] Records, pp. 65-67; Penned by Judge Jaime Salazar Jr.

[12] *Rollo*, pp. 67-73; Penned by Associate Justice Marina L. Buzon with Associate Justices Regalado E. Maambong and Japar B. Dimaampao, concurring.

court held that he had waived the same when he submitted himself to the jurisdiction of the trial court.

On the merits, the appellate court held:

> The bare denial of accused-appellant that *shabu* was found in his possession by the police officers deserves scant consideration. Accused-appellant testified that his arrest was witnessed by several persons who know him and who are known to him, however, he did not present anyone of them to corroborate his claim that no *shabu* was recovered from him when he was arrested by the police officers. It has been ruled time and again that a mere denial, just like alibi, is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail. Moreover, accused-appellant admitted that he does not know the police officers who arrested him as it was the first time that he saw them. In fact, accused-appellant does not impute any improper motive against the police officers who arrested him. **The presumption that the police officers performed their duties in a regular manner, therefore, stands.** (Emphasis and underscoring supplied)

His motion for reconsideration having been denied by Resolution[13] of November 21, 2007, petitioner filed the present petition for review.

Petitioner initially takes issue on the appellate court's ruling that he waived any objection to his arrest when he entered a plea upon arraignment and actively participated in the trial. Underscoring that an appeal in a criminal case opens the whole case for review, petitioner reiterates his lament that he was arrested without a warrant, asserting that "there was nothing unusual in [his] behavior then which w[ould] engender a genuine reason to believe that he was committing something illegal which would compel the police officers to approach him."[14]

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

[14] *Id.* at 15-20.

Respecting the Chemistry Report, petitioner contends that it is hearsay, as the forensic analyst who prepared the document was never presented to identify it and testify thereon.[15]

Moreover, petitioner contends that the prosecution failed to establish the chain of custody of the seized illegal drugs to thus cast serious doubt on whether the specimens presented in court were the ones allegedly confiscated from him.[16]

The Solicitor General, maintaining, on the other hand, that the arrest of petitioner needed no warrant as it was done while petitioner was committing illegal possession of *shabu*, posits: Since PO2 Labon and PO1 Peñalosa were conducting a surveillance based on a report of rampant drug trafficking in the area, the chance encounter with petitioner who was holding a plastic sachet with white crystalline contents gave the police officers reasonable suspicion to accost him and ask about the contents thereof. The police officers' suspicion was all the more heightened when petitioner was dumbfounded when asked about the plastic sachet.[17]

The Solicitor General further posits that the prosecution did not have to present the forensic analyst in view of petitioner's stipulation that the two plastic sachets seized from him were found to be positive for *shabu*.

Finally, the Solicitor General maintains that the seized plastic sachets were properly submitted to the police crime laboratory for testing, and, at all events, petitioner failed to rebut the presumption of regularity in the performance by the police officers of their official duties.

The petition is meritorious.

Prefatorily, the Court finds in order the appellate court's observation that it is too late for petitioner to question the legality of his arrest in view of his having already entered his plea upon

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[15] *Id.* at 22-23.

[16] *Id.* at 24-27.

[17] *Id.* at 96-102.

arraignment and participated at the trial. Having failed to move to quash the information on that ground before the trial court,[18] and having submitted himself to the jurisdiction of the trial court, any supposed defect in his arrest was deemed waived. For the legality of an arrest affects only the jurisdiction of the court over his *person*.[19]

It is with respect to the failure of the prosecution to prove the chain of custody of the allegedly seized evidence that the Court departs from the findings of the appellate and lower courts to warrant a reversal of petitioner's conviction.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.[20]

Thus *Mallillin v. People*[21] emphasized:

> Prosecutions for illegal possession of prohibited drugs necessitates [*sic*] that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. **More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody**

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[18] *People v. Timon*, 346 Phil. 572, 593 (1997).

[19] *People v. Nazareno*, 329 Phil. 16, 22 (1996).

[20] *People v. Tiu Won Chua*, 453 Phil. 177, 186 (2003).

[21] G.R. No. 172953, April 30, 2008, 553 SCRA 619 (2008).

requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. (Italics in the original; emphasis and underscoring supplied)

The standard operating procedure on the seizure and custody of dangerous drugs is found in Section 21, Article II of R.A. No. 9165 which provides:

1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized,** or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

Section 21(a) of Article II of the *Implementing Rules and Regulations* of R.A. No. 9165 more specifically mandates that:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; **Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis and underscoring supplied)

Thus, with respect to the marking of dangerous drug by the apprehending officer or team in case of warrantless seizures

such as in this case, it must be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. This is in line with the "chain of custody" rule. *People v. Sanchez*[22] elucidates:

> . . . [I]n case of **warrantless seizures such as a buy-bust operation,** the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. **Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.** This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft. (Emphasis and underscoring supplied)

For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. **If the physical inventory and photograph are made at the nearest police station or office as allowed by the rules, the inventory and photography of the seized items must be made *in accordance with Sec. 2 of Board Resolution No. 1, Series of 2002, but in every case, the apprehended violator or counsel must be present.*** Again, this is in keeping with the desired level of integrity that the handling process requires. Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of

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[22] G.R. No. 175832, October 15, 2008, 569 SCRA 194.

handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. (Italics in the original; emphasis and underscoring supplied)

Ranged against these evidentiary norms, the prosecution's terse treatment of its exacting duty to prove beyond reasonable doubt the guilt of accused-petitioner founders. Consider PO1 Peñalosa's following testimony:

FIS. ARAULA:
You said you turned over the confiscated item to the **investigator**?

WITNESS:
Yes sir.

FIS. ARAULA:
Before you turned over the item what did you do with that item?

WITNESS:
We marked it sir.

FIS. ARAULA:
What markings was placed on the items before it was given to the Police Investigator?

WITNESS:
Our initial sir.

FIS. ARAULA:
What is your initial?

WITNESS:
AP sir.

FIS. ARAULA:
What about the items, what markings?

WITNESS:
RL Reynaldo Labon sir.

x x x x x x x x x

FIS. ARAULA:
After you turned over the specimen to the investigator, what happened to the specimen?

WITNESS:

It was turned over to the PNP Crime Laboratory sir.

x x x (Emphasis and underscoring supplied)[23]

From the foregoing testimony of prosecution witness PO2 Penalosa which was essentially echoed by prosecution witness PO2 Labon, there is no showing how the flow of the custody of the drugs went from the time of the arrest of petitioner and alleged confiscation of the sachets up to the turnover thereof at the police station to the investigator according to PO2 Penalosa, to the desk officer according to PO2 Labon.

Neither is there a showing that the items were inventoried or photographed and marked in the presence of petitioner in accordance with statutory requirements. In fact, where in the police station and at what stage of the investigation was the supposed marking of evidence done were not even indicated.

And there is no indication whether the investigator and the desk officer were one and the same person, and what steps were undertaken to insure the integrity of the evidence.

Notably, the record shows that it was PO1 Peñalosa who delivered the items to the crime laboratory.[24] How they were turned over to him by the investigator or desk officer, the prosecution failed to give even a simple indication thereof.

There is thus a reasonable likelihood of substitution along the chain in that the two plastic sachets that tested positive for *shabu* were different from the items allegedly seized from petitioner. The Court has long considered such possibility of substitution as fatal for the prosecution.[25]

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[23] TSN, October 27, 2003, pp.7-8.

[24] Records, p. 6; At the lower left portion of Exhibit "B" is a stamped acknowledgement which reads:

CONTROL NO. 1892
T/D RECEIVED: 2000H 14 Aug '03
RECORDED BY: PO2 Plan
DELIVERED BY: PO1 Peñalosa

[25] *Vide*: *Valdez v. People*, 170180, November 23, 2007, 538 SCRA 611;

Worse, the two marked plastic sachets were not even presented, hence, not identified in open court by the police officers-witnesses and there is no explanation extant in the record of what happened to them after their laboratory examination.

Segueing to the Solicitor General's assertion that appellant already admitted that the two plastic sachets were seized from him and that the contents thereof were tested positive for *shabu* as contained in the trial court's Order of September 13, 2004 reading:

> It is hereby **stipulated by the parties** that the items ***allegedly*** confiscated from the accused were submitted to the crime lab for examination and the findings were put into writing and the same were marked by the prosecution as EXHIBIT B-Request for laboratory examination; EXHIBIT C – Chemistry Report No. D-765-2003; C-1 Findings; EXHIBIT D – Certification; EXHIBIT E – Specimen A; E-1 marking lmj; E-2 marking RL; EXHIBIT F – Specimen B; F-1 marking lmj; F-2 marking AP and EXHIBIT G – Brown envelope.
>
> In view of this stipulation, the testimony of Engr. Leonard Jabonillo is hereby dispensed with.
>
> x x x (Italics, emphasis and underscoring supplied),

the same fails to impress.

The above-quoted stipulation of facts is self-explanatory. What was stipulated was that, among other things, "the items allegedly confiscated" were submitted for laboratory examination.

The Chemistry Report only confirmed the contents of two plastic sachets. Whether they were the same packets allegedly confiscated from petitioner, the prosecution failed to establish as there was yet again an unexplained break in the chain.

That the prosecution offered in evidence the request for laboratory examination, the chemistry report and the certification

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People v. Ong, 476 Phil. 553 (2004); *People v. Kimura*, 471 Phil. 895 (2004); *People v. Pedronan*, 452 Phil. 226 (2003) and *People v. Casimiro*, 432 Phil. 966. (2002).

from the forensic analyst[26] has no bearing on the question of whether the specimens submitted for chemical analysis were the same allegedly seized from petitioner. All that these exhibits proved were the existence and authenticity of the request for laboratory examination and the results of said examination, but not the required chain of custody from the time of seizure of the evidence until its presentation in court.

While there is no need to present all persons who came into contact with the seized drugs to testify in court,[27] the prosecution still has to convincingly establish that the chain of custody remained unbroken throughout, and the seized items specifically identified. This the prosecution failed to discharge.

The appellate court's reliance on the presumption of regularity in the performance of official functions would not suffice to uphold petitioner's conviction. Once challenged by evidence, such as in this case, the presumption of regularity cannot be regarded as binding truth and cannot prevail over the presumption of innocence of petitioner-accused.[28]

Although petitioner's defense is denial which, standing alone, is inherently weak, the Court has repeatedly stressed that the conviction of an accused must rest on the strength of the prosecution's evidence and not on the weakness of his defense.

The prosecution having failed to overturn the constitutional presumption of innocence in favor of petitioner, his acquittal is in order.

A final word. The Court notes the trial court's seemingly haphazard consideration of the circumstances of the case as mirrored in its decision. Its three-paragraph *ratio decidendi* only discussed the defense evidence and even rendered judgment on the basis of conjectures and suppositions. Noticeably, the

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[26] Exhibits "B", "C" and "D", records 6, 8, and 10.

[27] *Vide*: *People v. Agulay*, G.R. No. 181747, September 26, 2008 and *People v. Zeng Hua Dian*, G.R. No. 145348, 432 SCRA 25 (2004).

[28] *People v. Tan*, 432 Phil. 171, 197 (2002).

decision never alluded to the prosecution evidence, nor even tackled in passing the basis of the penalties it imposed.

Exhorted to be extra vigilant in trying drug-related cases, courts should give more than lip service to the mandate of administering justice by undertaking a serious and comprehensive consideration of the pros and cons of the evidence offered by both the prosecution and defense in determining the merits of a case.[29]

WHEREFORE, for failure of the prosecution to prove his guilt beyond reasonable doubt, petitioner, BONIFACIO T. DOLERA, is *ACQUITTED* of the crime of illegal possession of dangerous drugs.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is *ORDERED* to cause the immediate release of petitioner, unless he is being lawfully held for another cause, and to inform this Court of action taken within ten days from notice.

No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

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[29] *People v. Sevilla*, 394 Phil. 125, 159 (2000).

SECOND DIVISION

[G.R. No. 180992. September 4, 2009]

ELMER DIAMANTE *y* SIOSON and TANNY BOY STA. TERESA *y* LINTAG, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; THE LEGALITY OF AN ARREST AFFECTS ONLY THE JURISDICTION OF THE COURT OVER THE PERSON OF THE ACCUSED, ANY DEFECT THEREIN MAY BE DEEMED CURED WHEN, AS IN THE CASE AT BAR, THE ACCUSED VOLUNTARILY SUBMITTED TO THE JURISDICTION OF THE TRIAL COURT; ILLEGALITY OF ARREST IS NOT A SUFFICIENT CAUSE FOR SETTING ASIDE A VALID JUDGMENT RENDERED UPON A SUFFICIENT COMPLAINT AFTER A TRIAL FREE FROM ERROR.— On the legality of petitioners' arrest, the Court finds that, indeed, they are barred from assailing the same for failure to take issue thereon before their arraignment. Objections to the legality of an arrest must be made prior to the entry of plea at arraignment; otherwise, they are considered waived. An accused may also be estopped from assailing the legality of his arrest if he fails to move for the quashal of the Information against him before his arraignment. To be sure, the legality of an arrest affects only the jurisdiction of the court over the *person* of the accused, hence, any defect therein may be deemed cured when, as here, the accused voluntarily submitted to the jurisdiction of the trial court. An illegal arrest is thus not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.

2. ID.; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS; RULE; APPLICABLE IN CASE AT BAR; THE COURT DOES NOT APPRECIATE A CONCLUSION DIFFERENT FROM THE TRIAL COURT'S AS AFFIRMED BY THE APPELLATE COURT.— Factual findings of the trial court

are entitled to respect and are not to be disturbed on appeal, unless some facts and circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. In the case at bar, the Court finds that the trial court did not overlook, misapprehend, or misapply any fact of value to warrant a reversal of its findings. Prevailing jurisprudence uniformly holds that findings of fact of the trial court, especially when affirmed by the appellate court, are binding upon this Court. Nevertheless, from a review of the records, the Court does not appreciate a conclusion different from the trial court's, as affirmed by the appellate court.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A SINGLE, TRUSTWORTHY, AND CREDIBLE WITNESS IS SUFFICIENT FOR CONVICTION; ABSENCE OF ILL MOTIVE TO TESTIFY FALSELY ALSO ENTITLES HIS TESTIMONY TO FULL FAITH AND CREDIT.— The trial and appellate courts found that petitioners were among those who committed robbery and carnapping against Cadorniga as shown by the testimonies of the prosecution witnesses which both courts considered to be straightforward, clear, and consistent. The Court finds no cogent reason to rule otherwise. That Cadorniga was tied down to a stool at gun point to facilitate the commission of the crimes speaks unequivocally that petitioners and their cohorts employed violence and intimidation in taking away Cadorniga's personal effects and the Daewoo racer without his consent and with intent to gain. This is clear from the testimony of Cadorniga alone which, as reflected earlier, is categorical on all material points. The records being barren of proof of any ill motive on the part of Cadorniga to testify falsely against petitioners, his testimony is entitled to full faith and credit. Well settled is the rule that the testimony of a single, trustworthy, and credible witness is sufficient for conviction.

4. ID.; ID.; ID.; THERE IS NOTHING CONTRARY TO HUMAN EXPERIENCE ABOUT THE WITNESS BEING ABLE TO RECALL PETITIONERS AS AMONG THOSE WHO ROBBED HIM AND HOW THEY DID IT; WHILE A STARTLING EVENT DOES NOT ELICIT A STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE,

EXPERIENCE SHOWS THAT IT OFTENTIMES CREATES AN INDELIBLE IMPRESSION IN THE MIND THAT CAN BE RECALLED VIVIDLY.— Respecting petitioners' identification as among the assailants, Cadorniga remembered petitioner Diamante as the person who entered the clinic with Maricar when the latter sought a "dental check-up," and Sta. Teresa as the one who later tied him down to a stool and wrapped his entire body with a clear scotch tape. Cadorniga, therefore, saw petitioners' faces before his eyes were covered. Such being the case, there is no reason to consider as fuzzy Cadorniga's recollection of petitioners' participation in the commission of the crimes. Besides, even with his eyes covered with a clear scotch tape, Cadorniga emphasized that he could still slightly open his eyes. There is nothing contrary to human experience about Cadorniga being able to recall petitioners as among those who robbed him and how they did it. As the appellate court observed, while a startling event does not elicit a standard form of human behavioral response, experience shows that it oftentimes creates an indelible impression in the mind that can be recalled vividly.

5. ID.; ID.; ID.; TESTIMONY OF WITNESS IDENTIFYING PETITIONERS AS THE ASSAILANTS, SUFFICIENTLY CORROBORATED.— While Cadorniga's testimony alone pointing to petitioners as among the assailants would have sufficed for purposes of identification, it bears to stress that the prosecution still provided corroborating evidence. As the trial court noted, Gerardo also identified petitioners, and his testimony was corroborated by Lintag and petitioner Sta. Teresa himself that they went to San Rafael Street corner Boni Avenue, Mandaluyong, entered the clinic of Cadorniga, and took certain things therefrom. And while Lintag's confession is binding only as to him, his court testimony pointing to his co-principals is a judicial admission of an eyewitness admissible in evidence against those it implicates. Gerardo's testimony should thus not be doubted merely because his participation was limited to bringing his passengers to their destination. He positively identified petitioners as among those he had brought to the clinic of Cadorniga and who entered the same on the day of the incident. At the very least, this is further proof of petitioners' presence at the crime scene when the robbery and carnapping were committed, belying all uncorroborated allegations to the contrary. In fine, petitioners' guilt is indubitable.

6. CRIMINAL LAW; ROBBERY AND CARNAPPING; ELEMENTS OF ROBBERY AND CARNAPPING.— The elements of robbery are: (1) the subject is personal property belonging to another; (2) there is unlawful taking of that property; (3) the taking is with intent to gain; and (4) there is violence against or intimidation of any person or use of force upon things. Carnapping, on the other hand, has these elements: "taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things."

7. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; EVIDENT FROM THE ORCHESTRATED MANNER INDICATIVE OF A COMMON DESIGN IN WHICH PETITIONERS AND THEIR COHORTS PURSUED THEIR UNLAWFUL PURPOSE.— The finding of the trial court on the presence of conspiracy merits the Court's concurrence too, it being evident from the orchestrated manner, indicative of a common design, in which petitioners and their cohorts pursued their unlawful purpose. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Along with Archimedez Lintag *y* Fausto (Lintag) *alias Medes*, Maricar Manalang *y* Mallari (Maricar) *alias Marie,* and Virgilio Gerardo *y* Supatan (Gerardo), herein two petitioners Elmer Diamante *y* Sioson (Diamante) *alias Romeo Diamante* and *Mengoy* and Tanny Boy Sta. Teresa *y* Lintag (Sta. Teresa)

alias Tanny were charged before the Regional Trial Court (RTC) of Mandaluyong with robbery[1] and carnapping[2] in two separate Informations, both dated July 13, 2000.

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[1] Records, pp. 1-3. Criminal Case No. MC00-2728 (for Robbery).

That on or about the 9th day of July, 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, one of them (Maricar Manalang) pretended to be a patient of WILFREDO CADORNIGA *y* CANOSA, and once inside the clinic, while armed with a gun, conspiring and confederating with ARNOLD LOZA @ Bimbo and RONALD DELA ROSA or "Ronnie dela Rosa" who are still at-large, and mutually helping and aiding with one another, with intent of gain and by means of force, violence and intimidation employed upon the person of said WILFREDO CADORNIGA *y* CANOSA *alias* Joey, did, then and there willfully, unlawfully and feloniously take, steal and divest from said WILFREDO CADORNIGA *y* CANOSA the following, to wit:

a.	One (1) unit cash register, Sharp Model XE-A130	₱6,500.00
b.	One (1) unit Spymomanometer Labtronix	4,000.00
c.	one (1) unit alarm clock (quarts)	
d.	one (1) pair brown slipper (LEWRE)	
e.	one (1) black travelling bag Fermont	
f.	bosch 908 cellphone with charger	5,000.00
g.	Louis Vuitton wallet color black containing ₱8,500.00 Cash money &AIG credit card	
h.	AIWA VHS with remote control	4,996 .00
i.	Rolex watch	150,000.00
j.	Gold bracelet	7,500.00
k.	wireless telephone	1,400.00
l.	mechanical tools with box	
m.	three (3) dozen of socks	
n.	travelling bag color black	
o.	check book and passbook	
p.	Non-Pro driver's license	
q.	PRC Professional license	
r.	China & Metrobank ATM card	
s.	CMG health and insurance card	
t.	Makro card	
u.	Angels figurine	

(Copied verbatim.)

[2] Records, pp. 27-28. Criminal Case No. MC00-2729 (for Violation of Republic Act 6359 also known as Anti-Carnapping Act of 1972).

When arraigned, petitioners and their co-accused pleaded not guilty.[3]

Upon motion of the prosecution, Amended Informations were admitted impleading as additional accused Arnold Loza (Loza) *alias Bimbo* and Ronald dela Rosa (Dela Rosa) *alias Ronnie*.[4] They, too, pleaded not guilty on arraignment.[5]

From the testimony of private complainant Wilfredo Cadorniga (Cadorniga),[6] a dentist, the following version of the prosecution is culled:

At about 2:00 o' clock in the afternoon of July 9, 2000, while Cadorniga was in his clinic inside his house at San Rafael Street, Mandaluyong City, Maricar, accompanied by petitioner Diamante, knocked on the door seeking a dental check-up. Cadorniga let them in and entered an inner room to fix himself. After he emerged from the inner room, he saw that there were already five persons inside.

Cadorniga went on to conduct the check-up, after which someone grabbed him and announced a hold-up. Sta. Teresa

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That on or about the 9th day of July, 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with Arnold Loza @ Bimbo and Ronaldo dela Rosa @ Ronnie dela Rosa who are still at-large, and mutually helping and aiding with one another, with intent to gain, did, then and there willfully, unlawfully and feloniously take, steal and carry away a motor vehicle which described as follows:

MAKE/TYPE	:	DAEWOO Racer
MOTOR NO.	:	G15SF425024
CHASSIS NO.	:	KLATF19T1TB677662
PLATE NUMBER	:	UPM-616
COLOR	:	Blue

owned by WILFREDO CADORNIGA *y* CANOSA *alias* "Joey", without the latter's consent, to the damage and prejudice of said Wilfredo Cadorniga *y* Canosa. (Copied *verbatim*.)

[3] Records, p. 46.

[4] *Id.* at 74-80.

[5] *Id.* at 547.

[6] TSN of August 12, 2002, pp. 4-18.

quickly tied him down to a stool and wrapped his entire body, including his face and eyes, with a clear scotch tape. Lintag and Dela Rosa poked guns at him, prompting him to cry, "*Kunin niyo nang lahat, huwag niyo lang akong saktan.*" The assailants soon ransacked the clinic for around 15 minutes and left carrying Cadorniga's personal effects. Cadorniga thereafter heard his car alarm sound off, putting him on notice that his car, a Daewoo racer, was likewise taken.

Still tied to a stool, Cadorniga struggled to reach the main door which he opened. A neighbor who saw his condition helped him untangle himself. Cadorniga thereupon called the police who swiftly arrived at the crime scene, gathered fingerprints thereat, and took Cadorniga's statement.

At about 10:00 to 11:00 p.m. of the following day, Gerardo turned up at the clinic and advised Cadorniga that they had to rush to Pandacan because his car would be sold to a buyer in Cavite. Accompanied by officers of the Manila police, Gerardo led Cadorniga and his brother to the house of Sta. Teresa who promptly confessed being one of those who had robbed Cadorniga. Sta. Teresa subsequently led them to the house of Loza where the other accused were hiding. The police thus apprehended Sta. Teresa, Diamante, Maricar, and Lintag and brought them to the police station. Some of the stolen items, including the Daewoo racer, were recovered.

Corroborating Cadorniga's account, accused-turned-state witness Gerardo,[7] a taxi driver, testified as follows:[8]

On July 9, 2000, in Pandacan, Manila, Gerardo was flagged down by a male passenger, later identified to be Dela Rosa, who instructed him to head to Boni Avenue corner San Rafael Street, Mandaluyong City. Along the way, they picked up Dela Rosa's companions, later identified as Diamante, Sta. Teresa,

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[7] By Order of February 12, 2003, the trial court granted the motion of the prosecution for the discharge of Gerardo to be a state witness in accordance with Section 17, Rule 119 of the Rules of Court; records, p. 395.

[8] TSN of February 12, 2003, pp. 3-20.

Lintag, and Maricar. Upon reaching their destination, Diamante and Maricar alighted from the taxi and entered the clinic of Cadorniga. The remaining passengers shortly followed upon Diamante's signal.

Gerardo waited outside as told. His passengers went out of the clinic after about 30 minutes carrying things. Lintag boarded Gerardo's taxi, while the others rode in the Daewoo racer parked behind it. Gerardo was asked to tail the Daewoo racer, but lost sight of it when they reached Makati. He was thus instructed to, as he did, proceed to Dela Rosa's house in Pandacan where Lintag got off and came back with Maricar. Gerardo was then told to drive on. They reached the house where the Daewoo racer had been brought, whereupon two other members of the group again boarded Gerardo's taxi. Gerardo overheard that they would take the Daewoo racer to Cavite.

His passengers having been brought to their final destination, Gerardo demanded payment for his services. Dela Rosa poked a gun at him, however, and told him to go away and keep quiet about everything. Gerardo returned to Dela Rosa the next day to demand payment once more, but the latter again poked a gun at him and asked him to leave. Gerardo thus left.

That night on his way home, Gerardo dropped by the clinic of Cadorniga and talked to him. It was then that he realized what had happened the day before. He accompanied Cadorniga in seeking police assistance; and led him and the police to Sta. Teresa who, in turn, led them to the other assailants and the location of the Daewoo racer.

PO3 Robert Eugenio (PO3 Eugenio) and PO2 Virgilio Bismonte (PO2 Bismonte) of the Mandaluyong City police testified that they conducted the investigation and took the sworn statement of Cadorniga.[9] PO2 Bismonte identified the items recovered from the accused.[10]

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[9] TSN of May 20, 2002, pp. 1-7; TSN of June 3, 2002, pp. 2-9.

[10] TSN of August 12, 2002, pp. 1-3.

SPO4 Alfredo Villarosa (SPO4 Villarosa) of the Pandacan Police Station testified that he and one SPO1 Cenia apprehended Diamante, Sta. Teresa, Lintag, Maricar, and Gerardo as accomplice, all without a warrant, but with the express consent of the owner of the house where Gerardo had led them and pointed to the suspects. SPO4 Villarosa likewise identified some additional items recovered.[11]

Now, the defense.

Lintag admitted his involvement in the robbery that took place in Cadorniga's clinic (and accordingly changed his plea to guilty upon re-arraignment for the robbery case), but denied complicity in the carnapping of the Daewoo racer, claiming that when the situation became tumultuous, he just took the cash register and traveling bag, then ran away on board Gerardo's taxi. He identified the other persons who participated in the robbery – Diamante, Maricar, Dela Rosa, Sta. Teresa, Loza, and Gerardo who acted as their driver.[12]

Dela Rosa, denying the charges, proffered alibi. He declared that he was either in Bataan or some place other than the crime scene on the day the robbery and carnapping were committed; and that he had not known any of his co-accused until he was detained at the city jail following his arrest.[13]

Petitioner Diamante, for his part, denied the charges too and put up alibi, stating that while the alleged ransacking of Cadorniga's clinic was happening, he was at home with his live-in partner and their child; that Sta. Teresa arrived in their house with Maricar at about 6:00 p.m. on the day of the incident requesting him to sell a Rolex watch which Sta. Teresa would not explain where he got; that of all his co-accused, he only knew Sta. Teresa and Maricar; and that Sta. Teresa probably implicated him in the case only out of jealousy over his closeness to Maricar.[14]

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[11] TSN of November 12, 2003, pp. 1-12.

[12] TSN of May 19, 2004, pp. 1-12.

[13] TSN of June 29, 2005, pp. 1-15.

[14] TSN of August 31, 2005, pp. 1-30.

Petitioner Sta. Teresa, on the other hand, averred that on the day of the incident, Maricar and her boyfriend Loza, followed by a taxi with approximately five unfamiliar passengers, went to his house requesting for help in moving Maricar's things from her mother's house to her new apartment. He obliged. When they arrived at the house, Maricar and her companions went inside to pick up some things, while he waited outside and later helped in loading the items picked up in the taxi's compartment. Maricar then told him he could already go home. He thus left, and learned only at the trial that the house which Maricar said was her mother's was actually the clinic and residence of Cadorniga.[15]

By consolidated Decision of January 27, 2006,[16] Branch 211 of the Mandaluyong RTC found all the accused guilty as charged, except Gerardo who had been discharged to be a state witness, and Loza whose demurrer to evidence resulted in the dismissal of the cases as to him by Order of even date.[17] It disposed as follows:

> WHEREFORE, finding the accused ***ELMER DIAMANTE y SIOSON, TANNY BOY STA. TERESA y LINTAG, ARCHIMEDEZ LINTAG y FAUSTO, MARICAR ISIP-MANALANG y MALLARI and RONALD DELA ROSA @ RONNIE DELA ROSA*** guilty beyond reasonable doubt of the crimes of Robbery, defined and penalized under Article 293 of the Revised Penal Code and Anti-Carnapping Act of 1972 (R.A. 6539), the court hereby sentences them as follows:
>
> In Criminal Case No. MC00-2728 for Robbery, accused ***ELMER DIAMANTE y SIOSON, TANNY BOY STA. TERESA y LINTAG, MARICAR MANALANG y MALLARI @ MARIE and RONALD DELA ROSA***, to suffer an indeterminate penalty of imprisonment of four (4) years, two (2) months of *Prision Correccional* as minimum to ten (10) years of *Prision Mayor* as maximum, each.
>
> Archimedes Lintag *y* Fausto having voluntarily pleaded to the crime charged under plea bargaining in Criminal Case No. MC00-2728, is hereby sentenced to suffer the penalty of imprisonment of four (4) years, two (2) months and one (1) day to six (6) years, one (1) month and ten (10) days of *prision mayor* as maximum.

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[15] TSN of February 23, 2005, pp. 1-28.

[16] Records, pp. 851-870.

[17] *Id.* at 879-891.

In Criminal Case No. MC00-2729 for Anti-Carnapping Act of 1972 (R.A. 6539), accused ELMER DIAMANTE *y* SIOSON, TANNY BOY STA. TERESA *y* LINTAG, ARCHIMEDEZ LINTAG *y* FAUSTO @ MEDES, MARICAR MANALANG *y* MALLARI @ MARIE and RONALD DELA ROSA @ "RONNIE DELA ROSA", to suffer imprisonment of fourteen (14) years and eight (8) months to seventeen (17) years and four (4) months, each.

The case/s against ARNOLD LOZA @ "BIMBO" will be resolved separately in relation to accused's Demurrer to Evidence he filed before this court, in the above-entitled case.

Likewise, the bail bonds posted by Elmer Diamante, Tanny Boy Sta. Teresa, Maricar Manalang and Ronald Dela Rosa for their provisional liberty are hereby ordered confiscated and forfeited in favor of the government.

Let *alias* warrant for the manhunt of Maricar Isip-Manalang be issued.

The evidence custodian of the court is hereby directed to turn over to private complainant, Dr. Wilfredo Cadornia, all his personal belongings marked as Exhibits "F-1", "F-2", "F-3", "F4" and "F-5". (Copied verbatim.)

The trial court credited the version of the prosecution, primarily the testimony of Gerardo, to be clear and coherent; and appreciated the presence of conspiracy in the commission of the crimes. It deemed the alibi of the defense inherently weak.

Petitioners Diamante and Sta. Teresa, as well as Lintag and Dela Rosa, timely filed a notice of appeal, hence, the case was elevated to the Court of Appeals.[18] Maricar has remained at large.

By Decision of July 31, 2007,[19] the appellate court affirmed *in toto* the Decision of the trial court, upon a finding that the testimonies of prosecution witnesses, particularly those of Cadorniga and Gerardo, were not only consistent, reliable and

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[18] CA *rollo,* p. 52.

[19] Penned by Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta; CA *rollo,* pp. 131-150.

trustworthy, but also corroborative of and in harmony with each other. It likewise observed that, in contrast, the testimonies of the therein appellants were incongruous.

Their Motion for Reconsideration having been denied by Resolution dated December 3, 2007,[20] petitioners seek relief from this Court via Petition for Review on *Certiorari*.

Petitioners argue that their identification as among the assailants by Cadorniga is dubious in view of the confusion and extreme pressure he went through during the incident; that the tale of Gerardo could not be believed as his participation was limited to bringing his passengers to their destination; that they were illegally arrested without a warrant by SPO4 Villarosa, he having relied solely on Cadorniga's subjective identification; and that since the prosecution's evidence emanated from an illegal arrest, the same cannot produce a conviction pursuant to the exclusionary rule under the Constitution.[21]

The Solicitor General counters that the factual findings of the trial court, as affirmed by the appellate court, are amply supported by evidence and must be respected; and that petitioners are estopped from assailing the legality of their arrest, not having raised any objection thereto prior to their arraignment.[22]

The appeal lacks merit.

On the legality of petitioners' arrest, the Court finds that, indeed, they are barred from assailing the same for failure to take issue thereon before their arraignment. Objections to the legality of an arrest must be made prior to the entry of plea at arraignment; otherwise, they are considered waived.[23] An accused

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[20] *Id.* at 177-178.

[21] *Vide* Petition for Review on *Certiorari, rollo,* pp. 11-27.

[22] *Vide* Comment, *id.* at 120-130.

[23] *People v. Biyoc,* G.R. No. 167670, September 7, 2007, 532 SCRA 528, 543, citing *People v. Ereño*, 383 Phil. 30 (2000), *People v. Tidula*, 354 Phil. 609 (1998), *People v. Cabiles*, 348 Phil. 220 (1998), *People v. Mahusay,* 346 Phil. 762 (1997), *People v. Rivera,* 315 Phil. 454 (1995) and *People v. Lopez, Jr.,* 315 Phil. 59 (1995).

may also be estopped from assailing the legality of his arrest if he fails to move for the quashal of the Information against him before his arraignment.[24]

To be sure, the legality of an arrest affects only the jurisdiction of the court over the *person* of the accused, hence, any defect therein may be deemed cured when, as here, the accused voluntarily submitted to the jurisdiction of the trial court.[25] An illegal arrest is thus not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.[26]

Regarding the admissibility of physical evidence obtained as a result of petitioners' arrest, the Court need not belabor this question as it is not even a material consideration in petitioners' conviction. It suffices to state that physical evidence would be merely corroborative because, as will be discussed later, there are credible witnesses who testified on the complicity of petitioners in the crimes charged.[27]

On the merits, what petitioners essentially want is for this Court to weigh the credibility of the prosecution witnesses *vis-à-vis* the defense witnesses and to take this case out of the purview of the general rule in order to review it in its entirety, a task entrusted to the trial court, which is in the best position to discriminate between truth and falsehood because of its untrammeled opportunity to observe the demeanor of witnesses during trial.

Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts and circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the

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[24] *Vide People v. Hernandez*, 347 Phil. 56, 74-75 (1997).

[25] *Vide People v. Nazareno*, 329 Phil. 16, 22 (1996).

[26] *People v. Alunday*, G.R. No. 181546, September 3, 2008, 564 SCRA 135, 149-150.

[27] *Vide Abay v. People*, G.R. No. 165896, September 19, 2008, 566 SCRA 34, 45.

case.[28] In the case at bar, the Court finds that the trial court did not overlook, misapprehend, or misapply any fact of value to warrant a reversal of its findings. Prevailing jurisprudence uniformly holds that findings of fact of the trial court, especially when affirmed by the appellate court, are binding upon this Court.[29]

Nevertheless, from a review of the records, the Court does not appreciate a conclusion different from the trial court's, as affirmed by the appellate court.

The elements of robbery are: (1) the subject is personal property belonging to another; (2) there is unlawful taking of that property; (3) the taking is with intent to gain; and (4) there is violence against or intimidation of any person or use of force upon things.[30] Carnapping, on the other hand, has these elements: "taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things."[31]

The trial and appellate courts found that petitioners were among those who committed robbery and carnapping against Cadorniga as shown by the testimonies of the prosecution witnesses which both courts considered to be straightforward, clear, and consistent. The Court finds no cogent reason to rule otherwise.

That Cadorniga was tied down to a stool at gun point to facilitate the commission of the crimes speaks unequivocally that petitioners and their cohorts employed violence and intimidation in taking away Cadorniga's personal effects and the Daewoo racer without

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[28] *Bautista v. Castillo*, G.R. No. 174405, August 26, 2008, 563 SCRA 398, 406.

[29] *Castillo v. Court of Appeals*, 329 Phil. 150, 159 (1996).

[30] Article 293 of the Revised Penal Code provides:

Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

[31] Republic Act No. 6539, Section 2.

his consent and with intent to gain. This is clear from the testimony of Cadorniga alone which, as reflected earlier, is categorical on all material points. The records being barren of proof of any ill motive on the part of Cadorniga to testify falsely against petitioners, his testimony is entitled to full faith and credit. Well settled is the rule that the testimony of a single, trustworthy, and credible witness is sufficient for conviction.[32]

The finding of the trial court on the presence of conspiracy merits the Court's concurrence too, it being evident from the orchestrated manner, indicative of a common design, in which petitioners and their cohorts pursued their unlawful purpose. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[33]

Respecting petitioners' identification as among the assailants, Cadorniga remembered petitioner Diamante as the person who entered the clinic with Maricar when the latter sought a "dental check-up," and Sta. Teresa as the one who later tied him down to a stool and wrapped his entire body with a clear scotch tape. Cadorniga, therefore, saw petitioners' faces before his eyes were covered. Such being the case, there is no reason to consider as fuzzy Cadorniga's recollection of petitioners' participation in the commission of the crimes. Besides, even with his eyes covered with a clear scotch tape, Cadorniga emphasized that he could still slightly open his eyes.[34]

There is nothing contrary to human experience about Cadorniga being able to recall petitioners as among those who robbed him and how they did it. As the appellate court observed, while a startling event does not elicit a standard form of human behavioral response, experience shows that it oftentimes creates an indelible impression in the mind that can be recalled vividly.[35]

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[32] *People v. Soriano,* G.R. No. 171085, March 17, 2009.

[33] *People v. De Leon,* G.R. No. 179943, June 26, 2009.

[34] *Rollo,* p. 106.

[35] *Id.* at 105-106.

While Cadorniga's testimony alone pointing to petitioners as among the assailants would have sufficed for purposes of identification, it bears to stress that the prosecution still provided corroborating evidence. As the trial court noted, Gerardo also identified petitioners, and his testimony was corroborated by Lintag and petitioner Sta. Teresa himself that they went to San Rafael Street corner Boni Avenue, Mandaluyong, entered the clinic of Cadorniga, and took certain things therefrom.[36] And while Lintag's confession is binding only as to him, his court testimony pointing to his co-principals is a judicial admission of an eyewitness admissible in evidence against those it implicates.[37]

Gerardo's testimony should thus not be doubted merely because his participation was limited to bringing his passengers to their destination. He positively identified petitioners as among those he had brought to the clinic of Cadorniga and who entered the same on the day of the incident. At the very least, this is further proof of petitioners' presence at the crime scene when the robbery and carnapping were committed, belying all uncorroborated allegations to the contrary.

In fine, petitioners' guilt is indubitable.

As to the penalties imposed, the Court resolves to modify them to conform to applicable jurisprudence.

In the robbery case, the felony committed by petitioners was simple robbery by means of violence against or intimidation of persons which, under Article 294 (5) of the Revised Penal Code,[38] is punishable with *prision correccional* maximum to *prision mayor* medium (4 years, 2 months and 1 day to 10 years).

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[36] *Id.* at 85.

[37] *Vide Abay v. People, supra* note 27 at 43-44.

[38] Art. 294. *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

There being no aggravating or mitigating circumstance, the penalty should be imposed in the medium period, *i.e.*, *prision mayor minimum*, which has a range of 6 years and 1 day to 8 years. Applying the Indeterminate Sentence Law, petitioners are entitled to a minimum term to be taken within the penalty next lower in degree to that imposed by the Code, or *arresto mayor* maximum to *prision correccional* medium, which has a range of 4 months and 1 day to 4 years and 2 months. Hence, the penalty of imprisonment to be imposed should be 4 years and 2 months of *prision correccional* as minimum, and 8 years of *prision mayor* as maximum.[39]

In the carnapping case, since the crime was similarly committed by means of violence against or intimidation of persons, the imposable penalty under the Anti-Carnapping Act of 1972 is imprisonment for not less than 17 years and 4 months and not more than 30 years.[40] Furthermore, pursuant to the Indeterminate Sentence Law, the trial court should have imposed an indeterminate sentence with a maximum term not exceeding the maximum fixed by the special penal law and a minimum term not less than the minimum term prescribed by the same.[41] Therefore, the proper penalty is imprisonment for an indeterminate sentence of 17 years and 4 months as minimum to 30 years as maximum.[42]

WHEREFORE, the petition is *DISMISSED*. The challenged Decision of the Court of Appeals in CA-G.R. CR No. 29967 affirming *in toto* that of Branch 211 of the Mandaluyong RTC in Crim. Case Nos. MC00-2728 and MC00-2729 is *MODIFIED* in that for robbery, the penalty imposed on petitioners is imprisonment for Four (4) years and Two (2) months of *prision correccional* as minimum, and Eight (8) years of *prision mayor*

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[39] *Eduarte v. People*, G.R. No. 176566, April 16, 2009.

[40] Republic Act No. 6539, Section 14.

[41] Act No. 4103, Section 1; . . . and if the offense is punished by [a special] law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[42] *People v. Viente*, G.R. No. 103299, August 17, 1993, 225 SCRA 361, 373.

as maximum; and for carnapping, the penalty imposed on petitioners is imprisonment for an indeterminate sentence of Seventeen (17) years and Four (4) months as minimum to Thirty (30) years as maximum. In all other respects, the assailed judgment is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Brion, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181081. September 4, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLDAN ARCOSIBA *alias* "Entoy",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, IF CREDIBLE, MAY BE THE SOLE BASIS OF CONVICTION.— This Court has held in the case of *People v. Baligod* that rape is generally unwitnessed and oftentimes, the victim is left to testify for herself. Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof. To ensure that justice is meted out, extreme care and caution is required in weighing the conflicting testimonies of the complainant and the accused.

2. ID.; ID.; ID.; CREDIBILITY OF RAPE VICTIM, UPHELD; VICTIM POSITIVELY IDENTIFIED APPELLANT AS HER RAPIST AND CANDIDLY REVEALED THE UGLY

DETAILS OF THE DEPLORABLE VIOLATION OF HER PERSON.— There appears nothing inconsistent with AAA's testimony. Despite being merely 14 years old she subjected herself to the glare of public prosecution for rape, positively identified appellant as her rapist and candidly revealed the ugly details of the deplorable violation of her person. Her testimony appears straightforward and clear. It is thus correct that both the trial and appellate courts gave credence to her testimony and they both regarded her as a credible witness. Absent any showing that the lower courts had overlooked certain facts of substance and value which, if considered might affect the result of the case, we find no basis to doubt or dispute, much less overturn, the findings of credibility by both courts.

3. ID.; ID.; DEFENSE OF DENIAL; CANNOT PREVAIL OVER POSITIVE AND CREDIBLE DECLARATIONS OF THE VICTIM AND HER WITNESSES TESTIFYING ON AFFIRMATIVE MATTERS.— Compared to the evidence presented by the prosecution consisting notably of the positive identification of the appellant not only by AAA herself but by two other witnesses, the appellant's defense of denial is inherently weak and dubious. As often stressed, a mere denial constitutes negative evidence and warrants the least credibility or none at all absent any strong evidence of non-culpability. It cannot prevail over the positive and credible declarations of the victim and her witnesses testifying on affirmative matters.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated May 9, 2007 of the Court of Appeals in CA-GR CEB-CR.-H.C. No. 00094

[1] *Rollo*, pp. 3-16. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor, concurring.

affirming with modification the Decision[2] dated February 25, 2005 of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13 in Criminal Case No. 4397. The RTC found appellant Roldan Arcosiba guilty beyond reasonable doubt of the crime of rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,[3] otherwise known as "The Anti-Rape Law of 1997." Pursuant to Section 11[4] of

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[2] CA *rollo*, pp. 50-63. Penned by Presiding Judge Crisostomo L. Garrido.

[3] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES, approved on September 30, 1996.

[4] SEC. 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 335. *When and how rape is committed*.— Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

2. when the victim is under the custody of the police or military authorities.

3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

4. when the victim is a religious or a child below seven (7) years old.

5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

Republic Act No. 7659,[5] the trial court sentenced him to suffer the penalty of *reclusion perpetua* and to pay the victim civil indemnity and moral damages.

The Information[6] dated May 12, 2004 charging Arcosiba for the crime of rape reads:

x x x x x x x x x

That on or about the 21st day of March, 2004, in the Municipality of [xxx], Province of [xxx], and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA],[7] a 14 year old girl, against her will, to her damage and prejudice.

CONTRARY TO LAW.

Arcosiba was arrested and jailed on March 24, 2004.[8] When arraigned on June 22, 2004, he pleaded not guilty.[9] Thereafter, trial ensued.

Based on the testimonies of AAA, the victim herself, and BBB, her friend, the prosecution established that on March 21, 2004, AAA and her friend BBB agreed to watch television at the house of a neighbor. Before proceeding to the house of

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6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

[5] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

[6] Records, p. 1.

[7] The real name of the victim is withheld; see *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

[8] Records, p. 15.

[9] *Id.* at 30.

their neighbor, they decided to pass by the house of AAA. There, they noticed that the door of the house was already open, so they decided to go inside thinking that AAA's older sister was there. AAA, however, noticed that one sack of rice was missing. She tried to look for it thinking that her sister might have kept the same, but to no avail. AAA and BBB were about to go out of the house when they saw Arcosiba in the yard. Out of fear, AAA and BBB retreated to the kitchen. At a distance of four meters, Arcosiba asked AAA of her father's whereabouts. AAA replied that her father was not around. Arcosiba then asked her to go outside. AAA drew nearer to Arcosiba but remained inside the house. At that instance, Arcosiba uttered, "*Your father owes a big amount of money and I am the one who is supporting your studies*." He then commanded AAA to get out of the house because they have something to talk about. AAA did as ordered while BBB stayed in the kitchen crying.

While at the yard, Arcosiba embraced and kissed AAA. He likewise ordered her to sit on a sack of charcoal. At first, AAA tried to evade Arcosiba's kisses but the latter threatened her. Arcosiba then undressed AAA and instructed her to lie down on the ground. He was about to rape AAA when he suddenly changed his mind. Instead, he told AAA to proceed to the back of the house. AAA resisted, but Arcosiba dragged her. As ordered, AAA proceeded to the back of the house while being followed by Arcosiba. AAA walked totally naked while Arcosiba had her dress on his face and held her shorts in his hand.

Upon reaching the back portion of the house, Arcosiba ordered AAA to lie down, to which she acceded. Arcosiba then took off his clothes and directed AAA to hold his penis. He ordered her to masturbate his penis. AAA tried to refuse, but Arcosiba threatened to shoot her. After a while, Arcosiba ordered her to stop. He then inserted his penis into her vagina. However, Arcosiba was not able to ejaculate because of the timely arrival of AAA's neighbors who were called by BBB. Arcosiba then tried to bring AAA to the nearby river. AAA resisted but Arcosiba threatened her, saying, "*Hurry because if you will not go with me I will kill you*."

While on their way to the river, a neighbor saw them and shouted at Arcosiba, prompting the latter to release AAA and flee. AAA, on the other hand, ran towards the house of her neighbor. They reported the incident the following day and she underwent a medical check-up.[10]

The medical certificate issued by Dr. Maribeth R. Aguilar who physically examined AAA on March 22, 2004, showed the following findings:

Findings: = Upper & Lower Extremities = (–) abrasion/hematoma
= Head & Neck (–) abrasion/hematoma
= Breast
= Back
= Gluteal area (–) abrasions/hematoma
= Abdomen
= Pelvic Exam :
Ext. [G]en[i]talia Normal
= Hymen = old healed lacerations on the [5 o'clock and 7 o'clock positions]
= erythema noted on the (R) *labia m[i]nora* lower 3rd &(L) *labia minora* middle 3rd
S.E. Vaginal canal = no abrasion, no hematoma
Cervix = small, closed
I.E. PPE – I –nulliparous
C – closed, small
U – Small
A – (–) mass / tenderness
D – scanty whitish
Mgt. - Patient is for CVS = Result: No spermatozoa seen[11]

Arcosiba denied the charges against him and testified that on March 21, 2004, he was at the house of his live-in partner's parents together with his live-in partner, Analyn Mocorro, and the latter's nieces, Christine and Julita Mocorro. At about 3:00 p.m. of said day, he went to the crossing of Brgy. Lemon in order to engage in a drinking spree with his friend, Jun-Jun Pigar, a certain Molo, Edwin and Boy. At around 6:00 p.m.,

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[10] *Rollo*, pp. 5-6.

[11] Exhibit "A-1", folder of exhibits.

he went back to the house of his live-in partner's parents in order to eat some snacks, after which he went back to his friends and they resumed their drinking spree. The drinking spree went on until 9:00 p.m. Thereafter, he went back to the house of his live-in partner's parents, ate and slept thereat together with Analyn, Julita, his nephew and Analyn's mother. The following morning, he went to Calubian, Leyte, on an errand. He was arrested on his way to said place.[12]

After trial, the RTC rendered judgment convicting Arcosiba of the crime of rape under Articles 266-A[13] and 266-B[14] of the Revised Penal Code, as amended. The trial court gave credence

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[12] *Rollo*, pp. 7-8.

[13] **ART. 266-A.** *Rape, When and How Committed.* – Rape is committed

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

a. Through force, threat or intimidation;

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

c. By means of fraudulent machination or grave abuse of authority;

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

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[14] **ART. 266-B.** *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age, and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

to AAA's testimony. It ruled that no woman who is of tender age, would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience not to mention the trauma of a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. It also ruled that in light of the positive identification of the accused, his defense of denial and alibi cannot be sustained. The *fallo* of the decision reads,

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2. When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

3. When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

4. When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5. When the victim is a child below seven (7) years old.

6. When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV) / Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

7. When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

9. When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article.

WHEREFORE, premises considered, applying Article 266-A and 266-B of the Revised Penal Code as amended, and the amendatory provisions of R.A. 8353, (The Anti-Rape Law of 1997), in relation to Section 11 of R.A. 7659 (The Death Penalty Law), the Court found accused, **ROLDAN ARCOSIBA GUILTY** beyond reasonable doubt of the crime of **RAPE** charged under the information and sentenced [him to] suffer the maximum penalty of ***RECLUSION PERPETUA*** and to pay civil indemnity in the amount of Fifty Thousand (₱50,000.00) Pesos and moral damages in the amount of Twenty[-]Five (₱25,000.00) Thousand Pesos to the victim, [AAA]; and

Pay the Cost.

SO ORDERED.[15]

On appeal, the Court of Appeals upheld the trial court's ruling but modified the award of damages by including an award of exemplary damages. The decretal portion of the decision reads:

WHEREFORE, premises considered, the decision of the Regional Trial Court finding the accused, ROLDAN ARCOSIBA GUILTY beyond reasonable doubt of the crime of RAPE and [sentencing him to] suffer the maximum penalty of *RECLUSION PERPETUA* and to pay civil indemnity in the amount of Fifty Thousand (₱50,000.00) Pesos, moral damages in the amount of Twenty[-]Five Thousand (₱25,000.00) Pesos and pay the cost to [AAA] is **AFFIRMED** with **MODIFICATION** that the private complainant is also entitled to the award of exemplary damages in the amount of Twenty[-]Five Thousand [P]esos (₱25,000.00).

SO ORDERED.[16]

The case is now before us for final disposition. In his brief, appellant faults the trial court, to wit:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

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[15] CA *rollo*, p. 63.

[16] *Id.* at 132.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESSES.[17]

Simply, the issue before us is whether appellant's guilt has been proven beyond reasonable doubt.

In his brief, appellant assails the credibility of the victim. He claims that the victim's testimony is inconsistent.

For the State, the Office of the Solicitor General contends that the testimonies of the prosecution's witnesses, including that of the victim, are credible and worthy of faith and belief.

We affirm appellant's conviction.

This Court has held in the case of *People v. Baligod*[18] that rape is generally unwitnessed and oftentimes, the victim is left to testify for herself. Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof. To ensure that justice is meted out, extreme care and caution is required in weighing the conflicting testimonies of the complainant and the accused.[19]

During trial, AAA recalled the harrowing ordeal she had gone through as follows:

PROSECUTOR MERIN:

x x x x x x x x x

Q Do you know the person of Roldan Arcos[i]ba *alias* Intoy?
A Yes, sir.

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[17] *Id.* at 34.

[18] G.R. No. 172115, August 6, 2008.

[19] *Id.* at 5.

Q Is he inside this courtroom now?
A Yes, sir.

Q Where is he?
A Witness at this juncture is pointing to a person inside the courtroom who when asked of his name identified himself as Roldan Arcos[i]ba.

Q Why do you know the accused in this case Roldan Arcosiba *alias* Intoy?
A Because he is a resident in the brgy. where I [am also residing.]

x x x x x x x x x

Q On March 21, 2004 about 7:00 o'clock in the evening where were you?
A I was in the house of my friend.

Q Who is that friend who was with you at that time?
A [BBB].

Q After you were in the house of [BBB] where did you proceed[?]
A We went to our house.

x x x x x x x x x

Q When you reached your house about 7:00 o'clock in the evening of March 21, 2004 was there any untoward incident that transpired thereat?
A When we went to our house[,] our house was already opened.

x x x x x x x x x

Q When you were already inside your house what[,] if any[,] did you observe?
A Our rice was missing.

x x x x x x x x x

Q And noticing the absence of that 1 sack [of] rice[,] what did you do next?
A I looked for it because I was thinking that it might have been kept by my sister in the cabinet.

Q Were you able to find it?
A No, sir.

Q What did you do when you were not able to find it?
A We stayed inside the house and at that time that we were intending to go out I have seen this person (witness referring to the accused).

Q Where was Roldan Arcos[i]ba when you were trying to go out of your house?
A He was in our yard.

Q Was your house lighted at that time?
A Yes, sir.

x x x x x x x x x

Q Noticing the presence of Roldan Arcos[i]ba at your yard[,] what next transpired if any [please] tell the court?
A We ran together with my friend to the kitchen.

x x x x x x x x x

Q You mean you went back inside your house and ran towards the kitchen?
A Yes, sir.

Q Is your house a one[-]storey house or a two-storey house?
A One[-]storey house.

Q Is that kitchen separated from the main house?
A It is inside our house.

Q When you both ran back to your house and proceeded to the kitchen what next transpired if any?
A This person [of]Roldan Arcos[i]ba uttered words.

Q What [were] his utterances?
A He asked where my father was.

Q When did he utter that[?] [While] you were still facing him or when you ran already?
A We were still inside our house but not yet in the kitchen.

Q How far was the accused when he uttered [his] posing query [as] to the whereabouts of your father?
A From here to the DSWD Officer (Witness indicating a distance of about 4 meters).

Q After he uttered such statement posing query to the whereabouts of your father what did you do?
A I said he is not here and then he said come here first.

Q To whom was he directing [the words "come here"]?
A Me.

Q What about [BBB] where was she?
A Also in the kitchen.

Q You mean you were separated from each other?
A Yes, sir.

Q When the accused directed such statement come here what did you do?
A I drew near to him[,] but I was still inside our house near the [window].

x x x x x x x x x

Q When you drew near to him and stayed by the window what [happened next]?
A He told me that my father owed him [a] big amount of money.

Q And when he uttered that what did you say?
A I said, ["that is not true"].

Q When you made a retort to that statement that it is not true what [happened next]?
A He said, "Your father owes a big amount of money and I am the one who is supporting your studies."

Q What was your answer then?
A Nothing and I just cried.

Q After you cried[,] what next transpired[,] if any?
A Then he said, ["Y]ou get out from that house and we have something to talk [about"].

Q Did you comply [with] such statement?
A Yes, sir.

Q Did you go [out] alone?
A Yes, sir.

x x x x x x x x x

Q When you go out did you go out alone or with the accused already?
A Yes, sir.

Q After you reached that yard where you first saw [the] accused what next transpired[,] if any?
A He embraced me and kissed me and then he told me to sit down on a sack.

Q What is [the] sack for?
A Full of charcoal.

x x x x x x x x x

Q You said you were kissed to what portion of your body was kissed?
A My lips.

Q What did you do when [he kissed your lips]?
A I refused.

Q How did you show your refusal when you were kissed?
A I was evading to be kissed.

Q Were you kissed indeed?
A Yes, sir.

Q Why?
A Because he said keep quiet if not I will kill you.

Q When you were kissed how did [the] accused try to kiss you tell the Court?
A He was standing and I was sitting.

Q Where was his right hand?
A He was holding my body.

Q What portion of your body?
A My left shoulder.

Q How about his left hand where was it?
A The same.

x x x x x x x x x

Q After he uttered threatening word[s] for you not to evade his kisses what did you do?
A I did nothing but cry.

Q Why? Why is it that you were not able to do anything but cry?
A Because I was afraid.

Q Why were you afraid?
A Because he threatened me.

Q How did he threaten you?
A He said, "don't cry or I will shoot you."

x x x x x x x x x

Q After that statement for you to keep quiet what next thing did the accused do upon your person?
A He undressed me.

Q How did he undress you?
A He took off my apparels and ordered me to lie down?

Q What were you wearing?
A [Striped T-shirt and shorts.]

Q What was taken first by the accused, was it your upper apparel?
A Short[s].

Q Were you [wearing a] panty that time?
A Yes, sir.

Q After the short[s] was taken was it along with the panty?
A Yes, sir.

Q After he was successful in taking off your panty and your short[s] what next did the accused do?
A He touched me.

Q What do you mean he touched you?
A He raped me.

Q How about the upper apparel was it still intact with his body?
A Yes, sir.

Q You said you were made to lie down, to what place where you made to lie down?
A Beside the sack.

Q You mean on the ground?
A Yes, sir.

x x x x x x x x x

Q After you [laid] down on the ground as commanded by the accused[,] what next did [the] accused do upon your person?
A He was intending to rape me but he said let's do it at the back of your house.

Q After he uttered such statement[,] what did you do?
A I was resisting but he dragged me.

Q How did he drag you?
A He told me to stand up and then told me to go first to the back of my house.

Q Did you not try to run away after he told you to go to the back of your house?
A No[,] because he was situated on my back.

Q You mean he was at your back?
A Yes, sir.

Q You mean he was following you?
A Yes, sir.

Q How far was the accused upon your person while you proceeded to the back of your house?
A A meter distance.

Q Was he holding your body?
A No, sir.

Q Were you still half naked that time?
A I don't have anymore my dress because he placed it on his face.

Q You mean he put it on his head?
A My dress only.

Q How about your short[s]?
A He took it.

Q You mean you were totally naked at that time?
A Yes, I was naked.

Q Were you able to reach the back of your house?
A Yes, sir.

Q To what portion [at] the back of your house did you go?
A At the back of our comfort room.

Q Is it near a kitchen?
A Yes, sir.

Q How about your companion [BBB] where was she?
A She ran to her house and had told what happened.

Q In what period of time when [BBB] ran to her house, was it on the time when you were on your way of going out to your house?
A When we were already at the back of our house.

Q You mean at the back of your comfort room?
A Yes, sir.

Q After you were at the back of your comfort room what [happened next] if any tell the Court?
A He told me to lie down and he took off his [shorts].

Q Did you lie down as instructed?
A Yes, sir.

Q Why did you lie down?
A Because I was ordered.

Q Why did you not try to run?
A No, sir.

Q Why did you not try to run away?
A Because I was afraid.

Q Afraid of what?
A Because he might shoot me.

x x x x x x x x x

Q After he was already naked what transpired next[,] if any?
A He took off his briefs and he let me hold his penis.

Q While you were already on a lying position.
A Yes, sir.

Q Did you hold his penis?
A I was refusing then but he threatened me.

Q Threatened you how?
A The same saying.

Q What is that?
A That he will shoot me.

Q Did you hold his penis?
A Yes, sir.

Q What hand was used by you in holding his penis?
A The two hands.

Q And what did you do when you [held] his penis with your two hands?
A He told me to masturbate.

Q Did you masturbate?
A Yes, sir.

Q For how long?
A It did not take long.

Q What happened to the penis when you masturbated that?
A He told me to stop and then he inserted it to my vagina.

Q What was your relative position when he inserted his penis?
A Lying.

Q How did you feel when the penis was inserted to your vagina?
A Pain.

Q Did you not try to evade the insertion of his penis to your vagina?
A I did not.

Q After the penis was inserted to your vagina was the accused able to ejaculate?
A No, sir.

Q Why?
A It did not take long because a person arrived.

Q [Who is that person?]
A Kuya Bombom.

Q Who is he?
A My neighbor.

Q When your neighbor Kuya Bombom arrived what did the accused do?
A He immediately stood up and he intended to bring me to the river.

Q Did you go along with the accused?
A I was refusing.

Q Because you refused, what did the accused do?
A He said, "Hurry because if you will not go with me I will kill you."[20]

There appears nothing inconsistent with AAA's testimony. Despite being merely 14 years old she subjected herself to the glare of public prosecution for rape, positively identified appellant as her rapist and candidly revealed the ugly details of the deplorable violation of her person. Her testimony appears straightforward and clear. It is thus correct that both the trial and appellate courts gave credence to her testimony and they both regarded her as a credible witness. Absent any showing that the lower courts had overlooked certain facts of substance and value which, if considered might affect the result of the case, we find no basis to doubt or dispute, much less overturn, the findings of credibility by both courts.

Compared to the evidence presented by the prosecution consisting notably of the positive identification of the appellant not only by AAA herself but by two other witnesses, the appellant's defense of denial is inherently weak and dubious. As often stressed, a mere denial constitutes negative evidence and warrants the least credibility or none at all absent any strong evidence of non-culpability. It cannot prevail over the positive and credible declarations of the victim and her witnesses testifying on affirmative matters.

As to the award of damages, both courts are consistent with the prevailing jurisprudence on simple rape and correctly imposed ₱50,000 as civil indemnity. Conformably too, the Court of Appeals correctly modified the award by including an award for exemplary damages in the amount of ₱25,000 in conformity with Article 2230 of the Civil Code which provides 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 which in this case is AAA's minority.

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[20] TSN, July 21, 2004, pp. 3-20.

WHEREFORE, the Decision dated May 9, 2007 of the Court of Appeals in CA-GR CEB-CR.-H.C. No. 00094 is *AFFIRMED*. This Court finds appellant Roldan Arcosiba guilty beyond reasonable doubt of the crime of rape and sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the victim the sums of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages. Costs against accused-appellant.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183656. September 4, 2009]

GILBERT ZALAMEDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ELEMENTS OF POSSESSION OF PROHIBITED DRUG, DULY ESTABLISHED IN CASE AT BAR.— Illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 carries the following elements: (1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused. On the other hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting,

ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. The evidence for the prosecution showed the presence of all these elements. PO2 De Guzman, in his testimony of January 28, 2004, narrated the circumstances that led them to go to the house of the petitioner; how he saw the petitioner and Villaflor in the act of "sniffing smoke"; and how they arrested and searched the petitioner and seized evidence they discovered in plain view. PO2 De Guzman duly and positively identified the petitioner as the person he saw sniffing *shabu* with Villaflor, and as the same person from whose right pocket he recovered a rectangular plastic sachet containing white crystalline substances. He also narrated how the police inadvertently found various drug apparatus and paraphernalia scattered on top of the petitioner's bed. Per Report No. D-1142-03S of Police Inspector Palacios, the plastic sachet recovered from the petitioner was examined and found to contain 0.03 gram of methylamphetamine hydrochloride, a prohibited drug. The two aluminum foil strips and three unsealed transparent plastic sachets recovered on top of the petitioner's bed also tested positive for the presence of *shabu*. Thus, the petitioner knowingly possessed *shabu* – a prohibited drug – and had under his control various drug paraphernalia without legal authority to do so, all in violation of Sections 11 and 12 of R.A. No. 9165.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; COMPLIED WITH IN CASE AT BAR; THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUG SEIZED FROM PETITIONER HAVE NOT BEEN COMPROMISED.— The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. Contrary to what the petitioner wants to portray, the chain of custody of the seized prohibited drug was shown not to have been broken. After the seizure of the rectangular plastic sachet containing white crystalline substance from the petitioner's possession and of the various drug paraphernalia on top of the petitioner's bed, the police immediately brought the petitioner and Villaflor to the police station, together with the seized items. PO2 De Guzman himself brought these items to the police station and marked them. The plastic sachet containing white crystalline substance was marked "GSZ" (*Exh*. "F"); the improvised tooter

aluminum foil strips and aluminum foil with traces of methylamphetamine hydrochloride were marked "AHV" (*Exh*. "G" and "H"); the three pieces of unsealed transparent plastic sachet were marked "RSG" (*Exh*. "I', "I-1", and "I-2"); the disposable lighter was marked "RSG" (*Exh*. "J"); the stainless pair of scissors was marked "RSG" (*Exh*. "K"); the transparent plastic sachet containing three aluminum foil strips was marked "RSG" (*Exh*. "L"); and the Monsieur bag was marked "RSG" (*Exh*. "M"). These confiscated items were immediately turned over to SPO4 Mangulabnan, who in turn, forwarded them to the PNP Crime Laboratory, Southern Police District for examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, Forensic Chemist Palacios concluded that Exhibits "F", "G", "H", "I", "I-1", and "I-2" tested positive for the presence of methylamphetamine hydrochloride. When the prosecution presented these marked specimens in court, PO2 De Guzman positively identified them to be the ***same*** items he seized from the petitioner and which he later marked at the police station, from where the seized items were turned over to the laboratory for examination based on a duly prepared request. Custody of the seized items from the time they were first discovered until they were brought for examination. Besides, as earlier stated, the petitioner did not contest the admissibility of the seized items during trial. **The integrity and the evidentiary value of the drug seized from the petitioner were therefore duly proven not to have been compromised.**

3. ID.; ID.; ID.; PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS IS OF UTMOST IMPORTANCE AS THESE WOULD BE UTILIZED IN THE DETERMINATION OF THE GUILT OR INNOCENCE OF THE ACCUSED.— Jurisprudence teems with pronouncements that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the *preservation of the integrity and the evidentiary value of the seized items*, as these would be utilized in the determination of the guilt or innocence of the accused. In the present case, we see substantial compliance by the police with the required procedure on the custody and control of the confiscated items, thus showing that the

integrity of the seized evidence was not compromised. We refer particularly to the succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, under a situation where no objection to admissibility was ever raised by the defense. All these, to the unprejudiced mind, show that the evidence seized were the same evidence tested and subsequently identified and testified to in court.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; PROSECUTION WITNESS TESTIFIED IN A SPONTANEOUS, STRAIGHTFORWARD AND THE CATEGORICAL MANNER PROVING ALL THE ELEMENTS OF THE CRIMES CHARGED DESPITE THE GRUELING CROSS-EXAMINATION BY DEFENSE COUNSEL.— PO2 De Guzman's testimony also presented a complete picture of the police operation – from the time the desk officer received a tip regarding an ongoing pot session at the petitioner's house on D. Gomez Street; to the time the police went there and arrested the petitioner and Villaflor; until they returned to the police station and marked the confiscated items. PO2 De Guia corroborated PO2 De Guzman's testimony on all material points. *The defense did not contest the admissibility of the seized items as evidence during trial.* Significantly, the petitioner failed to produce convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or that the evidence submitted by the prosecution had been tampered with. PO2 De Guzman testified in a spontaneous, straightforward and categorical manner, proving all the elements of the crimes charged; he never wavered despite the grueling cross-examination by the defense counsel.

5. ID.; ID.; LATIN MAXIM *"FALSUS IN UNUS, FALSUS IN OMNIBUS"* BEST EXPLAINS WHY PETITIONER'S STORY IS UNWORTHY OF BELIEF.— We find the petitioner's story unworthy of belief. We find the petitioner's claim that he was arrested and detained in the evening of September 13, 2003 to be self-serving and uncorroborated by any separate competent evidence. The petitioner, in fact, admitted that he has no proof of such detention in his testimony of March 31, 2004. The justification that the petitioner offered for Villaflor's presence at his place, in the absence of any corroborating evidence, is likewise questionable. Allegedly,

Villaflor was asked by Julie to borrow from Milagros money to be used in a baptism to be held on the following day. No reason exists in the records explaining why Villaflor would proceed to the petitioner's house and stay there, given the urgency of his task and given that, by the petitioner's own admission, Milagros was expecting Villaflor that night. The questionable status of this basic component of the denial, to our mind, renders the whole denial itself questionable. The latin maxim *"falsus in unus, falsus in omnibus"* best explains our reason.

6. ID.; ID.; DEFENSE OF DENIAL; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION AND CREDIBLE DECLARATIONS MADE BY PROSECUTION WITNESSES.— The petitioner's denial must likewise fail in light of the positive identification and declarations made by the prosecution witnesses. As we stated earlier, these witnesses testified in a straightforward and categorical manner regarding the identities of the malefactors. They did not waver despite the defense counsel's rigid questioning. Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense. As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed. One such positive evidence is the result of the laboratory examination conducted by the PNP Crime Laboratory on the various drug and drug paraphernalia recovered from the petitioner and Villaflor which revealed that the following confiscated items tested positive for the presence of *shabu*: (a) one heat-sealed transparent plastic sachet with marking "GSZ" containing 0.03 gram of white crystalline substance; (b) two aluminum foil strips both with markings "AHV," each containing white crystalline substance; and (c) three unsealed transparent plastic sachets all with markings "RSG" each containing white crystalline substance. In addition, the drug tests conducted on the petitioner and Villaflor both yielded *positive results*.

7. ID.; ID.; CLAIM OF EXTORTION IS SELF-SERVING AND UNCORROBORATED.— Petitioner's claim of extortion is similarly untenable. An allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases. It is viewed by this Court with disfavor,

for it can be easily concocted. To substantiate such a defense, the evidence must be clear and convincing. In the present case, the petitioner was unable to support his allegation of extortion with any other evidence. The petitioner also admitted that he did not know the policemen previous to the arrest, hence negating any improper motive on the part of the police. Such lack of dubious motive coupled with the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of prosecution witnesses, should prevail over the petitioner's self-serving and uncorroborated extortion claim. It is also worth noting that the petitioner has not filed a single complaint against the police officers who allegedly attempted to extort money from him.

8. ID.; ID.; PRESENTATION OF INFORMANT IN AN ILLEGAL DRUG CASE IS NOT ESSENTIAL FOR CONVICTION NOR IS IT INDISPENSABLE FOR A SUCCESSFUL PROSECUTION BECAUSE HIS TESTIMONY WOULD BE MERELY CORROBORATIVE AND CUMULATIVE.— The settled rule is that the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative. Moreover, informants are usually not presented in court because of the need to hide their identities and preserve their invaluable service to the police. Thus, we held in *People v. Boco*: Under the circumstances, we do not find any necessity for additional corroborating testimony, particularly that of the confidential informant. Intelligence agents, due to the nature of their work, are often not called to testify in court so as not to reveal their identities publicly. Once known, they could no longer be used again and, worse, may be the object of revenge by the criminals they implicate. The prevailing doctrine is that their testimonies are not essential for conviction, nor are they indispensable to a successful prosecution. With the testimonies of the arresting officers, they would be, after all, merely corroborative and cumulative.

9. ID.; ID.; NON-PRESENTATION OF THE FORENSIC CHEMIST WAS NOT FATAL TO THE PROSECUTION'S CASE; AS A PUBLIC OFFICER, THE FORENSIC CHEMIST'S REPORT CARRIES PRESUMPTION OF REGULARITY AND ARE, THEREFORE, CONCLUSIVE

IN THE ABSENCE OF EVIDENCE PROVING THE CONTRARY.— We also reject the petitioner's claim that the non-presentation of the forensic chemist was fatal to the prosecution's case. The petitioner never raised in issue before the trial court the non-presentation of Police Inspector Palacios. **In fact, the defense during the pre-trial agreed to dispense with her testimony.** It must also be stressed that Police Inspector Palacios is a public officer, and her report carries the presumption of regularity. Besides, Section 44, Rule 130 of the Revised Rules of Court provides that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are *prima facie* evidence of the facts therein stated. Police Inspector Palacios' findings that Exhibits "F", "G", "H", "I", "I-1", and "I-2" were found positive for the presence of *shabu* are, therefore, conclusive in the absence of evidence proving the contrary.

10. ID.; CRIMINAL PROCEDURE; ARREST; AN ACCUSED MAY BE ESTOPPED FROM ASSAILING THE LEGALITY OF HIS ARREST IF HE FAILED TO MOVE FOR THE QUASHING OF THE INFORMATION AGAINST HIM BEFORE HIS ARRAIGNMENT; CASE AT BAR.— We stress at the outset that the petitioner failed to question the legality of his warrantless arrest. The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise the objection is deemed waived.

11. ID.; ID.; ID.; WARRANTLESS ARREST; JUSTIFIED IN CASES OF *IN FLAGRANTE DELICTO*.— We carefully examined the records and now hold that the warrantless arrest conducted on the petitioner was valid. Section 5, Rule 113 of the Rules on Criminal Procedure lists the situations when a person may be arrested without a warrant, thus: Sec. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person: a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; b) When an offense has just been committed, and he has probable

cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (*1*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done in the presence or within the view of the arresting officer.

12. ID.; ID.; ID.; ID.; PETITIONER WAS ARRESTED *IN FLAGRANTE DELICTO*.— After carefully evaluating the evidence in its totality, we hold that the prosecution successfully established that the petitioner was arrested *in flagrante delicto*. We emphasize that the series of events that led the police to the petitioner's house and to his arrest were triggered by a "tip" from a concerned citizen that a "pot session" was in progress at the petitioner's house located on D. Gomez Street. Under the circumstances, the police did not have enough time to secure a search warrant considering the "time element" involved in the process (*i.e.*, a pot session may not be for an extended period of time and it was then 5:15 a.m.). In view of the urgency, SPO4 Orbeta immediately dispatched his men to proceed to the identified place – 2725 D. Gomez Street – to verify the report. At the place, the responding police officers verified from a slightly opened door and saw the petitioner and Villaflor "sniffing smoke" to use the words of PO2 De Guzman, or "*sumisinghot ng shabu*" as PO2 De Guia put it. There was therefore **sufficient probable cause** for the police officers to believe that the petitioner and Villaflor were then and there committing a crime. As it turned out, the petitioner indeed possessed a prohibited drug and, together with Villaflor, was even using a prohibited drug and likewise illegally possessed drug paraphernalia, contrary to law. When an accused is caught *in flagrante delicto*, the police officers are not only authorized but are duty-bound to arrest him even without a warrant.

13. ID.; ID.; ID.; ID.; SEARCH INCIDENT TO LAWFUL ARREST; JUSTIFIED THE WARRANTLESS SEARCH AND SEIZURE THAT YIELDED ONE (1) HEAT-SEALED PLASTIC SACHET OF *SHABU* AND OTHER DRUG PARAPHERNALIA.— In the course of the arrest and in accordance with police procedures, the petitioner and Villaflor were frisked, which search yielded the prohibited drug in the petitioner's possession. The police, aside from seeing Villaflor throw away a tooter, also saw various drug paraphernalia scattered on top of the petitioner's bed. These circumstances were sufficient to justify the warrantless search and seizure that yielded one (1) heat-sealed plastic sachet of *shabu*. In this regard, Section 13, Rule 126 of the Rules of Court states: Section 13. *Search Incident to Lawful Arrest*. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. The seizure of the various drug paraphernalia is likewise beyond question. Under the plain view doctrine, objects falling in the "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. This doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were dispatched by their desk officer; they arrested the petitioner and Villaflor as they had reason to believe that they were illegally using and possessing a prohibited drug and drug paraphernalia. The search of the petitioner incident to his arrest yielded the confiscated crystalline substance which later proved to be *shabu*. In the course of their lawful intrusion, they inadvertently saw the various drug paraphernalia scattered on the bed. As these items were plainly visible, the police officers were justified in seizing them.

14. ID.; ID.; ID.; ID.; ABSENCE OF SURVEILLANCE DID NOT UNDERMINE THE VALIDITY OF PETITIONER'S ARREST; WHEN TIME IS OF THE ESSENCE, THE POLICE MAY DISPENSE WITH THE NEED FOR PRIOR SURVEILLANCE.— The petitioner also harps on the fact that the police did not conduct a prior surveillance to verify the tipped information. We emphasize that the "tip" has reference to an ongoing pot session – an activity that does not usually last for an extended period. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. Simply stated, a prior surveillance is not necessary where the police operatives are pressed for time to capture a suspected offender, as in this case. Thus, the absence of a surveillance did not undermine the validity of the petitioner's arrest.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari* the decision[1] and resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 30061 that affirmed the February 8, 2006 decision of the Regional Trial Court (*RTC*), Branch 64, Makati City.[3] This RTC decision found petitioner Gilbert Zalameda (*petitioner*) guilty of violating **Section 11[4] of Republic Act (*R.A.*) No. 9165** (The Comprehensive Dangerous Drugs Act of 2002), and sentenced him to suffer the indeterminate penalty of imprisonment

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[1] Penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Mario L. Guariña III and Associate Justice Sixto C. Marella, Jr.; *rollo*, pp. 87-96.

[2] *Id.*, pp. 108-109.

[3] Penned by Judge Delia H. Panganiban; *id.*, pp. 60-68.

[4] Sec.11. Possession of Dangerous Drugs.

for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum. The trial court likewise found the petitioner and his co-accused Albert Villaflor (*Villaflor*) guilty of violating **Section 12**[5] **of R.A. No. 9165,** and sentenced them to suffer the indeterminate penalty of imprisonment for four (4) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum.

The prosecution charged **the petitioner** before the RTC with violation of Section 11, Article II of R.A. No. 9165 under the following Information:

Criminal Case No. 03-3559

That on or about the 14th day of September, 2003, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously possess one (1) heat sealed transparent plastic sachet containing zero point zero three (0.03) gram of Methylampethamine Hydrochloride (*shabu*), which is a dangerous drug.

CONTRARY TO LAW.[6]

The **petitioner and Villaflor** were likewise charged before the same court with violation of Section 12, Article II of R.A. No. 9165. The Information for this charge reads:

Criminal Case No. 03-3560

That on or about the 14th day of September 2003, in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, not being lawfully authorized to carry dangerous paraphernalia, did then and there willfully, unlawfully and feloniously have in their possession two (2) aluminum foil strips and three (3) unsealed transparent sachets

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[5] Sec. 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.

[6] CA records, p. 10.

with traces of Methylamphetamine Hydrochloride, three (3) other pieces of aluminum foils strips, one (1) stainless scissor and one (1) disposable lighter which are instruments, apparatuses or paraphernalia fit or intended for ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.[7]

The petitioner and Villaflor pleaded not guilty to the charges.[8] During pre-trial, the prosecution and the defense stipulated on the following:

PRE-TRIAL ORDER

x x x x x x x x x

1. That these cases were investigated by PO1 Alex Inopia;
2. That after the investigation of PO1 Alex Inopia, he prepared the Final Investigation Report;
3. That the Drug Enforcement Unit through SPO4 Arsenio Mangulabnan made a Request for Laboratory Examination;
4. That the PNP Crime Laboratory through Police Inspector Karen Palacios conducted an examination on the specimen submitted;
5. That Physical Science Report was issued by PNP Crime Laboratory Office detailing the findings of the Forensic Chemist; and
6. The qualification of the Forensic Chemist.

The prosecution marked the following exhibits:

A Final Investigation Report

A-1 Signature of PO1 Alex Inopia

A-2 Signature of SPO4 Arsenio Mangulabnan

B Request for Laboratory Examination

B-1 Signature of SPO4 Arsenio Mangulabnan

C Duplicate Copy of Physical Science Report

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[7] *Id.*, p. 11.

[8] *Records*, pp. 18-19.

C-1 Signature of Karen Palacios

D **Original Copy of Physical Science Report**

D-1 Signature of Karen Palacios

D-2 Signature of Engr. Richard Allan B. Mangalip

D-3 Signature of Juanita A. Ramos

The prosecution reserved its right to present and mark additional exhibits in the course of the trial.

The defense did not mark any exhibit but reserved the right to present and mark them in the course of the trial.

With the stipulation entered into by the prosecution and the defense, the testimony of Forensic Chemist Karen S. Palacios is dispensed with.

Pre-trial is terminated.[9]

Joint trial on the merits followed. The essential facts, based on the records, are summarized below.

At around 5:15 a.m. of September 14, 2003, SPO4 Mignelito Orbeta (*SPO4 Orbeta*), the desk officer of Precinct 1, Makati City, received a phone call from a concerned citizen regarding an on-going "pot session" at 2725 D. Gomez St., *Barangay* Tejeros, Makati City.[10] The house number was specified.[11]

Acting on this information, SPO4 Orbeta dispatched PO2 Faustino De Guia (*PO2 De Guia*), PO2 Renato De Guzman, (*PO2 De Guzman*), PO2 Gonzalo Acnam, PO1 Donie Tidang (*PO1 Tidang*), and one Major Ancheta to D. Gomez St., *Barangay* Tejeros to verify the report. They were in uniform.[12] They reached their intended destination at 5:25 a.m. which they found to be a house – three by six (3 x 6) meters – located along D. Gomez St. They found the door of the house slightly

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[9] Pre-trial Order, *id.*, pp. 33-34.

[10] TSN, January 28, 2004, pp. 3-4, 15-16.

[11] *Id.*, pp. 3 and 24.

[12] *Id.*, pp. 4, 23-24.

open.[13] PO2 De Guzman peeped inside and saw the petitioner and Villaflor sniffing smoke[14] – "*may sinisinghot sila na usok*"[15] – while sitting on a bed.[16] PO2 De Guzman gave a "thumbs-up" sign to his companions who joined him in immediately rushing inside the house. Villaflor was holding a tooter at that point, which he threw away.[17] The petitioner initially showed resistance when the police introduced themselves as law enforcers.[18] They frisked the petitioner and Villafor in accordance with police procedure,[19] and recovered from the petitioner's right pocket a rectangular plastic sachet containing white crystalline substances.[20] The police likewise found on top of the bed aluminum foils (later confirmed to have traces of *shabu),* three (3) plastic sachets containing traces of white crystalline substance, a pair of scissors, a disposable lighter, a bag with a plastic zipper, and an improvised tooter.[21] The police handcuffed the petitioner and Villaflor, informed them of their rights and their violation of R.A. No. 9165, and brought them to the police station.[22]

At the police station, PO2 De Guzman marked the confiscated items,[23] and turned them and the suspects to SPO4 Arsenio Mangulabnan (*SPO4 Mangulabnan*). The latter prepared a request for laboratory examination;[24] immediately after, the seized items were brought to the PNP Crime Laboratory for analysis and

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[13] *Id.*, pp. 4-5.

[14] *Id.*, p. 5.

[15] *Id.*, p. 23.

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

[17] *Id.*, pp. 5 and 27.

[18] *Id.*, pp. 19-20.

[19] *Id.*, pp. 6 and 20.

[20] *Id.*, pp. 6 and 21.

[21] *Id.*, pp. 7-9.

[22] *Id.*, pp. 7 and 20.

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

[24] *Id.*, p. 14; See also Pre-Trial Order, records, pp. 33-34.

examination. Police Inspector Karen S. Palacios (*Police Inspector Palacios*), Forensic Chemical Officer of the PNP Crime Laboratory, conducted an examination on the specimens submitted,[25] and found them to be positive for the presence of *shabu*.[26] Urine tests conducted on the petitioner and Villaflor also yielded a positive result.[27]

The petitioner presented a different version of the events and narrated that he and Villaflor were talking at around 11:47 p.m. of September 13, 2003 when four men in civilian clothes barged into his house on D. Gomez Street.[28] The door at that time was closed but not locked. These men ordered them to stand, and then handcuffed them.[29] PO2 De Guzman frisked him and found ₱100.00 in his pocket. PO1 Tidang then conducted a search on the room.[30] Afterwards, the police brought them to Precinct 1 where they were detained. At the police station, the police asked them whether they had money to give in exchange for their liberty (*i.e.* "*pang-areglo*"). The police initially demanded ₱20,000.00, but the petitioner and Villaflor answered that they did not have this amount.[31] The petitioner likewise denied that he and Villaflor were using drugs when the police entered his house.[32]

On cross examination, he testified that Villaflor was a friend of his sister, Julie; and that the latter requested Villaflor to borrow money from their (his sister's and his) mother, whose house was located in a nearby street.[33] The money was for the

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[25] *Id.*

[26] See Physical Science Report No. D-1142-03S, records, p. 55.

[27] TSN, January 28, 2004, pp. 14-15.

[28] TSN, March 31, 2004, pp. 4-5.

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

[30] *Id.*, pp. 9-10.

[31] *Id.*, pp. 11-13.

[32] *Id.*, p. 14.

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

baptism of Julie's daughter scheduled for the next day.[34] He did not anymore accompany Villaflor to his mother's house because her mother was already asleep.[35] He declared that he did not personally know the persons who arrested them prior to their arrest.[36] He also added that PO2 De Guzman demanded ₱20,000.00 from him in exchange for his liberty.

The RTC, in its decision of February 8, 2006, convicted the petitioner and Villaflor of the crimes charged, and sentenced them, as follows:[37]

1. In Criminal Case No. 03-3559, the accused GILBERT ZALAMEDA *y* SUMILE is found GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and is sentenced to suffer the indeterminate imprisonment of TWELVE (12) YEARS, ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum pursuant to the Indeterminate Sentence Law, R.A. No. 4103, as amended, and to pay a fine of ₱300,00.00.

2. In Criminal Case No. 03-3560, the accused GILBERT ZALAMEDA *y* SUMILE and accused ALBERT VILLAFLOR *y* HUERTE are found GUILTY beyond reasonable doubt of the crime of violation of Section 12, Article II, R.A. No. 9165 and are sentenced to suffer the indeterminate sentence of FOUR (4) MONTHS and ONE (1) DAY as minimum, to TWO (2) YEARS, SEVEN (7) MONTHS, as maximum, and to pay a fine of ₱10,000.00.

   In both cases, the period during which the accused were held under detention shall be considered in their favor pursuant to existing rules.

   The dangerous drug subject matter of Criminal Case No. 03-3559 consisting of 0.03 gram of Methylamphetamine Hydrochloride or *shabu* and the pieces of drug paraphernalia recovered from the accused and subject of Criminal Case

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

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

[36] *Id.*, pp. 31-32.

[37] RTC Decision, *rollo*, pp. 67-68.

No. 03-3560 are hereby transmitted to the Philippine Drug Enforcement Agency (PDEA) for its appropriate disposition.

SO ORDERED.

The petitioner appealed to the CA and this appeal was docketed as CA-G.R. CR No. 30061. The CA affirmed the RTC decision in its decision of March 18, 2008.[38] The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution of July 15, 2008.[39]

In the present petition,[40] petitioner alleges that the items confiscated from him were inadmissible, and that the prosecution failed to prove the existence of the illegal drug.

For the State, the Office of the Solicitor General (*OSG*) counters with the argument that the testimonies of PO2 De Guzman and PO2 De Guia were straightforward and consistent on material points.[41] In addition, the warrantless arrest conducted by the police was valid as the petitioner and Villaflor were caught sniffing *shabu*. Since the arrest was lawful, the search made incidental to the arrest of the two accused was also lawful.[42]

The OSG further argues that the prosecution was able to show all the elements of the crimes charged.[43] The police also complied with the procedure in the custody and disposition of seized drugs under Section 21 of R.A. No. 9165 and its Implementing Rules.[44]

Finally, the OSG contends that the petitioner's bare denial constitutes self-serving negative evidence which cannot prevail over the categorical and positive testimony of the prosecution witnesses.[45]

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[38] *Id.*, pp. 87-96.

[39] *Id.*, pp. 108-109.

[40] *Id.*, pp. 10-36.

[41] Comment, *id.*, p. 132.

[42] *Id.*, p. 134.

[43] *Id.*, p. 133.

[44] *Id.*, pp. 136-137.

[45] *Id.*, p. 138.

We DENY the petition for lack of merit. The records of the case records support the conclusion that a lawful arrest, search and seizure took place, and that the prosecution fully discharged its burden of establishing *all* the elements necessary for conviction for the crimes charged beyond reasonable doubt.[46]

The prosecution duly established the elements of the crimes charged

Illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 carries the following elements: (1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused.[47] On the other hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. The evidence for the prosecution showed the presence of all these elements.

PO2 De Guzman, in his testimony of January 28, 2004, narrated the circumstances that led them to go to the house of the petitioner;[48] how he saw the petitioner and Villaflor in the act of "sniffing smoke";[49] and how they arrested and searched the petitioner and seized evidence they discovered in plain view.[50]

PO2 De Guzman duly and positively identified the petitioner as the person he saw sniffing *shabu* with Villaflor, and as the same person from whose right pocket he recovered a rectangular plastic sachet containing white crystalline substances. He also

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[46] See *People v. Rivera*, G.R. No. 182347, October 17, 2008.

[47] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430.

[48] TSN, January 28, 2004, pp. 3-4.

[49] *Id.*, p. 5.

[50] *Id.*, pp. 6-14.

narrated how the police inadvertently found various drug apparatus and paraphernalia scattered on top of the petitioner's bed. Per Report No. D-1142-03S of Police Inspector Palacios, the plastic sachet recovered from the petitioner was examined and found to contain 0.03 gram of methylamphetamine hydrochloride, a prohibited drug. The two aluminum foil strips and three unsealed transparent plastic sachets recovered on top of the petitioner's bed also tested positive for the presence of *shabu*. Thus, the petitioner knowingly possessed *shabu* – a prohibited drug – and had under his control various drug paraphernalia without legal authority to do so, all in violation of Sections 11 and 12 of R.A. No. 9165.

PO2 De Guzman's testimony also presented a complete picture of the police operation – from the time the desk officer received a tip regarding an ongoing pot session at the petitioner's house on D. Gomez Street; to the time the police went there and arrested the petitioner and Villaflor; until they returned to the police station and marked the confiscated items. PO2 De Guia corroborated PO2 De Guzman's testimony on all material points. *The defense did not contest the admissibility of the seized items as evidence during trial.* Significantly, the petitioner failed to produce convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or that the evidence submitted by the prosecution had been tampered with.[51]

PO2 De Guzman testified in a spontaneous, straightforward and categorical manner, proving all the elements of the crimes charged; he never wavered despite the grueling cross-examination by the defense counsel.

The Petitioner's Defenses

a. The Legality of the Petitioner's Arrest

The petitioner alleges that since the warrantless arrest conducted by the police was illegal, the items seized from him as a result of said arrest were inadmissible.

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[51] See *People v. Hernandez*, G.R. No. 184804, June 18, 2009.

This argument totally lacks merit.

We stress at the outset that the petitioner failed to question the legality of his warrantless arrest. The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise the objection is deemed waived.[52]

In any event, we carefully examined the records and now hold that the warrantless arrest conducted on the petitioner was valid. Section 5, Rule 113 of the Rules on Criminal Procedure lists the situations when a person may be arrested without a warrant, thus:

Sec. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (*1*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done in the presence or within the view of the arresting officer.[53]

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[52] See *People v. Divina*, G.R. No. 174067, August 29, 2007, 531 SCRA 631.

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

After carefully evaluating the evidence in its totality, we hold that the prosecution successfully established that the petitioner was arrested *in flagrante delicto*.

We emphasize that the series of events that led the police to the petitioner's house and to his arrest were triggered by a "tip" from a concerned citizen that a "pot session" was in progress at the petitioner's house located on D. Gomez Street. Under the circumstances, the police did not have enough time to secure a search warrant considering the "time element" involved in the process (*i.e.*, a pot session may not be for an extended period of time and it was then 5:15 a.m.). In view of the urgency, SPO4 Orbeta immediately dispatched his men to proceed to the identified place – 2725 D. Gomez Street – to verify the report. At the place, the responding police officers verified from a slightly opened door and saw the petitioner and Villaflor "sniffing smoke" to use the words of PO2 De Guzman, or "*sumisinghot ng shabu*" as PO2 De Guia put it. There was therefore **sufficient probable cause** for the police officers to believe that the petitioner and Villaflor were then and there committing a crime. As it turned out, the petitioner indeed possessed a prohibited drug and, together with Villaflor, was even using a prohibited drug and likewise illegally possessed drug paraphernalia, contrary to law. When an accused is caught *in flagrante delicto*, the police officers are not only authorized but are duty-bound to arrest him even without a warrant.

In the course of the arrest and in accordance with police procedures, the petitioner and Villaflor were frisked, which search yielded the prohibited drug in the petitioner's possession. The police, aside from seeing Villaflor throw away a tooter, also saw various drug paraphernalia scattered on top of the petitioner's bed. These circumstances were sufficient to justify the warrantless search and seizure that yielded one (1) heat-sealed plastic sachet of *shabu*. In this regard, Section 13, Rule 126 of the Rules of Court states:

> Section 13. *Search Incident to Lawful Arrest*. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

The seizure of the various drug paraphernalia is likewise beyond question. Under the plain view doctrine, objects falling in the "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. This doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.[54]

All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were dispatched by their desk officer; they arrested the petitioner and Villaflor as they had reason to believe that they were illegally using and possessing a prohibited drug and drug paraphernalia. The search of the petitioner incident to his arrest yielded the confiscated crystalline substance which later proved to be *shabu*. In the course of their lawful intrusion, they inadvertently saw the various drug paraphernalia scattered on the bed. As these items were plainly visible, the police officers were justified in seizing them.

The petitioner also harps on the fact that the police did not conduct a prior surveillance to verify the tipped information. We emphasize that the "tip" has reference to an ongoing pot session – an activity that does not usually last for an extended period. We have held that when time is of the essence, the police may dispense with the need for prior surveillance.[55] Simply stated, a prior surveillance is not necessary where the police operatives are pressed for time to capture a suspected offender, as in this case. Thus, the absence of a surveillance did not undermine the validity of the petitioner's arrest.

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[54] See *People v. Salanguit*, G.R. Nos. 133254-55, April 19, 2001, 356 SCRA 683.

[55] See *Quinicot v. People*, G.R. No. 179700, June 22, 2009.

b. Denial and Extortion

The petitioner denied that he and Villaflor were caught sniffing *shabu*, and maintained that they were just talking to each other when the police arrived at his house at 11:47 p.m. of September 13, 2003. According to the petitioner, Villaflor was in his house because he (Villafor) had been requested by Julie (the petitioner's own sister) to borrow money from their mother, Milagros, who lives in a nearby street. The money was for the baptism of Julie's daughter, scheduled for the next day.[56] The petitioner maintained that he did not bring Villaflor to Milagros' house as soon as he (Villaflor) arrived in the evening of September 13, 2003 because it was already late and Milagros was already asleep.[57] He maintained that he and Villaflor were arrested and detained on September 13, 2003 and not on September 14, 2003.[58]

As the lower courts did, we find the petitioner's story unworthy of belief.

We find the petitioner's claim that he was arrested and detained in the evening of September 13, 2003 to be self-serving and uncorroborated by any separate competent evidence. The petitioner, in fact, admitted that he has no proof of such detention in his testimony of March 31, 2004.[59] The justification that the petitioner offered for Villaflor's presence at his place, in the absence of any corroborating evidence, is likewise questionable. Allegedly, Villaflor was asked by Julie to borrow from Milagros money to be used in a baptism to be held on the following day. No reason exists in the records explaining why Villaflor would proceed to the petitioner's house and stay there, given the urgency of his task and given that, by the petitioner's own admission, Milagros was expecting Villaflor that night. The questionable status of this basic component of the denial, to our mind, renders

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[56] TSN, March 31, 2004, pp. 4-6.

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

[58] *Id.*, pp. 4 and 11.

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

the whole denial itself questionable. The latin maxim "*falsus in unus, falsus in omnibus*"[60] best explains our reason.

The petitioner's denial must likewise fail in light of the positive identification and declarations made by the prosecution witnesses. As we stated earlier, these witnesses testified in a straightforward and categorical manner regarding the identities of the malefactors. They did not waver despite the defense counsel's rigid questioning.

Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense. As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed. One such positive evidence is the result of the laboratory examination conducted by the PNP Crime Laboratory on the various drug and drug paraphernalia recovered from the petitioner and Villaflor which revealed that the following confiscated items tested positive for the presence of *shabu*: (a) one heat-sealed transparent plastic sachet with marking "GSZ" containing 0.03 gram of white crystalline substance; (b) two aluminum foil strips both with markings "AHV", each containing white crystalline substance; and (c) three unsealed transparent plastic sachets all with markings "RSG" each containing white crystalline substance. In addition, the drug tests conducted on the petitioner and Villaflor both yielded *positive results*.

Petitioner's claim of extortion is similarly untenable. An allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases. It is viewed by this Court with disfavor, for it can be easily concocted. To substantiate such a defense, the evidence must be clear and convincing.[61] In the present case, the petitioner was unable to support his allegation of extortion with any other evidence. The petitioner also admitted that he did not know the policemen

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[60] False in part, fake in everything.

[61] See *People v. Boco*, G.R. No. 129676, June 23, 1999, 309 SCRA 42.

previous to the arrest, hence negating any improper motive on the part of the police. Such lack of dubious motive coupled with the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of prosecution witnesses, should prevail over the petitioner's self-serving and uncorroborated extortion claim. It is also worth noting that the petitioner has not filed a single complaint against the police officers who allegedly attempted to extort money from him.

c. Non-presentation of the Informant

The petitioner argues that the informant was never presented in court to corroborate the testimonies of the prosecution witnesses.

We do not find this argument convincing.

The settled rule is that the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative.[62] Moreover, informants are usually not presented in court because of the need to hide their identities and preserve their invaluable service to the police.[63] Thus, we held in *People v. Boco*:[64]

> Under the circumstances, we do not find any necessity for additional corroborating testimony, particularly that of the confidential informant. Intelligence agents, due to the nature of their work, are often not called to testify in court so as not to reveal their identities publicly. Once known, they could no longer be used again and, worse, may be the object of revenge by the criminals they implicate. The prevailing doctrine is that their testimonies are not essential for conviction, nor are they indispensable to a successful prosecution. With the testimonies of the arresting officers, they would be, after all, merely corroborative and cumulative.

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[62] See *People v. Lopez*, G.R. No. 172369, March 7, 2007, 517 SCRA 749.

[63] See *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513.

[64] G.R. No. 129676, June 23, 1999, 309 SCRA 42.

d. The Integrity and Evidentiary Value of the Examined and Presented Seized Items

The petitioner alleges that the prosecution failed to establish the evidence's chain of custody because the police operatives failed to strictly comply with Section 21(1) of R.A. No. 9165. He adds that the police did not immediately mark, photograph and inventory the drugs and drug paraphernalia at the place where they were seized.

We disagree.

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[65]

Contrary to what the petitioner wants to portray, the chain of custody of the seized prohibited drug was shown not to have been broken. After the seizure of the rectangular plastic sachet containing white crystalline substance from the petitioner's possession and of the various drug paraphernalia on top of the petitioner's bed, the police immediately brought the petitioner and Villaflor to the police station, together with the seized items. PO2 De Guzman himself brought these items to the police station and marked them. The plastic sachet containing white crystalline substance was marked "GSZ"[66] (*Exh*. "F"); the improvised tooter aluminum foil strips and aluminum foil with traces of methylamphetamine hydrochloride were marked "AHV"[67] (*Exh*. "G" and "H"); the three pieces of unsealed transparent plastic sachet were marked "RSG"[68] (*Exh*. "I", "I-1", and "I-2"); the disposable lighter was marked "RSG" (*Exh*. "J"); the stainless pair of scissors was marked "RSG" (*Exh*. "K"); the transparent plastic sachet containing three aluminum foil strips was marked "RSG" (*Exh*. "L"); and the Monsieur bag was marked "RSG"

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[65] See *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009.

[66] The initials of petitioner Gilbert S. Zalameda.

[67] The initials of Albert H. Villaflor.

[68] The initials of PO2 Renato S. De Guzman.

(*Exh*. "M"). These confiscated items were immediately turned over to SPO4 Mangulabnan, who in turn, forwarded them to the PNP Crime Laboratory, Southern Police District for examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, Forensic Chemist Palacios concluded that Exhibits "F", "G", "H", "I", "I-1", and "I-2" tested positive for the presence of methylamphetamine hydrochloride.[69] When the prosecution presented these marked specimens in court, PO2 De Guzman positively identified them to be the ***same*** items he seized from the petitioner and which he later marked at the police station, from where the seized items were turned over to the laboratory for examination based on a duly prepared request.[70] We quote the pertinent portions of the records:

x x x x x x x x x

PROSECUTOR ALEX BAGAOISAN:

Q: Now Mr. Witness, you mentioned earlier that when you frisked accused Zalameda, you were able to recover from his possession a sachet containing white crystalline substance?

PO2 RENATO DE GUZMAN:

A: Yes, sir.

Q: If that sachet containing white crystalline substance will be shown to you, will you be able to identify the same?

A: Yes, sir.

Q: **I am showing to you, Mr. Witness, a sachet, which contains white crystalline substance. Will you please go over the same and tell us what relation does this have to the sachet containing white crystalline substance, which you said was recovered from accused Zalameda?**

A: **This is the plastic sachet that I have recovered from the possession of accused Zalameda, sir.**

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[69] See Physical Science Report No. D-1142-03S, records, p. 55.

[70] TSN, January 28, 2004, pp. 10-15.

Q: **Why are you certain that this is the same sachet containing white crystalline substance, which you recovered from accused Zalameda?**

A: **I put markings, sir.**

Q: What markings?

A: I placed GSZ.

Q: Where did you place this marking?

A: Inside the headquarters, sir.

Q: Could you tell us what does this marking GSZ stand for?

A: Gilbert Sumile Zalameda, sir.

Q: May I request, Your Honor, that this white crystalline substance contained in a plastic sachet with markings GSZ be marked as Exhibit F, Your Honor. Now, you mentioned also that you were able to recover drug paraphernalia from the bed.

A: Yes, sir.

Q: You mentioned of an improvised tooter aluminum foil?

A: Yes, sir.

Q: **I have here several pieces of evidence. Will you please step down and identify the improvised tooter aluminum foil you have mentioned?**

A: **This one, sir.**

Q: **And why are you certain that this is the same improvised tooter aluminum foil that you recovered from the accused?**

A: **I placed markings sir.**

Q: What is the markings that you placed?

A: AHV, sir.

Q: What does AHV stand for?

A: Albert Huerte Villaflor, sir.

Q: May I request, Your Honor that this improvised tooter aluminum foil identified by the witnesses be marked as Exhibit G with markings AHV. **Now, you also mentioned of one aluminum**

foil, which was made as a tray, could you identify that particular object evidence that you have mentioned?

A: **Yes, sir, this is the one.**

Q: **And why are you certain that this is the same aluminum foil, which was used as a tray?**

A: **I also placed markings, sir.**

Q: What markings did you place in this particular object evidence?

A: AHV, sir.

Q: May I request, Your Honor, that this aluminum foil identified by the witness with markings AHV be marked as Exhibit H. **You mentioned of three pieces plastic sachets containing white crystalline substance. Now could you point to us these sachets that you have mentioned?**

A: **Yes, sir. These are the plastic sachets.**

Q: **And why are you certain that these are the same sachets which you said contained traces of *shabu*?**

A: **I placed the markings, sir.**

Q: What markings did you place?

A: My initial, sir, RSG.

Q: May I request, Your Honor, that these three pieces of plastic sachets containing traces of *shabu* be marked as Exhibit I, I-1, and I-2. **Now, you also mentioned of disposable lighter. Will you please identify the disposable lighter that you have mentioned?**

A: **Yes, sir, this is the one.**

Q: May I request, Your Honor, that the disposable lighter identified by the witness with markings RSG be marked as Exhibit J. **How about the scissors, could you identify the scissors that you have recovered?**

A: **Yes, sir. This is the one.**

Q: **The witness identified stainless scissors, which we request to be marked as Exhibit K. Aside from these object evidence, what other object evidence did you find on the bed?**

A: **I also found three rolled aluminum foil, sir.**

Q: **Will you be able to identify those three aluminum foils that you have mentioned?**

A: Yes, sir.

Q: **Please point them out to us.**

A: **Here, sir.**

Q: **May I request, Your Honor, that these three rolled aluminum foils with markings RS be marked as Exhibit L.** Now, why are the markings different, there is the marking RSG, there is a marking AHV? [*sic*]

A: For identification, sir.

Q: **You also mentioned a bag. Will you please identify that bag?**

A: **Here, sir.**

Q: We request, Your Honor, that the bag identified by the witness be marked as Exhibit M. Now, you also mentioned that you brought Zalameda to the headquarters.

A: Yes, sir.

Q: How about accused Albert Villaflor?

A: We also brought him to the headquarter[s].

Q: What did you do at the precinct?

A: Our desk officer prepared the necessary paper to turn over the two suspects to the investigator.

Q: So, did you come to know what happened after that?

A: The investigator prepared a request addressed to the crime lab. for laboratory examination of the confiscated evidence, sir.

Q: How about the accused, what did you do with them after the investigation?

A: The investigator also made a request for drug test examination addressed to the Crime Laboratory.

Q: **And did you come to know what was the result of the examination conducted?**

A: **Yes, sir.**

Q: **And what was the result?**

A: **The result is positive, sir.**

Q: **What do you mean positive?**

A: **Positive, sir, for methylamphetamine hydrochloride or *shabu*, sir.**

Q: **How about the drug test?**

A: **The accused also gave positive result.**

x x x[71] [*Emphasis ours*]

Thus, the prosecution established the crucial link in the chain of custody of the seized items from the time they were first discovered until they were brought for examination. Besides, as earlier stated, the petitioner did not contest the admissibility of the seized items during trial. **The integrity and the evidentiary value of the drug seized from the petitioner were therefore duly proven not to have been compromised.**

We also reject the petitioner's claim that the non-presentation of the forensic chemist was fatal to the prosecution's case. The petitioner never raised in issue before the trial court the non-presentation of Police Inspector Palacios. **In fact, the defense during the pre-trial agreed to dispense with her testimony.**[72] It must also be stressed that Police Inspector Palacios is a public officer, and her report carries the presumption of regularity. Besides, Section 44, Rule 130 of the Revised Rules of Court provides that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are *prima facie* evidence of the facts therein stated.[73] Police Inspector Palacios' findings that Exhibits "F", "G", "H", "I", "I-1", and

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[71] TSN, January 28, 2004, pp. 10-15.

[72] Pre-Trial Order, *supra*.

[73] See *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570.

"I-2" were found positive for the presence of *shabu* are, therefore, conclusive in the absence of evidence proving the contrary.

Jurisprudence teems with pronouncements that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165[74] does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the *preservation of the integrity and the evidentiary value of the seized items*, as these would be utilized in the determination of the guilt or innocence of the accused.[75] In the present case, we see substantial compliance by the police with the required procedure on the custody and control of the confiscated items, thus showing that the integrity of the seized evidence was not compromised. We refer particularly to the succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, under a situation where no objection to admissibility was ever raised by the defense. All these, to the unprejudiced mind, show that the evidence seized were the same evidence tested and subsequently identified and testified to in court. In *People v. Del Monte*,[76] we explained:

> We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. x x x

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[74] See *People v. Naquita,* G.R. No. 180511, July 28, 2008, 560 SCRA 430; *People v. Mateo,* G.R. No. 179478, July 28, 2008, 560 SCRA 375; *People v. del Monte,* G.R. No. 179940, April 23, 2008, 552 SCRA 627; *People v. Pringas,* G.R. No. 175928, August 31, 2007, 531 SCRA 828; *People v. Sta. Maria,* G.R. No. 171019, February 23, 2007, 516 SCRA 621.

[75] See *People v. Teodoro,* G.R. No. 185164, June 22, 2009.

[76] G.R. No. 179940, April 23, 2008, 662 SCRA 627.

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.

The Proper Penalties

The petitioner was caught in possession of 0.03 gram of *shabu* or methamphetamine hydrochloride. The illegal possession of dangerous drugs is punished under Section 11, paragraph 2(3), Article II of R.A. No. 9165, which provides:

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are **less than five (5) grams of x x x methamphetamine hydrochloride or "*shabu*"** x x x

We sustain the penalty imposed by the RTC and affirmed by the CA in Criminal Case No. 03-3559, as it is within the range provided for by law.

Meanwhile, Section 12, Article II of R.A. No. 9165 provides that the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body.

The courts *a quo* sentenced the petitioner to suffer the indeterminate penalty of four months and one day, as minimum, to two years and seven months, as maximum in Criminal Case No. 03-3560. Pursuant to Section 12 of R.A. No. 9165, we increase the minimum to six (6) months and one (1) day imprisonment.

WHEREFORE, premises considered, the Court of Appeals decision and resolution dated March 18, 2008 and July 15, 2008, respectively, in CA-G.R. CR No. 30061 are *AFFIRMED* with the *MODIFICATION* that in *Criminal Case No. 03-3560,* petitioner Gilbert Zalameda is *SENTENCED* to suffer the indeterminate penalty of six (6) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum.

The CA decision finding the petitioner guilty of violation of Section 11 of R.A. No. 9165 in *Criminal Case No. 03-3559* is *AFFIRMED* in all respects.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Del Castillo, and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184225. September 4, 2009]

SPOUSES ROGELIO F. LOPEZ and TEOTIMA G. LOPEZ, *petitioners, vs.* **SPOUSES SAMUEL R. ESPINOSA and ANGELITA S. ESPINOSA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; BASIC INQUIRY CENTERS ON WHO HAS PRIOR POSSESSION *DE FACTO*.— In *Dy v. Mandy Commodities Co., Inc.*, the Court held that there is forcible entry or *desahucio* when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. The basic inquiry centers on who has the prior possession *de facto*. The plaintiff must prove that he was in prior possession and that he was deprived thereof. In the instant case, respondents'

house was constructed in 1983 and they had prior physical possession until they were deprived thereof by petitioners. To substantiate their claims, respondents submitted the affidavit, dated September 20, 2002, of Carlos C. Menil and Lolito S. Bito, who witnessed the demolition of respondents' house during the latter's absence. Mr. Menil and Mr. Bito attested that they saw petitioner Rogelio personally supervising the demolition of respondents' house, and that he erected a concrete fence enclosing the area where the house formerly stood. Petitioners failed to refute the foregoing allegations except with bare denials. While petitioners hold title to the subject property where the house was located, the sole issue in forcible entry cases is who had prior possession *de facto* of the disputed property. In *Dy*, the Court held that these are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved; that is why it is a special civil action with a special procedure.

2. ID.; ID.; ID.; NO ABANDONMENT IN CASE AT BAR; THE DISCONNECTION OF WATER AND ELECTRIC SUPPLY AND THE FACT THAT RESPONDENTS LEFT THE HOUSE BECAUSE OF WORK ASSIGNMENT DO NOT CONSTITUTE ABANDONMENT; THEIR ACT OF LEAVING VALUABLES INSIDE THE HOUSE AND HAD THE SAME PADLOCKED CONSTITUTE ASSERTION AND PROTECTION OF THEIR RIGHT OVER THE SUBJECT HOUSE AND NEGATE RENUNCIATION AND INTENTION TO LOSE THE SAME.— The Court of Appeals correctly held that respondents did not abandon their house. Abandonment requires (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned. There is none in this case. The disconnection of water and electric supply and the fact that respondents left the house when respondent Samuel was assigned to Surigao del Norte in 1999, do not constitute abandonment. As correctly found by the Court of Appeals, respondents left valuables inside the house and had the same padlocked, which acts constitute assertion and protection of their right over the subject house and negate renunciation and intention to lose the same.

3. ID.; ID.; ID.; THE FILING OF ACTION FOR RECOVERY OF POSSESSION AND MALICIOUS MISCHIEF BEFORE THE OFFICE OF THE PUNONG BARANGAY AND A COMPLAINT FOR FORCIBLE ENTRY AND DAMAGES BEFORE THE TRIAL COURT SHOWS THAT RESPONDENTS HAVE NOT BEEN REMISS IN ASSERTING THEIR RIGHT AND THAT PETITIONERS' CLAIM OVER THE SUBJECT PROPERTY HAVE NOT GONE UNCHALLENGED.— It bears stressing that the instant case was preceded by the filing of actions for recovery of possession and malicious mischief before the Office of the Punong Barangay. Likewise, upon discovery of petitioners' acts of intrusion, respondents immediately filed a complaint for forcible entry and damages before the Municipal Trial Court in Cities. The Certification to File Action dated August 26, 2002 shows that no settlement or conciliation was reached. It is clear from the foregoing that respondents have not been remiss in asserting their rights and that petitioners' claims over the subject property have not gone unchallenged.

APPEARANCES OF COUNSEL

Danilo C. Menor for petitioners.
Paulino T. Chua for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition[1] for review on *certiorari* is the March 24, 2008 Decision[2] of the Court of Appeals in CA-G.R. CV No. 00113 finding petitioners, Spouses Rogelio F. Lopez and Teotima G. Lopez, liable for forcible entry and damages as well as the August 7, 2008 Resolution[3] denying petitioners' motion for reconsideration.

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[1] *Rollo*, pp. 29-41.

[2] *Id.* at 42-51. Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

[3] *Id.* at 61-65.

Respondents, Spouses Samuel R. Espinosa and Angelita S. Espinosa, owned a house located at Barangay Washington, Surigao City. Constructed in 1983, the house was situated at the back of petitioners' residence and stood over a portion of a parcel of land covered by Transfer Certificate of Title No. T-12332,[4] which was issued under the name of petitioners on June 28, 1996.

It appears from the records that the parties have had conflicting claims over the subject property since 1994 when petitioners, together with a Mr. Nolan Kaimo, filed an action for recovery of possession against respondents. The case was docketed as Civil Case No. 4301 before Branch 2 of the Municipal Trial Court in Cities of Surigao City, but was dismissed on September 7, 1994 on technical grounds.[5] On June 9, 1997 and July 2, 1997, petitioners were also summoned by the Office of the Punong Barangay of Barangay Washington, in connection with a complaint for malicious mischief filed by respondents.[6]

Meanwhile, the instant case stemmed from a complaint[7] for Forcible Entry with Damages filed by respondents against petitioners on September 30, 2002. The case was docketed as Civil Case No. 02-5950 before Branch 2 of the Municipal Trial Court in Cities of Surigao City.

Respondents alleged that on May 10, 2002, petitioners took advantage of their absence and demolished their house by means of stealth and strategy. Aided by hired personnel, petitioners removed and destroyed respondents' house and enclosed the property with a concrete fence.

In their Answer,[8] petitioners denied having demolished respondents' house and claimed that it was destroyed by the elements. They also averred that respondents permanently

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[4] *Id.* at 115.

[5] *Id.* at 89.

[6] *Id.* at 90-91.

[7] *Id.* at 71-76.

[8] *Id.* at 77-80.

transferred residence in 1999 considering that they paid their water bill only until February 1999 while the electrical utility was disconnected on the same year.[9]

On February 5, 2004, the Municipal Trial Court in Cities ruled in favor of respondents and held that petitioners forcibly entered the subject premises. It noted that:

> [I]n 1994 defendant Lopez and a certain Nolan Kaimo filed a case for recovery of possession versus herein plaintiffs [respondents] who were already occupants of a portion thereof, but the same was dismissed for technical reasons. In 1996, the defendants were able to secure TCT T-12332 in their name and which cover not only their residential lot but also the adjacent lot which plaintiffs occupied and where their house was erected. Then, in 1997 the plaintiffs had a clash with defendants when the latter allegedly destroyed plaintiffs' fence which conflict reached Barangay Captain Laxa's attention. These series of events clearly tend to show the many attempts of defendant Lopez to oust the plaintiffs from the premises and occupy the same as his own. And, the last event is the one related in the instant case where the defendants, sensing that plaintiffs were not present and their house already destroyed by the elements, had the lot relocated and fenced as a consequence of which plaintiffs were totally deprived of possession thereof.[10]

The Municipal Trial Court did not lend credence to petitioners' claims that respondents abandoned their house and that the same was destroyed by natural elements. It held that despite petitioners' constructive possession following the issuance of TCT No. T-12332, they were not justified in making such forcible entry.[11] The dispositive portion of the Decision[12] states:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Directing defendants [petitioners] to remove the concrete fence, steel gate, grills and other structures found on the premises

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[9] *Id.* at 78.

[10] *Id.* at 116-117.

[11] *Id.* at 117.

[12] *Id.* at 116-118. Penned by Judge Victor A. Canoy.

occupied by plaintiffs previous to the forcible entry, and after which to deliver possession thereof to plaintiffs smoothly and peacefully;

2. Directing defendants [petitioners] to pay the value of the house and improvements in the sum of ₱85,200.00;

3. Ordering defendants [petitioners] to further pay litigation expenses and the costs, and the sum of ₱10,000.00 as attorney's fees.

SO ORDERED.[13]

Petitioners appealed to the Regional Trial Court of Surigao City/Surigao del Norte, which reversed the ruling of the Municipal Trial Court in Cities. In its August 17, 2004 Decision,[14] the Regional Trial Court dismissed the case on the ground that the evidence clearly prove abandonment on the part of respondents.[15]

Respondents filed a petition for review[16] before the Court of Appeals which affirmed *in toto* the Decision of the Municipal Trial Court in Cities. It found that while respondents left the house in 1999 when respondent Samuel was assigned to Placer, Surigao del Norte, this fact alone does not establish abandonment. Moreover, the appellate court noted that respondents enjoy priority of possession, and that they paid the corresponding taxes due on the house.[17] Thus:

WHEREFORE, the instant petition is hereby GRANTED. The Decision dated 17 August 2004 of the Regional Trial Court, Tenth (10th) Judicial Region, Branch No. 29 of Surigao City in Civil Case No. 6229 is REVERSED and SET ASIDE. The Judgment dated 05 February 2004 of the Municipal Trial Court in Cities, Branch No. 2 of Surigao City in Civil Case No. 02-5950 for *Forcible Entry with Damages* is AFFIRMED *IN TOTO*.

SO ORDERED.[18]

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[13] *Id.* at 118.

[14] *Id.* at 119-127. Penned by Judge Jose Manuel P. Tan.

[15] *Id.* at 127.

[16] CA *rollo*, pp. 3-15.

[17] *Rollo*, p. 19.

[18] *Id.* at 20.

Petitioners' motion for reconsideration was denied, hence this petition on the following grounds:

THE COURT OF APPEALS ERRED IN RULING THAT THE HEREIN RESPONDENTS DID NOT ABANDON THEIR NIPA HOUSE DESPITE THE FOLLOWING UNDISPUTED FACTS, TO WIT:

A

THE LOT OVER WHICH THE NIPA HOUSE WAS CONSTRUCTED IS OWNED BY THE HEREIN PETITIONERS AND COVERED BY TCT-T12332;

B

NOBODY WAS LEFT STAYING IN THE NIPA HOUSE FOR YEARS AND THE WATER AND ELECTRICAL CONNECTIONS IN THE NIPA HOUSE WERE ALREADY CUT OFF AS EARLY AS 1999.

Petitioners argue that the disconnection of water and electric supply in respondents' house is proof of their intention to abandon the house, especially because respondents are not the owners of the land on which the house stood. Petitioners also allege that, even assuming *arguendo* that the Municipal Trial Court correctly decided on the issue of possession, the award of Php85,200.00 representing the value of improvements and attorney's fees is not supported by evidence.

On the other hand, respondents claim that they did not abandon their house, and that the abandonment of a right, claim or property must be clear, absolute, and irrevocable. On the award of Php85,200.00, respondents aver that the issue was raised for the first time on appeal.

The petition lacks merit.

In *Dy v. Mandy Commodities Co., Inc.*,[19] the Court held that there is forcible entry or *desahucio* when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. The basic inquiry centers on who has the prior possession *de facto*. The plaintiff must prove that he was in prior possession and that he was deprived thereof.

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[19] G.R. No. 171842, July 22, 2009.

In the instant case, respondents' house was constructed in 1983 and they had prior physical possession until they were deprived thereof by petitioners. To substantiate their claims, respondents submitted the affidavit, dated September 20, 2002,[20] of Carlos C. Menil and Lolito S. Bito, who witnessed the demolition of respondents' house during the latter's absence. Mr. Menil and Mr. Bito attested that they saw petitioner Rogelio personally supervising the demolition of respondents' house, and that he erected a concrete fence enclosing the area where the house formerly stood. Petitioners failed to refute the foregoing allegations except with bare denials.

While petitioners hold title to the subject property where the house was located, the sole issue in forcible entry cases is who had prior possession *de facto* of the disputed property.[21] In *Dy*, the Court held that these are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved; that is why it is a special civil action with a special procedure.[22]

The Court of Appeals correctly held that respondents did not abandon their house. Abandonment requires (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.[23] There is none in this case.

The disconnection of water and electric supply and the fact that respondents left the house when respondent Samuel was assigned to Surigao del Norte in 1999, do not constitute abandonment. As correctly found by the Court of Appeals, respondents left valuables inside the house and had the same

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[20] *Rollo*, p. 75.

[21] *Perez v. Falcatan*, G.R. No. 139536, September 26, 2005, 471 SCRA 21, 31.

[22] *Supra* note 19.

[23] *Dela Cruz v. Quiazon*, G.R. No. 171961, November 28, 2008.

padlocked, which acts constitute assertion and protection of their right over the subject house and negate renunciation and intention to lose the same.[24]

It bears stressing that the instant case was preceded by the filing of actions for recovery of possession and malicious mischief before the Office of the Punong Barangay. Likewise, upon discovery of petitioners' acts of intrusion, respondents immediately filed a complaint for forcible entry and damages before the Municipal Trial Court in Cities. The Certification to File Action dated August 26, 2002 shows that no settlement or conciliation was reached.[25] It is clear from the foregoing that respondents have not been remiss in asserting their rights and that petitioners' claims over the subject property have not gone unchallenged.

The Court affirms the award of Php85,200.00 representing the value of improvements and attorney's fees. The issue on the propriety of the award was raised for the first time on motion for reconsideration before the Court of Appeals. Well-settled is the rule that issues not raised below cannot be raised for the first time on appeal.[26]

WHEREFORE, based on the foregoing, the petition is *DENIED*. The March 24, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 00113-MIN finding petitioners liable for forcible entry is *AFFIRMED*.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[24] *Rollo,* pp. 16-17.

[25] *Id.* at p. 76.

[26] *Hermogenes v. Osco*, G.R. No. 141505, August 18, 2005, 467 SCRA 301, 310.

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